

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

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

vs) **No. 11-0387** (Mercer County 10-M-AP-19-DS)

**Steve E. Blankenship,
Defendant Below, Petitioner**

FILED

**February 14, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Mercer County, wherein the petitioner was convicted of (1) driving under the influence of alcohol, (2) failing to report an accident involving more than \$500.00 in property damage, and (3) failing to give notice of name and address after striking an unattended vehicle. This appeal was timely perfected by counsel, with Petitioner Blankenship's appendix accompanying the petition. The State has filed a response in support of the petitioner's convictions.

This Court has considered the parties' briefs and the appendix on appeal. The facts and legal arguments are adequately presented in the parties' written briefs and the appendix 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 appendix 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.

1. Facts

Petitioner was convicted in magistrate court of (1) driving under the influence of alcohol, (2) failing to report an accident involving more than \$500.00 in property damage, and (3) failing to give notice of name and address after striking an unattended vehicle. He appealed this conviction to circuit court. Following a bench trial on this appeal, the circuit court found the petitioner guilty of the same charges and sentenced him to fifteen days in the regional jail and a fine of \$500.00 for the first offense, ten days in the regional jail and a fine of \$100.00 for the second offense, and ten days in the regional jail for the third offense; all sentences were ordered to run concurrently with one another and credit was given to the petitioner for six days previously served in jail. The petitioner's convictions arose from events that occurred on May 2, 2010. Testimony at the circuit court bench trial provided that on that evening, Mercer County Sheriff's Deputies Gills and Coburn found that their police cruisers had been struck outside of the Sheriff's Department, leaving debris on the road and

blue paint transfer on the vehicles. Nobody was around at the scene to witness or claim the cause of damage. Sergeant Timothy Gray of the Princeton Police Department reported to the scene. Shortly after he arrived, he and the deputies were notified of an individual found lying about three blocks away from the Department and a blue Chevrolet registered under this individual's name about a hundred yards away from him. They found this individual, later identified as the petitioner, with lacerations on his face and fingers, slurred speech, and smelling of alcohol. The petitioner was subsequently taken to the hospital for treatment of his injuries. After he was released from the hospital, he was taken into custody by the Princeton Police Department where his breathalyser test was above the legal limit. The petitioner did not decide to testify until after the circuit made findings on the record.

2. Discussion

“‘This Court reviews the circuit court’s final order and ultimate disposition under an abuse of discretion standard. We review the challenges to findings of fact under a clearly erroneous standard; conclusions of law are reviewed *de novo*.’ Syllabus Point 4, *Burgess v. Porterfield*, 196 W.Va. 178, 469 S.E.2d 114 (1996)).” Syl. Pt. 1, *State v. Spade*, 225 W.Va. 649, 695 S.E.2d 879 (2010).

Petitioner Blankenship asserts that he was not driving the blue Chevrolet when it struck the two police cruisers. He insisted at the circuit court bench trial that he was asleep in the passenger seat when he heard a thump, looked up, and saw another individual named Roger Varney driving his vehicle. On appeal, he argues two assignments of error. First, he argues that he was denied due process and a fair trial because the State failed to prove that the alleged damage to the cruisers amounted to more than \$500.00 and because the circuit court assumed that the damage was more than \$500.00, thus the burden of proof was impermissibly shifted to the petitioner. In the second assignment of error, petitioner asserts that his convictions were based on insufficient evidence wherein the State failed to prove beyond a reasonable doubt that he was driving the vehicle involved in the alleged offenses.

Under the petitioner’s first assignment of error, he argues that the only witness who testified to the amount of damage to the cruisers did not own the cruisers. He further argues that the circuit court made an assumption on the record that the property damage to the vehicles amounted to more than \$500.00, impermissibly shifting the burden on the petitioner to prove that the damage to the vehicles amounted to less than \$500.00. In response, the State contends that Deputy Gills, the witness who testified to the amount of damage caused to the cruisers, testified that as part of his job, he routinely judges estimates of damage to vehicles. In estimating the damage caused to the police cruisers, he testified that the damage was more than \$500.00 and that to his cruiser alone, the damage was about \$1,500.00. The State further argues that the burden of proof was not shifted because even if the witness had

provided a written estimate from a professional automobile repair facility, the petitioner would have had the same burden of disproving the witness's testimony.

West Virginia Code § 17C-4-6 directs that the driver of a vehicle involved in a crash resulting in total property damage to an apparent extent of \$500.00 or more shall immediately, by the quickest means of communication, give notice of such a crash to the local police department. A review of the record confirms that Deputy Gills of the Mercer County Sheriff's Department testified that as part of his work, he routinely judges estimates of damage to vehicles. In estimating the damage to his police cruiser, he estimated that the damage amounted to a little over \$1,500.00. Any comment the circuit court made with regard to finding that the damage amounted to more than \$500.00 was made as part of its findings on the record. The burden of proving that the damage was less than \$500.00 was never shifted to the petitioner. Nevertheless, the petitioner did not provide testimony or evidence to rebut Deputy Gills's testimony, even when the petitioner decided to testify after all. Accordingly, the circuit court was left with only Deputy Gills's testimony in determining whether the petitioner was guilty of the charge of failing to report an accident involving more than \$500.00 in property damage. As such, the circuit court held that its findings before the petitioner's testimony remained the same. In this respect, the circuit court's final order convicting the petitioner of failing to report an accident involving more than \$500.00 in property damage was not in error and is affirmed.

In the petitioner's second assignment of error, he argues insufficiency of the evidence for his convictions. This Court has recognized:

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). Petitioner Blankenship argues that the State failed to provide a single witness that could place the petitioner behind the wheel of the blue Chevrolet that allegedly struck the two Mercer County Sheriff's Department Deputy cruisers. Nobody tested the keys in the petitioner's pocket to see that they matched the blue Chevrolet. One of the defense witnesses also testified that at one point in the evening, the witness had been driving the Chevrolet and at another point in the evening, another one of the petitioner's friends was driving the Chevrolet. Because the State failed to prove an essential element of the crimes for which the petitioner was convicted, i.e.,

that he was the individual who committed the offenses, the circuit court's convictions were based on insufficient evidence and should be reversed.

In response, the State highlights that “[c]redibility determinations are for a jury and not an appellate court.” Syl. Pt. 3, *State v. Guthrie*, 194 W.Va. 657, 461 S.E.2d 163 (1995)). “It is well settled in this jurisdiction that in a case tried without the aid of a jury, the trial court, and not the appellate court, is the judge of the weight of the evidence.” *Brown v. Gobble*, 196 W.Va. 559, 565, 474 S.E.2d 489, 495 (1996). In arguing sufficiency of the evidence for the petitioner's convictions, the State recaps essential evidence admitted at trial: (1) the petitioner was the registered owner of the vehicle that struck the police cars; (2) the body damage to the police cars was consistent with the damage to the petitioner's vehicle, including paint transfer that matched the paint of the petitioner's vehicle; (3) within eleven minutes of the collision, and approximately three blocks from its location, the petitioner was found lying in a yard close to where his damaged vehicle was parked; (4) the petitioner had the keys to the vehicle in his pocket at the time he was found; (5) injuries to the petitioner's face and hands were observed to be consistent with being from the type of collision that occurred; (6) the petitioner's blood alcohol content was .199; (7) the petitioner initially lied to the law enforcement officers, stating that he had been physically attacked at Kroger's and consequently, that his vehicle was stolen in the attack; however, he later gave a different explanation, admitting that he was in the vehicle at the time of the collision, but that he was a passenger while his friend was driving; and (8) the petitioner's credibility was called into question when he used different stories to explain what occurred and when the petitioner's friend who he claimed was driving testified that he had not been driving the vehicle at the time of the collision and had no visible injuries to indicate his involvement in the collision.

Upon review of the record, the circuit court order, and the applicable standard of review, this Court finds that the evidence was sufficient to convict the petitioner of his crimes for driving under the influence, failure to report an accident involving more than \$500.00 in property damage, and failure to give notice of name and address after striking an unattended vehicle. The transcript from the bench trial indicates that the injured petitioner and his damaged blue Chevrolet, registered under his name, were reported and found within minutes and within a few blocks of the damaged police cruisers. The paint on the petitioner's vehicle matched the paint that was transferred to the police cruisers. The petitioner contends that he was not driving the vehicle when it collided with the police cruisers, but that his friend Roger Varney had been driving it; however, when the petitioner was found lying near his Chevrolet, he had fresh injuries to his face and hands, smelled of alcohol, and had slurred speech. At the bench trial, Roger Varney did not have any visible marks of an automobile accident and he stated that the only time he drove the petitioner's vehicle that night was earlier in the evening when he used it to go to the store and back to Mr. Varney's house where he and the petitioner had been playing cards. It was not until later in the evening that the petitioner left

Mr. Varney's house and then, even later that night, that the accident occurred. The petitioner argues that because the keys found in his pocket were not tried on his blue Chevrolet, there is no proof that he was driving the vehicle. However, the remainder of the evidence presented supports the circuit court's findings that the State met its burden to prove beyond a reasonable doubt that the petitioner was driving the blue Chevrolet registered under his name when it was driven into the two police cruisers outside of the Mercer County Sheriff's Department. Consequently, the circuit court did not commit error in finding the petitioner guilty of (1) driving under the influence, (2) failing to report an accident involving more than \$500.00 in property damage, and (3) failing to give notice of name and address after striking unattended vehicle.

3. Conclusion

For the foregoing reasons, we find no error in the circuit court's decision and we affirm the petitioner's convictions in circuit court for (1) driving under the influence, (2) failing to report an accident involving more than \$500.00 in property damage, and (3) failing to give notice of name and address after striking unattended vehicle.

Affirmed.

ISSUED: February 14, 2012

CONCURRED IN BY:

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