Circuit Court for Prince George's County
Case Nos. 150391X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1517

September Term, 2016

TAVON ANTHONY OWENS

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Friedman,

JJ.

Opinion by Nazarian, J.

Filed: September 8, 2017

Tavon Anthony Owens was charged by indictment in the Circuit Court for Prince George's County with robbery with a deadly weapon, use of a firearm in the commission of a felony, and related offenses. He filed a pre-trial motion to suppress evidence in which he argued that the stop, arrest, and search of his person and the vehicle violated the Fourth Amendment and that the stop and arrest were illegal because Prince George's County police exceeded their authority under D.C. CODE § 23-901, which governs arrests in the District of Columbia by officers of other States, when they followed him into Washington. Additionally, Mr. Owens contended that his statement to police should be suppressed because it was "fruit of the poisonous tree" and because it was improperly induced. The court denied the motion and Mr. Owens proceeded to a jury trial, and the jury convicted him of robbery with a deadly weapon and numerous related offenses.

On appeal, Mr. Owens contends that the court erred in denying his motion to suppress evidence and in admitting lay opinion testimony during the trial. The State counters that the stop, arrest, and searches were supported by probable cause and that the officers did not exceed their authority under DC CODE § 23-901, because they were in "fresh pursuit" of Mr. Owens when they arrested him in D.C. In addition, the State contends that the court did not abuse its discretion in admitting lay opinion testimony. We agree with the State and affirm.

I. BACKGROUND

On February 8, 2015, a GameStop on Central Avenue in Capital Heights, Maryland was robbed by several armed suspects. Prince George's County Police responded to the

incident, where they received information about a tag number and description of a vehicle suspected to have been involved in the robbery and a description of some of the suspects, and viewed a surveillance video. From there, the police drove to the location in D.C. where the car was registered, set up surveillance, waited for someone to approach the vehicle, and ultimately arrested Mr. Owens, who fit the description of one of the suspects. Although D.C. police were not directly involved in the investigation and arrest, they had been notified about the investigation and were present when the arrest occurred. Mr. Owens filed a pre-trial motion to suppress evidence, which was denied, then proceeded to a jury trial. The jury convicted him of robbery with a deadly weapon, two counts of first degree assault, two counts of use of a firearm in the commission of a felony, two counts of conspiracy to use a firearm in the commission of a felony, and one count of second degree assault. This timely appeal followed.

Motion to Suppress Evidence

At the motion to suppress hearing, Detective William Lee of the Prince George's County Police testified that on February 8, 2015, while working with the residential robbery task force, he received a call from Sergeant William Clifford about a white Mitsubishi Galant that was suspected of being involved in a robbery at a GameStop on Central Avenue in Capital Heights at approximately 2:20 PM. The Sergeant asked the task force to run the license plate tag number from the Galant, and the search revealed that the vehicle was registered to an address in Washington, D.C. After locating the address, Detective Lee and two other detectives were directed by Sergeant Clifford to drive to the

D.C. address to see if they could locate the car. The Prince George's Police notified the D.C. police about the robbery and told them that the detectives were pursuing the suspects in D.C.

When the detectives arrived at the address, they saw a car that matched the description of the vehicle and tag number identified at the robbery scene. The car was unoccupied, so they parked across the street and waited for D.C. police to arrive. At approximately 5:15 PM, two people approached the vehicle and got inside. One individual matched the description of one of the robbery suspects. The detectives notified Sergeant Clifford, who directed them to stop the vehicle. As the detectives stopped the vehicle and placed the suspects in handcuffs, Sergeant Clifford and D.C. police arrived.

Sergeant Clifford testified that on February 8, 2015, while working in the Criminal Investigation Unit, he responded to a call about a robbery at the GameStop on Central Avenue. He began an investigation by interviewing victims and witnesses and watching a surveillance video. He learned that a white Mitsubishi Galant with a D.C. license tag had been parked in the fire lane during the robbery, and that one suspect waited in the car while two others entered the GameStop and a fourth stood as a lookout. One of the witnesses provided the Galant's tag number to police. From the video, Sergeant Clifford observed that one of the suspects wore a black sweatshirt with a distinctive white logo that covered the chest area. Sergeant Clifford asked Prince George's County's robbery task force to run a registration check on the tag number, which came back as registered to Ashley Griffin at an address in D.C.

Sergeant Clifford directed members of the robbery investigation unit, including Detective Lee, to drive to the address and find the Galant. The Sergeant also contacted Metropolitan Police Communications to inform them of Prince George's investigation. When Detective Lee and the others arrived at the location where the vehicle was registered, they notified Sergeant Clifford that they had located the Galant and that it was unoccupied. The Sergeant told them to stay there and watch the vehicle. In addition to sending the investigators to D.C., Sergeant Clifford sent investigators to canvass the area for witnesses and to seek authorization to track a cell phone that had been taken during the robbery.

The Sergeant then headed to the location of the Galant, calling D.C. Police communications along the way to let them know where he was going and to request that a D.C. officer meet him a block or two away from where the Galant was parked. While he was waiting, a D.C. police cruiser pulled up just as detectives advised him that two individuals were approaching the Galant. Sergeant Clifford told the detectives to prevent the Galant from going anywhere while he made his way to their location. When he and the D.C. police officer arrived at the address, he saw the Galant with the tag number identified at the robbery and one of the suspects he had seen in the GameStop surveillance video. The suspect, later identified as Mr. Owens, matched the description given by witnesses and was wearing the same black sweatshirt with the distinctive white logo that the Sergeant had seen in the surveillance video. "Based on the proximity, time, location of the robbery, vehicle, [and] clothing description," the Sergeant testified, they transported Mr. Owens,

along with the owner of the vehicle, to the Sixth District for further interviews. The Galant was impounded.

Detective Andrea Latson of the Metropolitan Police Department in Washington D.C. testified that she interviewed Mr. Owens while he was at the Sixth District Office. Before the interview, Detective Latson read Mr. Owens his *Miranda*[1] rights. During the interview, Mr. Owens expressed concern for his girlfriend, Ms. Griffin, who owned the Galant and also was being interviewed. Detective Latson stated that at some point, Prince George's County police might charge her in connection with the robbery because she was the owner of the vehicle. Mr. Owens asked the detective to call Ms. Griffin on his behalf, which she did, but the call went straight to voicemail. Defense counsel played for the court a recording of the interview in an effort to demonstrate that Detective Latson threatened Mr. Owens by stating that Ms. Griffin was being more cooperative than he was and that at any point Prince George's County police could obtain a felony warrant for her and break down her door.

Mr. Owens's counsel argued that Prince George's County police did not have reasonable suspicion to stop the vehicle, which had two occupants, one black female and one black male in dark clothing, three hours after the robbery, based on a general description of four suspects in dark clothing. The defense further argued that Prince George's police lacked authority to stop the vehicle in D.C. because there was a break in the investigation when the detectives waited by the car. Moreover, the defense added, the

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

police did not have probable cause to search the vehicle for the same reasons they lacked reasonable suspicion to stop the car in the first instance, and that no testimony was provided regarding the search of the car. Finally, the defense argued that Mr. Owens's statement was not voluntary because it was the product of an implied threat or promise by Detective Latson who, he says, implied that Ms. Griffin would not be charged if Mr. Owens cooperated, but might be charged if he didn't.

The court ultimately denied the motion and Mr. Owens proceeded to a jury trial.

Trial

Two portions of the trial testimony are relevant to this appeal. *First*, Detective Clifford testified at trial that when he arrived at the location in D.C. where the Galant was parked, he saw that Mr. Owens was wearing the exact same sweatshirt he had seen one of the perpetrators wearing in the surveillance video. Defense counsel objected, and the trial court overruled it. *Second*, the State introduced, over a defense objection, the video recording of Mr. Owens's statement to police in which he admitted that he had the keys to the Galant and drove it on the day of the robbery.

We will supply additional facts below as necessary.

II. DISCUSSION

Mr. Owens raises two contentions on appeal:[2] *first*, that the circuit court erred in denying his motion to suppress evidence; *second*, that the circuit court abused its discretion

[2] Mr. Owens phrases the Questions Presented in his brief as follows:

1. Did the circuit court err in denying defense counsel's motion to suppress evidence?

in admitting lay opinion testimony. The State counters that the circuit court correctly denied the motion to suppress evidence and did not abuse its discretion in admitting lay opinion testimony.

A. The Circuit Court Correctly Denied Mr. Owens's Motion To Suppress Evidence.

Mr. Owens challenges the court's denial of his motion to suppress evidence on numerous grounds that we have consolidated into three contentions: *first*, that police lacked reasonable suspicion to stop the car in which he was a passenger and probable cause to arrest and search him and the car; *second*, that the stop and arrest violated DC Code § 23-901, which governs arrests in the District of Columbia by officers of other States; and *third*, that his statement to police should have been suppressed because it was "fruit of the poisonous tree" and was improperly induced. We disagree with all three.

We review the ruling of the suppression court based solely on the record developed at the suppression hearing. *Holt v. State*, 435 Md. 443, 457 (2013). "We view the evidence and inferences that may be drawn therefrom in the light most favorable to the party who prevails on the motion," *Briscoe v. State*, 422 Md. 384, 396 (2011) (citation omitted), here, the State. "We defer to the motions court's factual findings and uphold them unless they are shown to be clearly erroneous." *State v. Luckett*, 413 Md. 360, 375 n.3 (2010). "We, however, make our own independent constitutional appraisal, by reviewing the relevant

2. Did the circuit court abuse its discretion in permitting Sergeant Clifford to opine that Mr. Owens was wearing the same sweatshirt depicted in the video of the robbery when he was arrested?

law and applying it to the facts and circumstances of this case." *Lee v. State*, 418 Md. 136, 148–49 (2011) (citation omitted).

1. The officers had probable cause to stop the vehicle, arrest Mr. Owens, and search him and the vehicle.

Mr. Owens contends that the police lacked reasonable suspicion to stop the vehicle because "[t]hree hours had passed since the robbery in Maryland, and only one of the occupants of the vehicle matched a vague, general description of one of four suspects." He argues as well that the police lacked probable cause to arrest and search him and the vehicle for the very same reasons that they lacked reasonable suspicion to stop the car. A review of the record reveals otherwise.

The Fourth Amendment, which applies to the states through the Fourteenth Amendment, protects against unreasonable searches and seizures. *Holt*, 435 Md. at 458 (citations omitted). A police-initiated traffic stop is a seizure within the meaning of the Fourth Amendment. *Whren v. United States*, 517 U.S. 806, 809–10 (1996). Police may stop an automobile without offending the Fourth Amendment if they have either reasonable suspicion or probable cause to believe that its occupants are involved in criminal activity. *Edwards v. State*, 143 Md. App. 155, 165 (2002). In addition, a warrantless arrest of an individual in a public place for a felony is consistent with the Fourth Amendment if the arrest is supported by probable cause. *Maryland v. Pringle*, 540 U.S. 366, 370 (2003) (citations omitted).

Probable cause is a "'practical, nontechnical conception' that deals with 'the factual and practical considerations of everyday life on which reasonable and prudent men, not

legal technicians, act.'" *Id.* (citations omitted). In assessing probable cause, we consider the "totality of the circumstances." *Cox v. State*, 161 Md. App. 654, 669 (2005). Probable cause exists where the facts and circumstances within the knowledge of the officer at the time of the arrest "are sufficient to warrant a prudent person in believing that the suspect had committed or was committing a criminal offense." *Haley v. State*, 398 Md. 106, 133 (2007) (citation omitted). A finding of probable cause "requires less evidence than is necessary to sustain a conviction, but more evidence than would merely arouse suspicion." *Williams v. State*, 188 Md. App. 78, 90–91 (2009) (citation omitted).

Before trial, the court held a hearing on Mr. Owens's motion to suppress evidence, including the evidence gathered as a result of the stop, arrest, and search of Mr. Owens and the vehicle. The court denied the motion, concluding that there was a reasonable basis for the stop and probable cause to arrest Mr. Owens and search the car:

> I find that there was a reasonable basis for the stop and also that the same evidence surmounted to probable cause to search the car and arrest [Mr. Owens], . . .
>
> Well, that evidence would be that within an hour of the robbery, of an armed robbery, involving handguns, that the specific vehicle, with the tag number was located, parked outside of a residence in the District of Columbia. The police officers staked out that car, that vehicle and within another two hours [Mr. Owens] occupied the vehicle. [Mr. Owens] met the description of one of the perpetrators of the armed robbery, specifically what was described by Sergeant Clifford today as being a distinctive sweatshirt, black clothing, but also the distinctive sweatshirt being black with a white logo on it, which I have the benefit of seeing in the video.
>
> He also met the further description of being a black male, 20 to 25, 150 to 170 pounds, medium complexion. He didn't have the black ski mask with him that was described. But otherwise, he met the description almost to a T or to a T.

> So, I think that amounts to both a reasonable basis to stop, reasonable suspicion to stop the vehicle and probable cause to search that vehicle and arrest [Mr. Owens].

We agree. The officers didn't pull Mr. Owens over on a lark—the Galant matched the description and tag number of a vehicle witnessed leaving the scene of an armed robbery, and Mr. Owens fit the description of one of the suspects, down to his distinctive clothing. "[P]robable cause is based on probabilities, not certainties," *Haley,* 398 Md. at 133 (citation omitted), and there was a stronger-than-usual (and–than–necessary) connection here between the people and vehicle seen at the robbery and the people and vehicle the police stopped and searched. The officers had probable cause to stop the vehicle based on the fact that it matched the description and tag number of a vehicle suspected to have been involved in an armed robbery, so there was a "fair probability" that its occupants were involved in the robbery or that the vehicle contained evidence of the crime. *State v. Lee*, 330 Md. 320, 326 (1993) (defining probable cause as a "fair probability that contraband or evidence of a crime will be found in a particular place") (citation omitted)); *see also Rowe v. State*, 363 Md. 424, 433 (2001) (noting that a traffic stop may be constitutionally permissible where the officer has a reasonable belief that "criminal activity is afoot") (citing *Terry v. Ohio,* 392 U.S. 1, 30 (1968)). And the officers had probable cause to arrest Mr. Owens because he matched the description of one of the perpetrators provided by witnesses, and because Detective Clifford saw that he was wearing "the exact same shirt" as one of the perpetrators visible in the video of the robbery. *See e.g., Haley,* 398 Md. at 135 (holding that the officer had probable cause to believe that the defendant

had committed a felony when he noted that the defendant was wearing the same unique article of clothing as the perpetrator). Not only did Mr. Owens fit the description of one of the suspects to a "T," as the trial court noted, but he also got into the suspected vehicle, which only bolstered the connection between him and the robbery. The fact that only one of the individuals who got into the car matched the description of one the four suspects does not, as Mr. Owens argues, diminish the officers' probable cause.

Furthermore, the officers had probable cause to believe that Mr. Owens had participated in an armed robbery, and thus that he could have been armed and dangerous or had evidence of the robbery on his person. That authorized them to search him incident to arrest. *Sinclair v. State*, 214 Md. App. 309, 325 (2013) ("Among the exceptions to the warrant requirement is a search incident to a lawful arrest. This exception has the dual purpose of preserving evidence and ensuring officer safety." (citations omitted)). Lastly, the officers had probable cause to search the vehicle based on their reasonable belief that it had been used in the armed robbery and could have contained evidence of the crime. *Carroll v. United States*, 267 U.S. 132 (1925); *Nathan v. State*, 370 Md. 648, 665–66 (2002).[3] We see no error in the trial court's decision to deny Mr. Owens's motion to suppress evidence based on the stop, searches, and the arrest.

2. The stop and arrest did not violate DC Code § 23-901.

[3] Mr. Owens does not cite any cases to support his contention that the police violated the Fourth Amendment. He cites cases that explain the level of proof needed for probable cause, but does not draw any connections, and we find none, between the facts of those cases and the facts here.

Mr. Owens contends *next* that the stop and arrest were illegal because they violated the District of Columbia Fresh Pursuit Act, D.C. CODE §§ 23-901 through 23-903. That statute governs the legality of the arrest in this case because it occurred within the District, and not in Maryland. *See Hutchinson v. State*, 38 Md. App. 160, 166 (1977) (The "legality of [the] arrest must be determined by applying the law of the District of Columbia, the jurisdiction in which it was made."). Section 23-901 of the D.C. Act authorizes out-of-state law enforcement officers to enter the District for the purpose of continuing a pursuit that began outside:

> Any member of a duly organized peace unit of any State (or county or municipality thereof) of the United States who enters the District of Columbia in fresh pursuit and continues within the District of Columbia in fresh pursuit of a person in order to arrest him on the ground that he is believed to have committed a felony in such State shall have the same authority to arrest and hold that person in custody as has any member of any duly organized peace unit of the District of Columbia to arrest and hold in custody a person on the ground that he is believed to have committed a felony in the District of Columbia. This section shall not be construed so as to make unlawful any arrest in the District of Columbia which would otherwise be lawful.

(D.C. CODE, § 23-901 (2016)).

As the term "fresh pursuit" suggests, this inter-jurisdictional cooperation is limited temporally, but the limit is bounded by reasonableness rather than a specific period:

> For purposes of this chapter, the term "fresh pursuit" shall include fresh pursuit as defined by the common law, also the pursuit of a person who has committed a felony or one who the pursuing officer has reasonable ground to believe has committed a felony. It shall also include the pursuit of a person who the pursuing officer has reasonable grounds to believe has

> committed a felony, although no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. Such term shall not necessarily imply an instant pursuit, but pursuit without unreasonable delay.

D.C. CODE § 23-903 (2016). The act "protect[s] [] the District[']s citizens by allowing surrounding jurisdictions' police to enter the District when they are in "fresh pursuit" of one whom the police has reason to believe has committed a felony and has subsequently crossed the D.C. line." *Swain v. State*, 50 Md. App. 29, 38 (1981).

In *Swain*, we defined three requirements that must be met for a pursuit to qualify as "fresh" for these purposes. *Id.* at 38–40. *First*, the police must have reasonable grounds to believe that the suspect has committed a felony. *Id.* at 38. *Second*, the pursuit must take place without unreasonable delay. *Id.* at 39. And *third*, the police must act continuously, without interruption, from the beginning of their response. *Id.* at 40.

Mr. Owens focuses on the third requirement. He argues that this pursuit was not a "persistent and continuous" investigation because the Prince George's County Police located the suspect car, set up surveillance, and then sat there "doing nothing, not making any attempt to get the Metropolitan Police involved." The circuit court found that the police had undertaken a fresh pursuit:

> . . . From the scene, [the police] interviewed at the scene, they interviewed witnesses, obtained the descriptions of the suspects as well as the suspect vehicle, tracked down the tag number associated with an address for the owner and drove to that address in the District of Columbia. . . .
>
> . . . [T]hen they staked out the address or the car. They found the car parked there and staked out that address, more

> particularly, the car and began doing that approximately an hour after the first robbery call, which I find to have been without delay at all. And thus, to have been fresh as contemplated by the statute and continuous.
>
> * * *
>
> . . . I find that staking out of a suspect vehicle is an activity. It's a continuous activity. . . . It is reasonable to do so. . . . So there was no cessation of police activity while the stake out was occurring.

We agree that the Prince George's County police complied with the Fresh Pursuit Act. Although nearly three hours elapsed between the robbery and the arrest, there was no break in police activity. Sergeant Clifford and other investigators responded immediately to the call about the GameStop robbery. The Sergeant interviewed witnesses who told him that a white Mitsubishi Galant with a D.C. tag had been parked in the fire lane in front of the GameStop during the incident. He asked police communications to run a registration check on the vehicle, which revealed that it was registered to Ashley Griffin at an address located in D.C. The Sergeant watched the surveillance video and saw that one of the suspects wore a black sweatshirt with a "very distinctive logo that covered the chest area." He provided officers from his unit with a description of the suspects and directed them to drive to the D.C. address to see if the vehicle was there. And in the meantime, the Sergeant notified D.C. police about the incident and ongoing investigation.

Just over an hour after the robbery, Prince George's County officers notified Sergeant Clifford that they had located the vehicle, which was unoccupied, in D.C., and the Sergeant informed them to stay there and watch the vehicle. Sergeant Clifford drove

to D.C., called D.C. police communications to let them know he was on his way, and asked that a D.C. officer meet him a block or two from where the Galant was parked. Once in D.C., Sergeant Clifford remained in contact with D.C. communications. Just as the Sergeant was informed by his officers that two people were approaching the Galant, D.C. police arrived and followed him to the location of the Galant where Prince George's police took Mr. Owens into custody.

It's not true, then, that the Prince George's police "sat there and did nothing," nor that they failed to involve D.C. police. To the contrary, the Prince George's police worked continuously after learning about the robbery to identify, locate, and apprehend suspects, and we agree with the circuit court that this investigation qualified as a fresh pursuit into the District of Columbia.

3. Mr. Owens's statements to police were not "Fruit of The Poisonous Tree," nor were they induced improperly.

Mr. Owens contends *next* that his statements to police should have been suppressed as "fruit of the poisonous tree" and because they were induced improperly. We can dispose quickly of this first contention based on our holding that the stop, arrest, and searches were supported by probable cause. In light of that finding, the trial court did not err in admitting Mr. Owens's statement as "fruit of the poisonous tree" because it was not obtained in violation of the Fourth Amendment. *See King v. State*, 434 Md. 472, 486–87 (2013) ("[E]vidence tainted by Fourth Amendment violations may not be used directly or indirectly against the accused." (citation omitted)).

A confession or incriminating statement is admissible only if it was made voluntarily. *Knight v. State*, 381 Md. 517, 531–32 (2004). Where a statement is obtained through coercion, "improper threats, promises, inducements or psychological pressures," the statement is deemed involuntary. *Winder v. State*, 362 Md. 275, 305 (2001). A trial court's determination of whether an incriminating statement made during police interrogation was induced by threat or promise is a mixed question of law and fact that we review *de novo*. *Winder*, 362 Md. at 310-11. We do not look to the trial record for additional information or engage in original fact-finding—appellate review…'of [a] motion to suppress is limited to the record of the suppression hearing." *Id.*; *see also Knight*, 381 Md. at 535.

In *Hillard v. State*, the Court of Appeals held that with "regard to fairness in the conduct of a trial, Maryland criminal law requires no confession . . . made by an accused be used as evidence against him, unless it first be shown to be free of any coercive barnacles that may have attached by improper means to prevent the expression from being voluntary." 286 Md. 145, 150 (1979). The Court gleaned a two-part test from *Hillard*, establishing that confessions are involuntary and inadmissible if:

> (1) a police officer or an agent of the police force promises or implies to a suspect that he or she will be given special consideration from a prosecuting authority or some other form of assistance in exchange for the suspect's confession, and (2) the suspect makes a confession in apparent reliance on the police officer's statement.

Winder, 362 Md. at 309. In evaluating the first prong, we 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." *Hill v. State*, 418 Md. 62, 76 (2011). This requires an *objective* "threat, promise, or inducement"[4] in the officer's eliciting statement. *Id*. at 77; *see also Reynolds v. State*, 327 Md. 494, 507 (1992) ("A mere exhortation to tell the truth is not enough to make a statement involuntary."). If there was an improper inducement, the State has the burden to prove "by a preponderance of the evidence, that the accused did not make the inculpatory statement in reliance on the improper inducement." *Hill*, 418 Md. at 77. Reliance depends on a variety of factors, including the "amount of time elapsed between the inducement and confession" and "whether any factors, other than the interrogating officer's statements, may have caused the confession." *Winder*, 362 Md. at 312. The court can consider as well any testimony the defendant gives about the interrogation at the suppression hearing. *Hill*, 418 Md. at 77.

Mr. Owens sought to suppress his statements to police admitting that he had the keys to the Galant on the day of the robbery. His counsel argued that the statements were induced by Detective Latson's statements implying that Mr. Owens's girlfriend would not be charged if he cooperated, or conversely, would be charged if he didn't. Counsel pointed the court to the detective's statements that Mr. Owens's girlfriend was being more cooperative than he was, that the detective was concerned about his girlfriend being connected to the robbery, that Mr. Owens could help his girlfriend's situation, and that if

[4] "[A]n accused's subjective belief that he will receive a benefit in exchange for a confession carries no weight under this prong." *Hill*, 418 Md. at 76.

prosecutors in Prince George's County wanted to charge his girlfriend, they could get a felony warrant and knock her door in.[5]

The trial court denied the motion to suppress, reasoning that Detective Latson never made an express or implied threat or promise. The court acknowledged that Detective Latson contrasted Mr. Owens's girlfriend's cooperation with his own lack of cooperation, but noted that Detective Latson never intimated that they would arrest his girlfriend if Mr. Owens did not cooperate or, on the other hand, that they would not arrest her if he did. The court noted as well that Mr. Owens was "coy" during the interrogation, had a "smile on his face throughout the interview" and was "playing with the detective, in his mind," all evidence that Mr. Owens did not say anything involuntarily or act against his will.

We agree with the trial court. No objective evidence supports the claim that Mr. Owens's statement to Detective Latson was induced by an improper threat or promise, and the Detective's comments about what *could have happened* to Mr. Owens's girlfriend were not an implicit threat or promise. To the contrary, Detective Latson explained the possible consequences to the owner of a vehicle involved in an armed robbery, consequences grounded in fact and not threats or promises meant to induce a confession. *See Williams v. State*, 219 Md. App. 295, 338 (2014) (holding that defendant's confession was not

[5] The State contends that since Mr. Owens "never admitted to committing the robbery or even having the car at the time of the robbery," he did not make an incriminating remark that could be suppressed as involuntary. Mr. Owens counters that the State's focus on his statement to Detective Latson throughout the trial is evidence that his remarks made up a significant portion of the State's case, and therefore were incriminating and should be suppressed if given involuntarily. Mr. Owens's statement was not an explicit confession, but we opt not to parse this issue finely and we address the merits of his contention.

improperly induced when the detective presented two possible theories of what happened, *i.e,* a robbery gone bad or a cold-blooded murder, and advised the defendant that he "might not see the light of day" if the detectives were left with the impression that it was the latter because the detective "was merely advising [the defendant] of the *possible* legal consequences of a verdict of first degree premeditated murder at [the defendant's] future trial" (emphasis in original)); *compare Winder v. State*, 362 Md. 275, 314 (2001) (finding improper inducement where the police told the suspect, among other things, that they were "not interested in sending [him] to jail for the rest of [his] life," and repeatedly promised to get "help" for the suspect, both from the police themselves and the State's Attorney's Office). The Detective never promised preferential treatment or threatened punishment for Mr. Owens's girlfriend based on what he said or didn't say. And any indication by Detective Latson that Mr. Owens could help his girlfriend's situation was not an improper inducement—the Detective never made any promises with respect to the girlfriend, and appeals to conscience are permissible in any event. *Williams*, 219 Md. App. at 338 (citing *Kier v. State*, 213 Md. 556, 562 (1957)).

Mr. Owens cites *Stokes v. State,* 289 Md. 155, 161 (1980), and *Bellamy v. State,* 50 Md. App. 65, 68, 77 (1981), to support his argument that his statement was improperly induced. Those cases are easily distinguishable. In *Stokes*, narcotic officers executing a search warrant for controlled dangerous substances at the defendant's residence told him "that if he would produce the narcotics, his wife would not be arrested." *Stokes*, 289 Md. at 157. In response to these assurances, the defendant told the officers where the drugs

were located. *Id.* The Court of Appeals held that the statement was involuntary because it was induced by the (improper) promise not to arrest the defendant's wife. *Id.* at 162. There was no doubt that the two were connected: "it [is] clear that the police not only promised [Mr. Stokes] they would not arrest his wife if he revealed the location of the heroin, but, in addition, this promise bore fruit, for it [was] equally apparent that [Mr.] Stokes' statement directly resulted from that entreaty." *Id.* at 159–60.

Bellamy likewise involved an improper promise: the defendant offered to tell the interrogating officer everything about the crime if his girlfriend was not charged. *Id.* at 68. The officer responded by promising to talk to the State's Attorney about securing the girlfriend's release. *Id.* Based on the officer's assurances, the defendant confessed to committing armed robbery. *Id.* We held that the defendant's statement was involuntary because it was the result of an improper promise not to arrest the defendant's girlfriend.

The direct connection between the promises and statements in *Stokes* and *Bellamy* is missing here. Nothing the Detective said induced Mr. Owens's statements, let alone induced them improperly. And his decision not to testify at the suppression hearing made it difficult for the trial court to know what he felt during the interrogation. *See Ashford v. State*, 147 Md. App. 1, 56 (2002) ("Only the defendant can truly tell us what was going on in the defendant's mind. Without such testimony, there is usually no direct evidence of involuntariness.").

B. The Circuit Court Did Not Abuse Its Discretion In Admitting Sergeant Clifford's Testimony That Mr. Owens Was Wearing The Sweatshirt Depicted In the Video Of The Robbery When He Was Arrested.

Sergeant Clifford testified on direct examination that when he arrived at the location where Mr. Owens was arrested, he observed Mr. Owens wearing the same top he had seen one of the individuals wearing in the surveillance video of the robbery:

> [THE STATE]: And what happened when you arrived on the scene and saw the vehicle and Mr. Owens, then what happened? What did you do?
>
> [SERGEANT CLIFFORD]: Proceeded with the investigation. I noticed from looking at Mr. Owens and having watched the video from the Gamestop that the clothing matched.
>
> [COUNSEL FOR MR. OWENS]: Objection.
>
> THE COURT: Overruled.
>
> [SERGEANT CLIFFORD]: In the video when the robbers were masked up, one of them had a very black top and a very distinctive white logo that covered the entire chest. Upon arrival on the scene, I observed Mr. Owens wearing the exact same top that I [had] just seen in the video prior.

Mr. Owens characterizes Sergeant Clifford's testimony as an improper lay opinion. He contends that the Sergeant had no first-hand knowledge of the events depicted on the video and his testimony was not "helpful to a clear understanding of the witness's testimony or determination of a fact in issue," and that the jurors were able to view the video themselves and draw their own conclusions about Mr. Owens's involvement in the robbery. We disagree.

We review the circuit court's ruling to admit or exclude evidence for abuse of discretion. *Norwood v. State*, 222 Md. App. 620, 642 (2015) (citation omitted); *Moreland v. State*, 207 Md. App. 563, 568 (2012) ("The admissibility of evidence ordinarily is left to

the sound discretion of the trial court." Md. Rule 5-104(a)). Under the Maryland Rules of Evidence, a lay witness may testify to those opinions or inferences which are "(1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness's testimony of the determination of a fact in issue." *Paige v. State*, 226 Md. App. 93, 125 (2015); Md. Rule 5–701. For testimony to be probative, it must be "rationally based and premised on the personal knowledge of the witness." *Paige*, 226 Md. App. at 125 (citation omitted).

Mr. Owens is correct, of course, that Sergeant Clifford did not observe the robbery personally—he wasn't there and didn't learn of it until police were called. The Sergeant did, however, view the surveillance video, and was present when Mr. Owens was arrested. When he testified that Mr. Owens was wearing the same sweatshirt as the person in the video, he testified from his personal knowledge of the video (the authenticity and admissibility of which Mr. Owens doesn't challenge) and what he saw in person at the scene of the arrest. That makes this case readily distinguishable from cases in which courts were found to have abused their discretion by allowing lay opinion testimony outside the witness' personal knowledge. *See United States v. La Pierre*, 998 F.2d. 1460, 1465 (9th Cir. 1993) (holding that trial court abused its discretion in allowing a police officer involved in a robbery investigation to testify that the defendant was the individual depicted in bank surveillance photographs when the officer had never seen the defendant in person and his knowledge of the defendant's appearance was based entirely on his review of the photographs and witnesses' descriptions of him); *Ruffin v. Florida*, 549 So. 2d 250, 251

(Fla. Dist. Ct. App. 1989) (holding that it was reversible error to allow three police officers to testify that it was their opinion that the defendant was the individual depicted in a drug transaction captured on videotape because none of the officers were present during the transaction nor did they have any familiarity with the defendant); *West Virginia v. Harris*, 605 S. E. 2d. 809, 812 (W. Va. 2004 (per curiam) (holding that the trial court abused its discretion in allowing a police officer to narrate and identify the defendant in a poor quality surveillance video that captured a shoplifting incident because the officer did not actually see any of the events recorded).

We conclude as well that the Sergeant's statements *were* helpful to a clear understanding of his testimony because they helped describe his investigation and because they explained how the Sergeant identified Mr. Owens as having been involved in the robbery. Nothing prohibited the Sergeant from offering his opinion on the identity of someone on a video surveillance recording. *See Moreland*, 207 Md. App. at 572 ("[A] lay witness may testify regarding the identity of a person depicted in a surveillance photograph if there is some basis for concluding that the witness is more likely to correctly identify the defendant from the photograph than the jury." (internal quotation and citation omitted)); *see also Tobias v. State*, 37 Md. App. 605, 616–17 (1977) ("We find no abuse of discretion in allowing the authenticating witness to identify the people shown in the video tape. . . . The jury saw the tape, and could judge for itself what it showed and whether [the detective's] identifications were accurate"). The Sergeant simply testified about what he observed in the video and what he saw Mr. Owens wearing when he was arrested—both

of which came from his personal knowledge gained in the investigation—and then he connected the dots. There is no doubt that his testimony helped the jury to understand the facts, and the court did not abuse its discretion by admitting it.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. APPELLANT TO PAY COSTS.