UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 355

September Term, 2016

LESTER EDWARD DESHAZOR, JR.

v.

STATE OF MARYLAND

Woodward, C.J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 5, 2017

In 1998, Lester Edward Deshazor, Jr., appellant, was convicted by a jury, in the Circuit Court for Prince George's County, of first degree murder, second degree murder, carjacking, and use of a handgun in a crime of violence.[1] This Court affirmed his convictions on direct appeal. *See Deshazor v. State*, No. 6378, Sept. Term. 1998 (filed November 8, 1999).

In 2016, Deshazor filed a motion to correct illegal sentence, claiming that, in announcing their verdict at his trial, the jury failed to specifically state whether they had found him guilty of first degree murder, thereby rendering his conviction for that offense a nullity. He also claimed that, when polling the jury, the clerk impermissibly suggested the degree of murder to the forelady. The circuit court denied Deshazor's motion without a hearing. On appeal, Deshazor raises two issues that are reducible to one: whether the trial court erred in denying his motion to correct illegal sentence. For the reasons that follow, we affirm.

To support a first degree murder conviction, the jury verdict must reflect that the jurors unanimously found the defendant guilty, not just of murder, but of murder in the first degree. *See* Md. Code Ann., Crim. Law Art. § 2–302 ("When a court or jury finds a person guilty of murder, the court or jury shall state in the verdict whether the person is guilty of murder in the first degree or murder in the second degree."). The Court of Appeals has made clear, however, that each juror need not utter those specific words. *See Strong v. State*, 261 Md. 371 (1971), *vacated,* 408 U.S. 939 (1972) (vacating death

[1] Deshazor's second degree murder conviction merged with his first degree murder conviction.

sentence). In *Strong*, the forelady announced the verdict as: "Guilty. Guilty of first degree murder, the first degree." *Id*. at 373. During the subsequent polling, the individual jurors responded: "Yes," or "Yes, it is," when asked if their verdict was the same as the forelady's. *Id*. The Court of Appeals held that the jurors had clearly found the appellant guilty of first degree murder, noting that the jurors' response to the polling question was "the equivalent of each juror saying: 'I find the accused guilty of murder in the first degree.'" *Id*. at 374.

The facts of this case are indistinguishable from *Strong*. After the forelady announced her verdict of first degree murder, all eleven jurors indicated that they had heard her verdict and stated that their verdict was the same. Thereafter, all of the jurors hearkened to the verdict and agreed, in unison, that they had found appellant guilty of first degree murder. That was all that was required to reflect the jury's verdict in Deshazor's case. *See State v. Santiago*, 412 Md. 28, 38–39 (2009) ("A verdict is not final 'until after the jury has expressed their assent in one of [two] ways,' by hearkening or by a poll." (alteration in original) (citation omitted)).

Finally, Deshazor's claim that the clerk impermissibly suggested the degree of murder to the forelady, challenges the polling process, which the Court of Appeals has recently held is a procedural challenge that cannot be raised in a motion to correct illegal sentence. *See Colvin v. State*, 450 Md. 718, 727-28 (2016) (holding that the appellant's challenge to the trial court's polling process amounted to a procedural challenge, not a substantive allegation of lack of jury unanimity and, therefore, that the claim was not

cognizable under Rule 4-345(a)). Consequently, we need not address that claim on appeal.[2]

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT

[2] We note that, even if this claim could have been raised in a motion to correct illegal sentence, it lacks merit, because it is premised on an excerpt from *Ford v. State*, 12 Md. 514, 534 (1859) that set forth the "questions presented" by the appellant in that case and did not reflect the opinion of the Court.