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Taylor v. State:

A Conviction Following a Violation of a Defendant's Right to be Present During Jury Communication will be Reversed Unless the Record Demonstrates a Lack of Prejudice to the Defendant

By Martha Arango

The Court of Appeals of Maryland held that a trial court's error in communicating with the jury in the absence of the defendant is presumed to prejudice the defendant, unless the record shows that the communication was not prejudicial. *Taylor v. State*, 352 Md. 338, 722 A.2d 65 (1998). Thus, regardless of the accuracy of the trial court's answers to the jury's questions, the conviction will be reversed if there is not a clear showing that the defendant was not prejudiced.

Lisa Taylor ("Taylor") was tried in the Circuit Court for Baltimore County on charges of conspiracy to distribute heroin and possession of heroin with the intent to distribute. *Taylor*, 352 Md. at 340, 722 A.2d at 66. After jury deliberations began, the jury submitted three written questions to the judge. *Id.* Without notifying the defendant or the State, the judge reconvened the jury in the courtroom and gave the jury oral instructions on the questions. *Id.* The questions sought information on probable cause, the proper procedure in a warrantless entry, why a witness had not testified, and sentencing procedures. *Id.* The court instructed the jury that the questions posed were questions of law and not factual issues that the jury needs to consider. *Id.* Approximately an hour later, the judge informed Taylor's counsel and the

State about the jury's questions that the judge answered, explaining that she did so in order to avoid delay in the deliberation process. *Id.* at 342, 722 A.2d at 66.

Taylor's counsel, while acknowledging the accuracy of the court's response, objected to the court's procedure on the basis of Maryland Rule 4-326(c), which requires the court to notify the defendant and the State's Attorney of any communication from the jury that relates to the case before responding to the jury's inquiry. *Id.* at 343-44, 722 A.2d at 67. Based upon the procedural error, Taylor's counsel moved for a new trial. *Id.* at 344, 722 A.2d at 67. The court denied Taylor's motion, stating that the procedural error was harmless. *Id.* at 344, 722 A.2d 67-68. The jury returned a guilty verdict on both counts and Taylor was sentenced to ten years imprisonment without parole. *Id.* at 340, 722 A.2d 66.

The Court of Special Appeals of Maryland affirmed the circuit court's holding on the same grounds. *Id.* at 344-45, 722 A.2d 68. The Court of Appeals of Maryland granted Taylor's petition for writ of certiorari. *Id.* at 345, 722 A.2d 68.

As a preliminary matter, the court discussed the trial court's violation of Maryland Rule 4-326(c) and Maryland Rule 4-231(b). The

court of appeals acknowledged that the trial court violated Rule 4-326(c) when it communicated with the jury without notifying Taylor. *Id.* Maryland Rule 4-231(b) establishes a defendant's right to be present at a preliminary hearing and at every stage of the trial. *Id.* at 339, 722 A.2d 66 n.2. The court noted that a judge's communication with the jury is a stage of the trial at which the defendant has a right to be present. *Id.* at 345, 722 A.2d 68 (citing *Bunch v. State*, 281 Md. 680, 685, 381 A.2d 1142, 1144 (1978)). The court therefore found that the trial court violated Rule 4-231(b) when it excluded Taylor from participating in answering the jury's questions. *Id.*

The issue before the court was whether Taylor's conviction should be upheld because the trial court's violation of Rules 4-326(c) and 4-231(b) was harmless error. Generally, a conviction will be upheld if the trial court's error was harmless, i.e., one which does not influence the verdict. *Id.* at 346-47, 722 A.2d 68-69 n.7 (citing *Dorsey v. State*, 276 Md. 638, 659, 350 A.2d 665, 678 (1976)). The defendant's absence at any stage of his trial is harmless error if, beyond a reasonable doubt, the violation was not prejudicial to the defendant. *Id.* at 346, 722 A.2d 69 (citing *Noble v. State*, 293 Md. 549, 559, 446 A.2d 844, 848 (1982)).

Furthermore, when the State will be the beneficiary of the error, the State bears the burden of showing that the error was not prejudicial to the defendant. *Id.* at 354, 722 A.2d 72 (citing *Dorsey*, 276 Md. at 658, 350 A.2d at 678).

To reverse a conviction, the court noted, a defendant does not need to show injury-in-fact. *Id.* at 348-49, 722 A.2d 70. Thus, “if the record is silent as to prejudice resulting from a violation of the defendant’s right to be present, an appellate court will not ‘speculate’ as to harm; instead prejudice will be presumed, and the conviction will be reversed.” *Id.* at 349, 722 A.2d 70 (quoting *Noble*, 293 Md. at 560, 446 A.2d at 849). Conversely, the court continued, a conviction will be sustained “if the record affirmatively shows that the denial of the right to be present at a stage of a criminal trial did not prejudice the defendant.” *Id.* at 350, 722 A.2d 70 (citing *Noble*, 293 Md. at 563, 446 A.2d at 851).

An example of where the record did not show prejudice to the defendant was in *Noble v. State*, in which the court held that a defendant was not prejudiced by his absence at a voir dire bench conference between the judge and the prospective juror at which the judge excused the prospective juror for bias. *Id.* at 347-48, 722 A.2d 69. The court in *Noble* reasoned that the defendant was not harmed by his absence at the bench conference, because the court’s ruling was favorable to the defendant. *Id.* at 348, 722 A.2d 69.

In reaching its holding, the court further relied on its previous

ruling concerning ex parte communications that constitute harmless error. In *Midgett v. State*, 216 Md. 26, 139 A.2d 209 (1958), a case analogous to *Taylor*, the court reversed the defendant’s conviction and held that the defendant’s right to be present was violated when the judge responded to questions from the jury in the defendant’s absence. *Id.* at 350, 722 A.2d 70-71 (citing *Midgett*, 216 Md. at 36-37, 139 A.2d at 214).

In the case at bar, the court concluded that Taylor was deprived of her right to be present during a stage of the trial and that the State failed to prove that Taylor was not prejudiced by her absence during the court’s communication with the jury. *Id.* at 354, 722 A.2d 72-73. The State did not meet its burden by simply noting the correctness in the trial court’s response to the jury. *Id.* at 354, 722 A.2d 73. Applying *Noble*, the court reasoned that prejudice was presumed because the record was silent regarding the violation of the defendant’s right to be present. *Id.* at 355, 722 A.2d 73.

In *Taylor v. State*, the court’s holding is unambiguous in requiring that trial courts either follow procedure or make a clear showing on the record that the defendant is not prejudiced by a violation of his or her rights. The court also established that in order to rebut a presumption of prejudice, there must be more than a mere showing that the court’s supplemental jury instructions were substantively accurate.

The court sends a clear message that the Rules are compulsory and that

the judge’s motives and intentions will not be considered if the Rules are violated; rather, the record must show that the defendant was not prejudiced by the violation.

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