

Juror's Grandmother Dies, Juror Tells Chambers, COSA Reverses

In an opinion filed yesterday, the Court of Special Appeals reversed a defendant's murder conviction and remanded the case for a new trial. At the heart of the court's decision was a concern about ex parte communications that occur between judges, chambers staff, and jurors. The opinion in *Harris v. State*, No. 581, September Term, 2008 (Filed November 30, 2009) is available [here](#).

The defendant was convicted of second-degree depraved heart murder in the Circuit Court for Baltimore County. From the earliest stages of the trial, one of the jurors made clear to the court that he potentially had family issues that might impair the juror's ability to serve. (The juror's grandmother was seriously ill, and the juror suspected that she might die.) "We do not know whether the juror whose grandmother died or other jurors failed to deliberate properly or rushed to reach a verdict."

At the close of the trial, and once the jury began deliberating, a note was sent to the court. The note indicated a juror's request to be excused from further deliberations so that the juror might assist with family funeral preparations. It said: "If you can exchange me for an alternate jury member without disrupting anything, that will be great. If it is a big deal, please discuss with me."

On the record, the court explained that the judge's secretary had been contacted by this juror before the jury began deliberations. She asked if the juror was all right to continue deliberating, and the juror answered that he was. Counsel was not alerted to this communication until after it had occurred, and after deliberations had begun and the alternate jurors were discharged.

Maryland Rule 4-326 provides that a court must notify the defendant and the State's Attorney's office of the receipt of any communication from the jury pertaining the action at hand before responding to the communication. In *Harris*, the court found that the trial court's failure to notify the parties of the communication before responding to it amounted to reversible error. If the court had alerted the parties of the communication, it would have provided the parties with an opportunity to help the court determine whether the juror would be able to exercise his duties in deliberating).

The court noted that "courts should err on the side of caution when dealing with jury communications." The court also decided that, although the juror's communication with the secretary related only to a family funeral (and not to the substance of the case), the communication was did pertain to the case: "In determining whether a communication is a ministerial matter, the best practice is for the trial court to confer with counsel for both sides and, if there is any doubt, to err on the side of concluding that it is not."

The court was especially troubled that the secretary's communication was ex parte, "thus disturbing the integrity of the record and preventing us and appellant from scrutinizing effectively the improper communications on appeal." This, coupled with defense counsel's assertion to the trial court on the record that, had the communication been disclosed before the alternates were discharged, she would have requested the juror be replaced with an alternate, persuaded the court to conclude that the trial court's error was not harmless.

Posted by [Brennan Sullivan and McKenna](#)