

Circuit Court for Baltimore City  
Case No. 123118036

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 1695

September Term, 2024

---

VICTOR JIMENEZ MORENO

v.

STATE OF MARYLAND

---

Berger,  
Kehoe, S.,  
Hotten, Michele D.  
(Senior Judge, Specially Assigned),

JJ.

---

Opinion by Kehoe, J.

---

Filed: June 17, 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 persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

Appellant, Victor Jimenez Moreno (“Mr. Moreno”), was convicted, following a jury trial in the Circuit Court for Baltimore City, of one count of sexual abuse of A.B.,<sup>1</sup> a minor child. After A.B. became emotional and experienced a panic attack during her initial testimony on the stand in the courtroom, the trial court, Hon. Althea M. Handy presiding, determined that A.B. would testify from Chambers via Zoom.<sup>2</sup> Thereafter, A.B. testified from Chambers, accompanied by defense counsel, a certified language interpreter, the prosecutor and a social worker. Mr. Moreno, the trial judge and the jury remained in the courtroom and viewed A.B.’s testimony contemporaneously.

On appeal, Mr. Moreno does not challenge the trial court’s determination that further testimony by A.B. in the presence of Mr. Moreno would result in A.B. suffering serious emotional distress such that she could not reasonably communicate.<sup>3</sup> Rather, Mr.

---

<sup>1</sup> In this opinion, we refer to the alleged victim using the initials A.B. in lieu of her name. *See* Md. Rule 8-125(b)(1). The initials are chosen at random and do not in any way resemble her name.

<sup>2</sup> Neither party took issue, now or on appeal, with the use of Zoom, an internet-based video conferencing platform, as opposed to closed circuit television as specified in the statute. *See generally* Md. Code Ann., Crim. Proc. (“CP”) § 11-303. Nevertheless, the record reflects that the court took care to comply with the statute’s mandate that “a court may not order the use of two-way closed circuit television or other procedure that would let a child victim see or hear a defendant . . . .” *See* CP § 11-303(g) (2002, 2018 Repl. Vol., 2024 Supp.). Although Zoom is typically used for contemporaneous two-way video conferencing, IT personnel assisted the court in removing A.B.’s ability to view Mr. Moreno while she testified (even through a small window in the corner of the laptop screen). Mr. Moreno’s ability to see and hear A.B. was protected, as A.B.’s testimony was simultaneously interpreted and projected on a television screen in the courtroom. As such, the Zoom platform functioned similarly to the one-way closed circuit television procedure at issue in *Maryland v. Craig*, 497 U.S. 836 (1990), discussed *infra*.

<sup>3</sup> Pursuant to CP § 11-303(b).

Moreno contends that the “resulting hearing was completely unreliable, riddled with technical snafus, inaudible testimony, and inaudible objections, to the point of depriving [him] of his constitutional confrontation right and his right to a fair trial.” Mr. Moreno raised this issue, among others, in a Motion for New Trial filed June 17, 2024—the October 16, 2024 denial of which is the subject of the instant appeal.

Mr. Moreno presents one question<sup>4</sup> for our review, which we have rephrased and separated into three questions, as follows:

1. Did Mr. Moreno preserve his right to challenge the reliability of A.B.’s Zoom testimony?
2. Did the cumulative effect of the technical difficulties that occurred during A.B.’s Zoom testimony fatally undermine the reliability thereby depriving Mr. Moreno of his right of confrontation under the Sixth Amendment to the United States Constitution?
3. Did the trial court abuse its discretion in denying Mr. Moreno’s Motion for New Trial?

For the reasons stated herein, we answer the first question in the affirmative and the second and third questions in the negative. We affirm the judgment of the Circuit Court for Baltimore City.

## **I. FACTUAL & PROCEDURAL BACKGROUND**

The facts underlying the sexual abuse of A.B. are irrelevant to our review. As such, we omit those sensitive details. In short, the allegations against Mr. Moreno stem from

---

<sup>4</sup> The question presented, as set forth in Mr. Moreno’s brief, is as follows: “Did the trial court err in denying Appellant’s Motion for New Trial?” The State rephrases the question, as set forth in its brief, as follows: “Did the trial court properly deny Mr. Moreno’s motion for new trial?”

A.B.'s accusation that Mr. Moreno sexually abused her on one occasion when she was five or six years old.<sup>5</sup> On May 3, 2023, Mr. Moreno was charged with nine counts related to the incident. On May 25, 2023, the matter was forwarded from the district court to the circuit court.

**A. Trial**

Trial began on Monday, June 3, 2024. A.B., eleven years old at the time, was the State's first witness. The prosecutor began by asking A.B. questions about her age, grade in school, and favorite activities, which she answered. When the prosecutor asked A.B. to explain what she is here to talk about, A.B. apparently looked at Mr. Moreno. The prosecutor observed that A.B. was tearful and started to breathe rapidly. At that point, A.B. did not answer the question, and asked to take a break. The trial judge paused the proceedings and instructed the jurors to retire to the jury room. The prosecutor informed the court that A.B. stated that she cannot take the stand, as she suffered a panic attack in the hallway. The court decided to stand in recess until Wednesday, June 5, 2024.

The next day, Tuesday, June 4, 2024, the State moved to have A.B.'s testimony taken by closed circuit television pursuant to CP § 11-303, which prompted the court to hold a brief hearing over Zoom to discuss the procedure for the following day, when the jury would be re-called. Although defense counsel opposed the State's motion to take

---

<sup>5</sup> A.B. is one of four children. Mr. Moreno, with whom A.B.'s mother is no longer romantically involved, is the father of two of A.B.'s half-siblings. According to A.B.'s mother, A.B. reported the incident to her mother later that day when she came home from work. Once Mr. Moreno moved out of their household in 2019, A.B. mentioned the incident to her mother again.

testimony by closed-circuit television, he noted that, should the court allow the testimony via closed circuit television, the defense has a “right of cross-examination.” The trial judge discussed the plan for the next day with the attorneys as follows:

THE COURT: I’m just trying to figure out how logistically [this] is going to work.

[PROSECUTOR]: Okay. The Judge, the jury and the Defendant remain in the courtroom.

THE COURT: So who’s in my Chambers?

[PROSECUTOR]: The victim, me, Defense Counsel, and then the support person for the victim, if she decides.

When trial resumed on Wednesday, June 5, 2024, the court stated its intention to “interview the alleged victim in this case to determine whether or not there is necessity in terms of allowing her to testify via the closed-circuit television, two-way closed-circuit television.”

The court explained:

THE COURT: [T]he reason that I’m interviewing her is to determine whether or not we should do the closed-circuit TV and, you know, whether there’s a necessity to do that [ . . . ] so make a specific finding that her testimony in the courtroom in the presence of the Defendant would result in her suffering serious emotional distress such that she could not reasonably [communicate].

I mean, that’s what occurred in my presence in the courtroom. Regardless, whatever the reason was, if it was because she was uncomfortable in the courtroom setting, whatever, *she, at some point, became unable to communicate*. And, so, that’s what I have to find.

You had mentioned about there being new cases about confrontation issues, et cetera. just, for example, there are several, but [ ] Spinks [v.] State, 252 Md. App. 604, that’s a 2021 case, it dealt with the testimony of a victim via – what was the original one called? *But Skype, and that didn’t violate the confrontation clause in a criminal case. So that’s not really an issue for us.*<sup>6</sup>

---

<sup>6</sup> Skype is another internet-based video conferencing platform.

(emphasis added). The trial judge proceeded to interview A.B. A few times during the interview, A.B. responded non-verbally by shaking her head. The trial judge asked A.B. if she would “try to use [her] words” as opposed to shaking her head. A.B. agreed.<sup>7</sup> After a brief discussion with A.B., and subsequent recess, the trial judge determined that A.B.’s testimony would be taken via Zoom from Chambers. In open court, the following colloquy ensued:

THE COURT: [. . .] Is there anything that you need to tell your client on the record, or have you had a chance to talk with him?

[DEFENSE COUNSEL]: We had a discussion off the record and I explained to him how we were going to proceed in a nutshell, that [A.B.] was going to testify via, I would say closed-circuit TV, but via Zoom from the Judge’s Chambers and he will be out here in the courtroom while that’s going on. I will be, as his attorney, inside Your Honor’s Chambers and asking questions on his behalf. He understands. I explained that to him.

THE COURT: Okay. And I’ll be in the courtroom with the jury and Mr. Moreno. Do you understand that, Mr. Moreno?

[MR. MORENO]: Yes.

THE COURT: Thank you. Okay. So right now we’re trying to get it set up and I’m trying to get into the Zoom meeting.

The court enlisted the assistance of information technology (“IT”) personnel to set up the Zoom meeting on a laptop in Chambers, which would audio- and video-record A.B. testifying, as shown on a television screen in the courtroom. At one point, IT personnel asked, “can we just do a quick test?” Following a test of the equipment, IT personnel stated “[t]hat sounds good” and “we have Zoom in Chambers, Zoom in the courtroom, we have

---

<sup>7</sup> Nevertheless, on many occasions, the transcript indicates a lack of response, inaudible and indiscernible answers from A.B.

the Polycom,<sup>[8]</sup> *we can hear everyone talking.*” (emphasis added). Further technical adjustments ensued:

THE COURT: So now we have to figure out where the monitor is going to go, the Polycom is going to be. Sit in the jury box and see if you can see that, please. [ . . . ] Can it come up any closer?

IT PERSONNEL: It’s got to be closer.

THE COURT: Don’t worry, Mr. Moreno, we’re going to get you closer, too. All right. I mean, the Alternates can move over some. Wait, wait, hold on. Take it back to where you just were, please. And thank you so much for doing this. [ . . . ] Mr. Moreno, can you move down so that you can see that. Where do you need to move to see that? Yes, is that where you need to sit to see it? [the prosecutor] will move her things down. *You can see well from there?*

DEFENDANT MORENO: *Yes.*

THE COURT: Okay. When we start the testimony, that’s where you will sit. Okay? Because the attorneys are going to be inside of my Chambers. All right.

IT PERSONNEL: Can you see?

THE COURT: I can see it on here, because I was thinking the same thing, but I can see it on here. Oh, I see [A.B.] sitting in there now. [A.B.] can you say something?

FEMALE VOICE: Say something. Can you talk with the Court.

[A.B.]: Yes.

THE COURT: Okay. Because you’re going to have to speak loudly. Okay?

[A.B.]: Hi.

THE COURT: *Okay. Thank you. That’s the only anticipation. Make sure that she speaks loudly so that the interpreters can hear her and, obviously, the jury can hear her.*

LAW CLERK: Okay.

THE COURT: All right. So that’s turned off. *Can everyone hear better now?*

INTERPRETER: *Yes, Your Honor.*

---

<sup>8</sup> Polycom is the trade name of the audio-visual system used for video conferences in courtrooms across Maryland.

THE COURT: Thank you for bringing that to my attention. So are we ready? Is there anything else that we need to do?

[DEFENSE COUNSEL]: *If she's not speaking loud enough, you're going to, like, probably tell us.*

THE COURT: *Yes.* You can hear me in there.

[DEFENSE COUNSEL]: All right.

(emphasis added). The court then explained the procedure to the jury:

THE COURT: [. . .] Members of the jury, we are going to be hearing the testimony of [A.B.] vis this closed-circuit TV. She is in my Chambers. There is a social worker who was sitting in the courtroom before is in there. She's going to be joined by the attorneys. And that's where she will be examined. I am going to remain on the bench. You will be looking at this via a screen. *Can everyone see that screen? Okay. And they're indicating everyone can see the screen.* So at this time, I am going to ask counsel to go into Chambers.

(emphasis added). As the direct examination of A.B. commenced, the interpreter for Mr.

Moreno interrupted:

INTERPRETER: I am having a little bit of trouble understanding what the witness is saying. It's like not picking up from my point of view.

THE COURT: I am, too. Can it be turned down or something?

INTERPRETER: I really don't know, Your Honor. I'm just listening to my voice at the same time, but I am hearing her, so it's kind of hard.

THE COURT: Okay. Can we try to fix that?

IT PERSONNEL: It's the counter, too. But I think it might be distorting because it's too loud.

THE COURT: Yeah. I thought it was too loud.

IT PERSONNEL: Oh, Your Honor, can I have the remote?

THE COURT: Oh, I'm sorry. Counsel, the audio is sort of distorted. So we're having it turned down to see if that helps.

IT PERSONNEL: Test that.

THE COURT: Could you please ask another question of the witness.

[PROSECUTOR]: Yes.

[PROSECUTOR]: [A.B.], where do you live?

[A.B.]: I live, like, me and my mom, by the school [. . .]

THE COURT: Can you turn it down a little bit more?

IT PERSONNEL: A little bit more.

\* \* \*

THE COURT: If the interpreter is in the room – can you come through and go in my Chambers for a moment please. Thank you. [. . .] Interpreter, can you please say something? Can you hear her, Mr. Moreno?

[MR. MORENO]: Only a little bit.

THE COURT: Are you responding to the interpreter? So can you hear her?

[MR. MORENO]: Yes.

THE COURT: You can hear her. I mean, she's moving around. Say something, interpreter, make sure he can hear you.

[MR. MORENO]: Yes.

THE COURT: Okay. Let's try it like this. Thank you. All right. [. . .]

The examination of A.B. continued as follows:

[PROSECUTOR]: So, [A.B.], do you promise to tell the truth today?

[A.B.]: Yes.

[PROSECUTOR]: So you promise to tell the whole truth today?

[A.B.]: Yes.

[PROSECUTOR]: *And do you promise to tell us nothing but the truth?*

[A.B.]: *Yes.*

[PROSECUTOR]: Now, tell me what you are here to talk about today.

[A.B.]: (Inaudible at 10:59:04).

[PROSECUTOR]: Okay. And who is Victor Moreno to you?

[A.B.]: A father.

[PROSECUTOR]: I need you to speak out.

[A.B.]: A father.

[PROSECUTOR]: And, so, you stated that he's a father to you?

[A.B.]: Yes.

[PROSECUTOR]: Okay. And what do you – do you call him father? What do you refer to him as?

[A.B.]: Victor.

[PROSECUTOR]: And how long have you known Victor?

THE COURT: Wait. Hold on for a minute, please, until the bells stop. The record doesn't pick up, believe it or not, when there's outside noise like that. Okay.

JUROR: *We couldn't hear what she said. What she said she referred to him as.*

THE COURT: All right. *Make sure that [A.B.] keeps her voice up, please.* And what does she refer to Victor Moreno as? Ask her that question again, please.

(emphasis added). The prosecutor repeated her question and asked A.B. to "speak up a little bit." After a few more questions and inaudible responses, the prosecutor reminded A.B. to "[g]o ahead and say it loudly." Shortly thereafter, the trial judge voiced another concern:

THE COURT: Look, [the jury] cannot hear her. They cannot understand her. The Deputy noticed that it's clearer when she's facing [IT personnel.]

[PROSECUTOR]: Yeah, she needs to be close to the microphone.

THE COURT: Where is the laptop? It needs to be closer to her. Can we try to do that?

IT PERSONNEL: I think so. If I may have a few minutes.

THE COURT: [. . .] Mr. Foreman, members of the jury, Madam Alternate, thank you so much for your patience. Would you please retire to the jury room. We're just going to see if we can make some technical adjustments. Thank you so much.

(The jury exited the courtroom at 11:06:50 a.m.)

The equipment was adjusted and tested again.<sup>9</sup> The jury returned and the examination of A.B. continued. When the trial judge could not understand A.B., and perceived that the jury could not hear her either, she interjected, and the following colloquy ensued:

[PROSECUTOR]: [. . .] [D]id you tell her what happened?

[A.B.]: Yes. And she got mad.

THE COURT: What did she say – excuse me. We didn’t understand the response, her last response. She what? Referring to her mother.

[A.B.]: She got mad.

THE COURT: I still didn’t understand. What did she say?

JURY: Mad.

THE COURT: Oh, they understood. That’s all that matters. Okay.

[PROSECUTOR]: So, go ahead and say it again.

[A.B.]: My mom got mad.

After a few more questions, the direct examination of A.B. concluded. On one occasion during A.B.’s testimony, defense counsel objected. The court sustained the objection.

Defense counsel began the cross-examination of A.B. At one point, the prosecutor objected, and defense counsel asked the court if he should rephrase the question. The court responded that it could not hear the prosecutor objecting, and instructed the prosecutor to “speak louder.” A.B. was subject to redirect examination as well as a re-cross-examination. A.B. was excused and trial proceeded. The State called three witnesses: A.B.’s mother, a social worker who conducted a forensic interview of A.B., and a Baltimore City Police

---

<sup>9</sup> The trial judge asked A.B. what her favorite color is, and after A.B.’s response, the trial judge remarked, “[i]t sounds much clearer now, I think.” IT personnel asked the court for permission to be excused, which the court politely declined, requesting that IT personnel stay and “wait to make sure [the equipment] is good[.]”

Department detective who investigated the allegations of sexual abuse. The State also played a portion of the video-recorded forensic interview. After the forensic interview, defense counsel declined to re-call A.B. to the stand for an additional cross-examination.<sup>10</sup>

At the close of the State's case-in-chief, defense counsel moved for judgment of acquittal. After discussion with the court, the State decided to proceed solely on count 1: child sex abuse,<sup>11</sup> and the court granted the defense's motion for judgment of acquittal as to the remaining counts. The defense called two witnesses: the former supervisor of the sex abuse division of Baltimore City Child Protective Services and Mr. Moreno's former wife. The court recessed.

Trial resumed the next day, Thursday, June 6, 2024. Mr. Moreno testified first and denied the allegations of sexual abuse. Then, Mr. Moreno's employer testified, stating that he found Mr. Moreno to be very honest. The defense renewed its motion for judgment of

---

<sup>10</sup> The following bench conference ensued prior to A.B.'s dismissal:

[DEFENSE COUNSEL]: I'm not going to call her. I'm not doing cross-examination so that's why.

[PROSECUTOR]: So you don't need [A.B.]?

[DEFENSE COUNSEL]: Right.

THE COURT: Are you sure?

[DEFENSE COUNSEL]: I think so, yeah.

<sup>11</sup> *See* Md. Code Ann., Crim. Law § 3-602(b)(1) ("A parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not cause sexual abuse to the minor."); *see also* Crim. Law § 3-602(a)(4)(i)–(ii) (defining "sexual abuse" as an act that involves sexual molestation or exploitation of a minor, whether physical injuries are sustained or not, including incest, rape, sexual offense in any degree, and any other sexual conduct that is a crime).

acquittal on the sole count, which the court denied. The court instructed the jury, the prosecutor and defense counsel gave closing arguments, and the jury retired to the jury room to deliberate. After deliberation, the jury found Mr. Moreno guilty of sexual abuse of A.B. The court postponed the disposition and sentencing until August 23, 2024, and stood in recess until that time.

**B. Motion for New Trial**

On June 17, 2024, Mr. Moreno filed a Motion for New Trial, arguing that the cumulative effect of the irregularities that occurred deprived Mr. Moreno of receiving a fair trial. Specifically, as it pertained to A.B.’s Zoom testimony, Mr. Moreno asserted the following errors:

- A) Victim testified by closed circuit (zoom) television rather than live in front of the jury.
- \* \* \*
- C) During victim’s testimony, it was apparent that the court was not able to hear the entirety of the testimony and/or objections interposed during the testimony. As a result, it is questionable that the jury was able to hear the entirety of the testimony.

The State filed an Answer to Defendant’s Request for New Trial on July 23, 2024, arguing that none of Mr. Moreno’s stated reasons for a new trial are sufficient, and that the burden of proof remains firmly on the defendant, citing *Jackson v. State*, 164 Md. App. 679, 686 (2005).

On August 23, 2024, Judge Handy presided over a hearing on the Motion for New Trial. Defense counsel argued that “the confluence of the unusual circumstance of the closed-circuit presentation of the victim’s live testimony before the jury” resulted in “an

objection [that] was not heard” and “another occasion where Your Honor had us come into the courtroom because you couldn’t hear and we had to adjust the system.” Defense further argued that, upon a review of the record, “[i]t appeared that the jury didn’t hear, because Your Honor didn’t hear, all of what had occurred in the live testimony.” Defense counsel concluded by requesting that, “if a new trial was granted . . . we would ensure that there’s a way for [it, such] that the jury understands and hears the cross-examination even if the victim ends up in the other room.” The State responded to defense counsel’s argument, arguing that “[c]ounsel is putting forth speculation as to what the jury did or did not hear.” The State further argued that “[c]ounsel’s arguments stem from when the State used the tools that are provided to us by law to allow this child to testify in closed-circuit.” Following arguments by counsel, the court noted that, “the question that I’m grappling with is that, is it in the interest of justice to grant a new trial in light of what occurred?” The court took the arguments under advisement and adjourned.

On September 20, 2024, the State filed a Supplemental Response to Defendant’s Motion for New Trial. Therein, the State averred that “Defense Counsel’s argument that the in-camera testimony was inaudible is inaccurate.” In its motion, the State pointed to the court’s finding that it “was a very attentive jury and when they couldn’t hear something, they made the court aware.” The State further argued that “[w]hen the in-camera testimony was occurring, [the court] stated how the jury couldn’t hear the victim’s testimony” in which the court responded by “sen[d]ing the jury to jury room to fix the audio issue of the jury not being able to hear the victim.”

On October 15, 2024, Mr. Moreno filed a Response to the Supplemental Answer to Defendant’s Motion for New Trial. Therein, Mr. Moreno argued that “the digital recording is an inaccurate record of what transpired specifically during the cross examination of the crucial state’s witness the child victim.” Mr. Moreno clarified that “[o]n no less than [two] occasions objections were not heard by the court.”

The parties returned to court on October 16, 2024 for a ruling on the Motion for New Trial:

THE COURT: All right. Thank you. So, I have considered all the papers filed in the case. As you know, the last time this was in, I advised you I wanted to review the testimony, I wanted to review some of the video I did want to make sure that I was making a right decision. Yes, we all wanted Mr. Moreno to have a fair trial. No trial is a perfect trial, we want a fair trial. And there were difficulties that came up during the trial. And, unfortunately, because of the age of the building and other issues, we really aren’t that well equipped for this in Chambers testimony. *But we kept working until we got it to a place where the jury could hear the testimony and observe the victim in Chambers testifying.*

As I said, they were a very attentive jury. They would write me a note in a minute or indicate they couldn’t hear and that’s why, eventually, I said, look, you know, with this echo, we’ve got to get them back down here and they have to clear that up. I am denying the Motion for New Trial. I do believe Mr. Victor Moreno had a fair trial. So the motion is denied.

On October 25, 2024, Mr. Moreno noted an appeal of the denial of the Motion for New Trial in a timely manner. The parties filed briefs to this Court.

Additional facts may be included in the discussion as they become relevant.

## **II. DISCUSSION**

The record reflects that the trial court was made aware of the potential implications of allowing A.B. to testify from Chambers via Zoom, such that the Confrontation Clause

issue is adequately preserved for our review. While Mr. Moreno claims that the reliability of A.B.'s Zoom testimony was fatally undermined in violation of his Sixth Amendment right to confront the witnesses testifying against him, as recognized in *Maryland v. Craig*, 497 U.S. 836 (1990), the heart of his argument is based upon remediated technical difficulties. A.B.'s testimony was given under oath, subject to cross-examination, and observable to the jury, such that reliability was adequately ensured. The trial judge, having been present in the courtroom with an engaged jury when the alleged error occurred, reasonably concluded that Mr. Moreno received a fair trial. Accordingly, we hold that the trial court did not abuse its discretion in denying Mr. Moreno's Motion for New Trial.

**A. Preservation and Waiver**

**1. Parties' Contentions**

In its brief, the State contends that the defense never complained during trial that the audio issues tainted the reliability of A.B.'s testimony, and thus, Mr. Moreno's challenge under the Confrontation Clause is unpreserved. The State next contends that "[d]efense counsel's silence at trial about the reliability of the victim's testimony, coupled with his later admission that he made strategic choices to proceed under the circumstances, constitutes waiver of Mr. Moreno's confrontation claim." Mr. Moreno declined to file a reply brief in which he could have addressed the preservation and waiver issues raised by the State in its brief.

## 2. Applicable Law

Maryland Rule 8-131(a) provides, in pertinent part: “Ordinarily, an appellate court will not decide any [ ] issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]” Md. Rule 8-131(a). The purpose of Rule 8-131(a) is “to ensure fairness for all parties in a case and to promote the orderly administration of law.” *State v. Bell*, 334 Md. 178, 189 (1994) (quoting *Brice v. State*, 254 Md. 655, 661 (1969)). Fairness and the orderly administration of justice is advanced “by ‘requiring counsel to bring the position of their client to the attention of the lower court at the trial so that the trial court can pass upon, and possibly correct any errors in the proceedings.’” *Bell*, 334 Md. at 189 (quoting *Clayman v. Prince George’s Cnty.*, 266 Md. 409, 416 (1972)).

That is to say, if the trial court made a *sua sponte* ruling on an issue that neither party raised, it is preserved. *See, e.g., Monarch Acad. Balt. Campus, Inc. v. Balt. City Bd. of Sch. Comm’rs*, 457 Md. 1, 58 (2017) (reviewing trial court’s *sua sponte* order staying case immediately, even though appellant “had no reason to offer, and did not offer, similar arguments against” the order before the trial court). “The broader principle underlying our preservation decisions focuses on whether the party objecting on appeal gave the circuit court a proper opportunity to avoid or resolve errors during the trial, not on hyper-technicalities.” *Smith v. State*, 218 Md. App. 689, 702 (2014).

“In the appellate setting, the general waiver rule holds that ‘a voluntary act of a party which is inconsistent with the assignment of errors on appeal normally precludes that party from obtaining appellate review.’” *Brockington v. Grimstead*, 176 Md. App. 327, 351

(2007) (quoting *Franzen v. Dubinok*, 290 Md. 65, 69 (1981)). “An effective waiver of a right extinguishes the waiving party’s ability to raise any claim of error based upon that right.” *Id.* at 355 (citing *U.S. v. Olano*, 507 U.S. 725, 733–34 (1993)).

### 3. Analysis

We first reject the State’s claim that Mr. Moreno failed to preserve his challenge to the reliability of A.B.’s Zoom testimony, which in Mr. Moreno’s view, fell short of the demands of the Confrontation Clause. Principally, we note, in Mr. Moreno’s Answer to State’s Motion to Take the Testimony of a Child Abuse Victim By Closed Circuit Television<sup>12</sup> filed amidst trial on June 4, 2024, Mr. Moreno did object to the use of closed circuit television. (“The defendant objects to the procedure outlined in the State’s Motion.”). In this case, as “neither the court nor a rule requires otherwise,” we conclude Mr. Moreno’s objection was “sufficient to preserve all grounds of objection which may exist,” including the reliability aspect of the testimony presented over Zoom. *See Boyd v. State*, 399 Md. 457, 475 (2007) (citing *Grier v. State*, 351 Md. 241, 250 (1998)).

Moreover, the record reflects that on June 5, 2024, the court relied upon *Spinks v. State*, 252 Md. App. 604, 614–15 (2021), to conclude that the use of Zoom, as a two-way video conferencing platform like Skype, would not violate the Confrontation Clause if used in a criminal case. (“But Skype, and that didn’t violate the confrontation clause in a criminal case. So that’s not really an issue for us.”). The issue was plainly “decided by the trial court[.]” *See* Md. Rule 8-131(a). When the court determined that the testimony, if

---

<sup>12</sup> Later substituted for Zoom. *See* note 2 *supra*.

provided from Chambers via Zoom, would not violate the Confrontation Clause—prior to the commencement of A.B.’s testimony—defense counsel had no reason to offer, and did not offer any similar argument pertaining to the “technical snafus” and “inaudible testimony” that had yet to occur. With respect to the technical issues that arose in the beginning of A.B.’s testimony, the record plainly shows that the trial court *did not* lack the opportunity to “pass upon, and possibly correct any errors in the proceedings.” *See Bell*, 334 Md. at 189. As we explain, the trial court had ample opportunity to—and indeed did—avoid and resolve technical issues implicating the reliability of A.B.’s testimony via Zoom. *See Smith*, 218 Md. App. at 702.

We further disagree with the State’s argument that Mr. Moreno waived his challenge to the reliability of the testimony for strategic purposes. Defense counsel, located in Chambers with A.B.—and therefore unable to perceive whether his client, the jury, and the court could fully hear and understand A.B.—reasonably relied on the court’s assurance that it would notify Chambers when A.B.’s testimony was inaudible:

[DEFENSE COUNSEL]: If she’s not speaking loud enough, you’re going to, like, probably tell us.

THE COURT: Yes. You can hear me in there.

[DEFENSE COUNSEL]: All right.

Despite this instruction, defense counsel did interject during redirect examination of A.B. and asked, “[d]id the Clerk get the answer?” The court responded, “[t]hat wasn’t necessary, [defense counsel]. I always let you know if we can’t hear her response.” Only after a review

of the digital transcript, could defense counsel fully understand the extent to which A.B.'s testimony was indiscernible.

As to Mr. Moreno's additional argument that the record reflects that "on at least one occasion" an objection by counsel was missed, we agree with the State that, if true, defense counsel should have prompted the court for a ruling. As such, we decline to address this argument, and instead focus our review on Mr. Moreno's preserved claim that the reliability of A.B.'s Zoom testimony was undermined by technical difficulties, resulting in testimony lost and an unfair trial.

**B. Confrontation Clause**

**1. Parties' Contentions**

Mr. Moreno contends that "the procedure followed by the court to ensure the reliability of the evidence, to preserve the essence of effective confrontation under these rare circumstances that justify a departure from the preferred face-to-face confrontation, was so rife with uncertainty and technological error that it fell far short of the assured standard of reliability established in *Craig*." Mr. Moreno maintains that "at several points throughout the examination, the judge, the jurors, and the interpreters could not hear or understand the testimony of A.B."

The State argues that the reliability of the testimony was ensured in every meaningful way: (1) the victim testified under oath; (2) the victim was examined about her duty to testify truthfully; (3) the victim was subject to thorough cross-examination, which occurred without any uncorrected audio issues; (4) and the jury was able to see the victim

and, thus, had the ability to assess her demeanor throughout her testimony. Furthermore, the State contends that the trial court acted promptly to resolve the audio issues early in the victim’s direct examination. The State notes that the court asked for clarification when uncertain about an answer, such that Mr. Moreno was not prejudiced.

## 2. Applicable Law

A court’s decision to permit a witness to testify remotely implicates a defendant’s constitutional right to confront witnesses. *See Spinks*, 252 Md. App. at 614–15. When determining whether that right has been violated, we conduct an “independent constitutional appraisal, by reviewing the law and applying it to the peculiar facts of the particular case.” *Id.* at 614.

The Sixth Amendment to the United States Constitution, applied to the states through the Fourteenth Amendment, guarantees that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . . .” U.S. CONST. amend. VI.<sup>13</sup> “The primary object” of this constitutional provision is to give “the

---

<sup>13</sup> *See also* Md. Decl. Rts., Art. 21 (“That in all criminal prosecutions, every man hath a right to be . . . confronted with the witnesses against him . . . .”). Our Supreme Court has previously declined to construe the Confrontation Clause of Article 21 differently from the Supreme Court’s construction of the Confrontation Clause of the Sixth Amendment. *See Craig v. State*, 322 Md. 418, 430 (1991); *see also Peterson v. State*, 444 Md. 105, 122 n.4 (2015) (quoting *Derr v. State*, 434 Md. 88, 103 (2013)) (“The two constitutional provisions are interpreted *in pari materia*—*i.e.*, to like effect.”). While our Supreme Court recently diverged from its history of reading Article 21 in lockstep with its federal counterpart, that case involved an interpretation of a different vein of Confrontation Clause jurisprudence, not implicated here. *See Leidig v. State*, 475 Md. 181, 234–41 (2021) (articulating a different standard under Article 21 as to whether a statement contained in a scientific report is “testimonial”).

accused . . . an opportunity, not only of testing the recollection and sifting the conscience of the witness, but of compelling him to stand face to face with the jury in order that they may look at him, and judge by his demeanor . . . whether he is worthy of belief.” *California v. Green*, 399 U.S. 149, 157–58 (1970) (quoting *Mattox v. U.S.*, 156 U.S. 237, 242–43 (1895)). But the Confrontation Clause does not “guarantee[ ] criminal defendants the absolute right to a face-to-face meeting [with] the witnesses against them at trial.” *Maryland v. Craig*, 497 U.S. 836, 844 (1990). Although the Confrontation Clause suggests a preference for physical, face-to-face confrontation, it is neither absolute nor “the *sine qua non* of the confrontation right.” *Craig*, 497 U.S. at 847.

“Essential elements of the right of confrontation include ‘physical presence, oath, cross-examination, and observation of demeanor by the trier of fact,’ because these enable a criminal defendant to challenge ‘the reliability of the evidence against [them] by subjecting it to rigorous testing in the context of an adversary proceeding before the trier of fact.’” *Spinks*, Md. App. at 615 (quoting *Craig*, 497 U.S. at 845–46); *see also Crawford*

---

In a single sentence in his brief, Mr. Moreno refers to Article 21, yet the record before the trial court contains no explicit mention of Article 21. *See* Appellant’s Br. at 12 (“In all criminal prosecutions in the State of Maryland, the Sixth Amendment to the Constitution of the United States . . . and Article 21 of the Maryland Declaration of Rights command that the accused shall enjoy the right to be confronted with the witnesses against the accused.”). Most cases discussed in Mr. Moreno’s brief, including *Craig*, *White* and *Spinks* as discussed in this opinion, refer to the right of confrontation that derives from the Sixth Amendment. While this Court briefly mentioned Article 21 in *Spinks*, we ultimately determined that the witness’s testimony transmitted through Skype in that case “comports with the Sixth Amendment[.]” *Id.* at 615, 620. As before, we limit our discussion and holding to the contours of the federal Confrontation Clause, as contained in the Sixth Amendment to the Constitution of the United States, and do not address Article 21 of the Maryland Declaration of Rights.

*v. Washington*, 541 U.S. 36, 61 (2004) (“[The Confrontation Clause] commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination. The Clause thus reflects a judgment [. . .] about how reliability can best be determined.”).

In *White v. State*, 223 Md. App. 353 (2015), we assessed whether the State’s presentation of Skype testimony, over defense objection, violated the Confrontation Clause. *Id.* at 386. In *White*, we acknowledged that “[e]ven the most cutting-edge technology cannot wholly replace the weight of in-court testimony, for the electronic delivery of that testimony—no matter how clearly depicted and crisply heard—is isolated from the solemn atmosphere of the courtroom and compromises human connection to emotions like fear, apprehension, or confusion.” *Id.* at 392–93. We therefore held that “the *Craig* standard applies when the State seeks to present witness testimony via two-way video conference against a defendant in a criminal proceeding.” *Id.* at 393. We reiterated the issues to be resolved, as set forth in *Craig*: (1) whether [the witness’s] testimony via a two-way medium was reliable; (2) whether the denial of Appellant’s right to confront [the witness] in person furthered an important public policy; and (3) whether the court made a sufficient finding of necessity.<sup>14</sup> *Id.* at 393. In *White*, we concluded that testimony given through two-way video conference (Skype and WebEx), “absent any technological complications,”

---

<sup>14</sup> Mr. Moreno does not argue on appeal that the trial court erred in finding that A.B.’s remote testimony was necessary and furthered an important public policy. Rather, Mr. Moreno takes issue with the reliability prong of the test set forth in *Craig* and *White*. We limit our discussion accordingly.

adequately “provided the traditional indicia of reliability under the Confrontation Clause[.]” reasoning that “both methods preserved the hallmarks of the confrontation right” i.e., the witness was sworn under oath, questioned in a manner that allowed the jury to observe demeanor, and available for contemporaneous cross-examination. *Id.* at 393. Notably, we acknowledged that “although the State did, indeed, experience some troubleshooting issues, the testimony proceeded without issue once the connection was ultimately established.” *Id.* at 394.

In *Spinks*, we again reviewed the appropriateness of witness testimony via Skype. 252 Md. App. at 607. As it pertained to reliability, we credited the trial court’s determination that “Skype provided a sufficiently reliable technological platform to present [the witness’s] testimony.” *Id.* at 620–21. We noted in *Spinks*, that the trial “court emphasized that the video transmission delivered a clear picture and sound, with only a slight sound delay” and, in addition to the witness being under oath, “the prosecutor, defense counsel, and the court were free to question the witness “in real time[.]” *Id.* at 621. We further noted that [the defendant], counsel, the judge, and the jury were able to observe [the witness’s] demeanor on a large screen in the courtroom.” *Id.* We thus held in *Spinks*, following an independent review of the record, that the trial court did not violate the defendant’s right under the Confrontation Clause by allowing the victim to testify via a two-way platform featuring clear picture and sound. *See id.* at 623.

### 3. Analysis

We hold that the court’s use of Zoom, a two-way video conferencing platform functionally equivalent to Skype and WebEx, was sufficiently reliable in this case to protect Mr. Moreno’s right under the Confrontation Clause. As with Skype and WebEx in *White*, Zoom adequately “provided the traditional indicia of reliability under the Confrontation Clause.” *See White*, 223 Md. App. at 393. Similarly, the “hallmarks of the confrontation right” i.e., the witness was sworn under oath, questioned in a manner that allowed the jury to observe demeanor, and available for contemporaneous cross-examination, were all preserved during A.B.’s testimony. *See id.* at 393. While admittedly the technical complications beset the beginning of A.B.’s Zoom testimony from Chambers, “the testimony proceeded without issue” once resolved with the assistance of IT personnel. *See id.* at 394. Like in *Spinks*, “the prosecutor, defense counsel, and the court were free to question” A.B. “in real time[.]” *Spinks*, 252 Md. App. at 621. Once resolved, “the video transmission delivered a clear picture and sound.” *See id.* Furthermore, unlike in *Spinks*, our record does not demonstrate any “slight sound delay” impacting the reliability of A.B.’s testimony. *Id.*

Additionally, upon our review of the record, any difficulty if experienced by the jury in discerning the testimony of A.B. is fairly attributable to A.B.’s soft-spoken nature—which would have persisted had she testified from inside the courtroom. More than once, eleven-year-old A.B. was told to “try to use [her] words” or “speak out” or “[g]o ahead and

say it loudly.” Mr. Moreno cannot use Zoom as a scapegoat for a child victim’s understandable lower volume and inability to follow instructions.

Nevertheless, the record supports the inference that although the defendant, jury, court reporter, and the trial judge were all located in the courtroom, their auditory perspectives differed. For example, when the trial judge had trouble hearing A.B.’s testimony and interjected on behalf of the jury, it was a juror who correctly repeated A.B.’s testimony for the court. The court properly noted that, in that instance, the jury “understood.” That aside, the prosecutor prompted A.B. to repeat herself and A.B. complied. We recognize that Mr. Moreno’s ability to hear and comprehend the testimony of A.B. may have been further complicated by the varying interpreters and their differing equipment.<sup>15</sup> However, the record, taken as a whole, does not support Mr. Moreno’s argument that he was deprived of his ability to confront A.B. We applaud the interpreter for taking an active role in alerting the court when she was “having a little bit of trouble understanding what the witness is saying.” This induced the court to ask IT personnel to “try to fix that?” After adjustments were made, the court asked Mr. Moreno: “So can you hear [the interpreter]?” Mr. Moreno responded in the affirmative. We conclude that A.B.’s Zoom testimony from Chambers was sufficiently reliable to protect Mr. Moreno’s right of confrontation under the Sixth Amendment.

---

<sup>15</sup> And, on at least one occasion, noise interference from outside the courthouse. (“Hold on for a minute, please, until the bells stop. The record doesn’t pick up, believe it or not, when there’s outside noise like that.”). Even so, the court paused the proceedings to ensure the jury and the record captured A.B.’s testimony.

**C. Motion for New Trial**

**1. Parties' Contentions**

Mr. Moreno emphasizes that at the hearing on the Motion for New Trial, the trial judge acknowledged that “unfortunately, because of the age of the building and other issues, we really aren’t that well equipped for this in Chambers testimony.” Mr. Moreno thus contends that he was deprived of his substantial right to confront the witness against him because the court was unable to fulfill its duty to assure that the procedure was reliable.

The State counters that the court made a specific finding that the jury was attentive and would notify the court whenever they could not hear. As the trial judge was “in the courtroom with the jury,” the finding related to the audio issues was based on “direct observation.” The State notes that when the trial judge “had difficulty hearing an answer” it was “*a juror* who spoke up to clarify the testimony for the court.” Thus, the State contends, “the jury was, in fact, engaged and attentive throughout the testimony.”

The State further contends that the trial judge was able to “feel the pulse of the trial, . . . heard and weighed the argument for a new trial, and spent time reviewing the recordings before ruling.” Thus, the State contends that the trial judge “soundly and carefully exercised her discretion in denying the motion for new trial.”

**2. Applicable Law**

Maryland Rule 4-331(a) states as follows: “On motion of the defendant filed within ten days after a verdict, the court, *in the interest of justice*, may order a new trial.” Md. Rule 4-331(a) (emphasis added). The court has revisory power and control over the

judgment to set aside an unjust or improper verdict and grant a new trial in the circuit courts, on motion filed within ninety days after its imposition of sentence. *See* Md. Rule 4-331(b)(2). The court may hold a hearing on a motion for new trial. *See* Md. Rule 4-331(f). To reverse a trial court for denial of a motion for a new trial, the appellate court “must find that the degree of probable prejudice [was] so great that it was an abuse of discretion to deny a new trial.” *Williams v. State*, 251 Md. App. 523, 573 (2021) (quoting *Williams v. State*, 462 Md. 335, 345 (2019)).

An abuse of discretion occurs “when the ruling is ‘clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result,’ when the ruling is ‘violative of fact and logic,’ or when it constitutes an ‘untenable judicial act that defies reason and works an injustice.’” *Alexis v. State*, 437 Md. 457, 478 (2014) (quoting *North v. North*, 102 Md. App. 1, 13–14 (1994)). “[T]he breadth of a trial judge’s discretion is not fixed and immutable, it will expand or contract depending upon . . . the opportunity the trial judge had to feel the pulse of the trial, and to rely on his or her own impressions in determining questions of fairness and justice.” *Argyrou v. State*, 349 Md. 587, 600 (1998). “A court’s decision is an abuse of discretion when it is ‘well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.’” *Wheeler v. State*, 459 Md. 555, 561 (2018) (citing *Alexis*, 437 Md. at 478).

### **3. Analysis**

Having concluded that the trial judge took adequate measures throughout A.B.’s testimony to ensure its reliability such that no violation of the Confrontation Clause

occurred, we cannot say the decision to deny Mr. Moreno’s Motion for New Trial was “clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result.” *See Alexis*, 437 Md. at 478 (quoting *North*, 102 Md. App. at 13–14). As the presiding trial judge, Judge Handy had the opportunity to “feel the pulse of the trial, and to rely on [ . . . ] her own impressions” and indeed carefully considered Mr. Moreno’s motion. (“THE COURT: [ . . . ] So, I have considered all the papers filed in the case. [ . . . ] I wanted to review the testimony, I wanted to review some of the video I did want to make sure that I was making a right decision.”).

The trial judge faithfully acknowledged that “there were difficulties that came up during the trial” but that “[they] kept working until [they] got it to a place where the jury could hear the testimony and observe the victim in Chambers testifying.” The record further supports the court’s finding that the jury was “very attentive.” When there was an “echo” or an audio distortion, the court was promptly alerted and, in turn, appropriately responded by requesting that IT personnel “clear that up.”

We take no issue with the court’s determination that it was not in the interest of justice, pursuant to Md. Rule 4-331(a), to grant Mr. Moreno’s Motion for New Trial. The “degree of probable prejudice” was not so great that it was an abuse of discretion to deny Mr. Moreno the right to a new trial. *See Williams*, 251 Md. App. at 573 (quoting *Williams*, 462 Md. at 345). Given that we do not view the court’s decision to be “well removed from any center mark imagined” nor “beyond the fringe of what [we] deem[ ] minimally acceptable[,]” we affirm. *Wheeler*, 459 Md. at 561 (citing *Alexis*, 437 Md. at 478).

### **III. CONCLUSION**

First, we conclude that defense counsel sufficiently preserved the reliability issue at trial, such that it was appropriate for our review. We next conclude that the reliability of A.B.'s Zoom testimony was not fatally undermined by technical difficulties in violation of Mr. Moreno's right "to be confronted with the witnesses against him." U.S. CONST. amend. VI. The trial court proactively addressed manifest audio issues and ensured adjustments were made. Furthermore, A.B.'s testimony was given under oath, subject to cross-examination, and observable to the jury, such that reliability was adequately ensured. Our review of the record reveals that Mr. Moreno was not unfairly deprived of a substantial right or a fair trial. Therefore, we hold that the court did not abuse its discretion in denying Mr. Moreno's Motion for New Trial.

**JUDGMENT OF THE CIRCUIT COURT FOR  
BALTIMORE CITY AFFIRMED. COSTS TO  
BE PAID BY APPELLANT.**