Circuit Court for Washington County
Case No. 21-K-15-51538

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1992

September Term, 2016

AARON JACOB VANMETER

v.

STATE OF MARYLAND

Nazarian,
Shaw Geter,
Fader,

JJ.

Opinion by Fader, J.

Filed: January 16, 2018

During police questioning, the appellant, Aaron Jacob Vanmeter, admitted to kicking, hitting, biting, slapping, and grabbing six-year-old D. on various occasions. D., the son of Mr. Vanmeter's girlfriend, sustained severe injuries. Mr. Vanmeter moved to suppress his inculpatory statements, claiming that they were induced and therefore involuntary and inadmissible at trial. The Circuit Court for Washington County denied his motion to suppress.[1] We affirm.

BACKGROUND

In the early hours of July 3, 2015, officers of the Hancock Police Department responded to a 911 call at a residence in Hancock, Maryland, where they found a severely-injured D. D. was bruised in multiple places, had what appeared to be belt and bite marks on his skin, and had a head injury so severe that doctors had to remove a portion of his skull because of a risk of imminent death. Although told that D. had fallen, the officers thought his injuries appeared more consistent with abuse.

Lieutenant Gregory Alton of the Washington County Sheriff's Office investigated. At the hospital, D.'s mother accused Mr. Vanmeter of "repeatedly abusing" the child. At Lt. Alton's direction, another sheriff's deputy drove to the residence, arrested Mr. Vanmeter, placed him in handcuffs, and brought him to the Washington County Sheriff's Office.

[1] Mr. Vanmeter identifies the single question presented by his appeal as "Did the lower court err in denying Mr. Vanmeter's motion to suppress his statement to law enforcement?"

Lt. Alton commenced a 22-minute videotaped interrogation of Mr. Vanmeter a little more than two hours after Mr. Vanmeter was arrested. Before asking any questions, Lt. Alton presented Mr. Vanmeter with a standard Washington County Sheriff's Office Miranda Rights form, which Lt. Alton also reviewed verbally with Mr. Vanmeter. A 21-year-old high school graduate with no learning disabilities, Mr. Vanmeter stated verbally that he understood his rights, signed the form to the same effect, stated that he understood that he could stop the interview at any time, and agreed verbally and in writing to answer Lt. Alton's questions. Although Mr. Vanmeter had been awake for approximately 24 hours before the interview began, he appeared alert throughout.

As questioning began, Lt. Alton told Mr. Vanmeter that he had come from the hospital where D. was in "very, very, very, very bad shape," with injuries that indicated he had been "beaten severely."[2] When Mr. Vanmeter protested ignorance as to the source of D.'s injuries, Lt. Alton showed Mr. Vanmeter photos of some of the injuries that Lt. Alton had taken with his cell phone while at the hospital. That led to the following exchange, which began approximately five minutes into the interview:

Lt. Alton: . . . This poor little boy is beaten from head to toe.

Vanmeter: I've never hit him.

Lt. Alton: Really? Because [D.'s mother] . . .

[2] At the suppression hearing, the trial judge reviewed in camera the video of the interview, which was admitted as State's Exhibit 3 at that hearing. As discussed further below, the video itself was not transcribed from that hearing. However, the video is part of the record that was transferred to this Court on appeal, and we have verified that the video is the same video that was introduced as State's Exhibit 5 at trial.

Vanmeter: No, really, uh . . .

Lt. Alton: [D.'s mother] said a hundred percent you. One hundred percent.

Vanmeter: Oh, no, no, no.

Lt. Alton: Oh, yes.

Vanmeter: I'm not taking the blame for all of it. No, I . . .

Lt. Alton: Well, okay, what part will you take the blame for?

Vanmeter: I've never hit him anywhere but his butt.

Lt. Alton: Really? Because that bruise I showed you was compliments of your steel-toe boot on Tuesday evening.

Vanmeter: Tuesday evening?

Lt. Alton: Mm-hm, Tuesday night. Now you can sit there and you can play this game all you want . . .

Vanmeter: No . . .

Lt. Alton: . . . okay? But you're . . .

Vanmeter: No, I'm just . . .

Lt. Alton: . . . either gonna paint yourself a picture of a monster, which I'm gonna do because I'm gonna show those pictures to a jury, or you're gonna explain to me how and why you did this.

Vanmeter: I'm just trying to think of which night that I didn't get home til late. But . . .

Lt. Alton: It doesn't matter, it's not relevant. Okay?

Vanmeter: Okay.

Lt. Alton: Because I know what happened tonight. I know he didn't fall.

Vanmeter: I know the other night, I just got very mad.

Lt. Alton: Okay. Special needs kid.

Vanmeter: But I am not taking the blame for all of it because I've seen her slam him up against the wall, hit him with a spoon, uh, everything.

Lt. Alton: Okay.

Vanmeter: Uh, no. I mean I haven't done anything to him that she didn't do.

Lt. Alton: Okay.

Vanmeter: I'll . . .

Lt. Alton: Except kick him with a steel-toe boot.

Vanmeter: Yeah.

Lt. Alton: You did do that?

Vanmeter: Yes. And I didn't – I didn't realize – I – I know it was wrong. I didn't realize how hard I did it.

Lt. Alton: And what made you do that?

Vanmeter: Just very frustrated, tired. It – it's not an excuse. I know it's not. It's not an excuse. But, no, I'm – I'm not gonna take the blame for it all. I'll sit here and do whatever I have to. But I – I've seen her grab him by the throat and slam him up against the wall, hit him everywhere with a belt.

Lt. Alton: And you've hit him with a belt also.

Vanmeter: Just in the butt, yes.

For the next twelve minutes, Mr. Vanmeter made additional inculpatory statements in which he admitted to kicking, hitting, slapping, biting, and grabbing D. Mr. Vanmeter also accused D.'s mother and her former boyfriend of similar and additional abusive conduct.

Mr. Vanmeter filed a pre-trial motion in the Circuit Court for Washington County to suppress his videotaped interview with Lt. Alton. According to Mr. Vanmeter, Lt.

Alton's "monster" comment combined with showing the photos of D.'s injuries constituted a threat that induced his inculpatory statements, rendering his confession involuntary. The circuit court held a hearing during which the arresting deputies, Lt. Alton, and Mr. Vanmeter testified. The court also reviewed in camera the videotaped interview.

On June 20, 2016, the circuit court denied Mr. Vanmeter's motion, finding by a preponderance of the evidence that Lt. Alton's actions were not an improper inducement and that Mr. Vanmeter's statements were freely and voluntarily given. At the subsequent bench trial, the judge admitted the videotaped statements over Mr. Vanmeter's objection. On July 12, 2016, the trial judge convicted Mr. Vanmeter on one count of first-degree child abuse and three counts of second-degree child abuse. The court sentenced Mr. Vanmeter to 40 years imprisonment with ten years suspended and five years of supervised probation upon release. In this timely appeal, Mr. Vanmeter challenges the denial of his pretrial motion to suppress.

DISCUSSION

Mr. Vanmeter argues that his videotaped confession was involuntary, and so should have been suppressed. This is so, he claims, because Lt. Alton (1) "showed [him] graphic photographs of D[.] unconscious, bruised, and on life support in the intensive care unit at a hospital"; and (2) "improperly threatened to use those photos (or not use the photos if Mr. Vanmeter confessed) to convince a jury that Mr. Vanmeter was 'a monster.'" Because we find that Lt. Alton's conduct did not constitute inducement as construed by our case law, we hold that the circuit court did not err in denying Mr. Vanmeter's motion to suppress. *See Ball v. State*, 347 Md. 156, 173-74 (1997).

We review a suppression court's ruling that a confession is voluntary de novo. *Hill v. State*, 418 Md. 62, 77 (2011). "[A]ppellate review of a suppression court's ruling is limited to the record developed at the suppression hearing." *Id*. at 77-78. We credit the suppression court's factual findings, and "review evidence and inferences that may be reasonably drawn therefrom in a light most favorable to the prevailing party on the motion." *Id*. at 77 (internal quotations omitted).

I. THERE IS A SUFFICIENT RECORD TO REACH THE MERITS OF THIS CASE.

As a preliminary matter, the State contends that we should dismiss Mr. Vanmeter's appeal because he has not provided an adequate record to allow appellate review. The State is correct that Mr. Vanmeter failed to comply with Rule 8-411(a)(3) in that he did not either: (1) order a written transcript of the videotaped police interview as it was admitted at the suppression hearing; or (2) otherwise obtain from the State a stipulation as to the contents of the recording. However, the State is incorrect that this failure interferes with appellate review in light of the specific circumstances of this case. The record contains the video of the interview that the circuit court reviewed in camera during the suppression hearing. We have reviewed that video and confirmed that it is the same video that was introduced, and transcribed, as State's Trial Exhibit 5. Although the failure to provide the transcript or obtain a stipulation would be a permissible ground for dismissal, we exercise our discretion to hear and decide the merits of Mr. Vanmeter's appeal. *See, e.g.*, *Joseph v. Bozzuto Mgmt. Co.*, 173 Md. App. 305, 348 (2007) (stating that reaching a decision on the merits, "when possible, is always a preferred alternative").

II. MR. VANMETER'S CONFESSION WAS VOLUNTARY.

Confessions must be voluntary to be admissible as evidence. *Hill*, 418 Md. at 74. "To be voluntary, a confession must satisfy federal and state constitutional strictures as well as the Maryland common law rule that a confession is involuntary if it is the product of an improper threat, promise, or inducement by the police." *Id*. In determining whether a confession was voluntary, "we generally look at the totality of the circumstances affecting the interrogation and confession." *Winder v. State*, 362 Md. 275, 307 (2001). This may include where the interrogation took place; its length; who attended; how the interrogation was conducted; its content; whether Miranda warnings were given; the "mental and physical condition of the defendant"; "the age, background, experience, education, character, and intelligence of the defendant"; how much time elapsed before the defendant was taken before a commissioner; whether the defendant was physically mistreated or intimidated; and whether the defendant was psychologically pressured. *Hof v. State*, 337 Md. 581, 596-97 (1995).

In *Hillard v. State*, the Court of Appeals established a two-prong test to determine whether confessions are improperly induced, and thus inadmissible. 286 Md. 145, 153 (1979). The first prong asks whether a police officer promised or implied that special consideration or assistance will result from a confession. *Hill*, 418 Md. at 76. This inquiry is objective. *Williams v. State*, 445 Md. 452, 478 (2015). To make this determination, we ask whether a reasonable layperson in the position of the accused would infer an express

or implied inducement in the officer's conduct that would move the accused to make an inculpatory statement. *Id*. at 478-79.

If the first prong is satisfied, the court then must "determine whether the accused relied on that inducement in making the statement he or she seeks to suppress." *Hill*, 418 Md. at 77. This second prong is subjective. In a suppression hearing, it is the State's burden to demonstrate, by a preponderance of the evidence, that there was no reliance. *Id.* at 77.

A. Mr. Vanmeter's Confession Did Not Result from an Inducement or Threat.

Mr. Vanmeter's appeal fails at the first *Hillard* prong. His claim centers on Lt. Alton's statement that Mr. Vanmeter was "either gonna paint yourself a picture of a monster, which I'm gonna do because I'm gonna show those pictures to a jury, or you're gonna explain to me how and why you did this." Mr. Vanmeter characterizes this statement as an "objective threat" that "constituted an improper inducement" to confess. We disagree.

Two decisions of the Court of Appeals control our analysis. In *Ball*, police officers presented the suspect with two documents, each containing a different characterization of the crime and the suspect. One identified the shooting as intentional and the suspect as "a cold blooded killer" with "no regard for human life" who had killed "for fun" and would likely do so again. 347 Md. at 168-69. The second characterized the shooting as an accident and the suspect as having had "a tough life," as motivated by a desire to support his family, and as remorseful. *Id.* at 169. Soon after viewing these documents, the suspect

confessed. In affirming the decision to not suppress the verbal confession, the Court of Appeals observed that police officers "are permitted to use a certain amount of subterfuge" when questioning a suspect. *Id.* at 178. "[P]olice officers are not permitted to employ coercive tactics in order to compel an individual to confess, but they are permitted to 'trick' the suspect into making an inculpatory statement." *Id.* at 179. The touchstone of the analysis is whether the defendant's will was overborne by the tactic. *Id.* at 178-79. The Court found "no indication that Appellant's will was overborne" in that case. *Id.* at 180.

Once the suspect in *Ball* had provided a verbal confession, the officers then convinced him to put his confession in writing. They did so by telling Mr. Ball that it would be better for him to tell a jury his side of the story in writing than to have his verbal confession conveyed at trial through the filter of police recounting. *Id.* at 174. The Court held that this also was not an improper inducement, but rather "an opportunity to explain his criminal behavior in his own words." *Id*. at 176. "To the extent that this opportunity constituted a 'benefit' to Appellant, it did not rise to the level of an improper inducement." *Id.* at 176.

Similarly, in *Williams*, police presented a suspected murderer with "two scenarios characterizing different charges and indicated that under one scenario [the suspect] might 'see outside again,' while in the other he would spend his life in prison." 445 Md. at 465-66. The first scenario involved the defendant getting the opportunity, through confession, to explain that the killing resulted from "a robbery gone bad," as compared to the second scenario, where he "went in there specifically to kill somebody." *Id.* at 481. The Court of Appeals held that "presentment of two different ways of characterizing the

situation is not an inducement." *Id.*; *see also Smith v. State*, 220 Md. App. 256, 280 (2014) (stating "that encouraging a suspect to adopt a version of the facts that might mitigate the punishment for the crime committed is not in itself an improper inducement under Maryland law").

Viewed through the prism of these decisions, Lt. Alton's statement that the photographs would paint Mr. Vanmeter as a monster if Mr. Vanmeter did not explain his conduct was not an improper threat or inducement. Lt. Alton presented Mr. Vanmeter the opportunity to use his own words to counter the story that would be told by the pictures. Lt. Alton did not state expressly, nor did he imply, that Mr. Vanmeter would receive any special consideration if he confessed or any special punishment if he did not. Nor would it have been in any way reasonable for Mr. Vanmeter to conclude, under the circumstances, that Lt. Alton had promised not to present evidence of child abuse to a jury in exchange for a confession. *See Smith*, 220 Md. App. at 279-80 (holding that statements implying a promise not to prosecute were not sufficient to satisfy *Hillard*'s objective first prong because no reasonable layperson would believe that confessing to "consensual" intercourse with a four-year-old child "would yield non-prosecution or leniency in prosecution"); *In re Lavar D.*, 189 Md. App. 526, 595-96 (2009) (police officer did not make a promise, for purpose of first prong of the *Hillard* test, when he stated that if the defendant did not confess, not only would other witnesses still testify against him at trial, but the officer would tell the court that the defendant had lied and was non-remorseful during questioning).

Examining the totality of the surrounding circumstances bolsters our conclusion that the confession was voluntary. As Mr. Vanmeter admits, he was not under the influence of drugs or alcohol, has no mental disability, was not physically restrained or threatened, and the interview was relatively brief. Lt. Alton gave Miranda warnings verbally and in writing, which Mr. Vanmeter acknowledged verbally and in writing. The interview was attended by only two deputies, and only Lt. Alton spoke. Mr. Vanmeter was held relatively briefly before the interview began, and during that time he formulated a plan to listen to Lt. Alton's questions and then request a lawyer. Mr. Vanmeter knew he could halt the interview at any time. And although he had not slept in approximately 24 hours, there is no indication that this affected his responses or that his lack of sleep was engineered or taken advantage of by Lt. Alton. In addition, as the suppression court found, the photographs shown Mr. Vanmeter were not "gruesome or particularly outrageous" under the circumstances.

In contrast, cases in which Maryland courts have discerned inducement have all involved situations where offers of non-prosecution or leniency were apparent (either express or implied). For example: when a defendant could reasonably believe that non-prosecution or other assistance would result from "making an apology to the victim and his family," *Hill*, 418 Md. at 78; when a detective promised to "go to bat" for a defendant with the State's Attorney's office and the court, *Hillard*, 286 Md. at 153; when a detective told a defendant, "I can make a promise, okay? I can help you. . . I could try to protect you," *Winder v. State*, 362 Md. at 314; and when an officer said, "if down the line, after this case comes to an end, we'll see what the State's Attorney can do for you, with your case, with

your charges," *Knight v. State*, 381 Md. 517, 537 (2004). Lt. Alton made no such inducement.

We perceive no indication that Mr. Vanmeter's will was overborne by the statement or the photographs, and his claim thus fails at the first *Hillard* prong.

B. In the Alternative, Mr. Vanmeter Did Not Rely on Any Threat or Inducement.

Even if we had found that Lt. Alton's statement and display of photographs constituted inducement under *Hillard*'s first prong, we conclude that he did not satisfy the second prong, because his confession was not made in reliance on that inducement. Considering all of the circumstances, the suppression court found that Mr. Vanmeter's confession was motivated not by Lt. Alton's statement or the photographs, but by a desire to shift blame to D.'s mother. That finding was not clearly erroneous. *See Knight*, 381 Md. at 538 (determining that confession was voluntary because the record indicated that the defendant's goal in confessing "was to shift the blame from himself . . . and not the hope of special treatment"). Indeed, Mr. Vanmeter stated multiple times during the interview that he would not take "the blame for all of it"; claimed that he had not done anything that the mother had not also done (although he later acknowledged otherwise); and accused the mother of having grabbed D. by the throat, slammed him against walls, hit him with a belt and a spoon, and engaged in other abusive conduct. At the conclusion of the interview, upon hearing that he was going to be charged, Mr. Vanmeter's primary concern was to learn whether D.'s mother would also be charged. When told that the Sheriff's Office was "working on that," Mr. Vanmeter responded, "Okay, good."

In sum, Lt. Alton's conduct and statement was not an inducement that could have rendered Mr. Vanmeter's confession involuntary. Even if it were, Mr. Vanmeter did not rely on it. Thus, the suppression court did not err in denying the motion to suppress Mr. Vanmeter's confession.

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.