UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1928

SEPTEMBER TERM, 2014

HERBERT MAYES

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Arthur,
Salmon, James P. (Retired,
Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: February 26, 2016

A jury in the Circuit Court for Baltimore City convicted Herbert Mayes, the appellant, of first degree premeditated murder, use of a handgun in a crime of violence, and wearing, carrying, or transporting a handgun. The court sentenced Mayes to life in prison for the murder conviction and a consecutive twenty-year sentence, the first five years to be served without the possibility of parole, for the use of a handgun conviction.[1]

Mayes presents three questions for review, which we rephrase as follows:

I. Did the circuit court err by admitting into evidence prior inconsistent statements of the State's own witnesses?

II. Was there legally sufficient evidence to support Mayes's conviction for use of a handgun in the commission of a crime of violence?

III. Did the circuit court abuse its discretion by ordering Mayes to remain in restraints when the jury returned its verdict?

For the following reasons, we shall affirm the judgments of the circuit court.

FACTS AND PROCEEDINGS

The following facts were adduced at trial.[2]

Around 11:00 p.m. on March 30, 2012, Chauncey Hardy was shot and killed while standing in front of a building in the 900 block of Valley Street, in Baltimore City. That block is an open air drug market and the building Hardy was in front of was a drug house known as the "Animal House." Officers of the Baltimore City Police Department

[1] Mayes's conviction for wearing, carrying, or transporting a handgun was merged for sentencing.

[2] This was Mayes's third trial. The first two trials resulted in hung juries.

("BCPD") recovered a surveillance video from a nearby City Watch blue light camera that showed the shooting and the shooter's flight from the scene.

Antonio Denise Carraway testified that she frequented the area and regularly purchased drugs from dealers at the Animal House. She often purchased drugs from Mayes, who she knew as "Monk" or "Mack," and his associate, "Horsey." On occasion, she sold drugs for them. Carraway knew Hardy. He was a drug addict who sometimes sold or hid drugs for Mayes and Horsey.

On March 29, 2012, Carraway was using drugs inside the Animal House when she saw Hardy shoot Horsey in the mouth. Later that day, she saw Hardy outside the house, and she warned him that he should leave because the drug dealers in the area "stick together" and might retaliate against him for shooting Horsey.

At around 11:00 p.m. the next day, March 30, Carraway and her fiancé, James Farmer, went to the Animal House to buy drugs. When Carraway and Farmer left the Animal House a short time later, Hardy was standing outside. Carraway saw Mayes and two other drug dealers—"Black" and "Twin"—approach Hardy. As she and Farmer walked away, she heard Mayes say, "I got your punk ass now," and then heard four or five gunshots. She started to run and then turned and saw Mayes standing over Hardy, holding a gun. Carraway knew the shooter was Mayes because she had seen him earlier that day wearing a white hooded sweatshirt with a grey jacket, the same outfit as the shooter, and recognized his dreadlocked hair "coming out of the hood" of the sweatshirt.

Either that night or the next morning, Carraway contacted the BCPD. On April 2, 2012, she and Farmer were interviewed separately at the station house. Detective Julian

Min, the lead investigator on the case, and Detective Raymond Yost conducted the interviews, which were tape recorded.

In her interview, Carraway described the shooting and said she thought Mayes had shot Hardy in retaliation for his having shot Horsey. Her interview included a photo array. She identified Mayes in the array and on the back of the photo array wrote, "He shot Chauncy [sic]. I know him as Mack. It happened on Valley Street at night." Carraway also identified Black and Twin in separate photo arrays.

In his interview, Farmer told the police that, when he and Carraway went to the Animal House to purchase drugs on March 30, 2012, they saw Hardy standing outside the Animal House and asked him why he was there. They only were in the Animal House briefly because no one was there selling drugs. When they left, Farmer noticed "someone creeping through the bushes" and then heard gunshots. He described the shooter as "short, dark-skinned with dreads." He thought it was "Monk." During the interview, Farmer identified Mayes in a photo array. On the back of the photo array he wrote, "Mac stood over the victim and shot him a few times then he ran away. He ran down the street and turned to the right." Farmer corroborated Carraway's statement that the shooter was accompanied by two men known as Black and Twin and identified them in separate photo arrays.

Detective Min testified that he arrived at the crime scene at 11:16 p.m. on March 30. He recovered seven .40 caliber cartridge casings on the sidewalk where Hardy was shot. He did not locate the murder weapon. He reviewed the surveillance video that showed the shooting. The footage was played for the jury and admitted into evidence.

Detective Min testified that his interviews with Carraway and Farmer led to Mayes's arrest on April 3, 2012. On that day, Mayes was interviewed by Detective Min's partner, Sergeant Richard Purtell, and Detective Shawn Richenburg.

Sergeant Purtell testified that Mayes waived his *Miranda* rights and gave a tape recorded statement.[3] Mayes denied any involvement in the shooting and claimed that he was at his mother's house on March 30, 2012, with other relatives, playing cards and getting ready for his aunt's 50th birthday party the following day. Mayes said he heard about the shooting and he and his sister went to check it out. They arrived at the scene as the ambulance was leaving with Hardy's body. The recorded statement was played for the jury.

Later that same day, Sergeant Purtell interviewed Sharon Chestnut, Mayes's mother, at her house.[4] This interview also was tape recorded. Sharon stated that Mayes had been at her house on March 30, 2012, but he left around 8:30 or 9:00 p.m. and did not return. She denied that anyone else was at her house that evening. Later that night, she received a phone call from someone (she could not recall who) telling her that Mayes had been shot. She tried to call him on his cell phone, but he did not answer. She then heard from her sister Linda that Mayes was not the person who had been shot. Sharon stated that she did not see Mayes until Linda's birthday party the next evening.

[3] *Miranda v. Arizona*, 384 U.S. 436 (1966).

[4] We shall refer to Sharon Chestnut and her sister, Linda Chestnut, by their first names, to avoid confusion.

Mayes called Linda and Ronald Douglas, his uncle, as witnesses. Linda testified that Mayes was with her at Sharon's house on March 30, 2012, from 7:30 p.m. to 11:30 p.m. She drove Mayes to the corner of Greenmount Avenue and Eager Street; she did not know why he wanted to go there. When asked on cross-examination why she did not give this information to the police, she replied, "I never contact no police. I don't talk to police."

Douglas testified that he arrived at Sharon's house between 7:00 p.m. and 7:30 p.m. on March 30, 2012; that Mayes arrived around the same time; and that he and Mayes played cards with two other men throughout the evening. When he left, sometime between 11:00 p.m. and 11:30 p.m., Mayes was still there playing cards.

We shall include additional facts as pertinent to the issues on appeal.

DISCUSSION

I.

The State called Sharon and Farmer as witnesses at trial. Their testimony conflicted with the recorded statements they gave to the BCPD. Over Mayes's objection, the recorded statements were admitted into evidence. Mayes challenges those rulings on separate grounds.

Statement of Sharon Chestnut

On direct examination, Sharon testified that Mayes spent the evening of March 30, 2012, at her house with her and other family members, preparing for Linda's birthday party, and that he left her house with Linda at "around 11:33 p.m." Sharon volunteered that Mayes was at her house every evening from March 27 through March 30, 2012.

At that point, the State moved to admit Sharon's recorded statement to Detective Purtell "for the purposes of impeaching [her]." Counsel for Mayes objected as follows:

> [COUNSEL FOR MAYES]: [Your Honor] – the State is not unaware that this is the way that [Sharon] was going . . . to testify. She – this is the third trial of this case. She testified consistently in those cases with her testimony today.
>
> The State is attempting to use the misstatements, the prevarications, whatever label we wanna attach to it, Sharon . . . who, the mother of the Defendant, to be – to be inculpatory evidence to the Defendant. It's–it's like bring [sic] a third party in and saying this third party lied –
>
> [THE COURT]: The witness – no. You don't have to show that they lied. You have to show that their statement, their testimony at trial is inconsistent with statements given at a prior time. That's –
>
> [COUNSEL FOR MAYES]: But –
>
> [THE COURT]: That's what impeachment is.
>
> [COUNSEL FOR MAYES]: But the whole purpose of, of the State doing this, Your Honor, because the State called her as their own witness, the whole purpose of the State doing this is to try and show – because Ms. Sharon Chestnut Adams is either prevaricating, lying, mistaken, whatever, it should be held as inculpatory evidence against the Defendant.

The court overruled the objection. It later clarified that Sharon's recorded statement was admissible as extrinsic evidence for the purpose of impeachment, under Rule 5-613(b).

After the recording was played, Sharon testified that, when she was questioned by the police, she had confused her dates. The State then moved into evidence a recorded jail phone call between Sharon and Mayes that took place on September 16, 2014, two days before Sharon's testimony at trial. The recorded phone call was as follows:

> [SHARON]: Yeah, man, I get up on the stand, man, I'm gonna let them know.
>
> [MAYES]: Yeah, man, you gotta tell 'em you had that shit mixed up, man.
>
> [SHARON]: With the times, you was there, you be there every day, the 27th, 28th, and 29th, the 30th, all that you was there and I just got my date and time mixed up like I told 'em, shoot.
>
> [MAYES]: That's right.
>
> [SHARON]: All them dates you was there, you was there all the time and you was there and then the other ones came on the 30th, simple as that.
>
> [MAYES]: Right.[5]

Mayes contends Sharon's recorded statement to Detective Min was hearsay and not admissible as impeachment under Rule 5-613. Specifically, given the two prior trials, the State was aware "that [Sharon] would give live testimony unhelpful to its own case . . . in contradiction with a prior statement[,]" and the "State may not open [the] door for admission of [a] prior inconsistent statement by opportunistically impeaching its own witness." *Bradley v. State*, 333 Md. 593, 604 (1994).

The State responds that the court's ruling was right for the wrong reason. It concedes that Sharon's recorded statement was not admissible under Rule 5-613(b), but maintains that the statement was admissible as substantive evidence under Rule 5-802.1(a). That rule allows a hearsay "statement that is inconsistent with the declarant's testimony" to be admitted substantively if it was "recorded in substantially verbatim fashion by . . . electronic means contemporaneously with the making of the statement[.]"

[5] Mayes does not challenge the admissibility of the recorded jail phone call.

"'A ruling on the admissibility of evidence ordinarily is within the trial court's discretion.'" *Thomas v. State*, 213 Md. App. 388, 405 (2013) (quoting *Hajireen v. State*, 203 Md. App. 537, 552, *cert. denied*, 429 Md. 306 (2012)). We review a trial court's evidentiary ruling for an abuse of discretion. *State v. Simms*, 420 Md. 705, 724–25 (2011). "[A]n abuse of discretion exists where no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles." *In re Andre J.*, 223 Md. App. 305, 323 (2015) (citations omitted, second alteration in original). A ruling admitting hearsay evidence that is not admissible under the hearsay exceptions in the Maryland Rules is an abuse of discretion. *Bernadyn v. State*. 390 Md. 1, 8 (2005).

Rule 5-802.1 states, in relevant part:

> The following statements previously made by a witness who testifies at the trial or hearing and who is subject to cross-examination concerning the statement are not excluded by the hearsay rule:
>
> (a) A statement that is inconsistent with the declarant's testimony, if the statement was (1) given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding or in a deposition; (2) reduced to writing and was signed by the declarant; or (3) ***recorded in substantially verbatim fashion by stenographic or electronic means contemporaneously with the making of the statement***.

(Emphasis added.) This rule adopted the holding in *Nance v. State*, 331 Md. 549 (1993). We discussed the rule's effect in *Stewart v. State*, 104 Md. App. 273 (1995), *aff'd*, 342 Md. 230 (1996):

> [After] *Nance*, it is no longer true that a party, anticipating that a prospective witness has already turned coat, will, thereby, be guilty of impermissibly calling a witness "who it knows will contribute nothing to

> the case." *Spence v. State*, 321 Md. [526,] 530 [(1991)]. Provided that *Nance's* express prerequisites have been satisfied, a party may call a witness, fully anticipating (indeed, even hoping for) a miserable testimonial performance, for the exclusive purpose of using that performance, or non-performance, as the launching pad for the introduction of . . . the witness's prior inconsistent statement to the police. . . . It is no longer true that such a witness "contributes nothing to the case." Under *Nance*, even a perjurious witness may now, simply by serving as a vehicle or a medium for the introduction of other evidence, contribute a great deal to the case.

Id. at 284–85.

Stewart makes clear that there is no prohibition against a party calling a witness the party anticipates will not be helpful in order to introduce a previously recorded, inconsistent statement, so long as the statement satisfies the requirements of Rule 5-802.1(a). Indeed, it would be an abuse of discretion to rule such evidence inadmissible. *Sheppard v. State*, 102 Md. App. 571, 573–74 (1994).

Here, Sharon testified at trial and was subject to cross-examination. Her prior statement met the requirements of Rule 5-802.1(a). She gave the statement to Detective Purtell on April 3, 2012, four days after the shooting. It was recorded. And it was inconsistent with the testimony she gave at trial. To be sure, the trial court allowed the State to introduce Sharon's recorded statement under Rule 5-613(b), as impeachment evidence, and, as the State acknowledges, the statement was not admissible under that rule. It was admissible under Rule 5-802.1(a), however, and not simply for impeachment. Thus, the court's error plainly was harmless. *See Thomas*, 213 Md. App. at 407 ("Because the statements were admissible as substantive evidence . . . Rule 5-613(b), regarding admissibility as impeachment, is inapplicable" and any error is harmless.).

Statement of James Farmer

At trial, Farmer acknowledged that, in his recorded interview by Detective Min, he identified Mayes in the photo array and wrote on the back of the photo of Mayes, "Mac stood over the victim and shot him a few times then he ran away." The photo array was admitted without objection. Farmer testified, however, that, although he identified Mayes as the person who shot Hardy, he "wasn't too sure about that" anymore and he "could be mistaken." He also testified that in April of 2014 he suffered a stroke that had resulted in some memory loss. His memory had been better when he spoke with the police on April 2, 2012.

The State moved the court for permission to play Farmer's recorded statement for the jury and proffered that "[t]here are a number of instances in his transcript that he is, at this time saying he doesn't recall making or that are inconsistent with what he told Detective Min back in April of 2012" and that the recorded statement is "a prior inconsistent statement." Mayes's lawyer objected on the ground that the recorded statement was consistent with the testimony Farmer had given in the second trial, and therefore was not a prior inconsistent statement. The court overruled the objection. After playing the recording, the State moved to admit it. Mayes objected "for reasons previously stated." The trial court ruled that the statement was admissible.

On appeal, relying on *Corbett v. State*, 130 Md. App. 408 (2000), Mayes contends the trial court erred by admitting Farmer's statement because the court did not find "that Farmer's lack of memory surrounding the shooting was feigned and not actual" and that "Farmer's stroke, combined with the 30 intervening months between the shooting and his

testimony, made it more likely that he simply did not remember the shooting with particular clarity." Mayes argues that, because Farmer genuinely could not recall whether Mayes was the shooter, his prior recorded statement was not "inconsistent" with his testimony at trial, within the meaning of Rule 5-802.1(a), and therefore was not admissible.

The State responds that Mayes failed to preserve this issue for review. On the merits, the State argues that "whether a witness's lack of memory is contrived or genuine" is a factual determination and because the court admitted the statement it "implicitly found that Farmer's lack of memory, as it only pertained to the identity of the shooter, was feigned" and was admissible.

We first address preservation. As noted, Mayes objected to the admission of Farmer's statement because it was consistent with Farmer's testimony at Mayes's second trial. In this appeal, Mayes argues that the statement was inadmissible because the State failed to establish that Farmer's lack of memory at trial was "feigned." Clearly, the argument Mayes advanced at trial and the argument he now advances on appeal are different. *See Gutierrez v. State*, 423 Md. 476, 488 (2013) ("[W]hen an objector sets forth the specific grounds for his objection . . . the objector will be bound by those grounds and will ordinarily be deemed to have waived other grounds not specified." (citations omitted)). Before the trial court, Mayes did not make the argument he presents to this Court. Accordingly, the issue is not preserved for appellate review.

Even if this issue were preserved, it lacks merit. In *Corbett*, the defendant was accused of committing multiple sex offenses against his girlfriend's 12-year-old

daughter. The daughter testified at trial that "something unusual happened" between her and the defendant, but she could not recall what. 130 Md. App. at 412. The State showed her a statement she wrote and gave to the police on the day of the assault, but she maintained that she had no recollection of what happened. The statement was admitted as substantive evidence over the defendant's objection and the defendant was convicted on all charges. On appeal, we held that "when a witness truthfully testifies that he does not remember an event, that testimony is not 'inconsistent' with his prior written statement about the event, within the meaning of Rule 5-802.1(a)." *Id.* at 425. We explained that it is within the trial court's discretion to determine "whether a witness's testimony truly is inconsistent with his prior testimony," and that determination must be made before admitting the prior statement into evidence. *Id.* at 426. Concluding that the court admitted the prior statement without first making the necessary factual findings, we reversed and remanded for further proceedings.

In the instant case, after acknowledging that he remembered the shooting, that he had spoken to the police, and that he had identified Mayes as the shooter, Farmer said he now "could be mistaken" and that he "could have gotten mixed up." Unlike in *Corbett*, Farmer did not testify that he could not recall any of the events on March 30, 2012, or that he did not remember identifying Mayes in his interview three days later. The court expressly ruled that the statement was admissible and the record plainly "demonstrates the inconsistency between [Farmer's] initial testimony and [his] prior audiotaped statement." *McClain v. State*, 425 Md. 238, 252 (2012); *see also id.* ("We presume, moreover, that the court recognized its obligations to satisfy itself of the existence of the .

. . prerequisites for admission of the statement under [Rule 5-802.1(a)].”; *Belton v. State*, 152 Md. App. 623, 632 (2003) (“A witness’s motive or reason for changing his testimony is not relevant to whether a statement is inconsistent.”).

The State established that Farmer’s testimony was inconsistent with his prior statement to Detective Min and that the statement met the requirements of Rule 5-802.1(a). The statement was made to the police three days after the murder and was recorded. Farmer was present at trial and subject to cross-examination, Mayes’s counsel questioned him at length about the accuracy of his memory, and the jury was able to weigh his live testimony against his prior statement. *See Belton*, 152 Md. App. at 638 (Under Rule 5-802.1, “[i]nconsistent extrajudicial statements are now admitted as substantive evidence. As a result, the jury has the responsibility of weighing the evidence and the credibility of the witnesses.”). The trial court did not err in admitting Farmer’s statement as substantive evidence.

II.

Mayes contends the evidence was legally insufficient to support his conviction for use of a handgun in the commission of a crime of violence. He argues that the State charged Mayes with using a “handgun or antique firearm,” not with using a firearm, but “failed utterly to present any evidence that the gun used was either a handgun or an antique firearm.”

The State counters that this issue is not preserved for review and, in any event, “there was sufficient evidence that the firearm used was indeed a handgun, capable of being concealed on the person.”

In Count II of the indictment, Mayes was charged with violating Maryland Code (2002, 2012 Repl. Vol.), section 4-204(b) of the Criminal Law Article ("CL"). That crime prohibits the use of a "firearm" in the commission of a crime of violence. Section 4-204(a) defines "firearm" as follows:

> (a)(1) In this section, "firearm" means:
>
> (i) a weapon that expels, is designed to expel, or may readily be converted to expel a projectile by the action of an explosive; or
>
> (ii) the frame or receiver of such a weapon.
>
> (2) "Firearm" includes an antique firearm, handgun, rifle, shotgun, short-barreled rifle, short-barreled shotgun, starter gun, or any other firearm, whether loaded or unloaded.

The language of the indictment specifically alleged that Mayes violated CL section 4-204(b) by using a "handgun and antique firearm capable of being concealed on the person in the commission of a crime of violence," as defined in Maryland Code (2003, 2011 Repl. Vol.), section 5-101 of the Public Safety Article ("PS"). Mayes maintains that, not having alleged that he used a "firearm," which encompasses a wide range of weapons, it was incumbent upon the State to prove that the weapon he used was a handgun (or antique firearm), and not some other type of firearm; and that the State failed to do so. At the close of the State's case, Mayes moved for judgment of acquittal, arguing:

> None of the witnesses said "I saw the murderer use a handgun." They say "I saw someone stand over [Hardy] and shoot him. They don't say whether it was a handgun. They don't say whether it was a rifle. They don't indicate what firearm was used. . . . So there's been no, no testimony to, by which this Court can conclude even at this stage that the weapon used was, in fact, a handgun as opposed to some other type of a long weapon, Your Honor. And for those reasons, I—I'd move the Court to grant my motion

> for judgment of acquittal as to the use of a firearm in the commission of a crime of violence and wear, carry, transport a handgun.

Mayes renewed his motion at the conclusion of all the evidence. Because Mayes argued below that the State did not adduce evidence to prove the allegations against him in the indictment, he preserved the issue of sufficiency of the evidence for appeal.

Evidence is legally sufficient to support a conviction if, "'after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Derr v. State*, 434 Md. 88, 129 (2013), *cert. denied*, ___ U.S. ___, 134 S.Ct. 2723 (2014) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in *Jackson*)).

We agree with the State that the evidence adduced at trial was sufficient to support a finding by the jury that Mayes used a handgun, beyond a reasonable doubt. Caraway testified that Mayes was the shooter and that she saw him point a gun at Hardy moments after leaving the Animal House. Detective Min testified that he located seven .40 caliber casings at the crime scene. He further testified that no fingerprints were recovered on the casings because "[o]nce the bullet comes out of a barrel, if it's an automatic handgun or semi-automatic, casing gets ejected to the right and because of the temperature of the gun and barrel, you cannot recover fingerprints."[6] The surveillance footage that was played for the jury depicts a man standing over Mayes and firing shots from a weapon too small

[6] Indeed, .40 caliber ammunition is used in a Smith and Weston Compact handgun. Springfield Armory, *XD(M) 3.8" Compact .40SW* (2016), *available at* http://www.springfield-armory.com/products/xdm-compact-40-cal/.

to see on the video. The video also shows the shooter fleeing from the scene, one arm dangling at his side, the other inside a jacket, concealing something inside.

On this evidence, reasonable jurors could find, beyond a reasonable doubt, that the weapon Mayes used to shoot Hardy was a handgun. As "[w]e defer to any possible reasonable inferences the jury could have drawn from the admitted evidence,'" *State v. Mayers*, 417 Md. 449, 466 (2010), we shall decline to disturb its verdict.

III.

Moments before the jurors entered the courtroom to deliver their verdict, counsel for Mayes asked the court to have "the restraints removed from [Mayes's] hands[.]" The judge motioned toward the security personnel and said, "That's up to them, now that there's a verdict. I don't—." Before the judge could finish his sentence, the jurors entered the courtroom. Once assembled, they returned guilty verdicts on all charges, which were confirmed by polling.

Mayes contends the court abused its discretion by allowing the security personnel to decide whether he would remain handcuffed while the verdict was returned and by not determining whether keeping him handcuffs furthered a "compelling state interest." He argues that his due process rights were violated because the jury "delivered its verdict, responded to jury polling, and harkened its verdict all while observing [him] bound by hand restraints."

The State responds that Mayes did not preserve this issue for review because the record does not show that he remained handcuffed when the jury entered the courtroom; and, if he did, counsel failed to object before the verdict was announced. The State

argues on the merits that, if the jurors saw Mayes in handcuffs, "any error is harmless beyond a reasonable doubt because there is not a reasonable possibility that the error affected the verdict."

We agree with the State that the issue is not preserved for review on appeal. The record does not establish that Mayes still was in handcuffs when the jurors entered the courtroom. (We disagree that, if Mayes was still handcuffed and the jurors could see that, Mayes did not timely object.)

Even if the issue were preserved, and even assuming the court abused its discretion, the court's error was harmless.

> "The decision as to the method and extent of courtroom security is left to the sound discretion of the trial judge." *Miles v. State*, 365 Md. 488, 570 (2001), *cert. denied*, 534 U.S. 1163 (2002). *Accord Whittlesey v. State*, 340 Md. 30, 84 (1995), *cert. denied*, 516 U.S. 1148 (1996) ("The trial judge has broad discretion in maintaining courtroom security."). As the Court of Appeals has explained, reviewing courts "'uniformly rely upon an abuse of discretion standard for reviewing the action of trial judges in the matter of restraint.'" *Hunt v. State*, 321 Md. 387, 408 (1990) (quoting *Bowers v. State*, 306 Md. 120, 132 (1986)), *cert. denied*, 502 U.S. 835 (1991). In exercising that discretion, however, the decision must be made by the judge personally; it may "not be delegated to courtroom security personnel." *Whittlesey*, 340 Md. at 84.

Wagner v. State, 213 Md. App. 419, 476 (2013) (parallel citations omitted). In that case, the trial court directed that the defendant remain seated and in shackles when the jury returned to deliver its verdict. Defense counsel objected, arguing that, "if the jury was not unanimous in its verdict and had 'to go back to deliberate,' they already would have seen" the defendant restrained. *Id.* at 475. The trial court found that the defendant would remain shackled because he posed a potential security threat. The court did not make an

"'individualized evaluation of both the need for shackling and the potential prejudice therefrom.'" *Id.* at 477 (quoting *Miles*, 365 Md. at 569). The jury entered the courtroom and returned its verdict. All the jurors were polled and "expressed their agreement with the verdict." *Id.* at 475.

On appeal, we concluded that the court had abused its discretion by failing to make an "individualized evaluation." We went on to explain, however, that

> requiring a defendant to wear shackles during the rendering of the jury verdict, after the jury has reached a guilty verdict and the presumption of innocence has been overcome, is not inherently prejudicial. Unless there is some indication in the record that the shackling caused prejudice to the defendant, any error in requiring shackling at this point will be deemed harmless.

Id. at 479.

In the case at bar, any abuse of discretion by the trial judge likewise was not prejudicial error. When the jurors entered the courtroom, they already had reached a verdict. There is nothing in the record to suggest that seeing Mayes in hand restraints after they had reached a verdict had any effect on their verdict.

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