
APPENDIX

DEMETRIES STURGIS

v.

STATE OF MARYLAND

* **IN THE**
* **COURT OF APPEALS**
* **OF MARYLAND**
* **Petition Docket No. 237**
* **September Term, 2020**
* **(No. 762, Sept. Term, 2019**
* **Court of Special Appeals)**
* **(Nos. 106334001 & 106334002,**
Circuit Court for Baltimore City

O R D E R

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals filed in the above-captioned case, it is this 23rd day of October, 2020

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, **DENIED** as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Mary Ellen Barbera
Chief Judge

Appendix A

Circuit Court for Baltimore City
Case Nos: 106334001,02

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 762

September Term, 2019

DEMETRIES L. STURGIS

v.

STATE OF MARYLAND

Berger,
Leahy,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 16, 2020

*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.

Appendix B

Demetries L. Sturgis, appellant, filed a motion to correct an illegal sentence in the Circuit Court for Baltimore City in which he asserted that his sentences to life imprisonment for first-degree murder and a consecutive term of 25 years for first-degree assault are illegal because the jury had not hearkened its verdict and the polling was defective because the jury foreperson was not included in the poll. By order filed on April 23, 2019, the circuit court denied relief, noting that it had rejected the same claim in an order dated February 3, 2015. Mr. Sturgis appeals that decision. We shall affirm because the verdict was valid and Mr. Sturgis's sentences are legal.

The jury returned its verdict on June 25, 2007. The foreperson, Juror No. 1, announced the jury's verdict on all counts before it. The defense requested a polling of the jury, and the clerk polled Juror Nos. 2 through 12 who each indicated their agreement with the verdict as announced by their foreperson. The clerk then hearkened the verdict. Although the transcript does not reflect the jury's response to the hearkening, the trial judge thanked the jury for their service and excused them. No one, including the defense, voiced any concern that the jury had not given its assent to the hearkening.

On appeal, Mr. Sturgis appears to be attacking the unanimity of the jury's verdict based on (1) the fact that the jury foreperson was not included in the poll, and (2) the transcript does not reflect the jury's response to the hearkening. The State responds that Mr. Sturgis's claim is not the proper subject of a Rule 4-345(a) motion and, in any event, is meritless. We agree with the State.

Although it is true that a jury's verdict must be returned in open court and is not final until it is either polled or hearkened, the verdict here was both polled and hearkened.

The fact that the foreperson was not polled, after having just announced the verdicts, did not invalidate the poll. But even if the polling were to be deemed deficient, the verdict was harkened and there is no evidence before us that the jury did not assent to that hearkening. See *Colvin v. State*, 450 Md. 718, 726-29 (2016) (holding that where a jury verdict was harkened, a claim that the jury was not properly polled because the foreperson was not included in the poll was not cognizable in a Rule 4-345(a) motion to correct an illegal sentence). Accordingly, we hold that the circuit court did not err in denying Mr. Sturgis's motion to correct an illegal sentence.

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

DEMETRIES STURGIS	*	IN THE
Petitioner	*	CIRCUIT COURT
v.	*	FOR
STATE OF MARYLAND	*	BALTIMORE CITY
Respondent	*	Case No.: 106334001, -002

* * * * *

MEMORANDUM OPINION AND ORDER

Pending before this Court is the Petitioner Demetries Sturgis' Motion to Correct an Illegal Sentence. Mr. Sturgis was charged with, among other things, first degree murder of Rasheed Stevenson and the first degree assault of Larry Reed. Following a jury trial which was conducted in June 2007, Mr. Sturgis was convicted by a jury on June 25, 2007. On August 14, 2007, Mr. Sturgis was sentenced in case number 106334002 to life imprisonment for the first degree murder of Rasheed Stevenson, and to consecutive term of twenty-five (25) years in case number 106334001 for the first degree assault of Larry Reed. Mr. Sturgis has asked this court to determine that his sentences are illegal within the meaning of Maryland Rule 4-345(b) on the basis of an "irregularity" of the courtroom clerk in hearkening the verdict. For the reasons stated below, the court shall deny the request.

The relevant portions of the transcript are as follows:

THE CLERK:	Who shall say for you? Madame Forelady, please stand. How say you, as to the case of the State of Maryland v. Demetries Sturgis, case no. 106334001, the verdict relating to the victim Larry Reed, how say you, is Demetries Sturgis guilty of (inaudible) or not guilty? Question No. 1, how do you find as to the charge of attempted murder in the first degree, not guilty or guilty?
FORELADY:	Not guilty.
THE CLERK:	As to question no. 2, how do you find as to the charge of attempted murder in the second degree, not guilty or guilty?
FORELADY:	Not guilty.
THE CLERK:	As to question no. 3, how do you find as to the charge of assault in the first degree, not guilty or guilty?
FORELADY:	Guilty.
THE CLERK:	And as to question no. 4, how do you find as to the charge of assault in the second degree, not guilty or guilty?
FORELADY:	Guilty.
THE CLERK:	Thank you. As to the case of the State of Maryland v. Demetries Sturgis, case no. 106334002, again how say you is Demetries Stugis guilty of the matter (inaudible) or not guilty? As to question no. 1, this is a verdict relating to the victim Rasheed Stevenson, how do you find as to the charge of murder in the first degree, not guilty or guilty?

FORELADY: Guilty.
THE CLERK: As to question no. 2, how do you find as to the charge of murder in the second degree, not guilty or guilty?

FORELADY: Guilty.
THE CLERK: As to count no. 3, how do you find as to the charge of assault in the first degree, not guilty or guilty?

FORELADY: Guilty.
THE CLERK: And as to question no. 4, how do you find as to the charge of assault in the second degree, not guilty or guilty?

FORELADY: Guilty.
THE CLERK: Thank you, you may be seated. Counsel, would you like the jury polled?

MR. KANE: Yes, please.
THE CLERK: Juror No.2, do you have heard the verdict as reported by your foreperson, is your verdict the same as hers?

JUROR No. 2: (Inaudible).
THE CLERK: Is that a yes?
JUROR No. 2: Yes.
THE CLERK: Juror No. 3, you have heard the verdict as reported by your foreperson. Is your verdict the same as hers?

JUROR No. 3: Yes.
THE CLERK: Juror No. 4, you have heard the verdict as reported by your foreperson. Is your verdict the same as hers?

JUROR No. 4: Yes.
THE CLERK: Juror No. 5, you have heard the verdict as reported by your foreperson. Is your verdict the same as hers?

JUROR No. 5: Yes.
THE CLERK: Juror No. 6, you have heard the verdict as reported by your foreperson. Is your verdict the same as hers?

JUROR No. 6: Yes.
THE CLERK: Juror No. 7, you have heard the verdict as reported by your foreperson. Is your verdict the same as hers?

JUROR No. 7: Yes.
THE CLERK: Juror No. 8, you have heard the verdict as reported by your foreperson. Is your verdict the same as hers?

JUROR No. 8: Yes.
THE CLERK: Juror No. 9, you have heard the verdict as reported by your foreperson. Is your verdict the same as hers?

JUROR No. 9: Yes.
THE CLERK: Juror No. 10, you have heard the verdict as reported by your foreperson. Is your verdict the same as hers?

JUROR No. 10: Yes.
THE CLERK: Juror No. 11 you have heard the verdict as reported by your foreperson. Is your verdict the same as hers?

JUROR No. 11: Yes.
THE CLERK: Juror No. 12, you have heard the verdict as reported by your foreperson. Is your verdict the same as hers?

JUROR No. 12: Yes.
THE CLERK: Harken to the verdict as the court has recorded it, we find in case no. 106334001 that Demetries Sturgis is not guilty of attempted murder in the first degree, not guilty of attempted murder in the second degree but is guilty of assault in the first degree and is guilty of assault in the second degree. As to case no. 1036334002 the case relating to the victim Rasheed Stevenson, we find that Demetries Sturgis is guilty of

murder in the first degree, is guilty of murder in the second degree, is guilty of assault in the first degree, is guilty of assault in the second degree and so say you all. Thank you.

Based upon this record, Mr. Sturgis alleges four errors: first, that the trial court erred by failing to not assert from each juror a verdict without specifying whether the verdict was murder in the first or second degree; second that the trial court erred by not polling all twelve jurors after a request by trial counsel; third, that the trial court erred by not hearkening the jury; and last, that the trial court erred by imposing an illegal sentence because the verdict was not correct, final, nor unanimous.

In support of the argument that the trial court erred by failing to ascertain from each juror whether their verdict was for first or second degree murder, Mr. Sturgis cites ***Ford v. State***, 12 Md. 514 (1859), and ***Williams v. State***, 60 Md. 402 (1883). In ***Williams***, the defendant Jason Williams was tried on an indictment for murder. When the jurors delivered their verdict, the foreman declared that Williams was guilty of murder in the first degree and the other jurors, when polled, responded “guilty” without specifying the degree of murder. There the ***Williams*** Court, relying upon ***Ford***, held that the verdict was defective where, when polled, none of the jurors declared the prisoner guilty of murder in the first degree. Unlike the facts in ***Williams***, Demetries Sturgis was tried on an indictment for first degree murder and the jurors answered specific questions presented to them in the form of a written verdict sheet. The courtroom clerk merely asked the jurors the questions on the written verdict sheet. Nothing in the record in the matter before this court indicates that the courtroom clerk improperly suggested to the jurors the degree of murder. Therefore, relief on the ground that the jurors failed to specify whether the verdict was for first or second degree murder is denied.

In support of the argument that the trial court failed to poll all twelve jurors at the request of trial counsel, Mr. Sturgis argues that while Jurors two through twelve were polled, Juror number one was not polled, thereby denying him of the right to a unanimous verdict. There is no merit to this argument, however, where the transcript indicates that Juror number one was the jury foreperson. Therefore, relief on the ground that all twelve jurors were not polled is denied.

In support of the third argument that the court failed to properly hearken the verdict, Mr. Sturgis argues the courtroom clerk failed to wait for an affirmative assent from the jurors, and therefore the verdict was not properly hearkened. It has been long established in Maryland that “hearkening” and “polling” are extra safeguards applied to protect the integrity of the jury verdict. ***Jones v. State***, 173 Md. App. 430, 457 (2007); ***State v. Santiago***, 412 Md. 28, 36 (2009). This procedural safeguard gives individual jurors an opportunity to dissent from the verdict announced by the foreperson. While the “hearkening of a verdict is the traditional formality for announcing the recording of the verdict,” a jury poll has the same effect. ***Santiago***, 412 Md. at 37. Even if this court were convinced that the clerk erred in failing to obtain an affirmative assent when hearkening the verdict, the poll of the

jury rendered the hearkening a mere formality. Thus, the procedural safeguard in all criminal prosecutions that no person be found guilty without the unanimous consent of a jury, as discussed in **Ford**, has been met. Therefore, relief on the ground that the jury verdict was not properly hearkened is denied.

Finally, there is nothing illegal about the imposition of a life sentence for the conviction for first degree murder. Nor is the imposition of a twenty-five year sentence for first degree assault illegal.

Finding no irregularity in the procedure surrounding the verdict or illegality in the sentence imposed, the Motion to Correct Illegal Sentence is **DENIED**.

3 February 2015

Date

Judge's Signature on Original

Judge Yolanda Tanner

Circuit Court for Baltimore City

c: Demetries Sturgis #345-565
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Cumberland, MD 21502

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West's Annotated Code of Maryland
Maryland Rules
Title 4. Criminal Causes
Chapter 300. Trial and Sentencing

MD Rules, Rule 4-345

RULE 4-345. SENTENCING--REVISORY POWER OF COURT

Currentness

- (a) **Illegal Sentence.** The court may correct an illegal sentence at any time.
- (b) **Fraud, Mistake, or Irregularity.** The court has revisory power over a sentence in case of fraud, mistake, or irregularity.
- (c) **Correction of Mistake in Announcement.** The court may correct an evident mistake in the announcement of a sentence if the correction is made on the record before the defendant leaves the courtroom following the sentencing proceeding.
- (d) **Desertion and Non-Support Cases.** At any time before expiration of the sentence in a case involving desertion and non-support of spouse, children, or destitute parents, the court may modify, reduce, or vacate the sentence or place the defendant on probation under the terms and conditions the court imposes.
- (e) **Modification Upon Motion.**
- (1) *Generally.* Upon a motion filed within 90 days after imposition of a sentence (A) in the District Court, if an appeal has not been perfected or has been dismissed, and (B) in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not increase the sentence.

Cross reference: Rule 7-112 (b).

Committee note: The court at any time may commit a defendant who is found to have a drug or alcohol dependency to a treatment program in the Maryland Department of Health if the defendant voluntarily agrees to participate in the treatment, even if the defendant did not timely file a motion for modification or timely filed a motion for modification that was denied. See Code, Health--General Article, § 8-507.

- (2) *Notice to Victims.* The State's Attorney shall give notice to each victim and victim's representative who has filed a Crime Victim Notification Request form pursuant to Code, Criminal Procedure Article, § 11-104 or who has submitted a written request to the State's Attorney to be notified of subsequent proceedings as provided under Code, Criminal Procedure Article, § 11-503 that states (A) that a motion to modify or reduce a sentence has been filed; (B) that the motion has been denied without a hearing or the date, time, and location of the hearing; and (C) if a hearing is to be held, that each victim or victim's representative may attend and testify.

West's Annotated Code of Maryland
Maryland Rules
Title 4. Criminal Causes
Chapter 300. Trial and Sentencing

MD Rules, Rule 4-327

RULE 4-327. VERDICT--JURY

Currentness

(a) **Return.** The verdict of a jury shall be unanimous and shall be returned in open court.

(b) **Sealed Verdict.** With the consent of all parties, the court may authorize the rendition of a sealed verdict during a temporary adjournment of court. A sealed verdict shall be in writing and shall be signed by each member of the jury. It shall be sealed in an envelope by the foreperson of the jury who shall write on the outside of the envelope "Verdict Case No." "State of Maryland vs." and deliver the envelope to the clerk. The jury shall not be discharged, but the clerk shall permit the jury to separate until the court is again in session at which time the jury shall be called and the verdict opened and received as other verdicts.

(c) **Two or More Defendants.** When there are two or more defendants, the jury may return a verdict with respect to a defendant as to whom it has agreed, and any defendant as to whom the jury cannot agree may be tried again.

(d) **Two or More Counts.** When there are two or more counts, the jury may return a verdict with respect to a count as to which it has agreed, and any count as to which the jury cannot agree may be tried again.

(e) **Poll of Jury.** On request of a party or on the court's own initiative, the jury shall be polled after it has returned a verdict and before it is discharged. If the sworn jurors do not unanimously concur in the verdict, the court may direct the jury to retire for further deliberation, or may discharge the jury if satisfied that a unanimous verdict cannot be reached.

Cross reference: See Rule 18-102.8, regarding praise or criticism of a jury's verdict.

Source: This Rule is derived from former Rule 759.

Credits

[Adopted April 6, 1984, eff. July 1, 1984. Amended April 7, 1986, eff. July 1, 1986; June 5, 1996, eff. Jan. 1, 1997; Dec. 10, 1996, eff. July 1, 1997; Dec. 2, 2004, eff. July 1, 2005; Dec. 4, 2007, eff. Jan. 1, 2008; June 7, 2011, eff. July 1, 2011; June 6, 2016, eff. July 1, 2016.]

Notes of Decisions (121)

MD Rules, Rule 4-327, MD R CR Rule 4-327

Current with amendments received through August 1, 2019.

West's Annotated Code of Maryland
Constitution of Maryland Adopted by Convention of 1867
Declaration of Rights

MD Constitution, Declaration of Rights, Art. 21

Article 21. Right of accused; indictment; counsel; witnesses; speedy trial; jury

Currentness

That in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the Indictment, or charge, in due time (if required) to prepare for his defence; to be allowed counsel; to be confronted with the witnesses against him; to have process for his witnesses; to examine the witnesses for and against him on oath; and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty.

Notes of Decisions (1738)

MD Constitution, Declaration of Rights, Art. 21, MD CONST DECL OF RIGHTS, Art. 21

Current through all legislation from the 2019 Regular Session of the General Assembly.

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