

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

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

vs) No. 101577 (Kanawha County 08-F-393)

**Jamel Kahalid Mitchell, Defendant
below, Petitioner**

FILED

April 18, 2011

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

MEMORANDUM DECISION

Petitioner Jamel Kahalid Mitchell filed this timely appeal of the circuit court order sentencing him to serve forty years, three to fifteen years and two to ten years consecutively following his conviction of robbery in the first degree, attempted murder and malicious wounding.

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 accused of shooting a man named Aaron Williams, then fleeing to Pennsylvania with the vehicle Williams was driving at the time of the shooting. Petitioner was extradited back to West Virginia, where he stood trial and was convicted by a jury of robbery in the first degree, attempted murder and malicious wounding. Petitioner argues that the circuit court erred in refusing to strike three jurors for cause, that the circuit court erred in not giving two requested instructions, and that the evidence was insufficient to sustain a conviction for robbery in the first degree.

Motion to Strike Jurors Issue

Petitioner first argues error in the circuit court's refusal to strike three jurors for cause. The husband of one of the challenged jurors had been the defense attorney's accountant in

the past and had to provide evidence to the Kanawha County Prosecutor on an embezzlement case years before. The other two challenged jurors each had relatives who have been in law enforcement, such as a nephew in either the Secret Service or the FBI, and a brother-in-law who is a city police officer in Richmond, Kentucky. This Court has recognized that “[t]he challenging party bears the burden of persuading the trial court that the juror is partial and subject to being excused for cause. An appellate court only should interfere with a trial court’s discretionary ruling on a juror’s qualification to serve because of bias only when it is left with a clear and definite impression that a prospective juror would be unable faithfully and impartially to apply the law.” Syl. Pt. 6, *State v. Miller*, 197 W.Va. 588, 476 S.E.2d 535 (1996). The record shows that all three jurors confirmed repeatedly their ability to be fair in the proceedings under the questioning of the circuit court. The circuit court found in each case that cause to strike had not been established. This Court finds no error in the circuit court’s refusal to strike these jurors for cause.

Jury Instruction Issue

Petitioner argues that the circuit court erred in refusing to give two jury instructions requested by the petitioner. This Court has held that

A trial court’s instructions to the jury must be a correct statement of the law and supported by the evidence. Jury instructions are reviewed by determining whether the charge, reviewed as a whole, sufficiently instructed the jury so they understood the issues involved and were not misled by the law. A jury instruction cannot be dissected on appeal; instead, the entire instruction is looked at when determining its accuracy. A trial court, therefore, has broad discretion in formulating its charge to the jury, so long as the charge accurately reflects the law. Deference is given to a trial court’s discretion concerning the specific wording of the instruction, and the precise extent and character of any specific instruction will be reviewed only for an abuse of discretion.

Syl. Pt. 6, *State v. Guthrie*, 194 W.Va. 657, 461 S.E.2d 163 (1995).

Petitioner’s second assignment of error concerns the circuit court’s refusal to give a requested instruction on the defense of necessity, stating that this jury instruction was the basis of petitioner’s defense, as he claimed he had to flee West Virginia to avoid being killed. The State objected to the instruction, stating that the instruction was not good law, as it is derived from Justice Starcher’s dissent in *State v. Poling*, 207 W.Va. 299, 531 S.E.2d 678 (2000), and has never been adopted as law. The circuit court agreed, finding that it had to apply the law as it stands, not as defense counsel states that the law “should be.” This Court finds no error in the refusal of this instruction.

Petitioner's third assignment of error is the circuit court's failure to give a special instruction stating that no more weight should be given to a police officer's testimony than to the testimony of any other witness. The State objected to this instruction, arguing that the instruction improperly singles out a particular type of witness and directs what weight to give that witness, and arguing that an instruction was already given regarding how witness testimony should be weighed. The circuit court refused the instruction, stating that it is not proper to single out a type of witness and direct the level of weight to be given to the testimony of that witness. This Court finds no error in the refusal of said instruction.

Insufficiency of the Evidence

Petitioner's fourth assignment of error is that the evidence was insufficient to sustain a conviction for robbery in the first degree because the State did not introduce evidence showing that petitioner took the vehicle driven by the victim without permission or intended to permanently deprive the owner of the vehicle. "The function of an appellate court when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, is sufficient to convince a reasonable person of the defendant's guilt beyond a reasonable doubt. Thus, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt." Syl. Pt. 1, *State v. Guthrie*, 194 W.Va. 657, 461 S.E.2d 163 (1995).

The victim testified that he did not know where the vehicle went after he was shot inside it. A police officer from Philadelphia testified that the vehicle the victim was driving was found in Philadelphia, the same city where petitioner was found and arrested. Petitioner's ex-girlfriend testified that she and petitioner took the vehicle to Philadelphia, and that she knew the vehicle was the one which had been driven by the victim. Finally, petitioner's mother testified that petitioner took the vehicle to Philadelphia after the shooting. The Court concludes that there was sufficient evidence to sustain the jury's conviction.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: April 18, 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