

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

CROSBY v. UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE
EIGHTH CIRCUIT

No. 91-6194. Argued November 9, 1992—Decided January 13,
1993

Although petitioner Crosby attended various preliminary proceedings, he failed to appear at the beginning of his criminal trial. The Federal District Court permitted the proceedings to go forward in his absence, and he was convicted and subsequently arrested and sentenced. In affirming his convictions, the Court of Appeals rejected his argument that his trial was prohibited by Federal Rule of Criminal Procedure 43, which provides that a defendant must be present at every stage of trial "except as otherwise provided" by the Rule and which lists situations in which a right to be present may be waived, including when a defendant, initially present, "is voluntarily absent after the trial has commenced."

Held: Rule 43 prohibits the trial *in absentia* of a defendant who is not present at the beginning of trial. The Rule's express use of the limiting phrase "except as otherwise provided" clearly indicates that the list of situations in which the trial may proceed without the defendant is exclusive. Moreover, the Rule is a restatement of the law that existed at the time it was adopted in 1944. Its distinction between flight before and during trial also is rational, as it marks a point at which the costs of delaying a trial are likely to increase; helps to assure that any waiver is knowing and voluntary; and deprives the defendant of the option of terminating the trial if it seems that the verdict will go against him. Because Rule 43 is dispositive, Crosby's claim that the Constitution also prohibited his trial *in absentia* is not reached. Pp.3-7.

951 F.2d 357, reversed and remanded.

BLACKMUN, J., delivered the opinion for a unanimous Court.