STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

State of West Virginia,
Plaintiff Below, Respondent

vs) No. 101365 (Gilmer County 09-F-7)

Rickie Lee Wright,
Defendant Below, Petitioner

FILED
May 13, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Rickie Lee Wright appeals his conviction for conspiracy to commit a felony, to-wit, grand larceny. He was sentenced to one to five years in prison, but that sentence was then suspended and he was ordered incarcerated in jail for ninety days to be followed by five years of probation. He was also ordered to pay restitution. The Respondent State of West Virginia filed a summary 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.

In this appeal, petitioner argues that there was insufficient evidence for the jury to find him guilty beyond a reasonable doubt of conspiracy to commit grand larceny.

> 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. To the extent that our prior cases are inconsistent, they are expressly overruled.

Syl. Pt. 3, *State v. Guthrie,*194 W.Va. 657, 461 S.E.2d 163 (1995).

Petitioner was arrested pursuant to an investigation into the theft of wood pellets from pellet manufacturer Lignetics, Inc. A Lignetics employee, Douglas Hardman, sold company inventory to third parties at greatly reduced prices and then personally kept the purchase money. Hardman had already been arrested and was facing criminal charges when he offered to assist in an undercover operation to identify the buyers of the stolen pellets. Lignetics General Manager John Utter agreed to the undercover operation and, at some point, State Police were involved.

According to Hardman's trial testimony, Hardman arranged with Rick Deterline for Deterline to purchase a load of stolen pellets. Deterline was to pick-up the pellets at a later time but, in the meantime, Deterline arranged for petitioner to deliver the money for this purchase. Petitioner delivered $2,000 in cash to a man that petitioner knew only as "John" at a gas station. According to General Manager Utter's testimony, the pellets would be valued at more than twice this amount.

Petitioner argued at trial that he thought he was paying for "set-backs" or unusable inventory, while the State alleged that petitioner was knowingly paying for stolen pellets. Petitioner also argued that he was indicted for conspiring with Hardman, but there was no actual or tacit agreement between himself and Hardman, and there was no evidence that petitioner ever even spoke to Hardman. Upon a review of the record, we hold that there was sufficient evidence for the jury to find that petitioner was involved in a conspiracy to commit grand larceny. There was evidence for the jury to find that Hardman and Deterline made arrangements for an illegal transaction, and Deterline made arrangements with petitioner to deliver the purchase money for this transaction. It was not necessary for petitioner to have spoken directly with Hardman. Moreover, petitioner took the overt act of delivering the money. The circumstances of the delivery of the money are sufficient evidence for the jury to have found that petitioner knew he was involved in the purchase of stolen property, and this Court will not second-guess the trier of fact.

Petitioner also argues that the West Virginia conspiracy statute, West Virginia Code § 61-10-31, should be construed as a bilateral conspiracy statute that requires two or more persons to agree to proceed with criminal conduct. He argues that in his case, two or more people did not agree to commit a crime because the two people who carried out the "sting

operation" in which petitioner was arrested – Hardman and Utter – were acting as agents of the State Police. Petitioner cites cases from other jurisdictions that hold that under bilateral conspiracy statutes, confidential informants and government agents cannot serve as the second party to a conspiracy. *E.g.*, *U.S. v. Dimeck*, 24 F.3d 1239, 1242 n.6 (10th Cir. 1994). However, in the case *sub judice*, this Court need not address whether West Virginia Code § 61-10-31 is a bilateral or unilateral conspiracy statute. The evidence at trial showed that petitioner conspired with Deterline, who unquestionably was not acting as a confidential informant or government agent.

Finally, petitioner asserts error in the trial court's rulings on various evidentiary issues. "'The action of a trial court in admitting or excluding evidence in the exercise of its discretion will not be disturbed by the appellate court unless it appears that such action amounts to an abuse of discretion.' Syllabus point 6, *State v. Kopa*, 173 W.Va. 43, 311 S.E.2d 412 (1983)." Syl. Pt. 1, *State v. Nichols*, 208 W.Va. 432, 541 S.E.2d 310 (1999). Upon a review of the parties' arguments and the record, we find no abuse of discretion.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: May 13, 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