LGIT'S ROLL CALL REPORTER
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MARYLAND'S VOLUNTARINESS REQUIREMENT FOR SUSPECTS' CONFESSIONS

QUESTION: DOES AN OFFICER'S PROMISE TO MAKE A FAVORABLE RECOMMENDATION TO A DISTRICT COURT COMMISSIONER CONCERNING PRETRIAL RELEASE IN EXCHANGE FOR A SUSPECT'S CONFESSION RENDER THE CONFESSION INVOLUNTARY AND INADMISSIBLE AT TRIAL?

ANSWER: YES. IF A POLICE OFFICER PROMISES OR IMPLIES TO A SUSPECT THAT HE WILL BE GIVEN SPECIAL CONSIDERATION FROM A PROSECUTING AUTHORITY OR SOME OTHER FORM OF ASSISTANCE IN EXCHANGE FOR A CONFESSION, AND THE SUSPECT MAKES A CONFESSION IN APPARENT RELIANCE ON THE OFFICER'S PROMISE, THE CONFESSION WILL BE DEEMED INVOLUNTARY AND INADMISSIBLE AT TRIAL.

CASE: *Taylor v. State,* No. 140, Sept. Term 2004
Court of Appeals of Maryland, August 10, 2005

In *Taylor v. State,* the Maryland Court of Appeals once again examined the issue of what constitutes an improper promise or inducement made to a suspect in return for the suspect's confession. Although courts usually examine this type of issue in the context of the *Miranda* requirements, the Court of Appeals focused on Maryland's common law requirement that a suspect's statement be made voluntarily in order to be admissible at trial.

The facts of the case disclosed that on June 1, 2002, the defendant, Shanquon Taylor, had made a date to go to a movie with a Ms. Carter, whom he had met a few weeks earlier. When Taylor did not have sufficient funds to buy movie tickets, Taylor and Ms. Carter agreed to go to Taylor's residence to watch a video. At the time, Taylor was 19 years old, under the care of the Department of Social Services, and was living in a group home as part of a counseling program. While at Taylor's residence, the couple engaged in sexual intercourse. The circumstances under which that act occurred were in dispute—Taylor claimed that it was, eventually, consensual, whereas Ms. Carter claimed that she had been raped. Upon leaving the residence, Ms. Carter called 911 and reported that she had been raped. In response to the 911 call, Detective Schreiber of the Prince George's County Police Department went to Taylor's residence to investigate. Taylor refused to speak with him or accompany him to the police station. About a week later, Taylor left the group home and moved to North Carolina. In June 2002, a warrant was issued for his arrest.

In July 2002, Taylor was arrested in North Carolina. On August 3, 2002, he was transported to a police station in Prince George's County, where, after his seven- or eight-hour trip, he was interviewed by Detective Schreiber. The videotaped interview lasted four hours.

Following a break in the interview, Taylor asked when his "court date" would be. Detective Schreiber said that he did not know, but that Taylor would have a hearing before the district court commissioner who would decide whether he would be released and, if so, under what conditions. The detective further said that if Taylor were not released, he would appear before a judge for a bail review sometime later. When Taylor asked Detective Schreiber what the commissioner would do, the detective said that he did not know, that there were many different commissioners and that they reach different decisions. He then added:

> **"Okay. But there's nothing that –you know, we speak and you're pretty forthright and you're pretty truthful to me, I can always make a recommendation to the commissioner, you know, say Mr. Taylor was pretty cooperative with me this evening, you know, he didn't give me any trouble, and then that can assist them in making whatever decisions they make. Okay?**
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> **"So, you know, I mean, if you-and I don't have any problem doing that, okay, but if you get in here and you jerk me around and you pull my leg and I know you're lying to me, you know what I mean, then I'm not going to—I wouldn't say anything to him at all. Okay?"**

Taylor then gave a verbal statement that was partially incriminating, as he admitted that Ms. Carter initially resisted his advances. He further stated that Ms. Carter then very quickly consented to the act of intercourse. Even though Taylor was reluctant, his statement was subsequently reduced to writing. Before it was, however, he twice revisited the prospect of the detective's assisting him with the commissioner. Taylor first asked, "[i]f I do this and everything be straight can you talk to him for me, man, for real," to which the detective responded, "[y]ou know, like I say, so long as you're straight for me, okay, then I'll talk to the commissioner and just say—let the commissioner know that you cooperated and, you know, that's the most the police can do." He added, "I can't say let him go. I can't—that's not up to the police. Okay. So you know, I know you want to go home. I can tell that. Okay. You know, I just want to make sure you get the opportunity to . . . tell your side of the story, okay, and, you know, we'll go from there." Taylor then reduced his statement to writing and signed it.

Taylor was charged with second-degree rape and second-degree assault. After the denial of his motion to suppress the statement, he was convicted of both offenses.

On appeal, the Court of Special Appeals affirmed. Subsequently, the Court of Appeals agreed to review the case and reversed and remanded for a new trial. Before it did so, the Court ruled that Taylor's statement was involuntary and could not be admitted against him at trial. It did so on the grounds that Maryland case law dating back more than a century stood for the principle that "'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).) In determining voluntariness, Maryland courts apply a two-part test: (1) did the officer promise or imply 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) did the suspect make a confession in apparent reliance on the police officer's statement? Although both parts of the test must be satisfied before an inculpatory statement will be considered involuntary, the State then has the burden of showing that an inculpatory statement is voluntary—that the statement was not made in reliance on a promise or inducement made by a police officer or agent of the police.

Here, the Court of Appeals was persuaded that the statement was involuntary because the detective "not only laid out the various options available to the commissioner, including release, as though all were equally possible, but he went on to offer the prospect of his making a recommendation to the commissioner that could assist in making 'whatever decisions they make.'" Because Detective Schreiber's offer to make a recommendation to the commissioner was closely tied in with Taylor's agreement to cooperate by giving a statement, the Court held that the offer constituted an improper inducement. Finally, since Taylor had refrained from giving any statement until he was assured that the detective would intercede on his behalf, the Court ruled that the "reliance" portion of the test had also been satisfied.

NOTE: In the *Taylor* case, the Court of Appeals discussed its earlier opinion in *Sirbaugh v. State*, 381 Md. 517 (2004). There, during his custodial interrogation, the suspect had been informed by the police that the officers would inform the State's Attorney "that when [they] asked a question [the suspect] answered it." The Court held that such a commitment did not constitute an improper inducement because the officer's statement was "not a promise of help or special consideration because he had no discretion regarding such matters"—that police officers had "a professional duty to inform the prosecutor truthfully of the circumstances surrounding the investigation of a case so that the prosecutor is not surprised at trial." *Taylor* and *Sirbaugh* highlight what is often the fine line between what is and what is not an improper inducement. As a rule of thumb, reviewing courts will view unfavorably any promise or assurance by an officer to advocate on the suspect's behalf.

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