Circuit Court for Montgomery County
Case No.: 137261C

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1355

September Term, 2022

BIET VAN TRAN

v.

STATE OF MARYLAND

Berger,
Beachley,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: January 10, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant, Biet Van Tran ("Tran"), was convicted by a jury in the Circuit Court for Montgomery County, Maryland, of the first-degree murder of Linh Pham, the attempted first-degree murder of Thi Nguyen, and the first-degree assault and attempted first-degree murder of Quy Luc. He was sentenced to lifetime incarceration, without the possibility of parole, for the murder of Linh Pham, a consecutive thirty (30) years for the attempted murder of Thi Nguyen, and a consecutive twenty-five (25) years for the attempted murder of Quy Luc. Tran noted a timely appeal and raises the following issue:

> Whether the motions court erred in denying Appellant's motion to suppress his statements to the police on voluntariness grounds.

For the following reasons, we shall affirm.

BACKGROUND

Summary of Pertinent Facts

On May 11, 2020, sometime around 3:30 p.m., Montgomery County Police received several calls that a stabbing had occurred at 911 Balmoral Drive, located in Silver Spring, Maryland. One of those calls came from Tran himself, in which he reported that "I just killed somebody. Can you come get me in the jail?" and "My stepson, he tried to kill me, and I tried to kill him." There were three victims of the stabbing: Quy Luc; Linh Pham, Quy Luc's girlfriend; and Thi Nguyen, a friend to Linh Pham. Linh Pham died as a result of a stab wound to her torso. Thi Nguyen sustained life-threatening stab wounds that resulted in her hospitalization for several weeks. Quy Luc, the son of Tran's girlfriend, Chau Luc, and sometimes referred to as Tran's "stepson," sustained cutting wounds to his

hands, but managed to escape to a neighbor's house and reported the violence inside 911 Balmoral Drive to the police.[1]

The jury heard from the surviving witnesses, Quy Luc and Thi Nguyen, who both identified Tran as their assailant, as well as Tran who testified in his own defense. Both the State and Appellant put on evidence that the stabbings occurred shortly after Quy Luc came down to Tran's basement bedroom and asked Tran to help pay the mortgage owed on their shared house. In both versions, after Quy Luc confronted Tran about the money, Tran became angry, grabbed a large kitchen knife, concealing it momentarily behind his back, and then lunged at Quy Luc, who sustained defensive cutting wounds before running outside to escape. According to Tran, he only retrieved the knife after Quy Luc hit him in the arm, and made him fear further injury. The fatal injury to Linh Pham, and the life-threatening injury to Thi Nguyen, occurred after Tran chased Quy Luc outside and then returned inside the house.

Tran never denied that he stabbed any of the victims, but claimed that he attacked Quy Luc after he attacked him first, and that, when he returned inside the house, his vision was impaired and that he mistakenly believed that Linh Pham and Thi Nguyen meant to attack him as well. Tran denied that he intended to kill anyone.

As will be discussed in more detail, Tran was taken into custody on the day of the incident and interrogated by lead Detective Dimitry Ruvin, with assistance from an Officer

[1] Chau Luc, Tran's girlfriend and the mother to Quy Luc, previously suffered a stroke and was not living in the house at the time of the incident.

Le, at police headquarters.[2] He was subsequently charged with multiple counts of murder, attempted murder, and other related counts.[3]

Motion to Suppress Statement and Motions Hearing

Subsequently, Tran's Defense Counsel filed a Motion to Suppress, along with a transcript of the interview, "complete with Vietnamese translation," and attached to the motion as "Exhibit A." For some reason, Defense "Exhibit A" is not filed in the appellate record immediately after that motion. Instead, as will be discussed, that exhibit appears elsewhere in our record, notably, within the collection of exhibits filed with the State's "Answer to Motion to Suppress Statements."

The collection of exhibits in the appellate record that appear immediately after the State's answer to Tran's written motion to suppress include: "State's Exhibit One," a Vietnamese-to-English Translation of Tran's statement, without any Vietnamese dialogue; the aforementioned "Exhibit A", a transcript of the audio file from the interview, including, in some places, a different Vietnamese-to-English translation than appears in "State's Exhibit One" (including dialogue in the original Vietnamese); and "State's Exhibit Two,"

[2] No first name is given for Officer Le; both parties on appeal refer to this police officer as "Officer Le," however his name is sometimes spelled as "Li," or "Lee," in the record.

[3] We note that, Appellant was taken into custody during the coronavirus pandemic and subjected to safety protocols associated therewith. In addition, at the time of the motions hearing on April 23, 2021, the Maryland Judiciary was operating under Phase IV emergency operations. *See* https://www.mdcourts.gov/coronavirusorders; *see also Murphy v. Liberty Mut. Ins. Co*., 478 Md. 333, 351-63 (2022) (describing the effect of the COVID pandemic on Maryland courts and the administrative orders issued by the Chief Judge of the Court of Appeals in response to the pandemic).

a translated transcript of the entire interview, entirely in English. Notably, all three versions include *entirely* different translations of the *Miranda* warnings and advisements.

Thereafter, at the motions hearing, there were no witnesses called by either side.[4] Instead, the court admitted four exhibits into evidence. There is no dispute as to the contents of three of these four exhibits, namely, State's Motion Exhibits 1, 3, and 4. State's Motion Exhibit 1 is the video of Tran's custodial interrogation on May 11, 2020, the day of the incident. State's Exhibit 3 is an audio recording of Tran's 911 call. And, State's Motion Exhibit 4 is the translation of Tran's interview, entirely in English, and previously identified as "State's Exhibit Two" as attached to the State's written answer.

In contrast to these three exhibits from the motion hearing, the content of State's Motion Exhibit 2 is in dispute. Because of that, it behooves us to determine which

[4] Tran appeared remotely with the aid of an interpreter but did not testify at the suppression hearing on the ultimate issue of voluntariness. This foreshadows our conclusion, discussed *infra*, that an adverse inference may be drawn from that decision. As this Court has stated:

> On the issue of voluntariness, a defendant's subjective state of mind is, after all, the ultimate issue. It is the defendant who knows that state of mind better than anyone else. The defendant who fails to testify as to his state of mind, when he could readily do so without any risk of incriminating himself, self-evidently thereby weakens his position. He asks the courts to speculate in his favor, but he declines to give them the testimonial assistance that only he could give. Such a course of conduct realistically invites an inference in the opposite direction.

Uzzle v. State, 152 Md. App. 548, 576, *cert. denied*, 378 Md. 619 (2003); *see also Madrid v. State*, 474 Md. 273, 329 n.11 (2021) ("The absence of such testimony would support the conclusion that Madrid did not confess in reliance on the alleged implicit inducement, i.e., the second prong of the [*Hillard v. State*, 296 Md. 145 (1979)] test is also not satisfied").

translation of Tran's statement to the police is properly before us on appeal. For clarity's sake, we set forth the admission of these exhibits at the motion hearing as follows:

> [PROSECUTOR]: It is. I apologize for not speaking up earlier. For the purposes of the State's response here, we've submitted four exhibits for the Court. I think the digital files have been numbered one through four.
>
> Exhibit 1 is the recorded video of the interview at the time. Exhibit 2 is Vietnamese-to-English translation of the Miranda portion.[5] Exhibit 3 is an audio recording of the 9-1-1 call made by the defendant. And Exhibit 4 is an English transcription of the entirety of the interview of the defendant.
>
> The State would, at this time, mark those four exhibits and offer them into evidence.
>
> THE COURT: Any objection?
>
> [DEFENSE COUNSEL]: Your Honor, I don't have an objection. The only one that I received, however, was Exhibit 4. I haven't received 1, 2, and 3. I do have the 2 as attached to my motion, but I didn't have the Exhibit 1 and 3. I'm assuming those are exactly what was provided in discovery and that I wouldn't have an objection, but I have not seen them.
>
> THE COURT: Okay. Mr. O'Grady, can you repeat the exhibit numbers? Because I see some exhibits attached to the courtesy copy provided to the Court, but I'm not sure if it's the same numbers that you said. So what is number one?
>
> [PROSECUTOR]: Number one, and this is based on the titling of the files that I submitted to the electronic folder that your Clerk made available to us.
>
> Exhibit 1, as it's labeled in the digital file, is the video recording of the interview.
>
> THE COURT: Okay.

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

> [PROSECUTOR]: Exhibit 2 is the Vietnamese-to-English translation and transcription of the Miranda portion.
>
> [DEFENSE COUNSEL]: And that, I think, is your Exhibit 1 on your motion submission.
>
> THE COURT: Right. What is three?
>
> [PROSECUTOR]: Three is the audio recording of the 9-1-1 call.
>
> THE COURT: And four?
>
> [PROSECUTOR]: And four is the English transcription of the interview of the defendant.
>
> [DEFENSE COUNSEL]: Which I think is your Exhibit 2 on your motion.
>
> THE COURT: Right.
>
> [PROSECUTOR]: Okay. Yes.

The parties on appeal dispute what is contained in State's Motion Exhibit 2. The reason the dispute is remarkable is that, depending on what exactly was admitted, there are different translations of the *Miranda* warnings and advisements. Tran relies on "Exhibit A," which was purportedly attached to Tran's written motion to suppress.[6] According to the State, however, the exhibit before the motions court, State's Motion Exhibit 2, only included what was identified as "State's Exhibit One" attached to the State's written answer. As the State notes, there is "one significant difference" between the transcripts. That is whether the translation for the *Miranda* warning, "Anything you say may be used

[6] To make things more confusing, Appellant's references in his brief are to "State's Exhibit #4," however, it is clear from the text provided that Appellant was relying on the document identified in our record as "Exhibit A."

against you," was either: (1) "Anything you say that is untruthful will be subject to *punishment* by the police," as appears in "Exhibit A"; or, (2) "At this time, anything you say which is not true … the police will … *fine* you" as appears in "State's Exhibit One." (Emphasis added).

As will be set forth, we observe that the motions court never referred to the translation in Tran's "Exhibit A" when it made its findings. Indeed, the court found that the translation for the warning that Tran's statements could be used against him was that "Officer Lee stated that anything that you say which is not true the police will *fine* you." (Emphasis added). This suggests that the court relied on the State's "State's Exhibit One," and not Tran's "Exhibit A."

Moreover, we note that Defense Counsel raised no objection when the court and the State clarified that State's Motion Exhibit 2 was only "Exhibit 1" as attached to the State's written answer. Defense Counsel also referred to translations that appear to come from "State's Exhibit One," during the course of argument on the motion. Further, in his reply brief filed in this Court, Tran appears to concede that he may have erred in identifying the translation that was before the motions court. The lack of an objection by Tran's counsel at the motions hearing and the apparent concession by Tran's appellate counsel lead us to conclude that "State's Motion Exhibit 2" is the translation identified in our record as the State's "State's Exhibit One" filed with the State's written Answer to Motion to Suppress Statements.

Thus, relying on the four exhibits admitted at the motions hearing, immediately after the stabbing at issue, Tran, himself called 911. He identified himself and his address, and

reported that "I just killed somebody" and, "My stepson, he tried to kill me. [inaudible] You come get me go to jail." Tran was arrested, taken to police headquarters, and placed in an interview room containing a couple chairs and a table.

The first interaction between Tran and several police officers was entirely in English with the officers directing Tran to stand and turn, to remove his clothing and to wear a standard-issue white jumpsuit. Inasmuch as this occurred on May 11, 2020, during the height of the coronavirus pandemic, everyone's face was covered and their voices were slightly muffled. After a short break, with Tran left alone in the room, two detectives entered and Tran indicated he would like a translator because he primarily spoke Vietnamese. The detective, who is identified during the motions hearing as Detective Dimitry Ruvin, told Tran that they would try to get a translator. Meanwhile, Tran was asked, in English, his name and address, his age, where he worked, details about his girlfriend, when he met her, when she suffered a stroke, where she was now, and how long they lived together. After another break, Tran was informed, still entirely in English, that a Vietnamese translator was enroute.

Once Officer Le arrived, Detective Ruvin and Officer Le returned to the interview room, took off Tran's handcuff, and then proceeded to read Tran his *Miranda* rights, with Detective Ruvin reading them in English from a preprinted form, and Officer Le translating them, verbally and contemporaneously, into Vietnamese. Tran indicated that he spoke "Vietnamese and a little bit English." He took medication for his blood pressure and his liver. Tran finished fifth grade in Vietnam, but did not go to school in America. Asked about his physical condition, Tran replied that he had trouble sleeping, difficulty breathing,

did not drink alcohol, and his blood pressure was elevated and he felt dizzy. Turning to the *Miranda* warnings and advisements, the following is reproduced from State's Motion Exhibit 2, with the portion translated from Vietnamese to English emphasized and Detective Ruvin referred to simply as "Officer":

> OFFICER: OK good good good good. OK. So we gonna... We have to read you this form... Any time we bring anybody here in handcuff, we have to read them this form, OK? So I am going to read you in English, OK? So just listen to me and Officer Le is going to translate it OK? ls that cool?
>
> TRAN: OK.
>
> OFFICER LE: Let see... seven fifty-five.
>
> OFFICER: So...OK... You have the right now and at any time to remain silent.
>
> OFFICER LE: *At this time... you... if you don't want to talk anymore, you have the right not to talk.*
>
> OFFICER: Do you understand?... If you don't understand something, please ask. OK?
>
> TRAN: OK.
>
> OFFICER: OK. All right... Anything you say may be used against you.
>
> OFFICER LE: *At this time, anything you say which is not true... the police will... fine you.*
>
> OFFICER: Do you understand?... OK... alright, so... you have the right to a lawyer before and during any questioning.
>
> OFFICER LE: *You have... At this time if you want a lawyer, you have the right to do so. If you hire a lawyer, it's fine to do so*.
>
> OFFICER: OK?

TRAN: OK.

OFFICER: If you cannot afford a lawyer, one will be appointed for you.

[OFFICER LE]: *If you want a lawyer but don't have the money, the police will hire a lawyer for you.*

OFFICER: OK?

TRAN: OK.

OFFICER: This one's kind of long, so we're going to do it in little pieces. OK?

OFFICER LE: Hold on one second.

OFFICER: You have the right to be taken promptly before a district court commissioner, who's a judicial officer not connected with the police.

OFFICER LE: Let see. OK. May be the best is [?][7]

OFFICER: I think it'll be easier if we can do it like in chunk, if you can.

OFFICER LE: [uh]

OFFICER: So just try to read that part you have the right to be taken promptly before a court commissioner. So just take... look... after this you going to be taken into a district court commissioner from here, OK? Can you tell him that? .

OFFICER LE: *At the end of today, the police will take you to see... a person in court... a judge.*

TRAN: *I don't understand*.

OFFICER LE: *The judge*.

TRAN: Yes?

[7] At this point, according to the video and the transcript entirely in English, Officer Le stated: "Okay, let me read the rest and I will see if [I can] mush it together."

OFFICER LE: *After finishing this, you will have to go to court*.

TRAN: *Go to court*?

OFFICER LE: *Pardon*?

TRAN: *Go to court*?

OFFICER LE: *The police will take you to the court to talk to the judge*.

OFFICER: So just tell him a court officer that doesn't work for the police.

OFFICER LE: *The judge doesn't work for, the police. He works on his own. He doesn't work for anyone*.

OFFICER: OK?... The commissioner, or a commissioner, will inform you of each offence you're charged with. So just tell him the commissioner will tell him what he's been charged with.

OFFICER LE: *The judge will read your documents and tell you what you've been charged with.*

OFFICER: And the penalty for each offense

OFFICER LE: *And for those charges, the judge will tell you how long you have to stay in jail and how much you have to pay*.

OFFICER: Providing you with a written copy of the charges against you

OFFICER LE: *He will also give you the copy of your documents*.

OFFICER: Advise you of your right to counsel. Or you can say advise you of your right to an attorney.

OFFICER LE: *Then the judge will ask you once again if you want an attorney*.

OFFICER: Make a pretrial custody determination.

> OFFICER LE: *Upon give you your paper... the judge will give a you a day to go to court*.
>
> OFFICER: And advise you whether you have a right to a preliminary hearing before a judge at a later time.
>
> OFFICER LE: I think I've just [?][8] him that you know.
>
> OFFICER: Which one? Oh... advise you whether you have a preliminary hearing before a judge at a later time?
>
> OFFICER LE: Yeah.
>
> OFFICER: Do you understand what I've just said?
>
> OFFICER LE: *Do you understand what I've just said*?
>
> TRAN: *But when I go to court, there have to be with an interpreter*.
>
> OFFICER LE: *Yes, there will be an interpreter in court*.
>
> TRAN: *Thank you*.
>
> OFFICER LE: *I'm not good at speaking [Vietnamese]. I only speak about enough. Here I only know how to say that*.
>
> TRAN: *I see*.
>
> OFFICER: OK...

(Emphasis in original.)

Throughout this portion of the interview, the videotape shows that Tran nodded in agreement at various times, never seemed uncomfortable, and had no difficulty, for the most part, understanding Officer Le. However, Tran also was never asked to initial or sign any written document acknowledging, and then waiving, his *Miranda* rights. *See*

[8] In the English translation, Officer Le stated, "I think I just mushed that into one just now."

generally, North Carolina v. Butler, 441 U.S. 369, 375-76 (1979) (holding that an express waiver of *Miranda* rights is not required and a waiver can be implied provided the circumstances indicate a knowing and voluntary relinquishment of rights); *Gonzalez v. State*, 429 Md. 632, 651 (2012) (recognizing that waiver may be inferred).

Immediately prior to the actual interview, when Tran was asked about the incident, and after the *Miranda* warnings were read to him, Detective Ruvin stated: "Okay, all right. Can you tell us, like how you ended up here, like what happened now? And you can do it in English or if you are more comfortable in Vietnamese, that's fine, whatever, we're here for you, man." Tran then began discussing the incident, and maintained that it all started when Quy Luc, who he referred to as his stepson, confronted him about financial issues at the doorway to Tran's basement apartment. As he spoke to the detectives about Luc, Tran seemed animated, used his hands, and looked directly at Officer Le while he spoke. Tran spoke both in Vietnamese, and sometimes, in English during the course of the interview.

Tran continued, as he spoke to Luc, Luc struck him first. Tran then stated, "And I get angry." Tran had knives in the basement, grabbed one, showed it to Luc, and then began to chase him up the stairs and then outside the residence.

As he returned back into the house, Tran stated that he had difficulty breathing and his vision was impaired. He saw "shadows" coming towards him from the upstairs area, confronted them, and asked them who they were and what they were doing inside the house. The individuals then ran back upstairs. At that point Tran chased them, afraid that they were going to retrieve a weapon, and stabbed them. Once the victims cried out and Tran realized they were females, Tran stopped and called 911 to turn himself in. In

addition, at around this same time, Tran washed the knife and returned it to the kitchen block in his small kitchen area.

Tran and Detective Ruvin then discussed, in both English and with Officer Le translating, about the whereabouts, the condition, and the size of the knife. Detective Ruvin asked Tran, in English, if he stabbed both people, and Tran nodded in affirmation, prior to the translation. The detective also asked if these people were "threatening" Tran, and Tran replied before hearing the translation of the question.

Further conversation about Quy Luc ensued, alternating between English and Vietnamese, and at times, entirely in English. Tran stated that Luc was "bigger than him, physically, in strength and everything and felt the need that if he didn't grab the knife, he would have got pummeled[.]" He also stated that, after he chased Luc outside the house, when he came back inside, he was not angry. Asked whether he wanted to add anything at the end of the interview, Tran told the detective that Luc "always bothers him," and that, when he was in the house, Tran was afraid to speak to him.

Returning to the hearing, the State began its argument by contending that the conversation before the *Miranda* warnings was simply routine booking questions and were admissible. *See Prioleau v. State*, 411 Md. 629, 639 n. 3 (2009) (listing exceptions to *Miranda* to include "routine booking questions; the "public safety" exception; and, the "rescue doctrine") (citations omitted); *see also Hughes v. State*, 346 Md. 80, 94 (1997) ("We agree that certain routine questions asked during the booking process are ordinarily exempt from the requirements of *Miranda*").

The State conceded that the *Miranda* warnings themselves were not accurately translated by Officer Le and could not be used in its State's case-in-chief, but, because Tran's overall statement was voluntary, his statements could be used as impeachment should he testify at trial.[9] The State noted that Tran spoke in English when he called 911 and at times during the interview with Detective Ruvin and Officer Le. Based on this, the State asserted that Tran "very well could have been sufficiently advised of his *Miranda* rights in English alone without Vietnamese translation." The State continued:

> The reason why that is significant in the present case is because with the defendant's level of proficiency in English, any reasonable person would have understood that the statements by Officer Lee were mere accidental mistranslations, and it was not the sort of proffer of assistance or leniency or an improper threat that would render the subsequent interview involuntary.
>
> Officer Lee, when he made these statements, was attempting to improvise translation of the Miranda rights. He had been called in from his home and asked to translate on the fly. But he was not reading from a written Vietnamese portion of the Miranda rights.
>
> It's also important that he was not attempting to -- at the time defendant was not showing any hesitance in waiving his Miranda rights.
>
> The mistranslations were not in an attempt to try and get the defendant to waive his Miranda. It's not a circumstance where the defendant was showing hesitance, maybe he didn't

[9] There is no dispute in this case that the translation at issue was an inaccurate reading of the *Miranda* warnings and advisements. We also note that, based on our review of the videorecording, Officer Le was contemporaneously translating as he read the *Miranda* warnings off of a form pre-printed in English and did not use any sort of pre-printed Vietnamese translation or any sort of readily available online language interpreter such as Google Translate.

> want to talk, and the officers were really trying to overcome that hesitance.
>
> It wasn't a situation like that. This was more where Officer Lee was doing his best to translate on the fly the English Miranda rights to the defendant.

After informing the motions court that he was unaware of any written Vietnamese translation of *Miranda*, the State also indicated "[i]t's also important that each of these statements were immediately preceded by the correct Miranda rights in English." Further, there was no argument that the warnings given in English were wrong or improper. Finally, even if the inaccurate translations were akin to an improper inducement, threat, or promise, the State argued that Tran did not rely on these mistranslations and that "level of causation cannot be met in the present case because the defendant had already called the police and confessed to the crime."

In response, Tran's defense counsel began by asserting that certain of the "booking questions," went beyond routine interrogation and involved Tran's relationship with his girlfriend.

Addressing next the voluntariness issue, counsel argued that Tran was not focusing on Detective Ruvin during the interview, but instead, was listening to Officer Le's translation throughout. Counsel argued:

> So despite the fact that the State wants you to say that the English-speaking officer told Mr. Tran to listen to the English-speaking officer, one, it's apparent that Mr. Tran needed an interpreter and asked for one; two, the English-speaking officer believed that this was necessary and so went to great lengths to call on Officer Lee to provide this translator; and the English-speaking officer say, "Listen to me," and Officer Lee will translate.

> So that's what's happening. It is not reasonable to believe that someone in Mr. Tran's position is going to not listen to the Vietnamese translation of the Miranda rights. Of course he is. That's why the interpreter is there. That's why he was brought in, and that's what Mr. Tran is relying on is the interpretation of Officer Lee.

Defense counsel continued, "I think that you have to look at the totality and the comments made together. So we have both of these misinterpretations, which although the State is arguing that they weren't intentional misinterpretation, they are important misinterpretations." Defense Counsel noted that one of the warnings was translated as "At this time anything you say which is not true, the police will fine you."[10] Counsel argued this translation meant that there was a "penalty" discussed. Counsel also noted that Officer Le translated another warning as "If you want a lawyer but don't have the money, the police will hire a lawyer for you." And, counsel also directed the court's attention to the statement towards the end of the warnings by Detective Ruvin that "Can you tell us, like, how you ended up here? Like, what happened now? And you can do it in English. Or, if you're more comfortable in Vietnamese, that's fine. We're here for you, man." Defense Counsel argued the police provided a "promise of leniency" akin to "We're going to be here for you and help you in what you're providing to us."

After recounting other circumstances from the interview, including, primarily, Tran's proficiency in English, Defense Counsel argued that Tran was improperly induced into making a statement:

[10] Supporting our earlier determination as to which translation was admitted as "State's Motion Exhibit 2," this is from the interpretation provided in "State's Exhibit One."

> So I think in looking at the totality of all of those and trying to decide whether or not there was a direct or implied promise and what a reasonable person in Mr. Tran's position would have believed, I think it's apparent that he would have believed that the police were going to be assisting him and not that all of this was going to be used against him and that this was not a voluntary statement and not a voluntary decision to give this information on his behalf.

Turning to the causation element of the voluntariness test, Defense Counsel asked the court to distinguish Tran's 911 call from the statement. Counsel noted that "the 9-1-1-call is brief and short and not detailed in any way in order to get the police to come and respond to this call." For that reason, counsel concluded that Tran's statement was involuntary. After hearing rebuttal from the State, the court recessed to consider the issue further.

When it reconvened a few days later, the court denied Tran's motion to suppress the statement. Specifically, the court first found that the portion of the pre-*Miranda* questions about Tran's name, age and how long he lived in the United States were routine booking questions, but that the rest of that conversation was not. Turning to whether Tran's post-*Miranda* statement could be used for cross-examination should he testify at trial, the court found as follows:

> In this case, the defendant had already called 9-1-1 and confessed to the murders. He was not coaxed by the police officers during the subsequent interrogation.
>
> The police did not say anything that would constitute improper offers of assistance to Mr. Tran. The statement, "We're here for you," is not similar to the statements made by the police in [*Winder v. State*, 362 Md. 275 (2001)], that the officers were not interested in sending the defendant to jail for the rest of his life, that the person who committed the murders

needed help, and that the only way for him to get the help would be to let the police know what had happened.

The court also found:

> The defendant had already confessed. Whether he had previously told all of the details of the murder to the 9-1-1 operator does not negate the fact that he confessed.
>
> Additionally, the misinterpretations of Officer Lee do not make the statements made involuntary. The most significant misstatement was instead of saying under Miranda that anything that the defendant said may be used against him, Officer Lee stated that anything that you say which is not true the police will fine you.
>
> The other statements involved the hiring of an attorney and taking the defendant before a commissioner. The Court does not find a significant difference in saying that if you can't afford an attorney one will be appointed for you and that if the defendant wanted a lawyer and couldn't afford one the police will hire a lawyer for him, nor was it significant that Officer Lee said defendant would be taken before a judge instead of a commissioner.
>
> The defendant understands some English. At times during the interview he answered questions posed by the detective before they were translated by Officer Lee, and he responded in English.
>
> Sometimes defendant began to speak in English in response to a question before switching to Vietnamese. The defendant, at one point, indicated that he did not understand Officer Lee's translation, and this is on page four of the Vietnamese-to-English translation. He asked questions.
>
> So it is clear to the Court that most of the time defendant was able to understand what was said to him in English. When he did not understand, he asked questions.
>
> Therefore, the Court finds that the statements after the Miranda warning as mistranslated were voluntary and can be used to cross-examine the defendant.

Accordingly, Defendant's motion to suppress is granted in part and denied in part.

Tran's Trial Testimony: Direct and Cross-Examination

Pertinent to the question presented on appeal, Tran testified on his own behalf at trial. On the day of the incident, Monday, May 11, 2020, Quy Luc came to Tran's basement door and demanded he pay part of the mortgage payment. Tran told him he did not have the money and asked him to leave. In turn, Quy replied by saying something disrespectful and hit Tran in the left arm. Specifically, Tran testified that "I got really angry and then he attacked me."

In addition to being angry, Tran, who earlier testified he was "groggy" from drinking too many beers the night before, was also "scared" and "very afraid" that Quy Luc might hurt him or "beat me up." At around this time, Tran turned from the doorway and went to his small kitchen area to retrieve a large kitchen knife. When he returned, Tran hid the knife behind his back, intending to scare Quy Luc, not kill him. At that point, Tran pulled the knife out, Quy Luc "blocked with his hand," and was injured. Quy Luc then turned and ran, and Tran chased him out to the yard to "scare him off." He denied he intended to kill Quy Luc.

Tran then turned and went back inside the house, but, because the sun was bright, his eyes did not adjust to the change in lighting. It was at that point that he saw two "shadows" "lurking." Believing these were two of Quy Luc's companions and that they intended to attack him, Tran demanded to know why they were in the house. Although he was "scared," Tran did not wait for a reply and immediately attacked the "shadows." And,

when they turned and ran, Tran chased after them. He stabbed one of them on the left side and then struck the other one on the right side. It was then, Tran testified, that he first heard a female voice, causing him to stop his attack.

Afterwards, Tran testified that he had a "lot of regret" and "felt guilty," and knew "I did the wrong thing to the wrong person." He admitted, however, that when he was chasing them, he "wanted to hurt them," and that he was scared. He went back downstairs, cleaned the knife, and then called the police, reporting that he killed someone. Tran denied that he planned to kill either Lin Pham or Thi Nguyen.

After he testified on direct examination, the State impeached Tran with his May 11, 2020 statement to the police. On cross-examination, Tran agreed he was interviewed by the police after he was arrested. Portions of the videotaped interview, previously suppressed in the State's case-in-chief, were now played during cross-examination. Indeed, the State showed the jury a part of the recorded interview concerning whether Tran told Quy Luc that he was not going to pay the mortgage. Following that, Tran agreed that he told the police that Quy Luc "finds all sorts of reasons, all kinds of ways to make me angry. Make me leave." He told police, with respect to the May 11 confrontation with Quy Luc, that "this is the first time that he told me directly. Before that, his demeanor and his attitude, I know that he want me to get out so that he can have the whole house for himself." The State then played the following portion of the interview in court, transcribed as follows:

> DETECTIVE: Could be in English, or if you're more comfortable in Vietnamese, that's fine. Whatever – we're here for you, man.

> INTERPRETER: He said there's been a build-up of disputes. And today was the -- was the last trigger, and he lost it.

Tran was then asked whether he told the police he was scared of Quy Luc and Tran testified, "they did not ask me." Tran was also asked, on continued cross-examination, whether he was angry at Quy Luc, as follows:

> Q. Well, what you said to the police was that you were so angry that you got the knife and chased him out of the house.
>
> A. Yeah, I -- yeah, I was angry. But I did not intend to kill him. I love my wife, and he is the son of my wife. And there's no way that I had planned to kill or want to kill him. Or I want to ask you a question, if I did that do you think my wife would still love me?

Tran admitted that he told the police that "I was so angry" and that "I grabbed the knife. I chased him. I chased him outside of the house." But, confronted with Quy Luc's injuries to his back, Tran denied stabbing Quy Luc in the back. After this, Tran was asked several questions on cross-examination about the stabbings of Linh Pham and Thi Nguyen. He agreed that, after he realized he stabbed two "innocent women," he went back to the basement, washed his hands and the knife, placed the knife back in the knife block, and then called 911. The jury then heard Tran's 911 call to police. In that call, Tran stated "I just killed somebody. Can you come get me in the jail?" He also told the 911 operator "My stepson, he tried to kill me, and I tried to kill him."

We may include additional details in the following discussion.

DISCUSSION

There is no dispute that the mistranslations of the *Miranda* warnings and advisements by Officer Le amounted to a *Miranda* violation and that the motions court

properly ruled that Tran's statement could not be used in the State's case-in-chief. The only issue on appeal concerns the voluntariness of Tran's statement, namely, whether the statement was involuntary such that the State could not use it to impeach him should he testify, as he did, at trial. *See generally, Harris v. New York*, 401 U.S. 222, 224-25 (1971) (holding that statements that violate *Miranda* may be used in impeachment "provided of course that the trustworthiness of the evidence satisfies legal standards"); *see also Oregon v. Hass*, 420 U.S. 714, 722 (1975) ("[T]he shield provided by *Miranda* is not to be perverted to a license to testify inconsistently, or even perjuriously, free from the risk of confrontation with prior inconsistent utterances").

Standard of Review

"The circuit court's determination from a suppression hearing that a statement is voluntary is a mixed question of law and fact that we review *de novo*." *Brown v. State*, 252 Md. App. 197, 234 (2021). In undertaking that review, we are limited to the record developed at the suppression hearing. *Id*. "[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). "We 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), *cert. denied*, 398 Md. 314 (2007). "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); *see also Winder v. State*, 362 Md. 275, 310-11 (2001).

In Maryland, involuntary confessions are inadmissible. *Knight v. State*, 381 Md. 517, 531 (2004); *Accord Madrid v. State*, 474 Md. 273, 317 (2021). "[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 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)).

"When a criminal defendant claims that his or her confession was involuntary because of a promise made to him or her by interrogating officers, the State must present evidence in order to refute the claim." *Knight*, 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*. (quotation marks and citation omitted).

The Supreme Court of Maryland has established a two-prong test, oftentimes referred to as "the *Hillard* test," for determining whether a statement has been rendered involuntary by way of an inducement:

> *First*, the trial court determines whether any officer or agent of the police force promised or implied to the suspect that he or she would be given special consideration from a prosecuting authority or some other form of assistance in exchange for the confession. *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.

Knight, 381 Md. at 533-34 (discussing *Hillard, supra*, emphasis added). "Both prongs must be satisfied before a confession is deemed to be involuntary." *Winder*, 362 Md. at 310. *Accord Madrid*, 474 Md. at 317-18*; Zadeh v. State*, 258 Md. App. 547, 604-05 (2023).

"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) (citing *Hill v. State*, 418 Md. 62, 76 (2011)). That determination is an objective one; the accused's subjective belief is irrelevant. *Id*. "An improper promise or inducement occurs when 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." *Knight*, 381 Md. at 534 (quotation marks and citation omitted).

"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*, 220 Md. App. at 275 (quoting *Lee*, 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*, 362 Md. at 311). "Factors relevant to the reliance analysis include the amount of time that elapsed between the improper inducement and the confession, [] whether any intervening factors, other than the officer's statement, could

have caused the confession, [] and the testimony of the accused at the suppression hearing related to the interrogation[.]" *Hill*, 418 Md. at 77 (internal citations omitted).

Our ultimate determination must be made based upon the "totality of the circumstances." *Knight*, 381 Md. at 533. In conducting that analysis:

> [W]e look to all elements of the interrogation, including the manner in which it was conducted, the number of officers present, and the age, education, and experience of the defendant. Not all of the multitude of factors that may bear on voluntariness are necessarily of equal weight, however. Some are transcendent and decisive. We have made clear, for example, that a confession that is preceded or accompanied by threats or a promise of advantage will be held involuntary, notwithstanding any other factors that may suggest voluntariness, unless the State can establish that such threats or promises in no way induced the confession.

Id. at 533 (alterations in original) (quoting *Williams v. State*, 375 Md. 404, 429 (2003)).

Merits Discussion

Initially, we address whether Tran was improperly induced to making an involuntary confession, in addition to the mistranslations of the warnings and advisements. Tran directs our attention to the following instances:

1. Detective Ruvin addressed Tran as "my friend."

2. Tran was not told the importance of the *Miranda* warnings. Instead, Detective Ruvin said "Anytime we bring somebody in here in handcuffs, we have to read them this form, okay?"

3. Tran was told that if he lied to the police he would be punished by the police. In addition, he was told that if he wanted a lawyer, one would be provided by the police.

4. Detective Ruvin told Tran that "we're here for you, man."

There was no promise or offer in the first two of these instances, nor are we persuaded that there was any inducement in the fourth instance. Addressing a suspect colloquially as "my friend," or informing them that the warnings have to be read to everyone, simply are not improper. Moreover, this Court in *Brown*, *supra*, held that the following statements were not "express or implied promises" or "special consideration from a prosecuting authority or some other form of assistance in exchange for [his] confession:"

- "Well, I mean we don't want you to make anything up but the [ ] thing is we want to help you out. We don't want this girl lying on you and painting you in a bad light if that's not true. We want to figure out what happened."
- "We're trying to help you out here."
- "Well, you're not helping yourself."
- "You're not helping yourself by just letting her do all the talking. That's not helping you. I mean this -- what would help you is just don't tell us what we want to hear. Tell us the truth. That will help you. Just the truth."

***

- "Let's clarify like you're not in trouble or anything."
- Regardless of what you tell us you're walking out that door without us."
- "We're not -- you're not in trouble with this. We made that very clear at the beginning. She said it, I said it, I'm saying it a third time. We're not taking you to jail if you tell us that you bent her over and raped her."
- "We're not going to take you to jail if you tell us that she seduced you or it was a mutual exchange between the two of

> you. . . . What we need to know is what the actual truth of the matter is and right now e have one side of the story. . . . You're walking out of here a free man regardless. You're not in trouble with us."

Brown, 252 Md. App. at 238-39 (citing *Madrid*, 474 Md. at 317; *Hillard*, 286 Md. at 153).

If statements such as these are not improper inducements, we are not persuaded that calling Tran "my friend" or an advisement that the warnings are given to everyone, are coercive. *See Harper v. State*, 162 Md. App. 55, 75 (2005) ("When an interrogating officer promises to do something that as a matter of routine is done for all suspects, there is no special consideration, and the promise therefore is not improper") (citing *Knight, supra*, 381 Md. at 536).

Nor do we conclude that Detective Ruvin's declaration "we're here for you, man," coming as it did immediately after the detective told Tran he could speak in English or Vietnamese, whichever he was more "comfortable" with, was intended to convey a promise to help Tran with anything other than communication between Tran, the detective, and the interpreter, notably, the only three individuals in the interview room during the interrogation. Indeed, we are not persuaded that, under these circumstances, that the "we're here for you man," "promises or implies to the suspect that he will be given special consideration from a prosecuting authority or some other form of assistance in exchange for the suspect's confession." *Lee*, 418 Md. at 161 (citing *Hillard*, 286 Md. at 153); *see also Fowler v. State*, 79 Md. App. 517, 522-24 (rejecting claim that a detective's comment to the defendant about identifying his confederate was an improper inducement where there was no "direct evidence" of coercion, only "speculation," and noting that the defendant

continued to talk with the detective for two hours after the alleged inducement before identifying anyone else), *cert. denied*, 317 Md. 392 (1989).

Turning to the third instance, *i.e*., the undisputed mistranslations of the *Miranda* warnings and advisements, we have not found, nor have the parties cited, a Maryland case concerning the narrow issue of whether a faulty translation of *Miranda* amounts to an improper inducement under the first prong of the *Hillard* test. *See generally*, *Suppression of Statements Made During Police Interview of Non-English-Speaking Defendant*, 49 A.L.R.6th 343 (2009) ("The courts have struggled with determining the admissibility of custodial statements of criminal suspects who do not speak English as their native language. Issues arise as to the quality of any interpreter provided to the suspect during a police interrogation, the accuracy and understandability of *Miranda* warnings administered to the suspect, and the validity of a suspect's waiver of his or her rights in light of arguable language barriers") (collecting cases).

Although *Gonzalez v. State*, 429 Md. 632 (2012), primarily concerns the adequacy of the *Miranda* warnings themselves (and was argued by the parties in the motions court, but not here because that specific issue is conceded), the case is nonetheless instructive. There, the defendant spoke some Spanish, but his first language was Mixtec, an indigenous language spoken in a specific region of Mexico. *Gonzalez*, 429 Md. at 637. The state trooper who advised Gonzalez of his *Miranda* rights, however, spoke to him almost exclusively in Spanish and only used the Mixtec words for "court" and "attorney" after Mr. Gonzalez indicated he did not understand those words in Spanish. *Id*. The trooper testified that, in order to explain those words, he spoke to Gonzalez's sister earlier that day, who

provided written, phonetic spellings of those words, translated from Mixtec. *Id*. at 642. In addition, because of the language barrier, the trooper paused after each sentence, making sure that Mr. Gonzalez understood each right before continuing to the next one, and also ensured that Mr. Gonzalez understood the acknowledgment of the waiver before he signed the waiver form. *Id*. at 642-43. The subsequent interview was conducted entirely in Spanish and English, Gonzalez's answers were "immediate," at no time did he ask for further explanation or indicate that he did not understand the questions that were being asked of him. *Id*. at 644.

After he was charged in connection with a murder, Gonzalez filed a motion to suppress his statement, contending that he did not receive proper *Miranda* warnings and that he was unable to make a knowing, intelligent, and voluntary waiver of his rights. *Gonzalez*, 429 Md. at 638. At the hearing on that motion, the services of two interpreters were enlisted – one who translated English to Spanish, and another to translate English to the Mixtec-Bajo dialect. *Id*. at 645. Because Gonzalez spoke the Mixtec-Alto dialect, defense counsel indicated that the interpreters were "having a great deal of difficulty in establishing true communication" with Gonzalez. *Id*. Additionally, an audiotape of the interview was admitted during the hearing, and Gonzalez did not testify. *Id*. at 644-45. At the conclusion of the hearing, the suppression court denied the motion to suppress, framing the question as whether Gonzalez "could sufficiently understand Spanish in order to waive his rights under *Miranda* and could freely and voluntarily respond to the questions posed to him" by the police officers. *Id*. at 645. This Court affirmed. *Id*. at 646.

The Maryland Supreme Court granted Gonzalez's petition and addressed whether his *Miranda* waiver was knowingly, intelligently and voluntarily made because they were translated from English to Spanish and Mixtec. *Gonzalez*, 429 Md. at 647. The Court observed that it was the State's burden to prove that the *Miranda* rights were waived, but that, "[n]o particular wording or 'precise formulation' need be used to impart the nature of the Fifth Amendment rights to the suspect." *Id*. at 650. Further, even though the adequacy of the warnings was considered in their totality, the State was also required to prove that the waiver was "knowing and voluntary." *Id*. at 651. That burden could be inferred considering "the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused." *Id*. (citations omitted).

In considering this issue, the Court accepted the suppression court's credibility determination that the interviewing state trooper gave "truthful and persuasive" testimony about his impressions of Gonzalez's understanding of the warnings and the phonetic pronunciations of the Mixtec words for "court" and "attorney." *Gonzalez*, 429 Md. at 652-53. The Court concluded that, with the exception of these two words, the trooper "painstakingly -- and, ultimately, successfully -- conveyed to Petitioner in Spanish the balance of the Miranda warnings accurately set forth on the MSP 180 form." *Id*. at 653 (footnote omitted). As to the Mixtec translation, the Court also concluded that the trooper's "use of the phonetic spelling of what he understood to be the Mixtec words for 'court' and 'attorney' sufficiently conveyed to Petitioner, based on his reaction to the trooper's pronunciation, the meaning of court and attorney." *Id*. Thus, acknowledging that the better practice in such a case was to audio- and/or videotape the issuance of the *Miranda* warnings

and supply those for the record, the Court held that "witness testimony may be sufficient to establish the adequacy of *Miranda* warnings delivered in a foreign language, without an audiotape or a transcript of the advisement[.]" *Id*. at 654, 656-57.

Turning to the waiver of rights, our Supreme Court continued:

> We likewise conclude that the State proved the constitutionality of Petitioner's waiver of the *Miranda* rights. Petitioner makes no allegation that he was threatened or coerced into making statements, that deceptive practices were used against him, or that his statements were the result of promises or inducements or that his will was overborne. Rather, Petitioner argues that his lack of comprehension of the *Miranda* warnings, assessed together with his personal characteristics, made it impossible for him to have made a knowing waiver of his *Miranda* rights.
>
> Much of what we have said in analyzing the warnings given to Petitioner holds true for his waiver of the rights described in those warnings. Indeed, Petitioner's argument for why his waiver was "unknowing" rests largely upon the contention that he could not make a good waiver of the rights without being adequately informed of those rights. We have explained, *supra*, why that argument fails.

Gonzalez, 429 Md. at 657.

Rejecting Gonzalez's additional claims that his waiver was suspect considering his age, education and recent immigration status, *Gonzalez*, 429 Md. at 657, and specifically noting that the "tempo and substance" of Mr. Gonzalez's responses indicated that he fully understood the officer's questions, *id*. at 659 n.11, the Court held that:

> [T]he suppression court reasonably could find, from the totality of the evidence offered by the State, not countered by testimony of Petitioner to the contrary, that the State proved both that proper *Miranda* warnings were adequately conveyed to Petitioner and that he knowingly and voluntarily waived

> those rights, before he was interrogated and made the statement he sought to suppress.

Id. at 659-60 (footnote omitted).

In *Gonzalez*, there was no claim that the petitioner there was threatened or coerced into making his statements, or that the trooper used deception or somehow made promises or inducements preceding the statement. *Gonzalez*, 429 Md. at 657. In contrast, Tran presents that argument before us. Tran contends that the two translated warnings, "[a]t this time anything you say which is not true, the police will fine you" and "[i]f you want a lawyer but don't have the money, the police will hire a lawyer for you" were improper inducements. We tend to agree with the State that the latter mistranslation was not an improper promise because, as the State argues, "the statement simply communicated to Tran that he would be afforded counsel even if indigent, a right available to any suspect facing potential interrogation."

We do not arrive at the same conclusion with respect the first mistranslation. That is because a promise to "fine" Tran if he does not speak truthfully could be interpreted by a reasonable person under these circumstances as a threat. *See generally*, Jezic, et al., *Maryland Law of Confessions* § 4:7 at 202 (2021 ed.) ("[T]hreats of immediate violence or about the defendant's constitutional rights generally render a subsequent confession involuntary. Threats regarding other important matters in the defendant's life are generally judged, under the due process test, by the totality of the circumstances").[11] This

[11] There is no claim, nor any evidence, that Appellant was threatened with physical violence, and he was not handcuffed during the interview. As an aside, it goes without (continued)

advisement amounted to an improper inducement and shifted the burden to the State to show that Tran did not rely on that threat in making his subsequent statement.

Turning then to causation, as previously set forth, a variety of factors inform our analysis of the second prong. We consider the manner of the interrogation, the number of officers present, as well as the age, education and experience of the suspect. *See Knight*, 381 Md. at 533. The interrogation took place in a police interview room, with just Tran, Detective Ruvin, and Officer Le present. Tran was not handcuffed during the interview itself and did not appear to be in any emotional, mental or physical distress. Tran was sixty-four (64) years old, had a limited elementary school education in Vietnam, but had been in America since 1982. He was employed full-time as a carpenter at a store in Glen Burnie, Maryland, and spoke primarily Vietnamese with a limited understanding of English.

Indeed, the exhibits, most notably the video of the interview itself, as well as Tran's 911 call immediately after the incident reporting that he "just killed somebody," establish that Tran speaks primarily Vietnamese but also understands, and speaks, English. Indeed, during the initial part of the custodial interrogation at issue in this case, various unidentified officers spoke with Tran entirely in English in order to gather pertinent background information. It was at that time that Tran was informed that the police would find a Vietnamese translator, Officer Le, to assist with the interview. There is no dispute in this case about the English versions of the *Miranda* warnings.

saying that the alternative translation originally suggested by Tran, that he would be "subject to punishment by the police," was threatening and clearly improper.

In addition to these factors related to the circumstances of the interrogation itself, we also consider: (1) the amount of time between the improper inducement and the confession; (2) whether there were any intervening factors that could have caused the confession, and, (3) the suspect's own testimony at the suppression hearing related to the interrogation. *Hill*, 418 Md. at 77 (internal citations omitted). As for the first two of these enumerated factors, the interrogation took place the same day as the underlying incident, Tran reported that incident himself to 911, and we have not been directed to any other intervening factors that could have caused him to make either that call or the statement at issue, beyond the inducement, or his own apparent remorse.

As to the third of these additional factors, Tran did not testify at the suppression hearing. That makes it impossible to glean whether he thought, subjectively, that he was being improperly threatened or promised anything in exchange for making a statement. As we have explained, "[i]t is curious that a fact-finding suppression hearing judge should be invited to speculate on the effect of external stimuli on a defendant's psyche when the defendant himself declines to say anything about that effect." *Uzzle*, 152 Md. App. at 571. As we explained:

> Where, on the other hand, for some reason such as double jeopardy, the running of limitations, or a grant of immunity, there is no risk of incrimination there is no privilege and consequently no shield against adverse comment. At a preliminary hearing on the admissibility of such things as a confession, an identification, or physical evidence, a defendant's testimony is protected by full use immunity, guaranteeing that nothing he says may be used against him at the trial on the merits. The appellant here, therefore, was free to testify at the suppression hearing without any risk of incrimination. He chose not to do so.

> Under the circumstances, we, in making our *de novo* determination about the voluntariness of the appellant's responses [during an interrogation], are not inhibited from taking into account his pregnant silence about his state of mind. Voluntariness concerns his personal subjective reactions to external stimuli. He was free to take the stand and tell [the motion judge] of his innermost thought processes without any risk of incrimination. His failure to do so may be given, in this case by us, that common sense significance that silence frequently evidences in everyday life.
>
> Throughout the suppression hearing, the appellant was present at the trial table. Representing him, advising him, and at his side was trained legal counsel. The appellant was free to testify about any of the circumstances surrounding his interrogation, without any risk that his testimony could later be used by the State at trial on the merits of guilt or innocence. Under the circumstances, the deliberate failure of the appellant to counter the testimony of the two officers that the appellant's responses to interrogation were voluntary strongly suggests the conclusion that there was no countervailing reality.

Uzzle, 152 Md. App. at 572-73.

Although no witnesses testified at the hearing in this case, and Tran appeared remotely, we are persuaded that a similar adverse inference applies here and that he did not make a statement in reliance on any improper inducement. *See Madrid*, 474 Md. at 329 n.11. As we have also explained, "[t]he voluntariness of a defendant's response to possible pressures, on the other hand, is very subjective. Only the defendant can truly tell us what was going on in the defendant's mind. Without such testimony, there is usually no direct evidence of involuntariness." *Ashford v. State*, 147 Md. App. 1, 56, *cert. denied*, 372 Md. 430 (2002); *see also Bellard v. State*, 229 Md. App. 312, 353 (2016) ("[T]he failure of a defendant to testify at a suppression hearing, when the issue is voluntariness, rather than

Miranda compliance, seriously hinders his chances of prevailing" (citing *Ashford*, 147 Md. App. at 56), *aff'd*, 452 Md. 467 (2017).

Furthermore, our conclusion that Tran did not rely on the improper inducement is borne out by the undisputed fact that Tran himself called 911, confessed to the murder and voluntarily turned himself in to the police. In other words, based on the totality of the circumstances, any statement Tran gave *after* the improper inducement was not caused by that inducement, considering that Tran already gave a similar statement *before* that inducement. Indeed, just as the Maryland Supreme Court concluded in *Knight, supra*, after holding a promise by a police officer amounted to an improper inducement:

> The improper inducement obviously could not have caused Knight to make the first statement. Giving due credit to Detective Sergeant Massey's testimony, it follows that the improper inducement could not have caused Knight to make the second identical statement either. If Knight needed no improper inducement in order to give the first statement, then it is reasonable to conclude that there was no nexus between, or reliance on, the improper inducement in his repetition of the substantive content of the former statement.

Knight, 381 Md. at 537-38 (footnote omitted).

Ultimately, although the English-to-Vietnamese translations were infirm, the videotape and the transcripts of the interview do not reflect any apparent or significant misunderstandings between Tran, the detective, and the police translator, as to the warnings, advisements, nor as to the substantive interview regarding the incident itself. Under the totality of these circumstances, we hold that the motions court properly concluded that Tran was "not coaxed by the police officers during the subsequent investigation," that Tran did not rely on any improper inducements, and that his statement

could be used for purposes of impeachment at trial. The court properly denied the motion to suppress. We, therefore, affirm.

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