UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2264

September Term, 2015

DOMINIQUE LAMONT GARLIC

v.

STATE OF MARYLAND

Meredith,
Leahy,
Beachley,

JJ.

Opinion by Leahy, J.

Filed: January 26, 2017

A jury in the Circuit Court for Prince George's County convicted Dominique Lamont Garlic ("Appellant"), on July 30, 2015, of possession of phencyclidine ("PCP"), possession of cocaine base, possession of marijuana, possession of drug paraphernalia related to PCP, and possession of drug paraphernalia related to cocaine.

After trial, Garlic's appellate counsel found a date-and time-stamped jury note in the record that requested: "May we have instructions to jurors especially definitions for possession and distribution[?]" On appeal, Garlic presents one question for our review: "Did the trial court err in responding to a question from the jury without notifying Appellant and his counsel of the jury's question?" Even assuming the trial court violated Maryland Rule 4-326(d) by responding to the jury note without informing the parties first, under the circumstances revealed by the record in this case, we conclude that the error was harmless. Accordingly, we affirm the judgment of the circuit court.

BACKGROUND

A. The Arrest[1]

Lieutenant Patrick Hampson of the Prince George's County Police Department received information that drugs were being sold out of an apartment in Laurel, Maryland.

[1] The following facts were elucidated from the witness testimony and evidence at Garlic's jury trial on July 30, 2015. The following witnesses testified for the State: Porsha Miles, leaseholder of the apartment; Lt. Hampson, lead investigator; Barbara White, a chemist for the Prince George's County Drug Analysis Laboratory; Agent Brian Grempler, CSI agent and evidence technician; and Lieutenant Melvin Powell of the Prince George's County Police Department, an expert on narcotics identification and distribution. The defense did not call any witnesses.

On April 26, 2013, Lt. Hampson obtained a no-knock search warrant for that apartment and executed the warrant that same day at approximately 9:30 p.m. with a SWAT team.

The SWAT team entered the apartment and secured Garlic and Brandon Brown. At Garlic's trial, Lt. Hampson testified that he read Garlic and Brown their *Miranda* rights and proceeded to question them. According to Lt. Hampson, Garlic responded that he did not live in the apartment, he had the leaseholder's permission to be there, and that he had been in the apartment for a couple of hours. Lt. Hampson testified that approximately $3,000.00 in cash was recovered from Garlic's pocket but that Garlic did not have any drugs on his person. Garlic and Brown remained handcuffed and detained in the living room during the execution of the search warrant.[2]

Lt. Hampson conducted an initial walkthrough with Agent Brian Grempler, a crime scene investigator and evidence technician, and observed bottles of PCP, cocaine, and related paraphernalia scattered throughout the apartment. Then, in a thorough search of the apartment, the police recovered PCP, marijuana, crack cocaine, heroin, a glass eyedropper containing PCP, more than two boxes of sandwich bags and rolling paper, a razor blade, empty vials, rubber gloves, three types of ammunition, cocaine cutting agent, and a pot on the stove with white residue from cooking cocaine. Agent Grempler photographed and processed the drugs and paraphernalia recovered from the search.

[2] The record does not clarify the point at which Lt. Hampson formally placed Garlic and Brown under arrest.

B. The Indictment and Jury Trial

On April 24, 2014, a grand jury indicted Garlic on 10 counts including 1) possession of PCP in a sufficient quantity to indicate an intent to distribute (Maryland Code (2002, 2012 Repl. Vol., 2016 Supp.), Criminal Law Article ("CL"), § 5-602(2)); 2) possession of cocaine base in a sufficient quantity to indicate an intent to distribute (CL § 5-602(2)); 3) maintenance of a common nuisance for the illegal storage of a controlled dangerous substance and paraphernalia (CL § 5-605); 4) possession of PCP (CL § 5-601(a)(1)); 5) possession of cocaine base (CL § 5-601(a)(1)); 6) possession of marijuana (CL § 5-601(a)(1)); 7) possession of drug paraphernalia (CL § 5-619(c)(1)); 8) possession of drug paraphernalia with the intent to use (CL § 5-619(c)(1)); 9) conspiracy to possess PCP in sufficient quantity to indicate an intent to distribute (common law); and 10) conspiracy to possess cocaine base in sufficient quantity to indicate an intent to distribute (common law).

Garlic was tried before a jury on July 30, 2015.[3] The defense moved for a judgment of acquittal on all ten counts at the conclusion of the State's case-in-chief. The trial court granted the defense's motion with respect to count 3 (common nuisance), count 9 (conspiracy to possess PCP in sufficient quantity to indicate an intent to distribute), count 10 (conspiracy to possess cocaine base in sufficient quantity to indicate an intent to distribute), and denied the motion on all remaining counts. The defense did not call any witnesses. After a brief recess, defense counsel renewed its motion for a judgment of acquittal on all remaining counts, which the trial court denied.

[3] Garlic and Brown were tried separately.

C. Instructions to the Jury

The trial court began its instructions to the jury with the following advisement:

> . . . I am reading the instructions and you will have with you for your reference if you need them during your deliberations a single copy of these instructions. Do not let that knowledge keep you from trying to absorb as much as you can as I read the instructions to you.

The record on appeal reflects that the trial court read nearly verbatim eight written pages of Maryland Pattern Jury Instructions ("MPJI") on numerous crimes and presumptions, including the following instructions on possession and distribution:

> Possession means having control over a thing whether actual or indirect. The defendant does not have to be the only person in possession of the substance. More than one person may have possession of the same substance at the same time.
>
> A person not in actual possession who knowingly has both the power and the intention to exercise control over a thing, either personally or through another person has indirect possession. In determining whether Mr. Garlic had indirect possession of a substance, consider all of the surrounding circumstances.
>
> These circumstances include the distance between him and the substance, whether he had some ownership or possessory interest in the place where the substance was found and any indication that he was participating with others in the mutual use and enjoyment of the substance.
>
> * * *
>
> Distribute means to sell, to exchange or to transfer a possession of a substance or to give it away. No specific quantity is required for you to find the intent to distribute. There is no specific amount below which the intent to distribute disappears and there is no specific amount above which the intent to distribute appears.
>
> You may consider the quantity of the controlled dangerous substance along with all other circumstances in determining whether Mr. Garlic intended to distribute the controlled dangerous substance.

The trial court also advised the jury as follows in regard to communication between

the jury and the court:

> [A]ll [jury] notes that the Court receives are required to be shown to the parties and to become part of the record[.]
>
> ***
>
> If there is a need for guidance or clarification from the Court, just tap on the door and ask the Bailiff to give you a sheet of paper on which to make whatever request -- write a request or whatever.
>
> Put it in writing on here and understand that there will be a delay in responding to any note from the jury. The reason that there is a delay is because we have to discuss the note.
>
> ***
>
> To the extent that there are things upon which you can deliberate that do not concern the note, deliberate on those other things while you are waiting for an answer. *My preference whenever possible is to respond to a note from the jury with a writing on the very piece of paper that bears the note.* And sometimes the nature of the question is such that I have to send a separate sheet of paper back.
>
> Every once in a while we get a question that requires us -- we get a note that requires us to bring the jury into the box and to orally respond to the note. At the conclusion of your deliberations if you have any papers that are passed between you, the jury, and the Court by way of inquiry and response, make certain that those papers are given to the Bailiff because they have to become an official part of the record of these proceedings.

(Emphasis added).

The jury began deliberating at 5:53 p.m. and delivered the verdict at 7:08 p.m. The jury found Garlic guilty on the following five counts: count 4 (possession of PCP); count 5 (possession of cocaine base); count 6 (possession of marijuana); count 7 (possession of drug paraphernalia related to cocaine), and count 8 (possession of drug paraphernalia related to PCP). The jury acquitted Garlic of count 1 (possession of PCP with intent to

distribute) and count 2 (possession of cocaine base with intent to distribute). The circuit court sentenced Garlic to eighteen months of home detention on November 6, 2015. Garlic timely filed a notice of appeal on November 30, 2015.

D. The Jury Note

The single issue before this Court was developed during the appeal period when Garlic's appellate counsel discovered a jury note while reviewing the record. The note is dated in the upper right-hand corner as follows: "7/30/15." The note also contains the following official circuit court date-stamp: "FILED Jun 30, 2015 Clerk of the Circuit Court for Prince George's County, MD."[4] The trial judge's, State's attorney's, and defense counsel's signature lines are blank. The note from the jury reads: "May we have instructions to jurors especially definitions for possession and distribution[?]" Below this question, there is a handwritten annotation: "6:35 p.m. done" and a cursive initial. The record on appeal has, behind this jury note, a full copy of the written jury instructions that were read to the jury by the trial judge.

Upon discovering the jury note, Garlic's appellate counsel sent a letter to the trial judge and trial counsel explaining this discovery and requesting their affidavits. The letter read:

> Upon review of the case file in Annapolis, I discovered a jury note that is dated July 30, 2015. The note requests "instructions to jurors, especially definitions for possession and distribution." The note displays a single signature, the time (6:35 p.m.), and the word "done." **A photocopy of the note is included with this letter.** I have not been able to find any indication

[4] Both parties are in agreement that the date-stamp was in error and that the note was received on July 30, 2015—the day of trial.

> in the record, including the trial transcripts, that the note was presented to counsel or to the defendant.
>
> In order to provide as complete a record as possible on appeal and to preserve any possible appellate issue regarding this note, I, as Appellant's counsel, am requesting affidavits from [the trial judge] and all counsel concerning their recollection as to whether this specific jury note was reviewed by the Court, counsel, and the defendant, I am also requesting that [the trial judge] and counsel indicate whether they recognize the signature on the note.

(Emphasis added).

The trial judge attested to the following in an affidavit dated April 28, 2016:

> I have no specific recollection of the trial of *State of Maryland v. Dominique Lamont Garlic*.
>
> The entry "6:35 p.m. done" on the note enclosed with [the appellate counsel's] [correspondence] is my handwriting. In addition, the cursive [] is my handwritten initial.
>
> The entry "6:35 p.m. done" means that the jurors were provided a response at the time indicated.
>
> **The note would not have been responded to by me without first sharing it with counsel and providing counsel for the Defendant an opportunity to review the note with the Defendant.**
>
> **Beyond what is stated above and without having reviewed the actual file, I would be speculating as to what physical form the response took.**

(Italics in original) (bold emphasis added).

The defense trial counsel submitted an affidavit stating that "To the best of my knowledge and recollection, I was not shown the jury note referenced in [appellate counsel's] letter, nor provided an opportunity to review the note with Mr. Garlic." The State's attorney attested in an affidavit that "I have reviewed the jury note attached to [the Appellate counsel's] correspondence and have no specific recollection of our collective response, or any response at all."

DISCUSSION

Garlic contends that the trial court violated Maryland Rules 4-231(b) and 4-326(d) when it responded to a jury note received during jury deliberations without notifying the parties.

We conduct two inquiries to determine the existence of reversible error: "(1) whether an error occurred in the trial court; and (2) if so, whether that error was harmless beyond a reasonable doubt." *Nicolas v. State*, 426 Md. 385, 416 (2012) (quoting *Stewart v. State*, 334 Md. 213, 228 (1994); *Noble v. State*, 293 Md. 549, 558 (1982); *Dorsey v. State*, 276 Md. 638, 659 (1976)). There is a presumption of regularity in trial court proceedings. *Black v. State*, 426 Md. 328, 337, 342 (2012) (quoting *Schowgurow v. State*, 240 Md. 121, 126 (1965) ("There is a strong presumption that judges and court clerks, like other public officers, properly perform their duties."). However, an appellant may rebut this presumption by "producing a 'sufficient factual record for the appellate court to determine whether error was committed." *Id.* at 337 (quoting *Mora v. State*, 355 Md. 639, 650 (1999)) (other citations omitted). Once the appellant establishes that an error occurred, the burden shifts to the State "to establish that the error was harmless beyond a reasonable doubt." *Id.* at 337–38 (citing *Dorsey*, 276 Md. at 658).

Criminal defendants have a common law right, preserved by Article 5 of the Maryland Declaration of Rights and guaranteed by Maryland Rule 4-231(b), to be present at trial. *See Bunch v. State*, 281 Md. 680, 683 (1978) (citing cases); Maryland Rule 4-231(b) ("A defendant is entitled to be physically present in person at a preliminary hearing

and every stage of trial[.]"). This right extends to any communication between the trial court and the jury "unless the record affirmatively shows that such communications were not prejudicial or had no tendency to influence the verdict of the jury." *Midgett v. State*, 216 Md. 26, 36–37 (1958).

Maryland Rule 4-326 provides certain procedures to ensure that 1) the trial court informs the parties of any jury communication, and 2) the parties have an opportunity to provide input in the court's response to the jury. *See Allen v. State*, 77 Md. App. 537, 545 (1989). This "right is deemed 'absolute,' and a judgment of conviction ordinarily cannot be upheld if the record discloses a violation of the right." *Stewart*, 334 Md. at 225 (citing *Porter v. State*, 289 Md. 349, 352–53 (1981)).

Maryland Rule 4-326(d)(2), which governs communications between the jury and trial court, provides

> (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.
> (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.*

(Emphasis added).

We interpret Maryland Rules with the "same well-established canons of construction that we use when interpreting statutes." *Perez v. State*, 420 Md. 57, 63 (2011)

(quoting *Dove v. State*, 415 Md. 727, 738 (2010)) (quotations omitted). "[T]he chief objective of statutory construction is to discover and effectuate the actual intent of the legislature in enacting the statute." *Id.* To determine the legislative intent, we first consider the plain language of the Maryland Rule "given the[] ordinary and popularly understood meaning[.]" *Id.* (internal citations omitted).

Upon receipt of a jury note, Rule 4-326(d)(2) requires the trial court to determine whether the jury note *pertains to the action*. This is not a point of contention in this case. The State concedes, in its brief, that the note pertained to the action and fell within the purview of Rule 4-326(d). We are also in agreement. First, it is clear that the trial court received the jury note because it appears in the record, it bears a circuit court clerk's office date-stamp, and it was annotated and signed by the trial judge. Second, there is no doubt that this note pertained to the action. The jury requested a written copy of the jury instructions that the trial judge indicated he would provide to the jury. The jury made a specific request for the definitions of possession and distribution—definitions for the elements of the crimes for which the State was prosecuting Garlic.

Next, we address whether an error occurred. Here, the transcript of the proceeding does not establish whether or not the court advised trial counsel of the jury note. Because there is no on-the-record advisement, we must find that the letter of Rule 4-326(d) was violated.

We now turn to the second inquiry—whether the error was harmless. *See Nicolas*, 426 Md. at 416. In making this determination, we conduct our own independent review of

the record. *Dorsey v. State*, 276 Md. 638, 659 (1976) (footnote omitted). We cannot conclude the error was harmless "unless the record affirmatively shows that such communications were not prejudicial or had no tendency to influence the verdict of the jury" beyond a reasonable doubt. *Midgett*, 216 Md. at 36–37.

Garlic argues that the State cannot meet its burden of proof that the error was harmless beyond a reasonable doubt because the jury asked for "instructions to jurors, especially definitions for possession and distribution" and the record is devoid of the trial judge's response provided to the jury.

The State counters that the note was administrative in nature and any violation of Maryland Rule 4-326(d) was harmless. The State argues that the record provides an affirmative reason that the error was not prejudicial. In support, the State postulates that the jury had not been provided a copy of the written jury instructions at the beginning of deliberations and was merely requesting the written copy that the trial judge told them they would receive. The State urges that the proper remedy is to remand the case for an evidentiary hearing to determine whether the trial judge notified the parties and the specific nature of the trial court's response.

In reply, Garlic asserts that there is nothing in the record supporting the State's position on the meaning of the jury's question and the trial judge's response. Garlic reiterates that the record does not indicate whether the trial court provided a copy of the written jury instructions at the beginning of deliberations or in response to the jury's note. Garlic asserts two other plausible scenarios. Garlic postulates that the jury may have been

either "seeking oral clarification of the written instructions they had received" or "seeking oral clarification of the previously stated oral instructions." Garlic further suggests that the trial judge may have, in fact, provided oral instructions in response to the jury note.

Garlic relies heavily on *Denicolis v. State*, but we find this case distinguishable. In *Denicolis*, the petitioner was tried and convicted of solicitation to commit murder. 378 Md. 646, 651, 654 (2003). While reviewing the record for purposes of appeal, the petitioner's appellate counsel discovered a jury note labeled as "Court Exhibit 4" in the record. *Id.* at 653. The jury note asked for the definition of solicitation. *Id.* The note was not time-stamped, and trial counsel were unaware of the note. *Id*. Additionally, the record did not contain the trial judge's response to the note or any indication of what the response would have been. *Id.* at 653. "Twice in its instructions, the court had defined the crime of solicitation, and yet the jury was still apparently uncertain." *Id.* at 658. On appellate review, the petitioner challenged the trial court's failure to disclose the note to trial counsel. *Id.* at 655. The Court of Appeals reversed the judgment, holding that the trial court erred in failing to disclose the note and that a silent record cannot support a harmless error argument. *Id.* at 659. The Court noted that "the error could not possibly be regarded as harmless, especially as we do not know what the response may have been." *Id.* at 658.

We emphasize that Maryland decisional law requires that our harmless error analysis focuses on whether the trial court's response to the jury note in violation of Rule 4-326(d) prejudiced Garlic or had a "tendency to influence the verdict of the jury." *Midgett*, 216 Md. at 36–37. Although rarely the case, it is possible that a violation of Rule

4-326(d) can be deemed harmless error. *See, e.g.*, *Denicolis*, 378 Md. at 656–57 ("The kinds of communication that may be regarded as non-prejudicial, as noted in *Midgett*, are those that clearly do not pertain to the action or to a juror's qualifications to continue serving and that are of purely personal nature."); *Graham v. State*, 325 Md. 398 (1992) (citing *United States v. Robinson*, 560 F.2d 507, 516–17 (2d Cir. 1977)) ("note from jury that provided no new information except name of holdout juror properly withheld from counsel and sealed in record"). In dicta, the Court of Appeals concluded that the trial judge's error in violation of Rule 4-326(d)—to only disclose part of a jury note—would not have constituted reversible error. *Graham*, 325 Md. at 411, 415. In *Graham*, the trial judge notified trial counsel that the jury could not reach a unanimous verdict but omitted the jury's numerical split. *Id.* at 415. However, the defense trial counsel failed to object, and the Court held that the error was not preserved for their review. *Id.* at 411.

We are not persuaded by Garlic's analogy to *Denicolis*. First, in *Denicolis*, the jury asked for the definition of solicitation—a substantive question. *Id.* at 658. In this case, the jury asked for the instructions that the trial judge indicated he would provide to the jury—an administrative question. Second, in *Denicolis*, the jury note was not time-stamped and there was no way to put the record together. *Id.* at 653–54, 658. Whereas here, the jury note bore a date-and time-stamp, indicating that the note was received and the time the trial judge responded to the jury. Additionally, a copy of the jury instructions bearing a circuit court clerk's office date-stamp—which the trial judge read virtually verbatim to the jury—appear in the record behind the jury note, indicating that the trial judge responded to the

jury by providing the requested written copy of the jury instructions.

We are also not convinced that the trial judge did not notify the parties of the jury note. First, the trial judge thoroughly instructed the jury on the procedures of how to submit questions to the trial court. The trial judge carefully explained that jury notes must be discussed with the parties before the trial judge responds to the jury, and that all jury notes are part of the record. Second, the trial judge attested that "[t]he note would not have been responded to by me without first sharing it with counsel and providing counsel for the Defendant an opportunity to review the note with the Defendant." Third, Garlic's appellate counsel only attached a photocopy of the jury note to his letter to trial counsel and the trial judge requesting an affidavit. Neither the trial judge nor trial counsel had the benefit of reviewing the record to refresh their recollection of what transpired at trial with respect to this note.[5] Therefore, neither the trial counsel nor the trial judge would have seen that behind the jury note in the record was a copy of the full 8-page jury instructions that were read to the jury by the trial judge.[6] The trial judge had instructed the jury that his preference was to respond in writing "on the very piece of paper that bears the note." Therefore, there is no plausible explanation other than to read the judge's notation "done" as his response,

[5] By the time Garlic's appellate counsel requested an affidavit from the trial judge and trial counsel in April and May 2016, the record had been transmitted to this Court. The record was transmitted to this Court on January 29, 2016.

[6] We also note that the Assistant State's Attorney did not attest that she did not receive any notice of the note from the trial judge. The Assistant State's Attorney's affidavit merely stated that she "ha[d] reviewed the jury note attached to [Garlic's appellate counsel's] correspondence and ha[s] no specific recollection of our collective response, or any response at all."

meaning that he provided the jury with the written instructions.

We have the trial judge's assurance under oath that the judge would not have responded to a jury note without first informing counsel. It is entirely possible that the trial court indeed advised counsel that it was providing the jury with the written instructions in response to the jury's request. Given that trial counsel had no objections to those same instructions, or to the fact that the judge had promised that the jury could have a copy of the written instructions with them during deliberations, it is also possible that everyone, including counsel, had no recollection independent of the record of this administrative act. Nevertheless, because there is no on-the-record advisement, we must resolve this case assuming the court failed to notify trial counsel and Garlic of the note. *See Denicolis*, 378 Md. at 658.

The record does not support Garlic's supposition that the jury was requesting oral clarification of either the oral or written instructions, or that the trial judge recalled the jury to provide oral clarification in response to the jury note off the record. A recall of the jury for additional instructions or oral clarification would have appeared in the trial transcript. Additionally, the jury began deliberating at 5:53 p.m., and the trial judge responded to the jury note at 6:35 p.m. It was unlikely that the trial judge recalled the jury and reinstructed them in such a short timeframe before they reached their verdict at 7:08 p.m.

The jury note was clearly administrative in nature. The jury was merely following up on the trial judge's earlier promise to provide the jury with a copy of the written jury instructions that the trial judge had just read to them. There is no indication in the trial

transcript that the defense counsel took issue with the trial judge providing the jury with a copy of these instructions during deliberations. Nor does the record indicate that counsel were ever dueling over competing versions of jury instructions in this case.

We cannot fathom that there was any prejudice to Garlic or that the trial judge's response had a "tendency to influence the verdict of the jury." *Midgett*, 216 Md. at 36–37. "'While the rule expressly requires notice to the parties of any communication from the jury, *its very spirit is to provide an opportunity for input in designing an appropriate response to each question in order to assure fairness and avoid error*.'" *Perez v. State*, 420 Md. 57, 65–66 (2011) (emphasis added) (quoting *Smith v. State*, 66 Md. App. 603, 624 (1986)). A comparison of the trial transcript and the copy of the written jury instructions contained in the record demonstrates that the trial judge carefully instructed the jury by reading the written copy of the jury instructions virtually word-for-word. We find it unlikely that, if Garlic had the opportunity to provide input in the trial judge's response to the jury, Garlic would have objected to providing the jury with a written copy of the instructions. We conclude that providing the jury with a written copy of the jury instructions that the trial judge read while instructing the jury could not have prejudiced Garlic or influenced the jury's verdict.

This Court recently reported its first opinion in which it held that a trial court's violation of Rule 4-326(d) for failing to notify the parties of a jury communication concerning a scheduling conflict was harmless error. *Gupta v. State*, 227 Md. App. 718 (2016), *cert. granted*, 449 Md. 409 (2016). During trial, a juror informed the trial judge's

law clerk that an out-of-state conference would prevent her from deliberating if the trial extended for a third week. *Id.* at 731. The trial judge, then, directed his law clerk to "tell [the juror] that they would assess the situation as it got closer and that she would not miss her conference." *Id.* The trial judge informed the parties of the juror's possible conflict and of his response after the fact. *Id.* On appellate review, the appellant challenged the trial judge's violation of Rule 4-326(d) when he responded to the juror before notifying the parties. *Id.* at 733. Although this Court agreed that the juror communication pertained to the action, we held that the trial judge's failure to inform the parties of a jury communication regarding a scheduling concern was harmless because the trial court's response "merely acknowledged the potential for a problem and promised to resolve it later." *Id.* at 737. In fact, the trial court informed the parties of the juror's subsequent note on the same scheduling issue and after discussion with the trial counsel, replaced the juror with an alternate. *Id.* at 732.

Although because of the factual distinctions we do not rely on *Gupta* in reaching our holding, *Gupta* is a recent case that signals that some errors of Rule 4-326(d) are deemed harmless. As in *Gupta*, 227 Md. App. at 736, we hold that the trial judge did not respond substantively to the jury's request when he provided the jury a copy of the written jury instructions, and, therefore, the violation of Rule 4-326(d)(2) was harmless.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.