Circuit Court for Baltimore City
Case No. 119087003

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2410

September Term, 2019

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JULES WILLIAMS

v.

STATE OF MARYLAND

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

JJ.

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PER CURIAM

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Filed: October 29, 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.

Convicted by a jury in the Circuit Court for Baltimore City of first degree assault, second degree assault, and related offenses, Jules Williams, appellant, presents for our review two questions: whether the court erred in limiting defense counsel's cross-examination of a witness, and whether the conviction for second degree assault must be vacated. For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the State called Christopher Holtzclaw, who testified that on March 10, 2019, he was working at his job as a security officer at a senior and disability living apartment complex known as Johnston Square. Mr. Holtzclaw observed Mr. Williams "knocking on a resident's door, [but] the resident wasn't there." Mr. Holtzclaw testified:

> So I asked him to leave because he was causing a ruckus in the lobby. So as I asked him to leave, he approached me at the security desk and asked me if he could talk to me, and I asked him to leave. Over and over again, he asked to speak to me, and I said could you please leave. If you don't leave, I will call the authorities so you can be removed.
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> As I began to walk out the door, he was walking behind me, and kept asking could he talk to me, and I told him no. As soon as I got outside, he decided to punch me in the back of the head and tried to take off running. And as soon as he took off running, I just kept asking him to leave the property. He hit me again, and the second time he hit me I caught his jacket, and we began to fight, physical altercation.
>
> After the physical altercation, he fell on the ground. He got up, reached for his pocket, zipping down his pocket, and pulled out a gun and pointed it at me.
>
> * * *
>
> After that I asked him to please leave the premises, and please put down the weapon. He decided to put it down by his shoulder and kept asking to speak to me. I began to back up and go back into the building. Some of the residents were sitting outside, they came up to the guy and told him that it's not worth it, and I also explained that to him. Then I went back inside and called the authorities.

Mr. Williams first contends that the court erred in limiting defense counsel's cross-examination of Mr. Holtzclaw. During voir dire of prospective jurors, the clerk informed the court that, according to the "victim advocate," Mr. Holtzclaw "was trying to leave." The court stated that it was "getting ready to sign [a] material witness warrant." The prosecutor stated that it was her "understanding that [Mr. Holtzclaw was] trying to leave," and asked the court if it was "possible to have [a] Deputy serve Mr. Holtzclaw with a summons for him to sign." The court replied: "He can sign a summons. But you can let him know that I've already signed a warrant. . . . . If he's not here when he's supposed to be here, he's going to be picked up on it."

The following morning, the parties appeared for trial. The prosecutor informed the court that Mr. Holtzclaw was not present, but asked the court if, "in lieu of taking [Mr. Holtzclaw] to Central Booking," the "officers [could] remain with him outside of the courtroom." The court replied: "That's fine as long as the jury doesn't see him shackled." By the close of opening statements, Mr. Holtzclaw appeared, and the prosecutor called him. During cross-examination, the following colloquy occurred:

> [DEFENSE COUNSEL:] Mr. Holtzclaw, you did not want to be here today; is that a fair statement?
>
> [MR. HOLTZCLAW:] No.
>
> [PROSECUTOR]: Objection.
>
> THE COURT: Overruled.
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> [DEFENSE COUNSEL:] Meaning no you did not want to be here?

[MR. HOLTZCLAW:] I came to clear myself because I didn't want to be in none of this mess.

[DEFENSE COUNSEL:] Well, there was a material witness warrant that went out for you; is that –

[PROSECUTOR]: Objection.

THE COURT: Sustained.

[DEFENSE COUNSEL:] Mr. Holtzclaw, were you having second thoughts about what you think actually happened that day?

[MR. HOLTZCLAW:] No, I wasn't.

[DEFENSE COUNSEL:] You came in here willingly today?

[MR. HOLTZCLAW:] Today I came in willingly, yes, I did.

[DEFENSE COUNSEL:] Not with the Warrant Apprehension Task Force –

[MR. HOLTZCLAW:] No.

[DEFENSE COUNSEL:] – coming out to get you?

[MR. HOLTZCLAW:] No.

[DEFENSE COUNSEL:] How about yesterday?

[MR. HOLTZCLAW:] No. I stayed here all day yesterday to testify. I was here at 9 a.m., and I left at 4 p.m.

[DEFENSE COUNSEL:] Isn't it true that you came in the company of a police officer yesterday?

[MR. HOLTZCLAW:] No, I did not. I came in willingly.

[DEFENSE COUNSEL:] Wasn't there a point around noon when you were actually leaving the witness room over in Mitchell?

[MR. HOLTZCLAW:] No.

[PROSECUTOR]: Objection.

[MR. HOLTZCLAW]: I went to my car.

The prosecutor then requested a bench conference, during which defense counsel stated his belief that Mr. Holtzclaw was "not telling the truth" and would not admit that he tried to leave during prospective juror voir dire. The court replied that defense counsel could "ask those questions at [his] own peril," but admonished him to "[b]e careful with this line of questioning." Defense counsel then ended his cross-examination.

Mr. Williams now contends that the court "erred in prohibiting . . . defense [counsel] from questioning Mr. Holtzclaw regarding the issuance of the material witness warrant," because "[t]here was no question that he tried to leave, and . . . with Mr. Holtzclaw refusing to admit that it happened, it was critical for the defense to be able to confront him with the fact that the judge issued the warrant in response to his evasive behavior." But, defense counsel did not introduce any evidence, and the prosecutor did not introduce any evidence during direct examination, that Mr. Holtzclaw had personal knowledge of the warrant or why the judge had issued it, and Rule 5-602 states that "a witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." Also, defense counsel was able to thoroughly explore the topics to which the question pertained, specifically whether Mr. Holtzclaw "was having second thoughts about what . . . actually happened" on the day of the offenses, whether he was testifying "willingly," and whether "the Warrant Apprehension Task Force" had been "coming out to get" him, and the court allowed defense counsel to continue exploring the topics if he so desired. We conclude from these circumstances that the court did not err in

sustaining the State's objection to a single question of defense counsel's cross-examination.

Mr. Williams next contends that the conviction for second degree assault must be vacated. The verdict sheet submitted to the jury instructed them to reach a verdict as to first degree assault, and if the jury found Mr. Williams guilty of the offense, to skip the offense of second degree assault and proceed to the remaining counts. When the jury returned the verdict sheet to the court, the sheet reflected that the jury had reached a verdict of guilty of both first degree assault and second degree assault. The clerk subsequently asked the foreperson for the jury's verdict as to first degree assault, and the foreperson replied: "Guilty." The clerk did not ask for the verdict as to second degree assault. During polling and hearkening, the jury confirmed its verdict as to first degree assault. At sentencing, the court sentenced Mr. Williams to a term of imprisonment of twelve years for first degree assault, and stated that "[t]he second-degree assault charge merges."

Mr. Williams now contends that the "sentence" for second degree assault is illegal, because the Court of Appeals has held that "a sentence is illegal if based upon a verdict of guilt that is not orally announced in open court in order to permit the jury to be polled and hearkened to the verdict." *Jones v. State*, 384 Md. 669, 672 (2005) (footnote omitted). But, as the State notes, the court did not impose a sentence for second degree assault. Also, second degree assault is a lesser included offense of first degree assault, and the Court of Appeals has held "that a conviction for a greater offense constitutes a finding of guilt for all lesser included offenses." *Smith v. State*, 412 Md. 150, 165-66 (2009) (citations omitted). In reaching a verdict of guilty as to first degree assault, and confirming that

verdict during polling and hearkening, the jury also reached and confirmed a verdict of guilty as to second degree assault, and hence, the conviction of second degree assault need not be vacated.

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