UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0640

September Term, 2012

McKINLEY GRIFFIN

v.

STATE OF MARYLAND

Krauser, C.J.,
Meredith,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Krauser, C.J.

Filed: June 22, 2016

In 1983, a jury in the Circuit Court for Harford County convicted McKinley Griffin, appellant, of first-degree murder, assault and battery, and a handgun violation. Appellant was sentenced to a term of life imprisonment for the murder offense. Approximately 18 years later, appellant filed a motion to correct an illegal sentence, in which he claimed that the jury failed to designate the degree of murder when announcing its verdict, rendering the conviction invalid and the sentence illegal. The circuit court denied the motion, and appellant appealed. Finding no error, we affirm.

BACKGROUND

Appellant was charged and tried in front of a jury on several counts, including murder in the first degree, murder in the second degree, and manslaughter. After deliberations, the jury returned to the court to announce the verdict:

> THE CLERK: Ladies and gentlemen of the jury, are you agreed upon your verdict?
>
> [JURORS]: Yes, we are.
>
> THE CLERK: Who shall speak for you?
>
> [JURORS]: Our Forelady.
>
> THE CLERK: Would you stand, please?...Would [appellant] please stand?...Ladies and gentlemen of the jury, would you look upon [appellant]. **Do you find him guilty or not guilty of Murder in the First Degree?**
>
> [FORELADY]: **Guilty**.
>
> THE CLERK: Do you find [appellant] guilty or not guilty of Murder in the Second Degree?
>
> [FORELADY]: Not…we just agreed upon First Degree.

THE COURT: Wait a minute. Don't tell us anything.

THE CLERK: I will go on to the next one. Do you find [appellant] guilty or not guilty of Manslaughter?

[FORELADY]: Undecided.

THE COURT: The same problem. All right, don't tell us anything.

After the jury returned several more verdicts on other charges, the court informed the jury that it had to make a separate finding as to first-degree murder, second-degree murder, and manslaughter. The court then asked the jury to continue deliberations so that it may make a finding of guilty or not guilty as to each charge. After the jurors deliberated further, they returned to the courtroom and the following colloquy ensued:

THE CLERK: Ladies and gentlemen of the jury, do you find [appellant] guilty or not guilty of Murder in the Second Degree?

[FORELADY]: Not guilty.

THE CLERK: Do you find [appellant] guilty or not guilty of Manslaughter?

[FORELADY]: Not guilty.

Defense counsel then indicated that he wished to have the jury polled. The clerk asked each juror the following questions: (1) "Do you find [appellant] guilty or not guilty of Murder in the First Degree?"; (2) "Guilty or not guilty of Murder in the Second Degree?"; and (3) "Guilty or not guilty of Manslaughter?" [1] Upon being asked these

[1] We note that, when polling Juror No. 4, the clerk posed the first question as: "Do you find [appellant] guilty or not guilty of **First Degree Murder**?" (Emphasis added). Nevertheless, for the purposes of this appeal, the clerk's rephrasing of the question in this way was inconsequential.

questions, each juror responded: "Guilty," "Not guilty," and "Not guilty," respectively. The jury was then harkened:

> THE CLERK: Ladies and gentlemen of the jury, **harken to your verdict as the court hath recorded it. Your Forelady says that [appellant] is guilty of First Degree Murder**; not guilty of Murder in the Second Degree; not guilty of Manslaughter…and **so say you all**?
>
> [JURORS]: **Yes**.

(Emphasis added).

STANDARD OF REVIEW

Maryland Rule 4-345(a) allows a trial court to "correct an illegal sentence at any time." *Id.* A sentence is considered "illegal" if the sentence itself is not permitted by law, such as when "there either has been no conviction warranting any sentence for the particular offense or the sentence is not a permitted one for the conviction upon which it was imposed[.]" *Chaney v. State,* 397 Md. 460, 466 (2007). We review the legality of appellant's sentence under a *de novo* standard of review. *See Blickenstaff v. State,* 393 Md. 680, 683 (2006).

DISCUSSION

In this *pro se* appeal, appellant contends that the jury, when announcing its verdict, deviated from "proper process and procedure." Specifically, he claims that the jury failed to properly state the degree of murder in announcing its verdict. As a result of this alleged defect, appellant contends that the jury's verdict on the charge of first-degree murder was a nullity and his life sentence illegal. We disagree.

"By its Declaration of Rights, common law, and procedural rules, Maryland continues an English tradition dating from the Middle Ages in requiring that criminal jury verdicts be unanimous." *Lattisaw v. State,* 329 Md. 339, 344 (1993). Furthermore, the Maryland Rules specify that the verdict "shall be returned in open court." *Id.* at 345 (internal citations omitted). This involves three distinct procedures: (1) the foreman, speaking for the jury, states the verdict on the record; (2) if requested by the defendant, the jury is polled, and each juror announces his verdict on the record; and (3) the jury's verdict is hearkened.[2] *Jones v. State,* 384 Md. 669, 682-84 (2005).

In addition to the above requirements, if a defendant is found guilty of murder, the jury must also state the degree of murder in its verdict. Md. Code, Criminal Law § 2-302.[3] This obligation has its roots in the Laws of Maryland, 1809, Chapter 138 § 3, wherein the General Assembly first divided murder into degrees. *Id.* In doing so, the General Assembly recognized that "the several offenses which are included under the general denomination of murder, differ so greatly from each other in the degree of their atrociousness, that it is unjust to involve them in the same punishment[.]" *Ford v. State,* 12 Md. 514, 543 (1859). As such, the General Assembly declared that "the jury before whom any person indicted for murder shall be tried, shall, if they find such person guilty thereof, ascertain in their verdict whether it be murder in the first or second degree[.]" *Id.*

[2] Hearkening is required only if the jury is not polled. *Jones*, 384 Md. at 684.

[3] At the time of appellant's trial, this provision was codified as Article 27, § 412(a).

This issue was first addressed by the Court of Appeals in *Ford, supra.* In that case, Ford was tried before a jury on a charge of murder. *Id.* at 547. Upon its return of the verdict in open court, the jury was asked by the clerk if Ford was "guilty or not guilty." *Id.* at 548. The foreman, speaking for the jury, answered "guilty," and the jury was polled. *Id.* The clerk then asked whether the jury found Ford "guilty of murder in the first degree or murder in the second degree," to which the foreman responded: "Guilty of murder in the first degree." *Id.* But the other jurors merely stated "guilty" when polled. *Id.*

On appeal, the Court of Appeals held that the jury's verdict was defective because "at no time did all the jury find [Ford] 'guilty of murder in the first degree.'" *Id.* Instead, when the jury was polled "so that each might answer for himself, eleven of them replied, severally, 'guilty,' without specifying the degree in words." *Id.* Consequently, the Court held that "[i]n the eye of the law, there has been no valid and sufficient verdict[.]" *Id.* at 549.

The Court reached a similar conclusion in *Williams v. State,* 60 Md. 402 (1883). In that case, Williams was tried on charges of first and second degree murder. *Id.* at 403. Upon its return of the verdict, the jury, through the foreman, stated that Williams was "guilty of murder in the first degree." *Id.* at 403. Upon being polled, however, "each juror, when called upon to answer for himself and in his own language, responded 'guilty,' without specifying the degree of murder." *Id.* On appeal, the Court overturned Williams' conviction, noting that "[a] general verdict of 'guilty' on an indictment for murder, is a bad verdict, and on such verdict no judgment can be pronounced." *Id.*

Relying primarily on the Court's holdings in *Ford* and *Williams,* appellant insists that the jury's verdict in his case was defective because "not a single juror answered 'guilty of first-degree murder' during appellant's exercise of his constitutional right to poll each juror." Instead, each juror simply responded "guilty" when polled by the clerk, which appellant claims was insufficient under *Ford* and *Williams*. Moreover, appellant contends that the clerk had "no right" to suggest the degree of murder when she polled the jurors, as the jurors were required to make this finding "in his own language."

Appellant's arguments are unpersuasive. Despite the Court of Appeals' indication that a general verdict of "guilty" is insufficient to satisfy the jury's obligation to specify the degree of murder, at no time did the Court hold that a juror must use specific words in order for the verdict to be properly recorded. Instead, the Court in *Ford* and *Williams* declared that the verdict was defective in those cases primarily because the record was devoid of any indication, either from the clerk or the jury, as to exactly what the jury meant by "guilty." *See Ford,* 12 Md. at 544 ("It is palpable to us that the true intent and purpose of the act, in this particular, were to impose upon the consciences of the jury the finding in their verdict (not therefrom to be inferred or conjectured) the degree of the crime[.]"); *Williams,* 60 Md. at 403 ("Upon the poll in this case, there was not a single juror who, in finding the prisoner guilty, ascertained the degree of murder[.]").

Furthermore, appellant is incorrect in his assertion that a clerk has "no right" to state the degree of murder when polling the jury. Appellant seems to derive this language from page 534 of the Court's opinion in *Ford*, which discusses certain "irregularities" in that jury's verdict:

> The clerk here puts the suggestive questions to the jury: "Is [the defendant] guilty of murder in the first degree or not guilty?" This he had no right to do, for the law says, the jury shall ascertain the degree of the offence in their verdict. **The clerk had no right to suggest to them this finding**.

Ford, 12 Md. at 534 (Emphasis added).

Although this language appears to support appellant's claim, a closer examination of the Court's 1859 opinion reveals that this language was not, in fact, part of the Court's published holding. The Court included in its opinion a restatement of each party's appellate arguments as they were presented to the Court. *Id.* at 529-42. Because these restatements were done in the first person, it appears that the Court was the one making the claim; however, the Court was merely quoting the argument as it was made by the individual party on appeal. In other words, the language cited by appellant was not the Court's, but instead belonged to the defendant's attorneys. The Court's actual holding and mandate, along with its analysis of the parties' arguments and the relevant issues, does not begin until page 542. *Id.* at 542-549. When we confine our analysis to this portion of the Court's opinion, we find nothing to suggest that the clerk's actions in the instant case were improper.

In fact, the Court of Appeals has expressly endorsed such practices. In *Strong v. State,* 261 Md. 371 (1971), the defendant was tried before a jury on a charge of murder in the first degree. *Id.* at 373. Following deliberations, the jury returned to the courtroom to deliver the verdict, whereupon the clerk asked: "Is [Strong] guilty of the matters wherein he stands indicted or not guilty?" *Id.* The forelady responded: "Guilty. Guilty of first degree murder[.]" *Id.* The jury was then polled, and each juror was asked: "[Y]ou have heard the verdict as given by your Forelady. Is your verdict the same?" *Id.* Each juror

responded in the affirmative. *Id.* Finally, the clerk hearkened the verdict, stating to the jury: "You say [Strong] is guilty of murder in the first degree…and so say you all?" *Id.* at 373-74. Again the jury responded in the affirmative. *Id.* at 374.

On appeal, Strong argued that the verdict was defective because "each juror did not say in so many words that the accused was guilty of murder in the first degree[.]" *Id.* at 373. The Court of Appeals rejected this argument and affirmed Strong's conviction, noting that the forelady "said explicitly…that the accused had committed first degree murder and, when each juror was asked individually whether his verdict was the same as that of the forelady, he replied in the affirmative." *Id.* at 374. The Court concluded that the juror's affirmative responses were "the equivalent of each juror saying: 'I find the accused guilty of murder in the first degree[.]'" *Id.*

Accordingly, we hold that the murder verdict in the instant case was valid. Although the jurors did not expressly state that appellant was "guilty of murder in the first degree," the jurors did provide an equivalent response. The clerk asked each juror if he found appellant "guilty or not guilty of murder in the first degree," and each juror responded: "Guilty." Moreover, each juror also stated that he found appellant not guilty of murder in the second degree and not guilty of manslaughter, which further indicated that appellant's guilty verdict was for first-degree murder. Finally, the jury was hearkened, and again the jury responded affirmatively when asked if it found appellant guilty of first degree murder, not guilty of second degree murder, and not guilty of manslaughter.

In short, the jury's verdict was properly recorded, and appellant's sentences were legal. The circuit court did not err in denying appellant's motion to correct an illegal sentence on these grounds.

JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.