Circuit Court for Dorchester County
Case No. 09-K-15-015749

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 01832

September Term, 2016

JERRY MURAT

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Meredith,
Arthur,

JJ.

Opinion by Meredith, J.

Filed: September 18, 2017

This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

At the conclusion of a jury trial in the Circuit Court for Dorchester County, Jerry Murat, appellant, was convicted of possession of cocaine with intent to distribute, possession of ethylone with intent to distribute, possession of fentanyl with intent to distribute, possession of a controlled dangerous substance not marijuana (cocaine) with intent to distribute, possession of a controlled dangerous substance not marijuana (ethylone) with intent to distribute, possession of a controlled dangerous substance not marijuana (fentanyl) with intent to distribute, and possession of controlled dangerous substance paraphernalia (scale). After sentencing, Murat noted a timely appeal and presents us with the following four questions for our review:

1. Did the trial court err in restricting the examination of a critical defense witness?

2. Did the trial court err in denying [Murat's] motion for judgment of acquittal, and was the evidence insufficient to support [Murat's] convictions?

3. Did the trial court err in permitting a witness to repeatedly testify as to hearsay?

4. Did the trial court err in sending the jury out to begin deliberations at 8:08 p.m. rather than commencing deliberations the next day?

Because we perceive no reversible error, we will affirm.

Facts and Procedural History

There was evidence at trial of the following. On June 26, 2015, Deputy Dayton, a member of the Dorchester County Sheriff's Department assigned to the Fugitive Task Force with the U.S. Marshals, was searching for Murat in order to serve an arrest warrant issued in connection with an unrelated case. After seeing Murat's vehicle traveling on

Galestown Newhart Mill Road in the vicinity of Eldorado, Maryland, Deputy Dayton, and a "convoy" of law enforcement vehicles, followed Murat closely by vehicle. Upon witnessing Murat park his vehicle at the side of the road, Deputy Dayton stopped his unmarked vehicle approximately 250 yards from where Murat parked.

Through binoculars, Deputy Dayton observed Murat remove a white and "multi colored towel" from his trunk, carry it with both hands over to the edge of a ditch near where the "wood line" began, and return to his car without the towel in hand. At this point, officers converged on Murat, and arrested him near the rear of his car. During a search incident to the arrest, officers found a clear bag containing 8.29 grams of what was later determined to be fentanyl in Murat's front pocket. On the front passenger-side seat of Murat's car, officers observed, and seized, $1,006 in cash and a digital scale.

Senior Trooper Jay Marshall, an officer with the Drug Task Force, Maryland State Police, returned to the scene nearly an hour and a half later after Deputy Dayton noticed the towel in a hollowed-out tire along the wood line where Murat parked his vehicle. In this tire, and under the towel, Trooper Marshall located a green Mason jar filled with a number of suspected controlled dangerous substances ("CDS"). Although forensic testing indicated that at least 90 percent of the pills tested contained no CDS, officers found numerous other drugs within the Mason jar. Five bags contained 416 ethylone tablets and three bags contained 13.36 grams of powdered ethylone. Eleven bags contained a total of ~60 grams of cocaine. Additional facts relevant to this appeal are discussed in greater detail below.

Discussion

In his brief, Murat contends that the trial court erred in restricting the examination of Murat's defense witness, in denying his motion for judgment of acquittal based upon insufficiency of the evidence, in permitting a witness called by the State to "repeatedly testify as to hearsay," and in sending the jury out to commence deliberations "at 8:08 p.m. rather than commencing deliberations the next day."

I. Restricting the examination of a defense witness.

During the prosecution's case-in-chief, the State asked Detective James McDaniel, the State's expert on drug distribution, if he had an opinion as to whether the circumstances of Murat's possession of the drugs were indicative of an intent to distribute. Detective McDaniel testified as follows:

> [BY THE STATE]
> Q: So based on your training, knowledge and experience starting with the cocaine based on the amount of cocaine, based on the testimony that you have heard today, based upon the amount currently seized, based upon the digital scale is it your expert opinion today that the amount of cocaine considering all the circumstances is consistent with possession with intent to distribute?
>
> [McDaniel]: That is correct. With the amount of cocaine, the amount suspected Fentanyl, MDMA, bath salts, U.S. currency, electronic scale far, far exceeds someone that's just a user of drugs and it's consistent with distribution or possession with intent.

Murat asserts on appeal that he attempted to rebut the above testimony by offering evidence that the drugs were for his personal use. During Murat's case-in-chief, Murat called his sister, Norka Murat, to the stand. The transcript reflects that the bulk of her

testimony related to the cash found in Murat's vehicle. But she was also asked the following question:

> [BY DEFENSE COUNSEL]
> Q: Did you have any personal knowledge of your brother experiencing any problems with drugs?
>
> [BY THE STATE]: Objection.
>
> [BY THE COURT]: Sustained.

Murat failed to proffer the substance of the testimony he hoped to elicit from his sister. But Murat now contends that the trial court erred in sustaining the State's objection, and, he argues the answer would have been relevant to his defense. Murat asserts: "[W]here a defendant seeks to introduce evidence in support of his defense, the trial court's discretion is significantly limited, and such evidence should only be excluded for a compelling reason." The State, on the other hand, argues that the issue was not preserved for appellate review because Murat "made no proffer of what the anticipated substance or relevance of the excluded testimony would have been . . . ."

We agree with the State, and conclude that the argument Murat makes on appeal was not preserved for appellate review. Maryland Rule 5-103(a)(2) provides:

> (a) Effect of Erroneous Ruling. Error may not be predicated upon a ruling that admits or excludes evidence unless the party is prejudiced by the ruling, and
>
> * * *
>
> (2) Offer of Proof. In case the ruling is one excluding evidence, **the substance of the evidence was made known to the court by offer on the record or was apparent from the context within which the evidence was offered.** The court may direct the making of an offer in question and answer form.

(Emphasis added.)

In *Muhammad v. State*, 177 Md. App. 188, 281, *cert denied*, 403 Md. 614 (2008), this Court commented on the requirement for a proffer:

> A claim that the exclusion of evidence constitutes reversible error is generally not preserved for appellate review absent a formal proffer of the contents and materiality of the excluded testimony. Maryland Rule 5-103(a)(2); *Merzbacher v. State,* 346 Md. 391, 416, 697 A.2d 432 (1997) (objection to exclusion of evidence unpreserved where appellate court is in no position to discern what the evidence may have been); *Ratchford v. State,* 141 Md. App. 354, 368, 785 A.2d 826 (2001), *cert. denied,* 368 Md. 241, 792 A.2d 1178 (2002) (failure to proffer contents of excluded testimony is "absolutely foreclosing" as to claims).

In this case, Murat made no proffer at trial. He now proffers, for the first time on appeal, that his question to Norka Murat sought to establish that he had a personal drug habit, and, he now argues that that information is relevant because it would establish a defense to possession *with intent to distribute*. Murat further asserts in his reply brief that the "anticipated answer to his question is obvious." We do not agree that the substance of the anticipated answer was obvious from the question. Even if we assume that the answer to the specific question asked was "yes," that response would have added nothing to Murat's defense, and we would have to speculate what, if any, follow-up questions were planned. As a result, we agree with the State's assertion that Murat failed to preserve this issue for our review because, as the State argues, "[a]n open-ended question, followed by a general objection which is resolved by a one-word ruling produces too sparse a record to allow for any meaningful review of that ruling on appeal."

II. Denial of Murat's Motions for Judgment of Acquittal.

Murat next contends that the trial court erred in denying his motion for judgment of acquittal because, he contends, the evidence is insufficient to support his convictions. During trial, Murat made two motions for judgment of acquittal. The trial court denied Murat's first motion made at the close of the State's case. Murat renewed his motion at the close of all evidence, submitting on his prior argument. The trial court also denied Murat's second motion.

Although Murat does not dispute that he possessed the seized fentanyl, Murat contends that the trial court lacked sufficient evidence to convict him of possession *with intent to distribute* the fentanyl. Murat first argues that the evidence of intent to distribute is lacking, both because "no drug user wants fentanyl," and because the fentanyl was all contained within a single bag. Murat also challenges the trial court's denial of his motion for judgment of acquittal with regard to the charges of possession with intent to distribute both the ethylone and the cocaine. Murat argues that the evidence of possession of those drugs was insufficient because officers located each in a Mason jar underneath the towel in a tire by the side of the road, and not in Murat's vehicle or on his person. Murat concedes, however, that if the jury determined that he possessed the ethylone and cocaine, the circumstances "would indeed be sufficient . . . for a distribution charge" as to those two drugs.

The State first contends that Murat waived his right to make arguments as to the desirability of fentanyl to users because Murat failed to make this argument in support of

either motion at trial. Furthermore, the State urges us to rule that the circumstantial evidence surrounding the seizure of drugs from the Mason jar is sufficient evidence of possession to support the trial court's decision to deny Murat's motion for judgment of acquittal.

The standard for our review of the sufficiency of the evidence is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). This deferential standard of review requires us to "review the evidence in the light most favorable to the State, giving due regard to the trial court's finding of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses." *State v. Albrecht*, 336 Md. 475, 478 (1994) (internal citations omitted). We recognize "that 'it is not the function or duty of the appellate court to undertake a review of the record that would amount to, in essence, a retrial of the case.'" *McDonald v. State*, 347 Md. 452, 474 (1995) (quoting *State v. Albrecht*, 336 Md. 475, 478 (1994)). This standard applies uniformly among all categories of criminal cases, including in cases decided, either in whole or in part, on circumstantial evidence. *Smith v. State*, 415 Md. 174, 185 (2010).

a. The fentanyl conviction.

At the close of the State's case, Murat made the following argument in support of his motion for judgment of acquittal on the fentanyl charge:

> [BY DEFENSE COUNSEL]: I'd make a motion for judgment of acquittal as to the charges in particular possession with intent to distribute Fentanyl

> being wrapped not packaged as typical small scale sales. And the mere fact of a thousand dollars and the presence of the Defendant would not add up to being a distribution . . . .

That was the full extent of the argument made at trial with regard to the fentanyl. The trial court denied the motion. At the close of all evidence, Murat simply renewed the motion, without adding any particularity to his initial argument, noting: "I wish to renew my motion for judgment of acquittal. Submit on my prior argument, Your Honor."

On appeal, Murat focuses nearly exclusively on a new argument, which he failed to raise during trial. Murat now contends that no user desires to purchase fentanyl because it is a cutting agent used to "dilute . . . heroin, thereby increasing the profit" to the drug dealer. As a result, he asserts, there could be no intent to distribute a product for which there is no demand. Murat argues: "The possession of fentanyl might be used to show an intent to distribute *heroin*, but the State failed to prove that there was an intent to distribute the *fentanyl*." (Emphasis added.)

Maryland Rule 4-324 provides, in pertinent part:

> A defendant may move for judgment of acquittal on one or more counts, or on one or more degrees of an offense which by law is divided into degrees, at the close of the evidence offered by the State and, in a jury trial, at the close of all the evidence. **The defendant shall state with particularity all reasons why the motion should be granted**.

(Emphasis added.)

A number of appellate opinions in this State highlight the requirement that evidentiary deficiencies be stated "with particularity" at the trial court level in order to preserve challenges to the sufficiency of the evidence on appeal. "A defendant may not

argue in the trial court that the evidence was insufficient for one reason, then urge a different reason for the insufficiency on appeal in challenging the denial of a motion for judgment of acquittal." *Tetso v. State*, 205 Md. App. 334, 384, *cert denied*, 428 Md. 545 (2012).

In *Hobby v. State*, 436 Md. 526, 539-40 (2014), the Court of Appeals noted:

> Maryland Rule 4-324(a), concerning motions for judgment of acquittal, provides, in pertinent part: "The defendant shall state with particularity all reasons why the motion should be granted." **"Under [Maryland] Rule 4-324(a), a defendant is . . . required to argue precisely the ways in which the evidence should be found wanting and the particular elements of the crime as to which the evidence is deficient."** *Montgomery v. State,* 206 Md. App. 357, 385, 47 A.3d 1140, 1157, *cert. denied,* 429 Md. 83, 54 A.3d 761 (2012) (alteration and omission in original) (internal quotation marks omitted) (quoting *Fraidin v. State,* 85 Md. App. 231, 244-45, 583 A.2d 1065, 1072, *cert. denied,* 322 Md. 614, 589 A.2d 57 (1991)). And, "[t]he language of the rule **is mandatory**." *State v. Lyles,* 308 Md. 129, 135, 517 A.2d 761, 764 (1986).

(Emphasis added.)

We decline to consider Murat's argument as to the undesirability of fentanyl to users. As is clear from the record, Murat failed to make this particular argument in support of his motions at trial. Consequently, we agree with the State that he has not preserved this issue for our review.[1]

[1] Even if the argument had been preserved, it would have no merit in light of the testimony given at trial. Detective McDaniel testified that fentanyl is "an unwanted cutting agent that's put in heroin **by those involved in distribution**." (Emphasis added.) Murat makes a self-contradicting argument: "There could be no intent to distribute a substance that is used as a cutting agent . . . ." We disagree. Deputy McDaniel's testimony indicated that a cutting agent would be used by someone who intended to sell the drugs with which the cutting agent had been combined in the hope of increasing continued…

Murat does, however, raise one preserved argument with regard to his motion for judgment of acquittal on the fentanyl charge. On appeal, Murat again argues that the evidence was legally insufficient to prove intent to distribute because "[t]he fentanyl was not packaged for individual distribution. It was all together in one bag."

Even though the fentanyl was not subdivided into individual packages for sale, the evidence regarding the unusually large quantity was sufficient to support a finding that it was not all for personal consumption. Detective McDaniel testified that the amount of fentanyl found in Murat's pocket was "the most Fentanyl I've ever seen through my law enforcement career without a doubt." Chemist Jessica Taylor also testified that this "was actually the largest amount of Fentanyl I've ever had." Fentanyl itself is not a drug commonly used on its own. The drug is, according to Detective McDaniel, a "cutting agent that's put in heroin by those involved in distribution."

The trial court denied Murat's motion for judgment, and made the following observations:

> [BY THE COURT]: At the time [Murat] was arrested he was searched incident to that arrest a bag of substance was pulled out of his pocket. It was **later identified by both the chemist and the expert Deputy McDaniel to be the largest amount of Fentanyl they'd ever seen. There was a scale seized with money on the scale. Literally he had money,**

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continued…
profits. And the quantity in Murat's possession far exceeded any personal need. If anything, Murat's possession of a large amount of a cutting agent used solely in drug distribution provides *further* support for the trial court's denial of Murat's motion on this charge. The State correctly indicates: "An intent to distribute a mixture comprised of two controlled dangerous substances is *ipso facto* an intent to distribute both of the constituent ingredients, not merely the ingredient that is advertised."

> **scale, Fentanyl all within the control of the Defendant**. . . . And there is enough evidence before the jury that I believe reasonable they could find it was possessed for purposes other than for personal use.

(Emphasis added.)

Viewing the evidence in the light most favorable to the State, we conclude that the trial court did not err in denying Murat's motion for judgment of acquittal as to the intent to distribute fentanyl. A "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson*, *supra*, 443 U.S. at 319.

b. The drugs found in the Mason jar.

We also agree with the trial court that the evidence was sufficient to support Murat's conviction of possession with intent to distribute the ethylone and cocaine found in the Mason jar under the towel, which officers located in a tire along the wood line where Murat parked. At trial, Murat made the following argument in support of his motion for judgment of acquittal as to these possession charges:

> [BY DEFENSE COUNSEL]: I'd make a motion for judgment of acquittal as to the charges in particular . . . . the other items . . . taken together from the glass jar would indeed be sufficient even at this point or any point for a distribution charge, however, I believe the state has failed to prove that the defendant was ever in possession of those particular drugs.
>
> Murat did not support this contention with a specific argument.
>
> In denying Murat's motion, the trial court explained:
>
> [BY THE COURT]: Now, with respect to the items in the bushy area, . . . we have testimony that from Deputy Dayton that he saw the Defendant to go to that general area, leave this – these [sic] items that were identified or marked by the brightly colored . . . towel. That he – that no one else approached the area until he did after the narcotic task force had come and left with the Fentanyl. . . . The Narcotic Task Force was called, came back

> and the contents of the jar were found which contained over four hundred pills of Ethylone . . . as well as cocaine. All that is in such a quantity in sort of bulk packaging that when taken together with the money . . . and the scale . . . appeared to be consistent with possessing this substance for sale.

Deputy Dayton testified that, through binoculars, he observed Murat "carry[] a towel in both hands" from the trunk of his car to the wood line. "It wasn't as though he had grabbed it like you are in your bathroom . . . . It was in both hands." Officers located the Mason jar underneath the distinctive towel Murat carried to the wood line. That evidence was sufficient to support a finding that Murat was in possession of the drugs in the Mason jar.

c. Murat is not entitled to plain error review of his unpreserved arguments.

Finally, Murat requests that we review for plain error any of his arguments deemed unpreserved relative to sufficiency of the evidence. To the extent that we hold Murat's above arguments on the issue of sufficiency to be unpreserved pursuant to Rule 8-131(a), the circumstances do not require our exercise of discretion to apply the plain error exception to this Rule. "[Plain error] review is reserved for those errors that are 'compelling, extraordinary, exceptional or fundamental to assure the defendant of [a] fair trial.'" *Robinson v. State*, 410 Md. 91, 111 (2009) (citing *Rubin v. State*, 325 Md. 552, 588 (1992)). The failure of the trial court to consider *sua sponte* the evidentiary argument Murat failed to articulate at trial does not fall within the category of error that we would find deserving of plain error review.

III. Permission of a witness to testify as to hearsay.

Murat next contends that the trial court erred by "repeatedly" allowing Trooper Marshall to testify as to hearsay. The following transpired during Trooper Marshall's testimony:

> [BY THE STATE]
> Q. Okay. At that point did Trooper Smith give you any items that he had located at the scene?
>
> [MARSHALL]: Yes. When I got there I contacted Trooper Smith. Trooper Smith advised that he had located a – it looked like --
>
> [DEFENSE]: Objection to what Trooper Smith advised.
>
> [BY THE COURT]: Sustained.
>
> [MARSHALL]: Okay. He handed me a clear plastic baggy of suspected crack cocaine. Said it was located on the Murat subject –
>
> [DEFENSE: Objection.
>
> [THE COURT]: Grounds?
>
> [DEFENSE]: I'm sorry, Your Honor. It is the same hearsay.
>
> [THE COURT]: He handed you said –
>
> [DEFENSE]: No, no, no. After he said he handed it to him then he said he told me.
>
> [THE COURT]: Okay. Just don't tell what he told you.
>
> [MARSHALL]: Okay. I got to know where it came from.
>
> [THE STATE]: Okay. But he did advise you where it came from?
>
> [MARSHALL]: Yes, he did. And then he pointed into the passenger seat of the vehicle [and] said there are some other items which I saw and identified as a digital scale and some U.S. currency[.]

Murat did not object to the last of Trooper Marshall's answers above. Murat now contends that Trooper Marshall's testimony referring to "where certain evidence was found constitute[s] rank hearsay, as it was offered to prove that Mr. Murat possessed drugs." Permitting this testimony, Murat argues, was an abuse of the trial court's discretion. Accordant to Murat: "The trial court further erred in failing to enforce its ruling by stating that the second objection was sustained. It also erred by failing to instruct the State not to ask for hearsay, or strike the testimony . . . ."

The State contends that, by failing to object to Trooper Marshall's subsequent answers following Murat's initial two objections, Murat failed to preserve this issue for appellate review. Alternatively, the State argues that any error with regard to the admission of this testimony should be considered harmless because "its content was directly cumulative with the earlier testimony of Corporal Smith, to the point of being redundant."

We agree with the State that Murat failed to preserve this issue for our review as a result of his failure to object to when the State asked Trooper Marshall if Trooper Smith "advise[d] you where it came from." Nor did defense counsel move to strike the testimony after Trooper Marshall testified about what the other officer said. Maryland Rule 8-131(a) states: "Ordinarily, the appellate court will not decide any other issue [*i.e.*, other than jurisdiction] unless it plainly appears by the record to have been raised in or decided by the trial court." In order to preserve an objection to the admission of evidence, a party is required to object "at the time the evidence is offered . . . .

[o]therwise, the objection is waived." Maryland Rule 4-323. "[I]t is fundamental that a party opposing the admission of evidence must object at the time that evidence is offered . . . . This also requires the party opposing the admission of evidence to object each time the evidence is offered . . . ." *Klauenberg v. State*, 355 Md. 528, 545 (1999). *See also Lohss v. State*, 272 Md. 113, 119 (1974) ("[W]hen a party has the option of objecting, his failure to do so while it is within the power of the trial court to correct the error is regarded as a waiver estopping him from obtaining a review of the point or question on appeal."); Maryland Rule 5-103(a)(1) (requiring objection or a motion to strike).

In the present case, Murat objected to two of Trooper Marshall's hearsay statements. The trial court sustained the first objection. Murat again objected to Trooper Marshall's next answer, and the trial court effectively sustained the objection by instructing the witness not to say what he had been told. In response to the third question in the sequence, Trooper Marshall testified that Corporal Smith "pointed into the passenger seat of the vehicle [and] said there [were] some other items which I saw and identified as a digital scale and some U.S. currency[.]" By failing to object to the testimony at this point, Murat waived his right to obtain review of this issue on appeal.

In the alternative, we also agree with the State's argument that, even if Murat had preserved this issue, any resulting error was harmless. Similar testimony had come in without objection before Trooper Marshall made the statement about the items found in the vehicle. Corporal Smith, who took the stand immediately prior to Trooper Marshall,

testified as follows regarding where he located the drugs, currency, and scale during his search of Murat and his vehicle:

> [THE STATE]: Okay. Did you search Mr. Murat at that time?
>
> [SMITH]: That's correct. Mr. Murat was searched incident to arrest. And in his left front pants pocket I pulled out a clear plastic baggy that had a white powdery substance inside the bag.
>
> [THE STATE]: Okay. Did you look into his vehicle at all?
>
> [SMITH]: Yes. At one point when we were standing with Mr. Murat[, I] looked into the vehicle to see what he was doing. And I observed on the front seat of the vehicle a large amount of cash and like I believe it was a black digital scale.

Murat made no objection to Corporal Smith's testimony on this point. Because Trooper Marshall's testimony is cumulative in this respect, we are persuaded that Trooper Marshall's un-objected to testimony on this point "in no way influenced the verdict . . . ." *Dorsey*, *supra*, 276 Md. at 659. Therefore, even if there were no preservation issue, we would conclude that any resulting error in admitting the testimony was harmless.

IV. Sending the jury for deliberations at 8:08 p.m. rather than commencing deliberations on the next day.

At the end of the first day of trial, for which the jury reported at 2:00 p.m., the trial judge sent the jury out to begin deliberations at 8:08 p.m. The jury returned a verdict at 9:31 p.m. on the same night. Murat contends that the trial court erred in requiring the jury to commence deliberations at 8:08 p.m., although he concedes that he failed to raise any objection on this issue during trial. In support of this argument, Murat notes that,

during *voir dire*, the trial court stated: "This case is a one day trial . . . once we start it we've got to finish it." Murat contends that there is no Maryland Rule or applicable case law requiring same day completion of the trial, and he urges us to find that, because the trial court "forced [the jury] to deliberate late at night," the jury's verdict was "coerced." The State responds that Murat failed to object to this action by the trial court, and argues that this issue has not been preserved.

Murat concedes his failure to timely object at trial, but he requests, in the alternative, that we review this issue on "plain error" grounds. Murat notes that there is "no reason why the jury could not commence deliberations the next day," and argues that this error "affected [his] substantial rights, as it is a fundamental right to have the jury not be forced to deliberate late at night where the verdict is coerced so the jury can go home." According to Murat, the trial court's "failure to commence deliberations the next day violated the requirements of fairness and integrity of the trial."

We perceive no error. First, this argument is unpreserved because it was never brought to the attention of the trial court. *See* Maryland Rule 8-131(a), quoted above. In *Zellinger v. CRC Dev. Corp.*, 281 Md. 614, 620 (1977), the Court of Appeals summarized the parameters of this Rule, holding that a "contention not raised below either in the pleadings or in the evidence and not directly passed upon by the trial court is not preserved for appellate review." The Court of Appeals has also recognized: "This rule [Rule 8-131(a)] and its predecessors have been applied to the failure of a defendant to raise constitutional rights in the trial court. . . ." *Taylor v. State*, 381 Md. 602, 615

(2004). Because Murat failed to object, in any manner, to the trial court's decision to send the jury out to begin deliberations at 8:08 p.m., Murat failed to preserve this issue for our review.

Furthermore, a trial judge's decision to commence jury deliberations at 8:08 p.m., in the absence of any concern raised by counsel or jurors, is a matter that falls within a trial judge's discretion, and not a ruling we would consider for plain error review. Despite beginning deliberations at 8:08 p.m., the jury deliberated for nearly an hour and a half prior to rendering a verdict. We perceive no reason to engage in plain error review of the manner in which the trial judge managed jury deliberations.

JUDGMENTS OF THE CIRCUIT COURT FOR DORCHESTER COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.