

Circuit Court for Anne Arundel County
Case No. C-02-CR-15-852

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 771

September Term, 2017

RICHARD IRIZARRY MINTON

v.

STATE OF MARYLAND

Woodward, C.J.,
Kehoe,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 14, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

A jury, in the Circuit Court for Anne Arundel County, convicted Richard Minton, appellant, of child sexual abuse. In this appeal, Minton presents a single question: “Did the trial court err in its response to a jury note indicating that the jury was deadlocked and that one of the jurors had to leave by 4:30 to catch a flight?” For reasons to follow, we answer Minton’s question in the negative and affirm the judgment of the circuit court.

Minton was arrested and charged with one count of sex abuse of a minor, two counts of third-degree sexual offense, one count of unnatural and perverted sexual practice, one count of fourth-degree sexual offense, and one count of second-degree assault. At trial, Minton’s daughter, who was seventeen years old at the time, testified that Minton had sexually abused her on multiple occasions. Minton also testified, denying the abuse.

At approximately 4:00 p.m. on the fourth day of trial, the jurors retired to begin deliberations. After deliberating for approximately two hours, the jurors were excused for the day (Thursday) and told to return at 9:00 a.m. the following day (Friday). That Friday afternoon, at approximately 2:44 p.m., the jury submitted a note to the court stating that the jurors were “deadlocked” and “uncertain if additional time will bring us to a unanimous verdict as we are fairly evenly split.” The note also stated that “one of the jurors has a flight scheduled for 6:30 and wishes to be able to leave by 4:30.”

The court then discussed the issue with all parties, stating that it was inclined to tell the jurors that they should continue deliberating. The court also stated that it would “address the issue of the flight at a later time.” Neither party objected to the court’s suggested response. In the end, the court gave the following instruction to the jury:

So as to the first portion of your note, I’m going to give you an instruction that relates to that, which is as follows: the verdict must be the considered judgment of each of you. In order to reach a verdict, all of you must agree. In other words, your verdict must be unanimous. You must consult with one another and deliberate with a view to reaching an agreement if you can do so without violence to your individual judgment.

Each of you must decide the case for yourself but do so only after an impartial consideration of the evidence with your fellow jurors. During deliberations do not hesitate to reexamine your own views. You should change your opinion if convinced you are wrong, but do not surrender your honest belief as to the weight or effect of the evidence only because of the opinion of your fellow jurors or for the mere purpose of reaching a verdict.

As to the second portion of your note related to a flight, I’m going to send you back to deliberate – to continue deliberations at this point and I’ll address the issue of the flight a little bit later in the afternoon, but certainly before the 4:30 time frame. All right? And I may have some further inquiry regarding that issue.

After excusing the jury, the court told the parties to come back “in about an hour” to “see where we are at that point in time.” Again, neither party objected. At approximately 4:00 p.m., the court sent a note to the jury asking if the jurors were “making any progress with deliberations.” The court also asked the jury to “provide additional information regarding the juror with the flight.” The jury responded that it had made progress and was “closer to a verdict.” The jury also stated that the juror’s return flight was “this Sunday evening.” The court responded that, unless the jury requested additional time to deliberate, jurors would be excused at 4:30 p.m. and expected to resume deliberations “Monday at 9:00.” Approximately 20 minutes later, the jury returned a verdict of guilty on the charge of child sexual abuse and verdicts of not guilty on the remaining charges.

Minton now argues that the trial court’s response to the jury’s note constituted coercion and an abuse of discretion. The record reveals, however, that neither Minton nor

defense counsel lodged an objection at the time of the court’s response. In fact, defense counsel appeared to agree with the court’s course of action. Accordingly, the issue is not preserved for our review. Md. Rule 8-131(a).

Nevertheless, we are not persuaded that the court’s response to the jury’s note constituted an abuse of discretion, as the court’s instruction substantially followed the language of Maryland Criminal Pattern Jury Instruction 2:01 “Jury’s Duty to Deliberate.” *Id.*; *See also Browne v. State*, 215 Md. App. 51, 60-62 (2013). Moreover, considering the circumstances and the information provided by the jury following its initial note, the court’s responses were reasonable and could hardly be considered coercive. *See Lindsey v. State*, 235 Md. App. 299, 314 (2018) (stating that an instruction given in response to a jury question “will not be disturbed except on a clear showing of an abuse of discretion.”).

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**