

Circuit Court for Baltimore City  
Case No. 121188032

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND

No. 1851

September Term, 2022

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JAMES LESTER GILLIARD

v.

STATE OF MARYLAND

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Arthur,  
Leahy,  
Eyler, James R.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: January 4, 2024

\*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Convicted by a jury in the Circuit Court for Baltimore City of unlawful possession of a regulated firearm and related offenses, James Lester Gilliard, appellant, presents for our review a single issue: whether the court erred in denying his motion for mistrial. For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the State produced evidence that on June 11, 2021, Maryland State Police troopers were operating a DUI checkpoint on Boston Street, when Trooper Enrique Reckeweg saw Mr. Gilliard, who was driving a “black MDX Acura,” stop in the middle of the checkpoint, reverse the wrong way, and ignore the verbal commands of troopers. Trooper Reckeweg stopped Mr. Gilliard, who stated “that he was trying to avoid the police ahead.” Suspecting that Mr. Gilliard could have been “impaired by alcoholic beverage or controlled dangerous substance,” the trooper conducted, among other tests, a “walk and turn” test. While Mr. Gilliard was performing the test, Trooper Reckeweg “observed a bulge in [Mr. Gilliard’s] groin area.” When the trooper ordered Mr. Gilliard “not to move,” he “began to flee on foot.” After Trooper Reckeweg and other officers apprehended Mr. Gilliard, the trooper discovered, “on the ground where Mr. Gilliard” had been, “a silver and black 40 millimeter[.]” handgun.

After the jury declared their verdicts, and while the court was dismissing the jury, defense counsel asked to approach the bench. The court granted permission, and defense counsel stated:

This was literally just brought to my attention. My client indicates to me that juror number nine seated in the back row with the braid had not only seen him in full regalia of shackles and everything but had addressed him and said, oh, you made it down here already. This was apparently day before yesterday.

I don't know why it wasn't brought to my attention before now. But . . . you may want to voir dire juror number nine to see if that made any impact and to confirm whether in fact it happened. Literally it was just brought to my attention.

The court called juror number nine to the bench, and the following colloquy occurred:

[THE COURT:] It has been brought to my attention that you may have seen the defendant in shackles in the hallway. Did you ever see the defendant in shackles at any time?

THE JUROR: Yes.

THE COURT: All right. Where and when did that happen?

THE JUROR: I think it was the second day. I just said to him that was fast and proceeded down the hall.

THE COURT: Did your seeing the defendant in shackles impact your decision –

THE JUROR: No.

THE COURT: – in this case in any way?

THE JUROR: No.

After the court excused the juror, defense counsel moved for mistrial. The court denied the motion.

Mr. Gilliard contends that the court erred in denying the motion, because the “appearance of a defendant in shackles in front of the jury is one of the inherently prejudicial practices that warrants close judicial scrutiny” (internal citations and quotations omitted), and “it was not sufficient that the juror simply profess that he was unaffected by what he saw.” The State counters that Mr. Gilliard “forfeited any right to appellate review

of this claim because he waited until after the verdict to alert the court and move for a mistrial.” Alternatively, the State contends that the court “properly exercised its discretion in denying the motion.”

*Holmes v. State*, 209 Md. App. 427 (2013), is instructive. Mr. Holmes was convicted by a jury in the Circuit Court for Baltimore City of first degree assault and related offenses. *Id.* at 432.

Prior to the trial court dismissing the jury, defense counsel asked to approach the bench. Thereafter, defense counsel shared with the court – for the first time – [Mr.] Holmes’s account of his previous encounter with [a] juror, stating that [Mr.] Holmes believed that the foreman witnessed him shackled and escorted by a correctional officer. The trial court accommodated defense counsel’s request to question the juror as to his observations, even though the “verdict [had] been taken.”

*Id.* at 453. During the subsequent colloquy, the juror indicated to the court that he had seen Mr. Holmes while “[t]hey was bringing him in,” that the sighting did not “impact [him] in any way as to [his] verdict,” and that he “really didn’t notice” whether Mr. Holmes “was in handcuffs.” *Id.* at 453-54.

The trial court then dismissed the entire jury, including the foreman. At that point, defense counsel indicated her intention to file a motion for new trial. Defense counsel argued that [Mr.] Holmes was deprived of his right to a fair trial under the 14th Amendment of the U.S. Constitution. The trial court denied the motion.

*Id.* at 454.

On appeal, Mr. Holmes contended “that the juror’s observation of [Mr.] Holmes violated his constitutional rights because it impaired his presumption of innocence.” *Id.* at 452. This Court concluded that “by failing to bring this claim to the trial court’s attention prior to the jury’s verdict, [Mr.] Holmes forfeited any ability to challenge the validity of

the jury’s verdict based on these circumstances on appeal.” *Id.* This Court further concluded:

Assuming *arguendo* that [Mr.] Holmes’s claim is preserved for appellate review, the trial court did not abuse its discretion in denying [Mr.] Holmes’s motion for new trial. The trial judge took appropriate measures by questioning the juror. In answering the trial judge’s question, the juror stated that he did not notice whether [Mr.] Holmes was in handcuffs and that the encounter did not impact his verdict in the case. Accordingly, the record demonstrates that [Mr.] Holmes was not prejudiced.

*Id.* at 455.

We reach a similar conclusion here. Assuming, *arguendo*, that Mr. Gilliard’s claim is preserved for our review, the trial judge took appropriate measures by questioning the juror, who indicated that his encounter with Mr. Gilliard did not impact his verdict. The record demonstrates that Mr. Gilliard was not prejudiced, and hence, the court did not err in denying the motion for mistrial.

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