

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

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

vs.) No. 10-4020 (Berkeley County 09-F-187)

**Aaron C. Rockwell,
Defendant Below, Petitioner**

FILED

November 15, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner appeals his jury conviction of first degree robbery and burglary and the circuit court's order sentencing him to a determinate term of forty years for first degree robbery and an indeterminate term of one to fifteen years for burglary. The appeal was timely perfected by counsel, with petitioner's appendix from the circuit court accompanying the petition. The State has filed a response.

This Court has considered the petition and the record on appeal. The facts and legal arguments are adequately presented in the petition and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review 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 of Appellate Procedure.

The petitioner challenges his conviction, arguing that the evidence presented was insufficient, that the jury impermissibly compromised its verdict by acquitting him of two related charges, and also that the circuit court committed reversible error by introducing the transcript of a victim's statement to police over his objections. "A criminal defendant challenging the sufficiency of the evidence to support a conviction takes on a heavy burden. An appellate court must review all the evidence, whether direct or circumstantial, in the light most favorable to the prosecution and must credit all inferences and credibility assessments that the jury might have drawn in favor of the prosecution. The evidence need not be inconsistent with every conclusion save that of guilt so long as the jury can find guilt beyond a reasonable doubt. Credibility determinations are for a jury and not an appellate court. Finally, a jury verdict should be set aside only when the record contains no evidence, regardless of how it is weighed, from which the jury could find guilt beyond a reasonable doubt." Syl. Pt. 3, in part, *State v. Guthrie*, 194 W.Va. 657, 461 S.E.2d 163 (1995).

To begin, petitioner asserts that the evidence against him was insufficient to support his conviction for several reasons. He argues that the identity of the crime's perpetrator remains in doubt, as no DNA evidence linking petitioner to the crime was introduced, although DNA evidence for the other two suspects was found. Further, petitioner argues that no evidence was found in his residence, and that no witnesses at the scene identified him as a perpetrator. Petitioner further argues that his brother, Jeremy Rockwell, who is of similar appearance, build, and affect, did leave DNA evidence at the scene of one robbery, and that witnesses could have easily confused the two men. Lastly, petitioner calls into question the testimony of co-defendant Dustin Rhodes, who testified that he, the petitioner, and petitioner's brother Jeremy committed the robbery against Mr. Myers. Petitioner alleges that Mr. Rhodes did not testify truthfully, as he had an interest in protecting his plea agreement with the prosecution offered in exchange for his testimony against petitioner.

As stated above, issues of credibility are for the jury to decide. This Court has held that "[t]he jury is the trier of the facts and in performing that duty it is the sole judge as to the weight of the evidence and the credibility of the witnesses." Syl. Pt. 2, *State v. Bailey*, 151 W.Va. 796, 155 S.E.2d 850 (1967). Simply put, the jury heard testimony from co-defendant Dustin Rhodes that the petitioner committed the crime in question. Despite petitioner's assertion that this testimony lacks credibility, the jury made its determination and presumably relied upon such testimony in reaching its decision. The petitioner has failed to meet the heavy burden of establishing that the record contains no evidence, regardless of how it is weighed, from which the jury could find guilt beyond a reasonable doubt, and this Court finds that the evidence against petitioner was sufficient to support his conviction.

As for his argument that the jury impermissibly compromised its verdict by finding him guilty of only half the charges against him, this Court finds no merit in petitioner's argument. The State proceeded against petitioner on two counts each of robbery and burglary in connection with two separate occurrences. However, the jury acquitted petitioner of the robbery and burglary charges related to victim Frank Carper, and found him guilty of the robbery and burglary charges related to victim Daniel Myers. Petitioner asserts that, due to the similar nature of the two crimes and also their close proximity in time, if the jury acquitted him of the charges related to the Carper robbery, it must also acquit him of the remaining charges related to the Myers robbery. However, there is no precedent that requires a conviction to be voided simply because the defendant was not convicted on all charges. In reality, this is another sufficiency of the evidence argument, and will be reviewed as such. Clear from the verdict is the fact that the jury found the evidence against petitioner insufficient to support conviction for the charges stemming from Mr. Carper's robbery, but sufficient to convict him of the Myers robbery. Again, these determination are for the jury to decide, and the same will be set aside on appeal "only when the record contains no evidence, regardless of how it is weighed, from which the jury could find guilt beyond a reasonable doubt." Syl. Pt. 3, in part, *State v. Guthrie*, 194 W.Va. 657, 461 S.E.2d 163

(1995). Because the evidence was sufficient to support the petitioner's conviction, the jury's decision to acquit the petitioner of the remaining two counts does not void the conviction.

Lastly, petitioner argues that the circuit court committed reversible error by allowing a transcript of Mr. Carper's interview with law enforcement to be admitted into evidence over his objection. Petitioner asserts that his counsel used the transcript for impeachment purposes only, and that such a demonstrative exhibit should not have been admitted into evidence. Per the petitioner's argument, the transcript was admitted without redaction and permitted the jury to read pages of hearsay testimony never adduced at trial through the State's witnesses. Petitioner alleges this was highly prejudicial. As such, petitioner argues that the transcript's admission is a violation of his right to confrontation and to cross-examination, and therefore a violation of his due process rights. "A trial court's evidentiary rulings, as well as its application of the Rules of Evidence, are subject to review under an abuse of discretion standard." Syl. Pt. 4, *State v. Rodoussakis*, 204 W.Va. 58, 511 S.E.2d 469 (1998).

In support of this assignment of error, petitioner argues that it is well settled that "[a]udio and video tape recording transcripts provided to a jury as an aid while the actual tapes are being seen or heard are not themselves evidence, should not be admitted into evidence, and should not be furnished to the jury during deliberations. Audio and video tape recording transcripts are demonstrative aids for the understanding of evidence; they should be so marked and identified; and the court should instruct the jury regarding the purpose and limited use of the transcripts." Syl. Pt. 3, *State v. Hardesty*, 194 W.Va. 732, 461 S.E.2d 478 (1995). The State, however, points out that the transcript at issue in this matter was not used as a demonstrative aid while a video or audio recording was played for the jury. Instead, petitioner's counsel made references to an unknown potential suspect by reading from the transcript interview during his cross-examination of Lieutenant Harmison.

Per West Virginia Rule of Evidence 106, "[w]hen a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it." Interpreting this rule, this Court has held that "[r]eading into the record from a document would be the same as introducing that document, for purposes of Rule 106." *Stewart v. Johnson*, 209 W.Va. 476, 484, 549 S.E.2d 670, 678 (2001). In this matter, the circuit court made the determination that petitioner's introduction of a portion of the transcript necessitated the introduction of the entire document upon the State's motion to admit the same. This decision does not constitute an abuse of discretion.

For the foregoing reasons, we find no error in the decision of the circuit court and the sentence is hereby affirmed.

Affirmed.

ISSUED: November 15, 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