

Circuit Court for Baltimore County
Case No. 03-K-12-000420

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1431

September Term, 2020

ADRIAN EUGENE GEE

v.

STATE OF MARYLAND

Graeff,
Zic,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 2, 2021

*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.

In 2012, Adrian Eugene Gee, appellant, was convicted by a jury in the Circuit Court for Baltimore County of first-degree rape, second-degree rape, first-degree assault, second-degree assault, and false imprisonment. In 2020, he filed a motion to correct illegal sentence claiming that no sentence should have been imposed for any of his convictions because the jury verdict was not unanimous. Specifically, he contended that the jury polling was defective because Juror No. 11's response to the polling was noted as "inaudible" in the transcript. The trial court denied the motion without a hearing. This appeal followed. Because the verdict was valid and appellant's sentences are legal, we shall affirm.

The jury returned its verdict on October 23, 2012. The foreperson announced the jury's verdict on all counts before it. The clerk then hearkened the verdict and the jury gave its assent to the hearkening. Thereafter, the court requested the clerk to poll the jurors. The transcript indicates that all the jurors, with the exception of Juror No. 11, stated "yes" when asked if they agreed with the verdict announced by the foreperson. The transcript states that the response of Juror No. 11 was "inaudible." No one, including the defense, voiced any concern that Juror No. 11 had not, in fact, agreed with the verdict.

On appeal, appellant attacks the unanimity of the jury's verdict based on the fact that the transcript does not clearly indicate whether Juror No. 11 agreed with the verdict during polling. The State counters that appellant's claim is meritless and not the proper subject of a Rule 4-345(a) motion. 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 Juror No. 11’s response was not recorded in the transcript did not invalidate the poll. But even if the polling were to be deemed deficient, the verdict was harkened, and the jury assented to that hearkening. Consequently, appellant’s claim that there was a defect in the polling procedure is not cognizable in a Rule 4-345(a) motion. *See Colvin v. State*, 450 Md. 718, 726-29 (2016) (holding that when the 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).

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