Circuit Court for Prince George's County
Case No. C-16-CR-24-000815

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2174

September Term, 2024

JOMAAR A. TAYLOR

v.

STATE OF MARYLAND

Tang,
Kehoe, S.
Raker, Irma S.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: June 8, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

During jury deliberations at a trial in the Circuit Court for Prince George's County, the court received a note from the jury, which it answered with input from defense counsel, but outside the presence of the appellant, Jomaar Taylor. The jury subsequently convicted the appellant of various offenses arising from the theft of a vehicle.[1] The appellant filed this timely appeal, presenting a single question, which we rephrase slightly: Did the trial court err by answering a juror note in the appellant's absence? We answer, "No," to that question and affirm the judgments of the circuit court.

BACKGROUND

The appellant was charged with the theft of a vehicle, and he was not detained pretrial at the time of trial. He was present during the first day of trial. He was present during the second day of trial until the jury started deliberating on the charges at 5:37 p.m. Within the first hour of deliberations, the court received a note requesting various trial exhibits, specifically, the "probable cause report and all police reports," and "all jury instructions." The trial judge summoned the parties back to the courtroom, where the following transpired:

THE COURT: *Where's your client?*

[DEFENSE COUNSEL]: *He's eating right now.*

THE COURT: *He's what?*

[1] The jury found the appellant guilty of (1) theft of a pickup truck valued between $25,000 and $100,000, (2) unlawful taking of a motor vehicle, (3) unauthorized removal of a motor vehicle, and (4) fourth-degree burglary-rogue and vagabond. The court sentenced the appellant to serve ten years, all but one year suspended, for the theft count, five years' supervised probation, and a special condition that he make a restitution payment to the vehicle owner. The remaining counts merged.

> [DEFENSE COUNSEL]: *Eating*.
> THE COURT: Call the case, please.
>
> THE DEPUTY CLERK: Recalling number one on the doc[ket], C-16-CR-24-00815, the State of Maryland versus Jomaar A. Taylor.
>
> THE COURT: Great. Counsel is present. *Defendant is not present*. The Court has received a note. But before we address the note, let me address this. I made it very clear that you were to provide your contact information. I neglected to say what I typically say. What I typically say is, is that you should be no more than ten minutes away in case we have some notes. And so, I cannot fault you because I did not say that. If this happens again and you're more than ten minutes away, I'm going to find you in contempt. All right.
>
> *Now, because your client is not here, I am deeming that he is forfeiting the right to be here for this, although he has an absolute right to be here.* ***I don't know where he is and we're not going to wait for him.***
>
> [DEFENSE COUNSEL]: *Understood*.

(emphases added).

The court proceeded to address the note and considered defense counsel's proposed response. After a discussion on the record, the court adjusted the proposed language in the note. Defense counsel approved it, stating that it was "a good middle ground," though she "liked" her version "better." Thereafter, the jury resumed deliberations and ultimately returned a verdict of guilty on all counts the next day.

DISCUSSION

The appellant argues that the court erred by addressing the note without his presence. He contends that the court did not know whether he was aware of the note or, if he was, whether his absence was deliberate. Accordingly, the appellant asserts that the court's finding—that he forfeited his right to be present because he was "eating"—was erroneous and violated Maryland Rule 4-326.

Rule 4-326 governs communications between the court and jury. "Maryland Rule 4–326(d) provides explicit guidance to a trial court in dealing with communications from the jury." *Perez v. State*, 420 Md. 57, 63 (2011). In pertinent part, Rule 4-326 states:

> (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.

Md. Rule 4-326(d)(2).

Maryland Rule 4-231 provides that 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; (2) when a nolle prosequi or stet is entered pursuant to Rules 4-247 and 4-248." Md. Rule 4-231(b). The right to be present at all stages of trial is not absolute, however, and is subject to waiver. *State v. Hart*, 449 Md. 246, 265 (2016). Under subsection (c), a waiver of a defendant's right to be present at a critical stage of trial may occur under the following conditions:

> The right to be present . . . is waived by a defendant:
>
> (1) who is voluntarily absent after the proceeding has commenced, whether or not informed by the court of the right to remain; or
>
> (2) who engages in conduct that justifies exclusion from the courtroom; or

> (3) who, personally or through counsel, agrees to or acquiesces in being absent.

Md. Rule 4-231(c). The Committee note to the Rule further explains, "[e]xcept when specifically covered by this Rule, the matter of presence of the defendant during any stage of the proceedings is left to case law and the Rule is not intended to exhaust all situations."

Certainly, a conference to address a jury note pertaining to the action during deliberations is a critical stage at which a defendant has a right to be present. *See Stewart v. State*, 334 Md. 213, 224–25 (1994) ("Any communication pertaining to the action between the jury and the trial judge during the course of the jury's deliberations is a stage of the trial entitling the defendant to be present."). However, the right of the defendant to be present during communications between the court and jury can be waived. *See William v. State*, 292 Md. 201, 218 (1981) (stating that the "right of the defendant to be present . . . during communications on a point of law between the court and jury . . . is no more 'fundamental' than many other 'rights' which can be waived by counsel's action or inaction"). Thus, the question becomes whether that right was waived in this case. Under the circumstances, we hold that the appellant's presence at the conference to address the jury note was waived by his voluntary decision.

The appellant argues that the court erred in determining that he forfeited his right to be present without applying the requisite considerations under *Pinkney v. State*, 350 Md. 201 (1998). In *Pinkney*, our Supreme Court enunciated the trial court's obligation to determine whether a defendant's absence is voluntary before determining that a defendant waived his right to attend a critical stage of the trial. *Id.* at 217. It reasoned that "the record

must reflect that adequate inquiry has been made to ensure that a defendant's absence is not in fact involuntary." *Id.* Before a trial court proceeds *in absentia*, the court "must generally be satisfied of two primary facts: that the defendant was aware of the time and place of trial, and that the non-appearance was both knowing and sufficiently deliberate to constitute an agreement or acquiescence to the trial court proceeding in his or her absence." *Id.* at 215–16.

We are not persuaded by the appellant's argument. We addressed a similar contention in *Reeves v. State*, 192 Md. App. 277 (2010). There, we held that a trial court satisfied that threshold level of inquiry under similar circumstances. *Id.* at 293. The defendant was present with counsel for his one-day trial. *Id.* at 285. The jurors began deliberations that day but were soon dismissed for the night and directed to reassemble the next day at 9 a.m. to resume deliberations. *Id.* at 285–86. The court directed the parties to "make certain we know where you're at" during the deliberations, which were expected to take "at least two hours." *Id.* at 286. The next day, the jury reached a verdict and, at 11:20 a.m., when counsel reassembled, the defendant was absent. *Id.* Defense counsel represented to the court that she had spoken to her client and he "said he's on his way." *Id.* The court responded that it would "take the verdict in his absence" because the defendant knew deliberations would be resuming at 9 a.m. *Id.* On this record, we reasoned that though "the trial judge did not conduct an extensive inquiry on the record into [the defendant's] whereabouts and any reason for his absence, . . . the circumstances provided the judge a

sufficient basis to conclude that [the defendant] voluntarily failed to appear that day." *Id.* at 293.

Here, the court likewise satisfied that threshold by asking defense counsel where the appellant was before addressing the jury note. The appellant had been present during the trial prior to the jury's deliberation but was absent during discussion involving the jury note. As the Court explained in *Pinkney*, a defendant's presence "at one portion of trial, but his absence at another" is a "significant factor in the Court's determination of voluntariness." 350 Md. at 222. Moreover, it is undisputed that the appellant was aware that deliberations were ongoing and that he was expected to return to court at a moment's notice; the record shows the court instructed defense counsel to provide contact information so she could be reached during this time. The court's admonishment to defense counsel further demonstrates that it had already waited over ten minutes for both counsel and the appellant to arrive after making contact. Defense counsel's statement that the appellant was "eating right now" indicated that the appellant chose to remain absent rather than attend the jury note conference. Consistent with the reasoning in *Reeves*, these circumstances gave the court a sufficient basis to conclude that the appellant voluntarily forfeited his right to be present during the proceeding to address the jury note. Based on this record, we conclude that the court did not err in finding the appellant's absence was voluntary and answering the juror note in his absence.

Even if we were to find that the court abused its discretion by responding to the jury note in the appellant's absence, any such error was harmless. *See Reeves*, 192 Md. App. at

300 (noting that the harmless error doctrine applies to cases involving a criminal defendant's absence from trial). "An error is harmless if we are convinced beyond a reasonable doubt that the error in no way influenced the verdict." *Id.*

The appellant argues the error was not harmless because he was denied the opportunity to provide any "input" on the jury's note. However, defense counsel was present and offered input on how to respond. Moreover, the court's written response to the jury note—simply requesting trial exhibits and jury instructions—was likewise straightforward:

> You have been provided all of the exhibits that were admitted into evidence. If an item was not actually admitted (such as a police report or statement of probable cause), then it should not be considered by you. However, you may consider all testimony that was not prohibited by the court.

Even if the appellant had been present, it is difficult to imagine what additional input he could have offered that would have changed the response his attorney approved. *Reeves*, 192 Md. App. at 301 ("Even if appellant were present, it is difficult to imagine what more he could have done."). Notably, the appellant does not challenge the substance of the court's response on appeal. We conclude that any error was harmless.

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