UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2624

September Term, 2012

QUINCY JACKSON

v.

STATE OF MARYLAND

Woodward,
Kehoe,
Arthur,

JJ.

Opinion by Woodward, J.

Filed: June 10, 2016

Quincy Jackson, appellant, was convicted of first degree murder and use of a handgun in the commission of a felony in November 2012 in the Circuit Court for Baltimore County. The instant appeal involves an exchange between a juror and the trial court, which occurred on the morning of the second day of jury deliberations prior to the beginning of those deliberations. The trial judge did not inform appellant or his counsel that a juror had contacted the judge's chambers, nor that the judge had sent the Sheriff's deputies to pick up the juror and bring him to court.

Consequently, on appeal, appellant presents one question for our review, which we have rephrased:[1] Did the trial court commit reversible error by responding to a communication from a juror before notifying appellant and considering his response? For the reasons set forth below, we answer appellant's question in the negative and affirm the judgments of the circuit court.

BACKGROUND

On January 8, 2011, Nathan Bowles was shot outside his apartment in Baltimore County, and died as a result of sixteen gunshot wounds. Bowles had been shot by a semi-automatic Ruger handgun, which was recovered in a dumpster near Bowles's apartment.

[1] Appellant's original question read as follows:

> Did the trial court err by responding, without disclosing to the defendant, a telephone call from a juror who reported that he would not be coming in for jury duty that day by telling the juror that he had to be there and sending a sheriff to transport him to court?

Fourteen of the cartridge casings that were found near Bowles's body had been fired from the Ruger. At that time, Bowles was having an affair with appellant's wife.

The day before the murder, on January 7, 2011, appellant rented a car in Brooklyn, New York, and drove it over 450 miles before returning it on January 10, 2011. A cell phone number registered to appellant called Enterprise rental car company on the morning of January 7, 2011, and then hit off a cell tower in Abingdon, Maryland, that afternoon, and Middle River, Maryland that evening. On the day of the murder, appellant's cell phone number hit off a cell tower in Middle River in the morning, and then hit off cell towers in Aberdeen, Maryland; Elkton, Maryland; Barrington, New Jersey; and finally in Brooklyn, New York at 1:11 pm.

When the police searched appellant's apartment after his arrest, they found ammunition that had the same stamp as several of the casings found near Bowles's body. A journal found in appellant's apartment included the following entries: "My woman is fuckin around on me with someone else," and "I'll either die or kill something." "No more venting on paper. I'mma going to take it out on the world."

On October 23, 2012, the trial began on the charges of first degree murder and use of a handgun during the commission of a felony. On Monday, November 5, 2012, the defense rested, and the jury began deliberations at approximately 2:46 pm. At 4:31 pm, the trial court excused the jury for the day.

Because Tuesday, November 6, 2012, was Election Day, the trial court told the members of the jury to return on Wednesday, November 7, 2012, with the following

additional instruction: "We will take back the exhibits, the jury instructions and the verdict sheet, because when 8 of you are here I don't want you deliberating, you have to wait until all 12 are here." The trial court then gave the following instruction to counsel:

> I expect you to be in the building, please, 9:30 Wednesday morning . . . I just think when 12 people are here I will give them the exhibits, the jury instructions and the verdict sheet and let them go to work. That's why I didn't say you had to be in this courtroom, but if there are any questions or anything like that I want to be able to address them quickly.

On Wednesday, November 7, 2012, at approximately 11:30 am, the trial judge called counsel for the parties and appellant into her courtroom. The following colloquy occurred regarding a message that the trial court had received that morning from Juror Number 2 ("Juror 2"):

THE COURT:	All right. Good morning, sir [appellant]. All right. So where we are is Juror [ ] 2 called this morning, he left a message with someone that he was having some work done at his house. Obviously, I didn't hear the message, I didn't speak to the gentleman, but my message back was, "You need to come to court." His message back was, "It's gonna take me at least an hour and a half or more if I take the bus." So I arranged for the deputies to pick him up and bring him here. So I wanted to make sure that you gentlemen knew all of that. The jury has not been deliberating. We have been waiting for Juror [ ] 2. Any comments about that, [State's Attorney]?
[STATE'S ATTORNEY]:	No. Thank you, your Honor.

THE COURT:	How about you, sir [Defense Counsel]?
[DEFENSE COUNSEL]:	Yes, I do have a comment about it. I think that's the kind of information that should have been communicated to counsel two hours ago.
THE COURT:	You weren't here, [Defense Counsel], and I've got a very busy docket.
[DEFENSE COUNSEL]:	I wasn't here because I was told by the Court that I didn't need to be here.
THE COURT:	I don't think that's completely true, but you're learning as soon as anyone knows. **Juror [ ] 2 hasn't been back, and that's why I'm telling you now, sir.**
[DEFENSE COUNSEL]:	When your Honor says it's not really true, the last word—
THE COURT:	[Defense Counsel]?
[DEFENSE COUNSEL]:	Yes.
THE COURT:	Let's focus on the issue at hand. I'd like to—
[DEFENSE COUNSEL]:	**The issue at hand is that I object that I did not know that not only was a juror two hours late, that this Court has sent an official of the State to go get the juror.**
THE COURT:	I'm telling you now, [Defense Counsel].
[DEFENSE COUNSEL]:	I understand that.
THE COURT:	What do you have to say about [ ] it if anything?

[DEFENSE COUNSEL]: **I have to say about it I would ask for a mistrial.** That's what I'm going to ask.

(Emphasis added).

At this juncture, the trial court conducted a *voir dire* of Juror 2:

THE COURT: Now, I'm gonna talk to Juror [ ] 2. Would you go get him, please, Craig? Hey there, [Juror 2], come on up, please. Why don't you bring your jacket, if you don't mind.

JUROR 2: How are you today?

THE COURT: I'm well. How are you? **Well, I got a message this morning that you were having, I guess, the tree removed.**[2]

JUROR 2: **That was just part of the issues. I'm self-employed.**

THE COURT: **Right.**

JUROR 2: **So I didn't expect the case to be the length as much as it was—**

THE COURT: **Nobody has.**

JUROR 2: **—so, financially it's striking.**

THE COURT: **All right. Well, I understand that. It just wasn't acceptable to leave a message you weren't coming. So then, is it that you then got a message back that said it would take you at least an hour and a half or so—**

[2] The tree that concerned Juror 2 was damage from Hurricane Sandy.

JUROR 2:	**To take public transportation, yes.**
THE COURT:	**So, did you consider it a kindness that I was able to send—**
JUROR 2:	**Yes, ma'am.**
THE COURT:	**—the deputies to get you?**
JUROR 2:	**Yes, ma'am.**
THE COURT:	**Would the fact that I sent the deputies to get you, would that in any way affect your ability to be fair and impartial in this case?**
JUROR 2:	**No, ma'am. I actually started walking when one of your clerks called me. When she said they tried to arrange for transportation, I just went back home.**
THE COURT:	**Okay. All right. Now you're here. Can you continue to commit to me that you will deliberate fully and fairly and come to a just decision.**
JUROR 2:	**Yes, ma'am.**
THE COURT:	All right. Terrific. [State's Attorney], anything from you?
[STATE'S ATTORNEY]:	No. Thank you, your Honor.
THE COURT:	**[Defense Counsel], anything from you that needs to happen in [Juror 2's] presence?**
[DEFENSE COUNSEL]:	**Not in Juror [ ] 2's presence, no.**

THE COURT:	All right. Craig, why don't you take [Juror 2] back. I think there's a little applesauce raisin cake waiting.
JUROR 2:	Probably attitude too.
THE COURT:	May be.
JUROR 2:	Thanks, Judge.

(Emphasis added).

At this point, Juror 2 was excused, and defense counsel began an inquiry into whether the other eleven jurors had deliberated while waiting for Juror 2:

[DEFENSE COUNSEL]:	Were the 11 jurors monitored in any way to see whether or not they were deliberating?
THE COURT:	**We took back all of the exhibits and the verdict sheet and the instructions, and they were instructed when I last saw [them] that they were not to start to deliberate until everyone was present.**
[DEFENSE COUNSEL]:	**In any event, I make a motion for a mistrial. Any juror communication should be communicated to counsel, particularly one where the juror is two hours late. His excuse for not being here, while I'm sure it's important to him, just doesn't seem to be that kind of a situation that would justify his not being here, and the Court taking the action of sending state uniformed folks to go get the juror, I think is coercive and I'm asking for a mistrial.**

THE COURT: [State's Attorney], anything from you, sir?

[STATE'S ATTORNEY]: I don't think a mistrial is warranted. I think the Court sufficiently covered the record in terms of the efforts that were made to get him here as opposed to him either taking public transportation taking longer or as he indicated, walking. The Court merely just sort of got him here quicker.

THE COURT: There was no opportunity, obviously, for conversation with Juror [ ] 2, nor would it have been appropriate. **The important thing to do was to get Juror [ ] 2 here, and it seemed to me based on his comments that the most efficient way to do that is to have him picked up.**

I really do take issue with [Defense Counsel's] concerns about when you all were told. You were told before—well, I asked the law clerk to find you before Juror [ ] 2 even got here. So there we have it. Motion for mistrial is respectfully denied.

[STATE'S ATTORNEY]: Your Honor, I would only add two other things.

THE COURT: What's that, [State's Attorney]?

[STATE'S ATTORNEY]: I am the type of prosecutor that has research files out my ears upstairs. I'd just like to take a look at the mistrial sort of rule and see if there's anything else that need to be said or done.

THE COURT: Yeah, that's fine.

[STATE'S ATTORNEY]: Beyond that, in terms of just again so the record is completely clear. My recollection is **on Monday how the Court concluded the day in terms of jurors being here they were instructed not to start deliberating when they came back today until all 12 were there.**

THE COURT: **That's true.**

[STATE'S ATTORNEY]: And it sounds like the Court had also instructed them and reiterated that today—

THE COURT: No, I haven't talked to any jurors today.

[STATE'S ATTORNEY]: Okay. guess the only other thing maybe out of an abundance of caution if the Court wishes is just have them voir dired just to make sure they didn't start deliberating.

THE COURT: Okay, we can do that. All right. Go get 'em, please, Craig.

(WHEREUPON, jury enters courtroom 11:45 a.m.)

THE COURT: **Ladies and gentlemen, good morning. When last we saw each other I indicated that we would take back the exhibits, take back the verdict sheet and that when we reconvene today there were to be no deliberations until all 12 of you were present, correct? All right. Madam forelady, are you able to conform [sic] for me that that instruction has been followed to the letter?**

FOREPERSON: **Yes, your Honor.**

THE COURT: All right. **Any questions, [State's Attorney]?**

[STATE'S ATTORNEY]: **No.** Thank you, your Honor.

THE COURT: **[Defense Counsel]?**

[DEFENSE COUNSEL]: **No.**

(Emphasis added). Later that day, the jury convicted appellant on both counts.

Appellant filed a motion for a new trial, and on February 4, 2013, the trial court held a hearing on that motion. At the hearing, the judge clarified that she had instructed the Sheriff's deputies to collect Juror 2 in "an attempt to be as efficient as possible," and that she told them to "[b]ring the gentleman here as quickly as possible so as not to keep the other 11 people waiting for an extraordinary amount of time." The trial judge stated that she considered Juror 2's communication to raise a "transportation issue." Defense counsel responded that, at 11:30 a.m. on November 7, 2012, he received notice from his office that the trial court wanted him in the courtroom.

The trial court then denied the motion for a new trial. On February 12, 2013, the court sentenced appellant to life imprisonment, with all but forty years suspended, followed by five years of probation for the first degree murder conviction, and a consecutive ten years of incarceration for use of a handgun during the commission of a felony. This appeal followed.

DISCUSSION

Maryland Rule 4-231 outlines the defendant's right to be present at every stage of the trial:

> **Right to be Present—Exceptions.** A defendant is entitled to be physically present in person at a preliminary hearing and every stage of the trial, except (1) at a conference or argument on a question of law; [and] (2) when a nolle prosequi or stet is entered pursuant to Rules 4-247 and 4-248.

Md. Rule 4-231(b). Specifically, a defendant has the right to be present "when there shall be any communication whatsoever between the court and the jury." *Midgett v. State*, 216 Md. 26, 36 (1958).

Communications between the trial court and the jury are governed by Rule 4-326(d), which provided at the time of appellant's trial:[3]

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[3] Rule 4-326(d) was amended in 2015 and now provides:

> (d) **Communications with Jury.**
>
> (1) Instruction to Use Juror Number. The judge shall instruct the jury, in any preliminary instructions and in instructions given prior to jury deliberations that, in any written communication from a juror, the juror shall be identified only by juror number.
>
> (2) Notification of Judge; Duty of Judge.
>
> (A) A court official or employee who receives any written or oral communication from the jury or a juror shall immediately notify the presiding judge of the communication.

(continued...)

[3](...continued)

(B) The judge shall determine whether the communication pertains to the action. If the judge determines that the communication does not pertain to the action, the judge may respond as he or she deems appropriate.

(C) If the judge determines that the communication pertains to the action, the judge shall promptly, and before responding to the communication, direct that the parties be notified of the communication and invite and consider, on the record, the parties' position on any response. The judge may respond to the communication in writing or orally in open court on the record.

(3) Duty of Clerk.

(A) The clerk shall enter on the docket (i) the date and time that each communication from the jury or a juror was received by or reported to the judge, (ii) whether the communication was written or oral, and, if oral, the nature of the communication, (iii) whether the judge concluded that the communication pertained to the action, and (iv) if so, whether the parties and attorneys were notified and had an opportunity on the record to state their position on any response.

(B) The clerk shall enter in the electronic or paper file each written communication from the jury or a juror and each written response by the judge. Any identification of a juror other than the juror number shall be redacted.

(continued...)

> (d) **Communications With Jury.—The court shall notify the defendant and the State's Attorney of the receipt of any communication from the jury pertaining to the action as promptly as practicable and in any event before responding to the communication.** All such communications between the court and the jury shall be on the record in open court or shall be in writing and filed in the action. The clerk or the court shall note on a written communication the date and time it was received from the jury.

Md. Rule 4-326(d) (2012) (emphasis added).

The State concedes that the communication between the trial court and Juror 2 is "pertaining to the action" under Rule 4-326(d). *See Grade v. State*, 431 Md. 85, 100-01 (2013) ("A phone call from a juror to the presiding judge concerning her required attendance at court for deliberations, a matter directly relating, and related, to her duty as a juror, is squarely within both the letter and the spirit of Rule 4-326(d)."). The parties thus agree that the trial court's response to the communication from Juror 2, without the presence of appellant, constitutes error under Maryland Rule 4-326(d).

Consequently, the issue that we must decide is whether the trial court's error was prejudicial, thus requiring reversal, or harmless. *See State v. Harris*, 428 Md. 700, 721 (2012). "'As the beneficiary of the error,'" the State has the burden to demonstrate that the trial court's error did not prejudice appellant. *Id*. (quoting *Taylor v. State*, 352 Md. 338, 354

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[3](...continued)

> (C) In any entry made by the clerk, a juror shall be identified only by juror number.

Md. Rule 4-326(d).

(1998)). The Court of Appeals has stated that violations of Rule 4-326(d) are presumptively prejudicial:

> **This Court has cautioned that the Maryland Rules are not guides to the practice of law but precise rubrics established to promote the orderly and efficient administration of justice and [that they] are to be read and followed. . . . A failure to comply with its explicit mandate is error**, and . . . a reversal of the . . . conviction is required unless the record demonstrates that the trial court's error in communicating with the jury *ex parte* did not prejudice the defendant. Stated differently, **it is error for a trial court to engage in a communication with the jury, or jurors, off the record, and without notification to counsel, and that error is presumably prejudicial unless the State can affirmatively prove otherwise.**

Id. at 720-21 (emphasis added) (citations and internal quotation marks omitted). A communication by the trial court to the jury in violation of Rule 4-326(d), however, will be deemed harmless if "'the record affirmatively shows that such communication[] w[as] not prejudicial or had no tendency to influence the verdict of the jury.'" *Ogundipe v. State*, 424 Md. 58, 74 (2011) (quoting *Denicolis v. State*, 378 Md. 646, 656 (2003)).

Appellant contends that the State has failed to prove that the error was harmless beyond a reasonable doubt. Appellant bases his argument mainly on a trio of cases, in each of which the Court of Appeals concluded that reversible error had occurred: *Stewart v. State*, 334 Md. 213 (1994), *State v. Harris*, 428 Md. 700 (2012), and *Grade v. State*, 431 Md. 85 (2013).

In *Stewart*, the trial had ended and the jury was engaged in its deliberations when the trial judge was informed that there was a problem with one of the jurors. 334 Md. at 217. The judge went to the jury room and was handed a note from an "upset and tearful" juror.

Id. The note stated that the juror needed to talk with the judge. *Id*. The judge asked the juror to step outside of the jury room, whereupon the juror told the judge that "she was nervous and upset and afraid she was going to say something she shouldn't say to one of the other jurors." *Id*. The judge instructed her to "go back and continue deliberating and exercise her best judgment as to how her duty should be discharged." *Id*. at 218. The jury then resumed its deliberations and ultimately convicted the appellant. *Id*. at 219.

The Court of Appeals held that the appellant had the "right to be present at the encounter between the judge and the juror," under Rules 4-231 and 4-326(d),[4] and that the trial court erred in failing to comply with those Rules. *Id*. at 226-27. The Court then concluded that, because there was no effective waiver of the appellant's right to be present, the trial court erred by not granting a new trial. *See id.* at 227. Finally, the Court held that the error was not harmless. *Id*. at 230.

In describing the prejudice suffered by the appellant as a result of the judge's error, the Court stated that the

> [appellant's] absence at the meeting between the judge and [the juror] precluded him from having "input" in the judge's response to the juror's conduct. . . . [The appellant] was denied the chance to evaluate

[4] At the time of the appellant's trial, Rule 4-326(d) was Rule 4-326(c). There was no substantial difference in the language of the two subsections. *Compare* Rule 4-326(d) (2012) *with* Rule 4-326(c) (1993).

> the distress of the juror and the judge's solution to the problem and make such objection and suggestions as he deemed to be advisable.

Id. at 229.[5]

In *Harris*, a juror's grandmother passed away just before deliberations were scheduled to begin. 428 Md. at 705-06. Without notifying counsel and outside of the presence of the parties, the trial judge's secretary informed the juror of his grandmother's death and inquired whether he was "alright to continue." *Id.* at 706. After expressing his belief that the jury's deliberations would be finished soon, the juror stated that he was. *Id*. Soon thereafter, the court dismissed the alternate jurors, and the jury's deliberations began. *Id*. Shortly after the commencement of the deliberations, the juror sent a note to the court, asking that he be excused. *Id*. The Court then advised counsel and the respondent of the communication with the juror and the court's action as a result thereof. *Id*. Defense counsel requested a mistrial, which was denied. *Id*. at 709.

The Court of Appeals held that the trial court's failure to disclose to counsel its staff's communication to and from the juror violated Rule 4-326(d), and thus was error. *Id*. at 720. In deciding whether such error was prejudicial, and thus required reversal of the appellant's convictions, the Court looked to *Stewart* for guidance, expressly citing to the lack of "input" from the defendant on how to proceed. *Id*. at 721. Likewise, the Court determined in *Harris*

[5] The Court also determined that "[i]t was clearly prejudicial for the judge to further instruct one juror rather than the entire panel," and that the substance of the judge's conversation with the juror "was in the nature of an *Allen* charge, but was so foreshortened as to be woefully inadequate." *Stewart v. State*, 334 Md 213, 229 (1994).

that the trial court's failure to disclose the subject communication to the respondent was prejudicial because (1) "[t]he death of the juror's grandmother created a significant risk that the juror in question, in an effort to be able to attend the funeral, which he expressed a strong desire to do, would rush to a decision," and (2) defense "counsel was not provided with the opportunity to evaluate the emotional state of the juror, nor to provide input on how to proceed." *Id.* at 722. Finally, the Court observed that, "had the communication been disclosed when it occurred, the alternate jurors would have been available to replace the juror." *Id*.

In the recent case of *Gupta v. State*, this Court summarized the factual background of *Grade*:

> At the conclusion of a jury trial, but before adjourning for the day, the court inquired whether the jury would prefer to begin deliberating immediately or wait until the following day. [*Grade*,] 431 Md. at 88-89. After determining that the jury preferred to return the next day, the court instructed both jurors and alternates to return the next morning "because something [could] happen with one of the regular jurors before deliberation begins." *Id.* at 89. Deliberations were scheduled to begin around 9:15 AM, and the court instructed counsel to return at 10:00 AM in case "questions and problems ar[o]se." *Id.* at 88. And a problem did arise: at 9:20 AM the next morning, a juror called to tell the court that an emergency would prevent her from arriving for deliberations on time. *Id.* Without consulting either party, the court actually substituted an alternate for the absent juror, and deliberations began as scheduled. *Id.*

__ Md. App. __, __, No. 1185, September Term 2015 (filed April 28, 2016), slip op. at 8.

The Court of Appeals determined in *Grade* that the communication at issue fell squarely within the ambit of Rule 4-326(d), which "contemplates that the court will notify

both parties of the communication and give each of them an opportunity for input." 431 Md. at 101. Because the trial court "discharged the juror and replaced her with an alternate without first notifying defense counsel," the court erred. *Id*. Again, the Court held that the trial court's error was prejudicial, reasoning:

> We have been clear, the right to notice and the opportunity to provide input have significance. In *Harris*, we emphasized that "the purpose of Rule 4–326(d) is to provide an opportunity for input in designing an appropriate response to each question in order to assure fairness and avoid error," 428 Md. at 720, 53 A.3d at 1182, quoting *Harris v. State*, 189 Md. App. 230, 247, 984 A.2d 314, 324 (2009), and concluded that the failure of notice necessarily deprives the defense of the opportunity to provide the input on how to proceed that the Rule contemplates. *Id. See Stewart*, 334 Md. at 229, 638 A.2d at 761.

Grade, 431 Md. at 106.

The principle of law articulated in *Stewart*, *Harris*, and *Grade*, is that, where there is a communication from the jury that is within the scope of Rule 4-326(d), the parties have a right to notice of the subject communication and the opportunity to provide input on how the trial court should proceed in response thereto. Failure of the court to provide the required notice and an opportunity for input constitutes error. In determining whether such error is harmless, the trial court's action in response to the communication from the jury must have no tendency to influence the verdict of the jury. *See Gupta*, slip op. at 8 (holding that the trial court's violation of Rule 4-326(d) was harmless because the "court's non-substantive *ex parte* response to the juror's scheduling question, attenuated as it was from any decisions about her participation in the case, could not possibly have affected the jury's deliberations or its verdict in this case"). In *Stewart*, *Harris*, and *Grade*, the trial court's action in response

to the jury communication did have a tendency to affect the jury's verdict, because the court's action had a direct impact on the deliberations or composition of the jury without input from defense counsel. *See Stewart*, 334 Md. at 217-18 (trial court directed a nervous and upset juror to continue to deliberate); *Harris*, 428 Md. at 705-06 (trial court allowed a juror to continue deliberations after the juror was informed of his grandmother's death and expressed a desire to attend her funeral); *Grade*, 431 Md. at 89 (at the beginning of the jury's deliberations, the trial court replaced a juror, who indicated that she would be late in arriving at the court, with an alternate juror).

Applying the above principles to the case *sub judice*, we conclude that the trial court's violation of Rule 4-326(d) was harmless beyond a reasonable doubt, because the court's action in response to Juror 2's communication "'had no tendency to influence the verdict of the jury.'" *Ogundipe*, 424 Md. at 74 (quoting *Denicolis*, 378 Md. at 656). We shall explain.

Appellant claims that he was prejudiced when the trial court received a communication from Juror 2 that Juror 2 would be "two hours late," and, without input from defense counsel, the court responded by sending the Sheriff's deputies to transport Juror 2 to court. Appellant's concern, as expressed to the trial court, was that the court's action was "coercive." Juror 2, however, was not allowed to rejoin the jury and resume deliberations until *after* the court had addressed such concern *with the input of defense counsel*. As previously indicated, upon Juror 2's arrival at the courthouse and before returning to the jury room, the court held a hearing with counsel for both parties and appellant present. The court asked Juror 2, "Would the fact that I sent the deputies to get you, would that in any way

affect your ability to be fair and impartial in this case?", to which Juror 2 answered, "No, ma'am." The court also asked Juror 2 whether he could "continue to commit to me that you will deliberate fully and fairly and come to a just decision," to which Juror 2 responded, "Yes, ma'am." The court then asked defense counsel if he wished to say anything, and defense counsel said, "Not in Juror [ ] 2's presence, no."[6] The court also allowed defense counsel to present argument, during which he moved for a mistrial. The court denied the motion and ultimately permitted the jury to resume deliberations with Juror 2.

Therefore, given (1) the trial court's inquiry of Juror 2 before allowing him to rejoin the jury and resume deliberations, (2) Juror 2's responses indicating that he could continue to "deliberate fully and fairly and come to a just decision," and (3) the opportunity for defense counsel to question Juror 2 or otherwise provide input on how to proceed, it is clear that the court's action of sending the Sheriff's deputies to transport Juror 2 to court "had no tendency to influence the verdict of the jury." *Ogundipe*, 424 Md. at 74 (quoting *Denicolis*, 378 Md. at 656).

Finally, appellant asserts that, if he had known about the communication from Juror 2, he "may have suggested they proceed with 11 jurors," or "that the 11 jurors be released from the jury room until they were reconstituted as 12." As to appellant's first suggestion,

[6] It is worthy of note that defense counsel did not make any inquiry of Juror 2 regarding his apparent suggestion that he did not wish to continue to serve on the jury because of financial reasons, which, if true, might have placed pressure on him to reach a quick verdict. Indeed, defense counsel did not ask Juror 2 any questions when given the opportunity to do so.

he had the opportunity during the questioning of Juror 2 to offer to proceed with eleven jurors, but did not. Regarding the release of the jury until it could be reconstituted as twelve, the trial court specifically addressed the issue of whether the jury had been deliberating prior to Juror 2's arrival. The court brought all eleven jurors into the courtroom and asked the foreperson whether the jury had "followed to the letter" the court's instruction, given two days before, that there were to be no deliberations until all twelve jurors were present. The foreperson responded, "Yes, your Honor." The court also placed on the record the fact that all of the exhibits, jury instructions, and verdict sheet were taken from the jury at the end of the day on Monday and not returned to the jury during the absence of Juror 2 on Wednesday morning. In sum, appellant's suggestions could have been or were addressed prior to the resumption of jury deliberations, and thus the court's failure to comply with Rule 4-326(d) had no effect on the jury's verdict.

For the reasons stated above, this Court holds that the trial court's violation of Rule 4-326(d) was harmless beyond a reasonable doubt, and accordingly, appellant's convictions are not required to be reversed.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED; APPELLANT TO PAY COSTS.