UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1574

September Term, 2013

KAIREE DEYONTE DORSEY

v.

STATE OF MARYLAND

Meredith,
Nazarian,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: November 19, 2014

At 10:20 p.m., on November 28, 2012, the Family Dollar Store located on Outlet Drive in Silver Spring, Maryland, was robbed by a man who displayed a handgun. About three and one-half hours after the armed robbery, Kairee Deyonte Dorsey (hereafter "Dorsey"), was arrested for that robbery and taken to police headquarters in Rockville, Maryland, for interrogation.

At police headquarters, Dorsey initially denied any involvement in the robbery. However, during questioning, a police officer made certain statements to Dorsey that caused Dorsey to: 1) admit that he had participated in the robbery of the Family Dollar Store, and 2) tell the police where he had hidden the money obtained in the robbery.

After Dorsey was indicted for the armed robbery of the Family Dollar Store, his counsel filed a motion to suppress the statement that Dorsey had given to the police, as well as the fruits of that confession. Dorsey claimed that the incriminating statements he made were coerced by a threat by a police officer. The court denied the motion.

On June 28, 2013, a Montgomery County jury convicted Dorsey of one count of armed robbery and two counts of second-degree assault. Dorsey was sentenced to 15 years' imprisonment on the armed robbery count and 10 years each on the second-degree assault counts. The assault sentences were to run concurrently with the sentence imposed for armed robbery.

In this timely appeal, Dorsey asks:

> Whether inculpatory admissions made at 4 o'clock in the morning, after multiple police threats to the welfare of Appellant's nine-month-old infant and the child's mother, were properly admitted at trial.

I.
FACTS DEVELOPED AT THE SUPPRESSION HEARING[1]

Immediately after the robbery of the Family Dollar Store, police officers arrived at the scene of the robbery and interviewed two store employees who were present at the time of the robbery. The employees were Beement Tafesse and Gora Seck. The employees told the investigating officers that as they were locking up the store for the night, a man approached the front door of the store. When the man was told that the store was closed, he displayed a handgun and demanded to be allowed entrance into the store. Once inside, the man threatened to kill the employees if they did not cooperate. He then took $1,000 from a safe and fled.

Both employees described the robber as a black male, approximately 5 foot 3 inches tall and wearing a thin half-face-mask, which one employee described as "like a handkerchief or scarf" that left the robber's cheeks and eyes uncovered. The employees also told the police that the robber wore camouflage pants, a dark North Face brand jacket, and had dread-locked hair with a short "twist." More important, Ms. Tafesse told the police that although she did not know his name, she recognized the robber as someone that she had gone to school with at Paint Branch High School. She also said that she had seen the man who committed

[1] The facts set forth in part I are undisputed. Because the only issue that we need to decide in this case concerns whether the circuit court erred in denying Dorsey's motion to suppress his confession and the fruits of that confession, our review is limited to the evidence produced at the suppression hearing. Evidence produced at trial is irrelevant. *Cartnail v. State*, 359 Md. 272, 282 (2000).

the robbery in the vicinity of the store on several occasions and that, prior to the robbery, the man had "hit on her" and "asked her out." Moreover, only about one-half hour before the crime, she had seen the robber walking around the store clad in the same clothing that he was wearing when the robbery occurred.

Ms. Tafesse also told the police that she knew a woman who would probably know the name of the robber. A police officer contacted the woman and gave her a description of the robber. That woman told the police officer that the man's name was Kairee Dorsey and that a picture of him could be found on Facebook under the name "K-Man." The police promptly obtained a picture of appellant from Facebook and showed it to the two store employees. Both employees positively identified appellant as the person who had committed the robbery.

Armed with knowledge as to the name of the robber and a description of him, Montgomery County police officers on patrol were advised to be on the lookout for Dorsey. At approximately 12:30 a.m., on November 29, 2012, a policeman saw appellant seated with another man on a picnic table located about one-half mile from the robbery scene. Appellant matched the description of the robber exactly. He was even wearing a mask covering the lower half of his face similar to the mask used in the robbery.

When Dorsey saw police officers approach, he ran and hid. When an officer spotted him laying on the ground, he got up and ran again but was apprehended and taken to police headquarters for interrogation.

What was said during police interrogation was tape-recorded. A transcript of the tape recorded exchanges between Dorsey and the interrogating officers was introduced into evidence at the suppression hearing. The transcript covers sixty-three pages.

The important parts of the interview of appellant were conducted by Brian Dyer, a detective employed by the Montgomery County Police Department. During the interview, it was established that appellant was 21 years old, had a girlfriend named Brie White, and that Ms. White was the mother of appellant's nine-month-old son. It was also established that Ms. White, Ms. White's mother, appellant's nine-month-old son and appellant lived together in an apartment in Silver Spring, Maryland. That residence was not far from the spot where appellant was arrested.

During the early stages of the interview, appellant told Detective Dyer that he was 5 foot 4 inches tall and had graduated from Paint Branch High School. The detective then told appellant that one of the victims of the robbery knew him. Detective Dyer also told appellant that "they got you . . . red-handed" and, in his opinion, it was "no coincidence" that he was wearing the exact same clothing that had been worn by the robber.

Detective Dyer also said:

> If you could stop right now and take a peek in the future three months down the road and make a decision today that would affect you and affect your life and loved one's life, wouldn't you want to make that decision today?

Appellant answered, "uh-huh, if you say so. The only thing I could have did was stay my ass in bed." Detective Dyer replied: "Okay, let me tell you what's going to [happen] after this. Okay, cause you're not going anywhere so I am going to lay everything on the table for you."

Detective Dyer then said:

> Okay. We're going to go from here. We're going to get a SWAT team together. And we're going to bang your girlfriend's house. We're going to bang through her front door. You have a 9-month-old baby in there, okay? Everyone's getting put in handcuffs while SWAT goes through there.

After appellant said "uh-huh," the detective continued, "while we look for the gun and money." After appellant once again indicated that he understood, Detective Dyer said "Do you think you're [sic] girlfriend needs a F- - -ing ram come [sic] through her door [and] wake the baby up?" Appellant replied "No, she wouldn't need no shit like that." Detective Dyer then said:

> Okay but you see what I'm saying? That's where you went after the robbery. That's where all of our clues lead to. It's right there. That's the door we hit. As opposed to, and again this is where you make a decision as a man to see what kind of person you want to be as opposed to, Hey, Detective Dyer, F- - -k all that. I'm not having my baby woken. I'm not doing all that. I did it. The gun is under the bed. You don't need to have the SWAT team. Gun's under the bed. Money's in the dresser. Boom. Otherwise we go from here. You go to jail. We go to the house, bang the door, let the cards fall as it will.

After a few other questions and answers, the following exchange occurred:

> DETECTIVE DYER: So because there was a gun displaying and we have you on video. Like I said I know it's you. There's no doubt in my mind. But you want to deny it that's on you. I know it's you and the other officers know it's you. So all the detectives that got together and got all this information together we found you. We found the place you're staying. It happened to be real close to Little Caesars and to the Dollar Tree. So because there was a gun involved and money was stolen we got to find that gun. We got to find that money. We take our SWAT team because there's a gun involved and we go to where it is, okay? SWAT don't land on a house with like [knocks]. SWAT doesn't do that.
>
> MR. DORSEY: I'm hip.

DETECTIVE DYER: Okay. SWAT bangs the door down. Everyone gets thrown in handcuffs on the floor. We search the house. Tear everything apart. Tear every room apart. We're looking for a gun and for money so it could be anywhere. Okay if that's how you want this to go down so be it. But if you don't want it to go down like that, like I said, it's very easy to say, "Stop right there. I don't want you doing that shit. There's this. Here's this. I'm done."

MR. DORSEY: That's a lot for a nigra [spelled phonetically] who like don't have nothing to do for this bullshit like this - - I want to cry right now. Like this shit crazy for real for real. This shit crazy.

DETECTIVE DYER: So we're doing it like this? We're just going to do it my way?

MR. DORSEY: If that's what you want to do.

DETECTIVE DYER: That's what I have to do. It's what my job is, man.

MR. DORSEY: You right. That's your job.

Mr. Dorsey then asked if the SWAT team was about ready to start the "raid." Detective Dyer said "Yeah, I told you that they were doing that." Appellant then said "Call it off." The detective asked "Why," and appellant replied "Cause I am about to tell you. Call it off." Appellant then admitted he "threw the gun and the bread . . . in the sewer." He denied giving any of the robbery proceeds to any third-party. Next, he said that he had all the money from the robbery on him when the police were chasing him but he threw it away as he ran. He then told several other stories as to what he had done with the gun and the robbery proceeds. Detective Dyer did not believe appellant. Finally, appellant said that the only way that he would tell Detective Dyer where the money from the robbery was located would be if the detective promised that he [Dorsey] could go with the police to his apartment

so that the police wouldn't raid it. Detective Dyer then agreed that appellant could call his girlfriend's apartment so that appellant could get someone in the apartment to find the money from the robbery and deliver it to the police when the police officers arrived.

The recorded phone conversation between appellant and appellant's girlfriend–or appellant's girlfriend's mother; it is not clear as to whom he spoke–was transcribed. Appellant asked the woman he spoke to on his cell phone to go into his room and get his "Jordan box." She was also asked to keep the box in her possession until he called again. Appellant made it clear that he was calling on his cell phone and that the police were bringing him to the apartment. He next told the woman to whom he spoke to bring the "Jordan box" downstairs and that he would be there in about 20 minutes.

At that point, Detective Dyer asked appellant whether the box would contain only money or also contain the gun. Appellant said that it would contain only money and that the gun he used in the robbery was made of styrofoam. He volunteered to show the detective where he had discarded the styrofoam gun. At a little past 4:00 a.m., when the police arrived at the apartment where appellant and his girlfriend lived, a woman delivered the "Jordan box" to the detective. It contained a pellet gun and $323 in cash.

Detective Dyer testified that as he questioned appellant, a search warrant for appellant's apartment was being prepared. That fact, however, was not mentioned in the detective's interview with appellant.

II.
ANALYSIS

As mentioned, the motions judge denied appellant's motion to suppress the taped confession and the fruits of that confession. During the suppression hearing, the State stipulated that Detective Dyer's threat of a police raid caused appellant to make the inculpatory statements here at issue.

In this appeal, appellant contends that the inculpatory statements he gave to the police were coerced by threats to his loved ones and, therefore, the motions judge erred in ruling that the inculpatory statements, together with the evidence derived therefrom, was admissible. The motions court's determination of whether Dorsey's statement was voluntarily given is reviewed *de novo*. *Gorge v. State*, 386 Md. 600, 610-11 (2005).

In this case, the relevant facts are undisputed inasmuch as: 1) the court had before it a taped transcript as to exactly what was said by the police and what was said by appellant during the police interview, and 2) the State stipulated that the promise or inducement at issue caused appellant to make the inculpatory statements that appellant seeks to suppress. Under such circumstances, our task is to determine the voluntariness of the confession based on proper constitutional standards. *Lodowski v. State*, 307 Md. 233, 252 (1986).

In *Buck v. State*, 181 Md. App. 585 (2008), Judge Deborah S. Eyler, speaking for this Court said:

> Upon a proper pretrial challenge, the State bears the burden of "showing affirmatively that [the defendant's] inculpatory statement was freely and voluntarily made. . . ." *Winder*, *supra*, 362 Md. [275,] 306, 765 A.2d 97

[(2001)] (citation omitted). In that context, "the State must establish the voluntariness of the statement by a preponderance of the evidence." *Id*. Ordinarily, voluntariness is determined based on a totality of the circumstances test:

* * *

> We look to all of the elements of the interrogation to determine whether a suspect's confession was given to the police through the exercise of free will or was coerced through the use of improper means. On the non-exhaustive list of factors we consider are the length of the interrogation, the manner in which it was conducted, the number of police officers present throughout the interrogation, and the age, education and experience of the suspect. Maryland law requires that "no confession or other significantly incriminating remark allegedly 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."

Id. at 307, 765 A.2d 97 (internal citations omitted).

> When a confession is "preceded or accompanied by threats or a promise of advantage," however, those factors are "transcendent and decisive," and the confession will be deemed involuntary "unless the State can establish that such threats or promises in no way induced [it]." *Williams v. State*, 375 Md. 404, 429, 825 A.2d 1078 (2003). *See also Knight*, *supra*, 381 Md. [517,] 533, 850 A.2d 1179 [(2004)]; *Hillard v. State*, *supra*, 286 Md. [145,] 151-53, 406 A.2d 415 [(1979)].

Id. at 632-33 (emphasis added).

The historic basis for excluding confessions based on promise of benefit made to the defendant is that such confessions are unreliable. *Ball v. State*, 347 Md. 156, 175 (1997).

The facts in this case, in at least some respects, are similar to those presented in *Jarrell v. State*, 36 Md. App. 371 (1977). In *Jarrell*, the police stopped a vehicle in which

John Jarrell was one of the passengers, as was Mr. Jarrell's friend, Robert Reynolds. The third occupant in the vehicle was Mr. Jarrell's co-defendant, Robert Hopper. *Id*. at 372-73. The car was searched pursuant to the *Carroll* doctrine (*Carroll v. United States*, 267 U.S. 132 (1925)), and a large quantity of marijuana was found. *Id*. at 373. Mr. Jarrell was then interrogated by the police and asked to consent to the search of his house. *Id*. at 375.

During the interrogation, Mr. Jarrell told the detective that his friend, Robert Reynolds, was very sick. *Id*. The police in turn told Mr. Jarrell that they had officers guarding his house and that if he consented to the search of his house, the police would let Mr. Reynolds go, but if he refused to consent, Mr. Reynolds would be left in jail. *Id*. Mr. Jarrell consented to the search and Mr. Reynolds was freed. In *Jarrell*, we noted that the test for the voluntariness of a consent to search was the same test as that used to determine the voluntariness of a confession. *Id*. at 378. In *Jarrell*, we also said:

> In the present case at the time the appellant consented to the search of his home, the psychological environment was suggestive of coerced consent. Jarrell was in custody; he was informed that his home had been "secured" and he was promised, according to his uncontradicted testimony, that Reynolds would be released if he consented to the search.

Id.

The *Jarrell* court concluded:

> Another factor suggestive of coercion in the instant case was the police combining the request for permission to search with the statement to Jarrell that his house was secured, to wit: two policemen were in the front of the house and two were in the rear. We think this statement coupled with the request to search was calculated to persuade Jarrell that the search was inevitable, with or without his consent. In fact, the lower court, in its opinion,

> said: "I find as a fact that Mr. Jarrell, being ringwise, being in the situation he was there in, believing that he was caught redhanded, threw up his hands and said to himself, I might as well sign it, they are going to get a search warrant anyway."
>
> In *Whitman v. State*, 25 Md. App. [428,] 456 [(1975)], this Court held that "police representations that the issuance of a warrant will be practically automatic" combined with other factors were inherently coercive and the arrestee's consent to a search was lacking in voluntariness under the "totality of the circumstances." We think this rationale is apposite here.
>
> From our independent, constitutional review, we conclude that the coercive factors in this case rendered the appellant's consent involuntary within the meaning of *Schneckloth v. Bustamonte*[, 412 U.S. 218 (1973)].

Id. at 380.

The facts of *Stokes v. State*, 289 Md. 155 (1980), are also instructive. In *Stokes*, two narcotics officers employed by the Baltimore City Police Department entered the home of Bernard Stokes armed with a search warrant that allowed the police to conduct a search of the residence for controlled dangerous substances. *Id*. at 157. When the officers entered Mr. Stokes's third floor bedroom, they found him sleeping next to his wife. *Id*. The officers identified themselves, explained their purpose, and advised Mr. Stokes of his *Miranda* rights.

The officers spent the next five minutes searching Mr. Stokes's bedroom but then turned to Mr. Stokes and told him "that if he would produce the narcotics, his wife would not be arrested." *Id*. Mr. Stokes then told the officers that the drugs were hidden in a drop ceiling on the left side of the bedroom. *Id*. The officers searched the area where Mr. Stokes said drugs were hidden and seized a quantity of heroin.

Stokes was charged with and convicted of possession of heroin, based upon the drugs found in the ceiling. *Id*. The Court of Appeals reversed Stokes's conviction on the basis that the statement Stokes made concerning the location of the drugs was involuntary and therefore that statement, together with the fruits of that statement (*i.e.*, the heroin), should have been suppressed. *Id*. at 162, 166.

In *Stokes*, the Court said:

> Turning now to the facts before us in this case, it is clear that the police not only promised petitioner they would not arrest his wife if he revealed the location of the heroin, but, in addition, this promise bore fruit, for it is equally apparent that Stokes' statement directly resulted from that entreaty. The State's case is therefore reduced to dependence on an argument that a "promise to benefit a relative is not that type of advantage, help or special consideration to an accused which is contemplated by *Hillard [v State*, 286 Md. 145 (1979)]." Responding to this contention with respect to the reach of *Hillard*, we make clear here, even if beclouded until now, that the mandate of that case encompasses the issue presented in this case and is dispositive of it. The rule in *Hillard* announces that a statement is rendered involuntary if it is induced by any official promise which redounds to the benefit or desire of the defendant. And this necessarily includes a promise not to harm (physically or emotionally) a near relative with whom the defendant naturally has a close bond of affection. Indeed, in line with what we have just said with respect to a near relative, our predecessors in *Jones v. State*, [229 Md. 165 (1962)], by their very willingness to examine the issue whether sufficient evidence existed to support the finding of the trial court that no threat to arrest the defendant's common law wife was in fact made, necessarily recognized that such an inducement, if proven, would have rendered the defendant's statement involuntary.

Id. at 159-160 (emphasis added)(footnote omitted).

Also in *Stokes*, the Court said: "That principle of Maryland criminal law which excludes an inculpatory statement induced by any promise of favor or threat of punishment

is, perhaps, more extensive than those of other jurisdictions." *Id*. at 160 (internal quotation marks and citation omitted).

The State admits that the general rule that excludes confessions based on threat(s) made to the defendant "has been expanded to cover situations where a third party will be affected by whether the accused makes an inculpatory statement." Citing *Stokes*, *supra*, 289 Md. at 160 n.2, the State also concedes that a "benefit to the accused 'necessarily includes a promise not to harm (physically or emotionally) a near relative with whom the defendant naturally has a close bond of affection.'" According to the State,

> [t]he type of benefit or harm promised or threatened to the third party is determinative of whether the accused's statement is voluntary. Threats to criminally charge a third party or promises to avoid doing so in exchange for a confession will render a statement involuntary. . . . In *Bellamy v. State*, 50 Md. App. 65 (1981), the accused's statement was held involuntary because it was given in reliance [upon the promise] that the police would "talk to the State's Attorney" about "securing [the] release" of the accused's fiancée. *Id*. at 77[-78].

The State argues that the inducement to confess in this case was proper because the inducement was simply an explanation "of the unpleasant reality" of what would happen next in the investigation of appellant's crime if he elected not to make a statement. The State cites, in support of its position, *United States v. Long*, 866 F.2d 402, 404 (11th Cir.1989), *Holtzen v. United States*, 694 F.2d 1129, 1131 (8th Cir.1982), and *Finke v. State*, 56 Md. App. 450, 485 (1983). These cases are unpersuasive.

Harry Long was convicted of possession of counterfeit money. *Long*, 866 F.2d at 404. The conviction was based, at least in part, on the fact that Long showed federal agents where

the counterfeit money could be found (*i.e.*, buried under a mattress near an oak tree). *Id*. at 404. Long testified that the government agents told him that the grand jury had enough information on which to base his arrest. The officers threatened that, if necessary, they would return and "dig the place up." *Id*. Because of this threat to "dig the place up," Long alleged that he consented to the search. Additionally, he consented to the search because he believed that the officers already had the authority to search the premises. On those grounds, Long argued that the consent was not knowingly and voluntarily given. *Id*.

The Court, in *Long*, said:

> [T]here is no evidence in the record of threat or force. The officials testified that without any request or promise on the part of the officers, Long led the agents to a mattress, out by an oak tree, under which the counterfeit money was buried. Even if the officers stated that they could come back and "dig the place up," such a statement does not amount to coercion. Long was free to force the agents to obtain a search warrant and, if at that time, he did not want "his whole place dug up," Long could have cooperated. We agree with the district court that the official's search was lawful.

Id. at 405.

The holding in *Long* does nothing to undercut appellant's position in this case. In the case at hand, the detective neither stated, nor even implied, that a search warrant had been, or would be, obtained. Therefore, unlike the situation in *Long*, Dorsey was not aware that he was "free to force the [police] to obtain a search warrant" if he wanted to prevent police entry into his apartment. Instead, he was told that a SWAT team was ready to act if he did not confess. Moreover, the threat made here was not to obtain a search warrant and enter

appellant's apartment peacefully; instead, the threat was to break down the apartment door without knocking, handcuff everyone in the apartment, and tear every room apart.

The second case relied upon by the State, *Holtzen v. United States*, 694 F.2d 1129 (8th Cir.1982), is not even arguably helpful to appellee. In *Holtzen*, the defendant was arrested at his home. According to the defendant, a police officer advised that he had a search warrant and would "tear apart" the defendant's house unless the defendant consented to a search of it. *Id*. at 1131. The defendant testified that he then showed the officer where various items were located within the house, including a booklet, which was incriminating. *Id*.

But in *Holtzen*, the defendant's testimony was contradicted by that of Agent Anderson, the federal agent who conducted the search. Agent Anderson flatly denied that he told the defendant that he had a search warrant or that he threatened the defendant in any way. Instead, according to Agent Anderson, he merely requested and received the defendant's permission to search a desk in the defendant's house, where the booklet was found. *Id*.

On appeal, the Court first ruled that the district court's decision to credit Agent Anderson's testimony over defendant's was not clearly erroneous. *Id*. The court went on to say that even assuming that the district court erred in failing to suppress the booklet, any such error was harmless beyond a reasonable doubt because the evidence of the defendant's guilt was overwhelmingly established by the trial testimony of three eyewitnesses. *Id*. Contrary

to the State's argument, the *Holtzen* Court did not "hold" that a consent to search was voluntary "where officers announced that they had a search warrant and would 'tear apart' Holtzen's house unless Holtzen consented to a search."

The State also places reliance on *Finke v. State*, 56 Md. App. 450 (1983). Allen Finke was convicted of the murder of Leonette Shilling, his aunt. *Id*. at 458. The victim's body was found shortly after the murder by her husband. At the time the body was discovered, the victim's three-year-old grandson, Michael Somerfield, was found sleeping nearby. *Id*. About one month after the murder, Finke was questioned by the police about the murder of his aunt. *Id*. at 461-63. Ultimately, he gave an inculpatory statement to the police during questioning.

On appeal, he contended, *inter alia*, that the statement he gave was obtained in violation of Maryland's non-constitutional confession law. *Id*. at 482. According to Finke, one of the reasons he gave the inculpatory statement was because of comments the police made concerning the three-year-old grandson of the murder victim. First, the police told Finke that the three-year-old could identify him as the murderer. Finke was then told that "the police could bring the child in to make the identification [of him]; but, if this was necessary, the child would likely be emotionally damaged for the rest of his life." *Id*. at 484. At a subsequent suppression hearing, Finke claimed that this statement "amounted to a threat to harm an innocent three-year-old and that, in order to prevent this, [he] was induced to render his statement." *Id*. In support of that argument, Finke relied on *Stokes v. State*, *supra*.

He contended that the detective's statement concerning the three-year-old was a threat to emotionally harm his near relative (the child was appellant's cousin) and that his statement was induced by that threat. *Id*. at 485.

We rejected appellant's contention for two reasons. First, it did not "appear that appellant ha[d] a 'close bond of affection' with the child." *Id*. In this regard, we observed that it is evident that "something more than a casual relationship or distant kinship is required." We added that "[t]he record contains nothing to indicate that appellant actually enjoys a particularly close relationship with the child, and the nature of their kinship does not imply such a closeness." *Id*.

Second, we rejected Finke's argument because "the statements [of the interrogating police officer] did not constitute a threat of 'harm' as that word was used in *Stokes* and *Bellamy* [*v. State*, 50 Md. App. 65 (1981)]." *Id*. We explained:

> In *Stokes*, the police promised not to arrest the defendant's wife. Thus, the harm that was being avoided was a harm which was within the power of the police to inflict. Likewise, in *Bellamy* the police promised to talk to the State's Attorney about arranging the release of the defendant's fiancee. Again, the officer was promising to take direct action on behalf of the defendant.
>
> Here, a threat or promise (a promise being nothing more than an implied threat) of direct police action is absent. There was neither a threat to arrest a third person nor a promise not to arrest that person. Rather, [the interrogating officer] was relating to appellant the possible adverse consequences to a young child if that child were forced to identify his grandmother's killer. There was no threat of direct police action against the child if appellant failed to give an inculpatory statement. Rather, an appeal to a suspect to give a confession in order to prevent an innocent child from being hurt is a "classic interrogation

> technique." Such a ploy is similar to asking a sex offense suspect to confess in order to spare emotional harm to the victim if she is forced to testify.

Id. at 485-86 (internal citation omitted).

In the case *sub judice*, as appellant points out, neither of the factors that led the *Finke* court to hold that the inculpatory statement was given voluntarily is present here. In this case, the threat was made to harm (emotionally, at least) appellant's girlfriend. Secondly, the "harm that was being avoided was a harm [that] was within the power of the police to inflict." *Id.* at 485. In other words, from the perspective of the appellant, the police had the power to have a SWAT team break down the apartment door where appellant's girlfriend lived, handcuff everyone in the apartment, and "tear the place apart."

During oral argument, members of this panel asked counsel for the State if Detective Dyer's statements were in fact an accurate summary of what would happen if appellant did not cooperate, *i.e*., a SWAT team would, without knocking, ram through the door of appellant's apartment, handcuff all occupants, and "tear the place apart." The State asked permission to brief this issue, which we granted. In its supplemental brief, the State makes two arguments, the first of which is:

> Detective Dyer's description of SWAT executing a "no-knock" warrant was reasonable under the circumstances, and in light of Detective Dyer's testimony as to his experience of SWAT team warrant executions.

We reject this argument. First, Detective Dyer never described to appellant how a search warrant would be executed. In fact, a search warrant was never mentioned. Second, there is nothing in the record to suggest that it would have been permissible for a "no-knock"

warrant to be issued in a case such as this. Officers may apply for permission to enter a targeted residence "without giving notice of the officer's authority or purpose" only if there is reasonable suspicion to believe that "the life or safety of the executing officer or another person may be endangered." Md. Code Ann. (2013), Criminal Procedure Article, section 1-203(a)(2)(ii).

Appellant's apartment was occupied by two women and a baby. None of the occupants was shown to have ever committed any crime or otherwise to be dangerous. The fact that a gun is in a residence does not, standing alone, justify the issuance of a "no-knock" warrant. *See Wynn v. State*, 117 Md. App. 133, 167 (1997), *rev'd on other grounds*, 351 Md. 307 (1998); *United States v. Murphy*, 69 F.3d 237, 243 (8th Cir. 1995); and *United States v. Marts*, 986 F.2d 1216, 1218 (8th Cir. 1993).

The State also maintains in its supplemental brief that:

> Detective Dyer's statement that SWAT officers would handcuff the occupants of Dorsey's girlfriend's apartment during the execution of a search warrant was reasonable under the circumstances.

This argument has the same false premise as does the State's "no-knock" argument, *i.e.*, no search warrant was even mentioned by Detective Dyer. In any event, we know of no authority, and the State refers us to none, that would allow the police to handcuff occupants of a house when executing a search warrant when, as here, there was no indication that any of the occupants of the residence were dangerous.

In summary, Detective Dyer, at a minimum, threatened emotional harm to appellant's girlfriend when he said he would have the police, without knocking, ram down the door to her apartment in the middle of the night, handcuff her, and "tear up" the apartment. This threat made appellant's inculpatory statement involuntary. And, as previously stated, involuntary confessions under Maryland's non-constitutional law must be excluded because such confessions are likely to be unreliable. *Ball*, *supra*, 347 Md. at 175. Because appellant's taped statement was admitted into evidence at trial, a new trial shall be ordered.

OTHER MATTERS

In a footnote to the State's initial brief, the State argues:

> Dorsey argues that suppression of his statement requires suppression of the gun and cash that his girlfriend provided to the police. This is incorrect. The police had probable cause to search Dorsey's girlfriend's residence and had drafted a warrant application in preparation to do so. The gun and money given to the police by Dorsey's girlfriend would have been discovered in that search. *See Williams v. State*, 372 Md. 386, 411 (2002) (even if the State gains knowledge of certain facts in an unlawful manner, as long as knowledge of those facts was derived from a lawful, independent source untainted by the initial illegality, the exclusionary rule does not apply).

In appellant's written motion to suppress filed in the circuit court, he asked the court to suppress his confession as well as its fruits (*i.e.*, the gun and money in the "Jordan box"). In the State's written reply to that motion, it did not argue that the fruits of the confession would be admissible even if the court ruled that the confession was inadmissible. Moreover, at the suppression hearing, even though appellant argued that because the confession was involuntary, the "fruits" of the confession should be suppressed, the State simply argued that

the confession was voluntarily obtained. Under such circumstances, the inevitable discovery argument the State now makes has been waived. *See* Md. Rule 8-131(a). (Ordinarily, except for jurisdictional issues, an appellate court will not decide any issue neither raised or decided below.). *See also Elliott v. State*, 417 Md. 413, 441-443 (2010) and *State v. Mason*, 173 Md. App. 414, 428-29 (2007).[2]

JUDGMENT VACATED; CASE REMANDED TO THE CIRCUIT COURT FOR MONTGOMERY COUNTY FOR A NEW TRIAL; COSTS TO BE PAID BY MONTGOMERY COUNTY.

[2] In his brief, appellant argues that the trial court committed reversible error when it allowed the State to recall a witness. Because we are vacating the judgment of conviction, and remanding the case for a new trial, there is no need to address that argument.