Circuit Court for Baltimore City
Case No. 118024004

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3429

September Term, 2018

ARNELL HOSKINSON

v.

STATE OF MARYLAND

Meredith,
Wells,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by, Meredith J.

Filed: April 27, 2020

Arnell Hoskinson, appellant, was convicted by a jury, sitting in the Circuit Court for Baltimore City, of first-degree felony murder and attempted robbery.[1] Hoskinson raises two questions on appeal:

> I. Did the [suppression] court err in denying the motion to suppress [because the court found] that Ms. Hoskinson's statement to police was voluntary under Maryland common law?
>
> II. Did the trial court err in permitting the prosecutor to argue to the jury, over objection, that Ms. Hoskinson's statement to the police was not "illegal" because "[i]f it was illegal you wouldn't hear it"?

We answer both questions in the affirmative. We shall vacate her convictions and remand the case for a new trial.

I. SUPPRESSION HEARING

A. Standard of review

When reviewing a lower court's ruling on a motion to suppress, we look only to the record of the suppression hearing. *Owens v. State*, 399 Md. 388, 403 (2007), *cert. denied*, 552 U.S. 1144 (2008). We "extend great deference to the findings of the motions court *as to first-level findings of fact* and as to the credibility of witnesses, unless those findings are clearly erroneous." *Brown v. State*, 397 Md. 89, 98 (2007) (emphasis added) (citation omitted). We "'view the evidence and inferences that may be reasonably drawn therefrom in a light most favorable to the prevailing party on the motion[.]'" *Owens*, 399 Md. at 403 (quoting *State v. Rucker*, 374 Md. 199, 207 (2003)). But, with respect to the motion court's

[1] The jury acquitted Hoskinson of armed robbery, attempted armed robbery, robbery, and conspiracy to commit armed robbery. The court sentenced her to life imprisonment for first-degree felony murder, and merged her conviction for attempted robbery.

legal conclusions, we make an independent, *de novo* appraisal of whether the motion court correctly applied the law to the facts presented in the case. *See Williams v. State*, 372 Md. 386, 401 (2002).

In this case, we are called upon to decide whether the motion court erred in concluding that incriminating statements made to the police by Hoskinson were voluntarily made. In *Williams v. State*, 375 Md. 404, 429 (2003), the Court of Appeals reiterated that, under Maryland common law, a confession that is induced by a promise of some advantage will be held involuntary:

> Many factors can bear on the voluntariness of a confession. As noted in *Winder v. State*, 362 Md. 275, 307, 765 A.2d 97, 114 (2001), we 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**. *See Winder, supra*; *see also Hillard v. State*, 286 Md. 145, 406 A.2d 415 (1979). A confession that is preceded or accompanied by any physical mistreatment would obviously be regarded in the same way. Those kinds of factors are coercive as a matter of law. When shown to be present, the State has a very heavy burden, indeed, of proving that they did not induce the confession.

(Emphasis added.) *Accord Hill v. State*, 418 Md. 62, 75 (2011).

In *Winder v. State*, 362 Md. 275, 309 (2001), the Court of Appeals described the two-part test that applies to admissibility of incriminating statements of a defendant:

> We will deem a confession to be involuntary, and therefore 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.

And the appellate courts "undertake a *de novo* review of the trial judge's ultimate determination on the issue of voluntariness." *Id*. at 310-11. The Court in *Winder* also noted that the State bears the burden of establishing, "by a preponderance of the evidence, that the suspect's confession or inculpatory statement was not made in reliance on a promise or inducement made by a police officer or agent of the police." *Id*. at 310.

B. Hoskinson's Statements to Police

The State filed charges against Hoskinson for her involvement in the robbery and murder of Josue Gonzalez-Jimenez that took place on July 17, 2017. Prior to trial, Hoskinson moved to suppress inculpatory statements she made to the police a few days after the murder. She argued that her statements should be suppressed because she made the inculpatory statements in response to offers by the police to help her and protect her from the gang members involved in the incident, and also in response to the officers' threats that if she did not provide information she would end up in a cell and could die in jail.

During the hearing on the suppression motion, the State called Detective Steven McDonnell, who led the interview of Hoskinson at the police station. The State also played a videotape of the interview. The defense called Hoskinson to testify. The following evidence was elicited at the suppression hearing.

Detective McDonnell testified that a few days after the murder, he and Detective Perez interviewed Hoskinson, a possible suspect, just after midnight at the police station.

The interview began with Detective McDonnell reading Hoskinson her *Miranda* rights and having her initial the form after each right. Before she waived her rights, Detective McDonnell advised her:

> I believe you know honesty is the best policy you know [] especially if you didn't do anything wrong okay. There's a difference between starting a fight, being the one that starts the whole thing and finishes it and being a bystander right okay? [sic] A lot of times just being someplace doesn't mean you're guilty okay?

After Hoskinson signed the waiver form, the detectives asked her several background questions. She told the detectives that she was 38 years old and had gone as far as 7th grade in school. She told the detectives that she had not been to that police station before, but she had been "to headquarters[.]" Detective McDonnell testified that he and his partner did not yell at her or have their guns drawn, and she did not appear intoxicated.

When the detectives asked Hoskinson what had happened the previous Monday, she initially gave the following account. She said that she worked as a prostitute, and she had gone on a "date" with a man, later identified as the victim. She had dated him several times before. While she and the victim were having sex in his apartment, they were interrupted by a woman. Because the victim and the woman began to argue, Hoskinson left the victim's apartment. But later that evening, the victim called her on her cell phone and asked her to return. So she came back. Hoskinson said that, after she returned to the victim's apartment, while they were engaged in sex, two "guys ran into the room and smacked me[,] went in my purse and took my money[,] and they were like were messing with him [the victim,] and I grabbed my clothes and I ran out of the room." She said she had never seen

the men before. She described the men as black, and added that they both wore masks; one wore his hair in long dreads, and the other was "really big[.]" She repeated twice more that she had never seen the men before.

Detective McDonnell then told Hoskinson that there were "video cameras all over" the area where the victim lived, and what the police had seen on the videos was not "jiving" with her "story." He told her that the victim was dead, and the following colloquy ensued:

> Detective McDonnell: So um I know you make [] your living on the streets but now is not the time to start protecting people. It was a bad idea okay?
>
> Ms. Hoskinson: I was made to do it.
>
> Detective McDonnell: And I believe that. I believe it you were made to do it and this **this is the honesty you need to stay out of big trouble okay?** Um I don't think you're the one who stabbed this guy over and over again.
>
> Ms. Hoskinson: I didn't no.
>
> Detective McDonnell: And I believe in my heart that you didn't know that they were going to kill [the victim] because I just can't believe you being there having sex with the guy know they were going to come in and kill him[.]
>
> Ms. Hoskinson: I didn't[.]
>
> Detective McDonnell: Okay[.] So **let's start from the top again okay**. **We can help you**. You have to help yourself okay? So start at the top. You said they made you do it. Who's they?
>
> Ms. Hoskinson: Um the boys from down the street um[.]

(Emphasis added).

The detective pressed her for the names of the two men, and she responded: "But if I give you the names Sir, I'm fucked." The following colloquy then occurred:

> Detective McDonnell: Okay[.] **First off if you're worried about retaliation**
>
> Ms. Hoskinson: Yes[.]
>
> Detective McDonnell: **Or retribution whatever um we're not going to let anything happen to you**. You know you're here. I really don't believe you killed anybody but you're in the Homicide unit[.]
>
> Detective McDonnell: Well it's a toss-up here okay now is the time to be honest not the time to go down for some other goof's bullshit and that's what it is because I don't see you as a murderer. I don't see you [] as a conspirator to commit murder okay. So to get yourself in a better position it's time to be truthful. **These two guys that made you do it what's their names?**

(Emphasis added).

She responded that the men were named "Banger" and "E." She explained that E was her "crack dealer," who sometimes stayed at her house and who she calls when she has "trouble on the street[.]" She added that the men were in the "Bloods" gang.

When asked why the men targeted the victim, Hoskinson said that she assumed that the victim owed Banger and E money because they did "business together[.]" She further explained that, on the night of the murder, E saw the victim's text on her cellphone asking her to return to his apartment, and E made her "go through [with] the date. Like I didn't want to go back to see [the victim] and [E] was like you need to go see him we need some money and I was really broke so. That's you know that's what I was made to do." She told the detectives that she did not know the two men would come into the victim's apartment, and when they did, Banger had a knife. She said she was **"scared to death because . . . I know what the Bloods are capable of[.]"** (Emphasis added.) She added,

"That's what I'm scared of. **I'm scared of retaliation from that. That scares the death out of me**[.]" (Emphasis added.)

The detective then told her, "Arnell[,] you're making progress as far as trying to help yourself[,]" but **"to believe what you're saying you've got to be a little more convincing[.]"** (Emphasis added.) The following colloquy then occurred:

> Detective McDonnell: Some of the things you're telling me yeah okay I can like validate as the truth. Other things you're telling me and avoiding to tell me because you're trying to protect these guys who got you in a shitload of trouble, okay. So **now is the time to get yourself out of trouble**. You should look after number one you know that right? You told me yourself no one you have nobody okay? Who's looking after you?
>
> Ms. Hoskinson: Nobody[.]
>
> Detective McDonnell: Okay well it's time to start looking after yourself. You know what I'm saying? You were put you were put [sic] in a very very precarious situation. You understand that right? It's time to help yourself not time [] to sit there and say well I don't want I don't want to get E in trouble I don't want to get Banger in trouble.

(Emphasis added.)

She added to her statement that E went to the victim's apartment because he had seen the victim earlier "with a whole bunch of money" and the victim texted her for a date. She then implicated herself further, stating: "E had told me to um leave the door unlocked[.]" She started crying and said "I didn't think anything of it[.] I didn't know what was going to go down. I really didn't know what was going to go down[.]" She said that, after the stabbing, she went to her apartment, where E joined her about 45 minutes later. When she asked E what happened, he said that "Banger took care of it[.]" Hoskinson

and the detectives spoke for about three more pages of written transcript after which the detectives left the interview room.

About twenty minutes later a third detective—Detective Moynihan—entered the room. Detective Moynihan told her twice that she "did good," to which she responded: "I did?" She said: "I don't know what that means[.]" Detective Moynihan then confronted her with the following:

> Right now right here and now you are going to be 100 percent straight honest because listen to me[;] this morning the [S]tate['s] attorney is going to be reviewing everything that's done in this room which is video and audio tape from the beginning okay? And **you could die in jail. You understand that?** You're 38. You have four kids and a grand kid. You from this point on starting now not one lie comes out of you because **here's the thing you're either going to be a witness or you're going to be a defendant.** Twenty-four years I've been here in Baltimore doing this job this job right here. **If you think I'm fucking with you take your chance cause you will end up in a cell. Are we clear?**

(Emphasis added.)

When Detective Moynihan then asked what was the plan that night, Hoskinson began to cry and stated: "E just told me to leave the door unlocked. That was it." She added: "I just thought they were going to come in and like beat him up or something[.] . . . I didn't know that they were going to rob him or hurt him." She said, "I got nothing [out of it]." She repeated that she was "scared of the Bloods. I don't [sic] know what they can do. That's what scares me about it. Like I never knew [E] was in the Bloods until literally a month ago. He said he was in jail for fourteen years for murder[.]" Detective Moynihan reminded her that he could check her story and added:

> Again like I said **straight up and we'll work with you, okay?** In a little bit. You're going to be sitting here for a minute probably for quite a while. In a little bit, we're probably going to come in here and show you some pictures okay? Again [j]ust be truthful okay? Because we are beyond the point of not one lie. This is your life.

(Emphasis added.) The detective then left the room.

The video recording and transcript reflect that she fell asleep for about an hour and a half, after which another officer entered with two photographic arrays. Hoskinson identified Banger and E from the arrays. After about ten minutes, that officer left and she slept for about four hours. After more than seven hours in the interview room, she was released from the police station. And several months later, she was arrested for her connection to the murder and robbery.

Hoskinson testified at the suppression hearing that she was getting high when the police arrived at her apartment and took her to the station for questioning. She said that she was still high when the detectives started questioning her, but she did not tell them because she did not want to get in trouble. She testified that, when the detectives told her that they would help her, she thought that meant that they would help her not get arrested, help her get an attorney, and help her to relocate to protect her from Banger and E. But she later testified on cross-examination that, when she talked to the detectives: "I was trying to get out of the room quicker because I wanted to go get high, not because of protection. I was trying to go get high." She further testified that, when the detective told her that she could either be a defendant and end up dead in jail or a witness, she believed that if she did

not give a statement she would be a defendant, and if she gave a statement she would be a witness.

At the conclusion of the hearing, the State argued that Hoskinson's entire statement was voluntary. The State argued that any mention of help by the detectives was vague at best, and it was only to encourage "her to tell the truth, not because there was some benefit that she was going to get, some leniency that she was going to get." The State also argued that there was "absolutely no indication" that she was "so sleepy and high and drunk that she d[id]n't know what's going on."

In response, Hoskinson's attorney argued that the detectives' assertions that they would help her were improper inducements that rendered her inculpatory responses involuntary. Hoskinson's attorney added that Detective Moynihan's remark that she was either going to be dead in jail or a witness was also an improper inducement. Hoskinson's attorney argued further that, even if the inducements were not improper individually, when viewed together and with other remarks by the detectives, they rendered her statement coerced and involuntary.

After hearing the parties' arguments, the court denied the motion to suppress. The court found that the detectives did not promise to use their discretion to show Hoskinson leniency, noting that the detectives did not tell her explicitly that if she gave a statement, they would make her a witness, or if she did not give a statement, they would make her a defendant. The court said that the detectives' statement to her that they would "help her" was vague and did not, by itself, provide an objective basis for Hoskinson to believe that

the police meant they would help her not be charged, help her be a witness, or protect her from the other two men. The court concluded that, because there was no specific, explicit promise of help, there was no improper inducement. The court added that, in any event, the detectives' promise to help her did not induce her statement because she had, by then, already inculpated herself in the robbery/murder. In the court's view, Hoskinson's statement was freely and voluntarily made and not the product of a promise or a threat.

C. Discussion

On appeal, Hoskinson argues that the suppression court erred in denying her motion to suppress. She directs our attention to statements made by the detectives that, she contends, amounted to improper inducements that rendered her confession involuntary under Maryland common law. The State responds that the suppression court properly denied the motion to suppress because the remarks by the detectives were too vague and the police offered no promise of leniency *from prosecution* to render the remarks improper inducements. We agree with Hoskinson that two of the detectives' remarks were improper inducements that rendered her inculpatory responses involuntary and inadmissible.

Beyond the rights protected by the United States Constitution, the common law of Maryland offers additional protections against the use of involuntary confessions. As the Court of Appeals observed in 2015 in *Williams v. State*, 445 Md. 452, 478 (2015): "'[U]nder Maryland criminal law, independent of any federal constitutional requirement, 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.'" (Quoting *Hillard v. State*, 286 Md. 145, 153 (1979).)

Under the two-part test set forth in *Hillard*, 286 Md. at 153, an inculpatory statement will be deemed involuntary and held inadmissible if: (1) any officer promises or implies to the suspect that the suspect will be given special consideration from a prosecuting authority or some other form of assistance in exchange for the suspect's statement, and (2) the suspect makes an inculpatory statement in apparent reliance on the officer's explicit or implicit inducement.

The first prong of the *Hillard* test employs an objective standard. And the threat or promise of advantage can be improper regardless of whether it is express or implied. *Hillard*, 286 Md. at 153. As the Court of Appeals noted in *Hill*, 418 Md. at 80, an improper inducement can come in the form of various offers of a benefit:

> We disagree with the State, however, that only statements offering or implying the officer's assistance in avoiding prosecution qualify as inducements under *Hillard* and its progeny. The thrust of the *Hillard* test is to ensure that an incriminating remark is "free of any coercive barnacles that may have attached by improper means to prevent the expression from being voluntary." *Hillard*, 286 Md. at 150[.] "Coercive barnacles" can take many forms and are not limited to instances in which interrogating officers promise *their* assistance to the accused. Thus, it is of no consequence that Detective McLaughlin neither promised nor suggested that he would help Petitioner avoid prosecution. It matters only that Detective McLaughlin promised or suggested such assistance by one or more persons who, from the perspective of a layperson in Petitioner's position, could reasonably provide it.

Id. at 80. But: "Although a defendant need not point to an express *quid pro quo*, [a] mere exhortation to tell the truth is not enough to make a statement involuntary." *Winder*, 362 Md. at 311 (quotation marks and citation omitted).

The *Hill* Court explained that the test to assess voluntariness is whether a reasonable layperson in the position of the defendant would have inferred that there would be some form of assistance forthcoming if additional information was provided:

> We have said that the first prong of the *Hillard* test requires an objective analysis. **The question, therefore, is whether a reasonable layperson in the position of Petitioner would have inferred** from Detective McLaughlin's statement **that he could gain the advantage of non-prosecution or some other form of assistance**, upon making an apology to the victim and his family.
>
> Detective McLaughlin, after informing Petitioner that he had recorded Petitioner's conversation with Randy, told Petitioner that the victim's family "did not want to see him get into any trouble, but they only wanted an apology." In this context, an objectively reasonable interpretation of the word "trouble," is trouble with the law. *See Biscoe v. Maryland*, 67 Md. 6, 8–9, 8 A. 571, 571 (1887) (stating that the detective's telling the accused "to tell the truth [ ] and have no more trouble about it" was an inducement "of the strongest kind").
>
> Moreover, a reasonable layperson in Petitioner's position, hearing Detective McLaughlin's statement, would not necessarily understand that the State could prosecute him or her, even against the wishes of the victim or victim's family. To the contrary, it is reasonable for a layperson in that position to infer from the officer's statement that the victim's family, upon receipt of an apology, would either recommend to the prosecutor that criminal charges not be pursued or decline to participate in any prosecution. **We therefore conclude that Petitioner had an objectively reasonable belief, based on the detective's statement, that by making an inculpatory statement** that included an apology to the victim's family **he might avoid criminal charges or, at the least, lessen the likelihood of a successful criminal prosecution**.

418 Md. at 78-79 (emphasis added; footnote omitted).

The second *Hillard* prong requires "a causal nexus between the inducement and the [inculpatory] statement[.]" *Id*. at 77 (quotation marks and citations omitted). "If a suspect did not rely on an interrogator's comments, obviously, the statement is admissible regardless of whether the interrogator had articulated an improper inducement." *Winder*, 362 Md. at 309-10 (quotation marks and citations omitted). Several factors may inform the second prong analysis, including "the temporal relationship between the improper threat, promise, or inducement and the confession[.]" *Knight*, 381 Md. at 534 (citation and footnote omitted). *Compare Ralph v. State*, 226 Md. 480, 486 (1961) (a single police statement eight hours before the suspect agreed to confess was too attenuated to conclude that the suspect had relied upon the statement in making his confession), *cert. denied*, 369 U.S. 813 (1962), *with Stokes v. State*, 289 Md. 155, 157 (1980) (holding that a defendant relied on a police statement that if he produced the narcotics, his wife would not be arrested whereupon the defendant immediately revealed the location of the narcotics). As this Court noted in *Henry v. State*, 204 Md. App. 509, 539 (2012):

> [A] presumption of involuntariness . . . arises when evidence is adduced that a confession was obtained by improper threats, promises, or inducements. For the State to introduce the confession in evidence, it must adduce specifically contrary evidence, thus rebutting the presumption of involuntariness. If it fails to do so, the presumption remains that the confession is involuntary.

We now turn to the several alleged instances of improper inducements.

1. "Honesty is the best policy"

Hoskinson directs our attention to Detective McDonnell's remark before he read her the *Miranda* rights: "[H]onesty is the best policy . . . especially if you didn't do anything

wrong[.]" Hoskinson argues that the detective's remark implied that she "would be treated favorably if she made a statement regardless of its content." We view this statement as a mere exhortation to tell the truth.

In *Clark v. State*, 48 Md. App. 637, 644 (1981), we observed that "a mere caution to make a true statement, without more, does not make a subsequent statement inadmissible." We explained:

> [T]he Court [of Appeals] has held that mere exhortations to tell the truth, and nothing more, are not improper. "I want you to tell the truth" has been held not to be an improper inducement. *Nicholson v. State, supra*. Similarly, in *Deems v. State*, 127 Md. 624 (1916), an officer's questions to the accused of "why [didn't he] tell the truth" and the statement that "the truth would hurt no one" did not render the confession inadmissible. In *Merchant v. State*, 217 Md. 61 (1958), the officer told the appellant, in response to a question, that he did not know if things would go easier if he made a statement and he could make no promises. He added, "the truth hurts no one." The court did not think the generalization could be viewed as a promise of leniency, especially where the accused was told any statement could be used against him. Neither is it an improper inducement for an officer to tell an accused to "get it off his chest." *Bean v. State*, 234 Md. 432 (1964).

Id. at 645 (footnote omitted). *Accord Reynolds v. State*, 327 Md. 494, 507-08 (1992), *cert. denied*, 506 U.S. 1054 (1993).

Based on the above, we are persuaded that the detective's remark—"honesty is the best policy . . . especially if you didn't do anything wrong"—was a mere exhortation to tell the truth and therefore not an improper inducement.

2. "This is the honesty you need to stay with to stay out of big trouble"

Hoskinson argues that the detective made a second improper inducement when he tempted her to continue talking to him by saying: "[T]his is the honesty you need to stay

with to stay out of big trouble." Citing *Hill*, 418 Md. 62, and *Biscoe v. State*, 67 Md. 6 (1887), Hoskinson contends that the detective's remark implied that she "would avoid any serious legal jeopardy if she provided more information." The State responds that the remark was not an improper inducement, noting that, in *Hill*, there was a promise of leniency if the defendant wrote an apology to the victim's family.

We agree with the State that the detective's implication of a benefit to Hoskinson—that she could stay out of "big trouble" if only she would provide additional information—was too vague to elevate the remark beyond a mere exhortation to be truthful.

3. & 4. "We can help you" and "We're not going to let anything happen to you"

Hoskinson points to these two promises the detective made to provide her assistance as improper inducements for her to provide additional information: "We can help you," and "if you're worried about retaliation . . . [o]r retribution whatever um we're not going to let anything happen to you." Hoskinson argues that the offer of help "could only reasonably be understood as referring to leniency in a future prosecution" in light of the detectives' previous assertion that she could stay out of "big trouble" if she continued to provide information. Hoskinson cites *Hillard*, 286 Md. at 153, and *Lubinski v. State*, 180 Md. 1, 5-6 (1941), to support her argument regarding the offer of "help." With respect to the promise to protect Hoskinson from retaliation or retribution, she asserts in her brief that a reasonable person in her position would have interpreted this statement as a promise of protection and resources for witnesses if she provided more information. She points out in

her brief that Detective McDonnell "testified that he was offering Ms. Hoskinson the State's 'resources for witnesses, witness protection, relocation, things of that nature.'"

The State concedes that the police "did offer the protection that could be afforded *to witnesses* to Hoskinson," but nevertheless claims "that was not an offer to intervene to prevent (or to mitigate) *prosecution*."

Applying an objective standard as described in *Hill*, 418 Md. at 76 and at 78, and recognizing that a "promise, or inducement can be considered improper regardless whether it is express or implied," *id*. at 76, we conclude that a reasonable layperson in Hoskinson's position would have understood the statement "we can help you" as an offer to try to help her avoid prosecution (or at least mitigate prosecution) if she provided the police additional information. And we conclude that a reasonable layperson in Hoskinson's position would have understood the statement "if you're worried about retaliation . . . [o]r retribution whatever um we're not going to let anything happen to you" as a promise to protect her from retaliation from her gang-member associates if they retaliated against her for providing information to the police.

In *Hillard*, 286 Md. at 153, the Court of Appeals held that the detective's statement to a suspect, "[I]f you are telling me the truth . . . I will go to bat for you," was an improper inducement. Writing for the Court, Judge Dudley Digges reviewed Maryland case law on improperly induced confessions and concluded:

> [I]t clearly emerges that under Maryland criminal law, independent of any federal constitutional requirement, **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**. In examining the facts of this case with this principle in mind, there can be little doubt that Detective Jones made an improper promise to the defendant in exchange for his statement. In his findings of fact at the second suppression hearing, which we cannot say are clearly erroneous in light of the record established at that proceeding, the trial judge stated quite emphatically:
>
> > So what this defendant was in fact told by Jones, and I find as a fact this is what he was told, that if you are telling me the truth about your involvement in the occurrence, I will go to bat for you to the extent that I will tell the State's Attorney's office and the Court, number one, that you have cooperated, number two, you have told me the truth, and number three, I believe you were not knowledgeable as far as the murder was concerned.
>
> This finding judicially confirmed that the officer had promised the defendant help if he would make a statement and, when coupled with the fact that the State did not meet or even attempt to fulfill its burden of demonstrating that the improper promises failed to induce Hillard's admissions, established the statement in question here was involuntarily obtained and therefore inadmissible at petitioner's trial.

Id. (emphasis added; footnote omitted). The Court further reasoned that the presence of Hillard's attorney at the time of the statement did not compel a different result because the State failed to show that Hillard's decision to make a statement was not induced by the promise of a favor. *Id.* at 154. Similarly, in Hoskinson's case there is no question that detectives made offers of help and protection if she provided them additional statements; the interrogation was recorded and the recording is in evidence. Nor is there any question as to whether Hoskinson made incriminating statements in response to the offers of help and protection.

In *Winder*, 362 Md. at 289, 294, the Court of Appeals held that the following statements by a detective to the appellant were improper inducements: "I can make you a promise, okay? **I can help you. I could help you, I could try to protect you**" (emphasis added). "Because I know that there are people in that family and not the immediate family who are ready to come out here and do some bad things to you. You follow me? And I can't be there all the time." Finding that these offers of assistance improperly induced Winder's incriminating statement, the Court explained:

> In prior cases, we have held that the following statements constituted improper inducements: "produce the narcotics, [and your] wife would not be arrested" *Stokes*, 289 Md. at 157; "if you are telling me the truth . . . I will go to bat for you," *Hillard*, 286 Md. at 153; "it would be better for [you] if [you] made a statement because if [you] did they would try to get him put on probation," *Streams v. State*, 238 Md. 278, 281 (1965); "it will help you a lot," *Lubinski v. State*, 180 Md. 1, 4-5 (1941); and "it would be better . . . to tell the truth and have no more trouble about it," *Biscoe v. State*, 67 Md. 6 (1887). The common thread in each of these cases is that **a singular statement communicated to the suspect may be sufficient to qualify as an inappropriate offer of help held out to the suspect**.
>
> In the present case, the interrogating officers' statements and conduct go far beyond that in any of our prior cases where improper inducements were recognized. During the twelve hour interrogation, the officers repeated many times that they would help [Winder]. They offered him an apparent means to garner leniency from the state prosecutors and the trial court and protection from an angry mob. The only thing [Winder] had to do in return for these meaningful inducements was confess to a triple murder. The first prong of the *Hillard* test has been satisfied.

Id. at 317-18 (emphasis added).

Although the State argues that *Winder* is distinguishable from the facts here, we are persuaded that the offers to Hoskinson of help and protection were improper inducements under the first prong of *Hillard* because the detectives clearly implied that Hoskinson

would be given special assistance in exchange for speaking further. The remarks would have been understood by a reasonable layperson in her position as a promise that, if she continued providing information, the detectives would provide her assistance, to not only protect her from the gang members she feared, but also to help her avoid or mitigate prosecution.

We are persuaded that, as in *Winder*, Hoskinson's response to Detective McDonnell's remarks also satisfied the second *Hillard* prong, which requires a causal nexus between the inducement and the suspect's statement. The Court in *Winder* found that the second prong of the *Hillard* test for exclusion was satisfied, noting: "[I]n the present case there is no attenuation in time or circumstance, no change of environment, and no interruptive change of the interrogation team. [Winder] confessed to virtually the same team of officers, in the same environment in which his entire interrogation took place, following twelve hours of interrogation."

Although Hoskinson's interrogation did not last twelve hours, she provided inculpatory information—at odds with her initial statement—in direct response to the detective's inducing offers of assistance. Hoskinson was resistant to naming the two men involved in the robbery and murder until the detective offered to help and protect her, and, given the men's known affiliation with a violent gang, her reluctance was reasonable. Directly on the heels of the detective's offer to help her and protect her, she identified the men and gave a detailed description of them and how the crimes occurred. She explained that E forced her to go through with meeting the victim because E was broke, as was she.

She further implicated herself when she told the detectives that E told her to leave the door unlocked. There was no intervening break between the improper inducements and her statement, such as a break in questioning, a change of detectives, or a change of rooms.

The suppression court was incorrect in its assertion that, even if the offers of help were improper inducements, Hoskinson had already made her inculpatory statements so as to render the inducement essentially harmless. Hoskinson did not name the two men involved until the detective made assurances that the police would protect her, and she also did not implicate herself until after the offers to help. The motion court erred in failing to suppress the statements Hoskinson made after the detective's offers of help and protection.

Because we are vacating Hoskinson's convictions based on the offers by the detective to help her and protect her, we need not address Hoskinson's remaining arguments regarding the other remarks made by the police.[2]

II. TRIAL – CLOSING ARGUMENT

We also agree with Hoskinson's argument that the trial judge committed reversible error when she overruled an objection to the prosecutor's closing argument.

[2] Because of our holding, we need not address Hoskinson's remaining arguments as to remarks made by detectives after Detective McDonnell's offer to help: (1) "[N]ow is the time to be honest not the time to go down for some other goof's bullshit[.] . . . So to get yourself in a better position it's time to be truthful."; (2) "[N]ow is the time to get yourself out of trouble." and "You should look after number one[.]"; (3) "[Y]ou could die in jail. . . . [H]ere's the thing you're either going to be a witness or you're going to be a defendant. . . . If you think I'm fucking with you take your chance cause you will end up in a cell."; and 4) "[W]e'll work with you[.]"

Because the suppression motion had been overruled, the trial court admitted into evidence the statement Hoskinson gave to the detectives, as described above. The State played the recorded statement for the jury. And the court properly instructed the jury that it was their duty to decide whether the inculpatory statements had been voluntary. In accordance with Maryland Criminal Pattern Jury Instruction 3:18, the court instructed the jury that it was incumbent upon the State to prove "beyond a reasonable doubt" that Hoskinson's statement "was voluntarily made" and "[not] compelled or obtained as a result of any promise, threat or inducement." And, the jury was instructed: "[I]f you do not find beyond a reasonable doubt that the statement was voluntary, you must disregard it."

But, during the prosecutor's closing argument, the prosecutor made the following assertions about the Hoskinson's recorded statement:

> Now the Defendant's going to try hard to have you all disregard her statement. They say that statement was not voluntary. That statement was not voluntary because what, it's damaging, right. That statement gives you all the information you need as to what happened in this case, how it happened, who was involved. But for the words uttered out of the mouth of Arnell Hoskinson, the detectives wouldn't have known what happened in this case, so of course she's not going to want you to take that into consideration. **Her statement is not an illegal statement. If it was illegal you wouldn't hear it**.

(Emphasis added.)

At that point, Hoskinson objected, but the court overruled the objection. After closing argument, defense counsel moved for a mistrial on the ground that the prosecutor had improperly told the jury "that the court [had] already determined . . . that [the statement] was legal." The motion was denied.

We agree with Hoskinson that the trial court erred in overruling the objection to an argument regarding the law that was in conflict with the court's instructions regarding the legal status of the confession. *Cf. Dempsey v. State*, 277 Md. 134, 136 (1976) (trial judge committed reversible error in telling jury that he had found by a preponderance of the evidence that the alleged confession was voluntary, but ultimately, it was for the jury to determine the issue of voluntariness; the Court held "it is error for the judge to disclose in the presence of the jury his finding of voluntariness," 277 Md. at 150). Although the trial court had given the jury detailed instructions about their duty to analyze the voluntariness of the recorded statement and whether they were legally obligated to disregard it, the prosecutor told the jury, in essence, that defense counsel's arguments regarding the statement should be given short shrift because they would not have even heard the statement if it was "illegal." As the Court of Appeals recently observed in *Kazadi v. State*, ___ Md. ___ , No. 11, September Term, 2019, Slip op. at 40 (filed January 24, 2020): "[T]oday, jury instructions about the law are binding and trial courts advise juries as much." But the court's overruling of Hoskinson's objection placed a judicial seal of approval on the State's argument that was at odds with the court's instructions. *Cf. Smith v. State*, 367 Md. 352, 361 (2001) (by overruling defense counsel's objection to prosecutor's improper argument, the trial court was "effectively giving his imprimatur to the State's comment").

We agree with Hoskinson that the error does meet the standard for being considered "harmless." *See, e.g., DeVincentz v. State*, 460 Md. 518, 560–61 (2018).

JUDGMENTS VACATED; CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE CITY FOR A NEW TRIAL.

COSTS TO BE PAID BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.