

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**State of West Virginia,
Plaintiff Below, Respondent**

vs) **No. 11-0502** (Harrison County 10-F-119)

**Mark A. Reed Jr.,
Defendant Below, Petitioner**

FILED
December 2, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Mark A. Reed Jr. appeals the circuit court's order sentencing him to serve one year, following his conviction by jury of destruction of property. This appeal was timely perfected by counsel, with petitioner's appendix accompanying the petition. The State has filed its response.

This Court has considered the parties' briefs and the record on appeal. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this case is appropriate for consideration under the Revised Rules. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

Petitioner was involved in an altercation with his girlfriend and allegedly striking her vehicle, which she was inside, with his vehicle, causing damage. He was also accused of forcefully removing her from her vehicle after hitting it. Petitioner was indicted on four counts in this matter: destruction of property, assault during the commission of a felony, domestic assault, and domestic battery. Petitioner was tried before a jury on this matter, and was found guilty of destruction of property, but was acquitted on all other charges. At trial, petitioner called his mother's boyfriend as a witness and attempted to elicit opinion testimony from him regarding the damage to the victim's vehicle. The lay witness, Ronald Crim, had not personally examined the victim's vehicle, and was not an expert in accident reconstruction. The circuit court excluded his testimony. Petitioner filed post-trial motions attempting to set aside the verdict, which were denied.

On appeal, petitioner argues that the jury verdict was contradictory, as he was acquitted of other charges arising out of the same chain of events. The State argues that the

charges all had different elements, so the verdicts were not contradictory. Even if the verdict were contradictory, this Court has stated that “[a]ppellate review of a claim of inconsistent verdicts is not generally available.” *State v. Hall*, 174 W.Va. 599, 328 S.E.2d 206 (1985).” Syl. Pt. 5, *State v. Bartlett*, 177 W.Va. 663, 355 S.E.2d 913 (1987). The elements of the charged crimes were not identical; thus, this Court finds no error in the jury’s verdict.

Petitioner also argues that Ronald Crim should have been able to testify under Rule 703 of the West Virginia Rules of Evidence. However, Rule 703 requires that the witness be an expert, but Crim was never qualified as an expert.

In order for a lay witness to give opinion testimony pursuant to Rule 701 of the West Virginia Rules of Evidence “(1) the witness must have personal knowledge or perception of the facts from which the opinion is to be derived; (2) there must be a rational connection between the opinion and the facts upon which it is based; and (3) the opinion must be helpful in understanding the testimony or determining a fact in issue.”

Syl. pt. 2, *State v. Nichols*, 208 W.Va. 432, 541 S.E.2d 310 (1999), modified on other grounds by *State v. McCraime*, 214 W.Va. 188, 588 S.E.2d 177 (2003). In the present case, Crim is not an accident reconstruction expert, and he never measured the location of any damages on the victim’s vehicle. He did not know the relative positions of the vehicles at the time of the impact and did not have enough information to measure exactly. He offered no photographs showing his measurements. Thus, the *Nichols* requirements are not met in this case. This Court finds no error in the circuit court’s ruling that Crim could not testify regarding the accident in question.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: December 2, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh