IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
NO. 21-0424

STATE OF WEST VIRGINIA,

Plaintiff Below, Respondent,

v.

CANDICE T. SALMONS,

Defendant Below, Petitioner.

RESPONDENT'S BRIEF

Appeal from the circuit court's denial of Petitioner's oral motion for judgment of acquittal
Wyoming County Circuit Court Case No. 16-F-71

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I. ASSIGNMENTS OF ERROR

Petitioner presents three assignments of error. She claims that the circuit court erred in (1) denying her motion for judgment of acquittal with respect to the burglary charge, (2) denying her motion for judgment of acquittal with respect to the grand larceny charge, and (3) denying her motion for judgment of acquittal with respect to the conspiracy to commit burglary charge. (*See* Pet'r's Br. 1; App. 7 (charging nighttime burglary, grand larceny, and conspiracy to commit burglary).)

II. STATEMENT OF THE CASE[1]

On May 25, 2016, a Wyoming County grand jury returned a three-count indictment against Petitioner, alleging nighttime burglary in violation of West Virginia Code § 61-3-11 (1993), grand larceny in violation of West Virginia Code § 61-3-13(a), and conspiracy to commit burglary in violation of West Virginia Code § 61-10-31. (App. 7.) The victim named in the indictment was Melissa Goins. (App. 7.) Petitioner proceeded to trial by jury, which occurred on June 18 and 19, 2019. (*See generally* App. 9–206.)

A. Testimony of Jerry Goins, Jr. (victim's son)

Jerry Goins, Jr., is the son of the victim, Melissa Goins. (*See* App. 61, 69–70.) At the time of the burglary and larceny in this case, Jerry Goins, Jr., lived with his parents, Melissa Goins and Jerry Goins, Sr., at 5069 Interstate Highway in Hanover, West Virginia. (*See* App. 61, 64, 69–70.) On the evening of November 26, 2015, Jerry Goins, Jr., was "drinking [at] home alone" (App. 62)

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[1] Given the standards of review applicable to this appeal, the summary of the trial evidence provided in this section includes that which is favorable to, and consistent with, the jury's guilty verdicts. *See, e.g.*, Syl. Pt. 6, *State v. Vilela*, 238 W. Va. 11, 792 S.E.2d 22 (2016) ("[T]he question is whether there is substantial evidence upon which a jury might justifiably find the defendant guilty beyond a reasonable doubt," with that question being answered by viewing the evidence "in the light most favorable to [the] prosecution." (second alteration in original) (internal quotations and citations omitted)).

while his parents were out of town (App. 63). That night, he walked over to Petitioner's home, which was close by, and invited Petitioner and David Laney over to his parents' home to drink and "shoot some pool." (App. 62–63.) Jerry Goins, Jr., stated that Petitioner was friends with his mother, Melissa Goins. (App. 62.)

While Jerry Goins, Jr., "was drinking" and "shooting pool" with David Laney, Petitioner was "in and out." (App. 63.) Jerry Goins, Jr., testified that Petitioner "said she had a stomach ache and was in the restroom and in [his] parents' closet." (App. 63.) He advised that he observed Petitioner in his parents' closet "looking through clothes." (App. 65.) Petitioner and David Laney were inside the victim's home for approximately two hours. (App. 63.)

"The next morning," Jerry Goins, Jr., "noticed cabinet doors being open" (App. 64) and that "stuff . . . [was] rummaged" (App. 67). He testified that no one other than himself, Petitioner, and David Laney were inside his parents' residence while his parents were out of town and that no one else had access to his mother's property during that time. (App. 64, 68.) When Jerry Goins, Jr.'s parents returned home, his mother "knew exactly what was missing." (App. 67.)

B. Testimony of Jerry Goins, Sr. (victim's husband)[2]

Jerry Goins, Sr., is the husband of the victim, Melissa Goins, and the father of Jerry Goins, Jr. (*See* App. 64, 69, 77–78.) In November 2015, Jerry Goins, Sr., resided with his son and wife

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[2] The indictment in this matter does not name Jerry Goins, Sr., as a victim; it names only Melissa Goins. (App. 7.) Accordingly, the testimony of Jerry Goins, Sr., regarding his personal property that he contends was stolen from his home on November 26, 2015, is not considered by the State in this appeal. *Cf. State v. Scarberry*, 187 W. Va. 251, 255, 418 S.E.2d 361, 365 (1992) ("The generally recognized rule relating to the conformity of proof in a larceny case is that the proof must show ownership of the property stolen in a person of the same name stated in the indictment . . . ."); *State v. McGraw*, 140 W. Va. 547, 551, 85 S.E.2d 849, 853 (1955) (providing that "an indictment for larceny must state the name of the owner of the stolen property or that it is the property of some unknown person or persons"). *But cf.* Syl. Pt. 4, *State v. Reece*, 27 W. Va. 375 (1886) ("In the absence of evidence to show that the owner of the goods was some other person than the one named in the indictment the variance is not fatal.").

at 5069 Interstate Highway in Hanover, West Virginia. (*See* App. 61, 64, 69–70, 77–78.) Jerry Goins, Sr., testified that he and his wife went out of town to visit his mother in Tennessee for Thanksgiving. (App. 70.) As soon as they returned home from their short trip, Jerry Goins, Sr.'s "wife . . . just looked around and said somebody's been in my house." (App. 70.) Melissa Goins "went straight and asked [her son], 'Who has been in here?'" (App. 70.) Jerry Goins, Jr., responded that only Petitioner and David Laney had been in the residence. (App. 70.) Jerry Goins, Sr., testified that his wife "had a big container of jewelry, and . . . it was gone." (App. 72–73.) During direct examination, the State inquired as to "the value of the items that [Jerry Goins, Sr.] kn[e]w were gone." (App. 73.) Jerry Goins, Sr., responded that he "kn[e]w [he] bought at least $2,000 worth of jewelry." (App. 73.)

C. Testimony of Melissa Goins (victim)[3]

Melissa Goins is the victim in this case. (*See* App. 7, 254.) She is the wife of Jerry Goins, Sr., and the mother of Jerry Goins, Jr. (*See* App. 61, 64, 69–70, 77–78.) Melissa Goins testified that near Thanksgiving of 2015, she and her husband went on a "short trip for the holidays." (App. 77–78.) When they returned home, she "knew immediately that somebody had been in [her] home." (App. 78.) She "went to the bedroom and . . . looked in [her] closet" and noticed "things [were] gone through, and everything was out of order." (App. 78.)

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[3] Melissa Goins testified to missing property that is not listed in the indictment for the grand larceny charge. (*Compare* App. 7, *with* App. 78–83.) The grand larceny charge lists the following property: "numerous household items, makeup, purses, class ring, pendant and assorted jewelry and coins." (App. 7.) Only the property that is identified in the indictment will be discussed by the State in this Brief. *See State ex rel. Day v. Silver*, 210 W. Va. 175, 180, 556 S.E.2d 820, 825 (2001) ("We . . . hold that in order for an indictment for larceny to be sufficient in law, it must identify with specificity the particular items of property which are the subject of the charge by specifically describing said property, unless the property is incapable of identification as in cases involving fungible goods, United States currency, or comparable articles.").

Melissa Goins testified that jewelry (including about five or six rings, five or six bracelets, earrings, and costume jewelry); approximately ten purses; and unused makeup were missing. (App. 78–79, 81–82.) She provided the average value of each of her purses as being between $300 and $400 and named a few brands, including Coach, Dolce & Gabbana, and Vera Bradley. (App. 79.) She testified that the total value of the jewelry that was missing was "around $7,000." (App. 81.)

After the theft, Melissa Goins recovered some, but not all, of her property. (App. 84, 95, 98.) She recovered pieces of jewelry and costume jewelry; four purses; and Mary Kay makeup. (App. 84–87, 91.) Mrs. Goins testified that she retrieved her Coach purse, her black purse, costume jewelry, and Mary Kay makeup from Tina Riffe[4] (App. 84–85, 91, 209–10); Mary Kay makeup, a Vera Wang purse, a plaid purse, and a bracelet from Kelly West[5] (App. 84–86, 211); and jewelry, including bracelets and rings, from Ernestine Justice[6] (App. 87, 212).

Melissa Goins testified that she had a previous friendship with Petitioner and had known Petitioner's "family for quite a while." (App. 93.) At some point in time, Mrs. Goins told Petitioner that she was not allowed in her home. (App. 83.) Mrs. Goins testified that she did not give anyone permission to borrow or take any of her property. (App. 83.)

D. Testimony of Tina Riffe

Tina Riffe testified that in December 2015, Petitioner "had some items for sale." (*See* App. 109–10.) Ms. Riffe purchased "purses, make-up, [and] a bracelet" from Petitioner for $60. (*See* App. 110; *see also* App. 111–12.) Ms. Riffe testified that she "ended up returning" the purses

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[4] Tina Riffe testified at trial. (App. 109–121.)

[5] Kelly West did not testify at trial. (*See generally* App. 61–159.)

[6] At the time of trial, Ernestine Justice was deceased. (App. 87.)

and makeup "to the owner, Melissa Goins." (App. 112.) Another individual, Kelly West, also purchased items from Petitioner, including purses, which were given back to Mrs. Goins. (App. 112–14.) Ms. Riffe testified that she observed Ms. West pay Petitioner what she believed to be "$40 or $50" for the purses. (App. 113–14.)

Ms. Riffe testified that Melissa Goins came to her house regarding Mrs. Goins's missing property. (App. 119–20.) Melissa Goins advised Ms. Riffe "that [Petitioner] . . . came to [Mrs. Goins] and told her where some of the merchandise was . . . , which is how [Ms. Riffe's] name . . . got brought into it, and Kelly West's name also." (App. 120.) When Melissa Goins showed up at Ms. Riffe's home, Ms. Riffe stated that she "didn't want to lie" and "gave [Melissa Goins] her . . . things back." (App. 120.)

E. Testimony of Trooper Shifflett

Trooper Matthew Shifflett of the West Virginia State Police testified regarding his investigation. (*See* App. 136.) Trooper Shifflett confirmed that the trial testimony of Melissa Goins, Jerra May Hatfield, Tina Riffe, and Jennifer Justice coincided with their narration of events that they provided during the investigative stage. (App. 137, 142.) At some point, Melissa Goins notified Trooper Shifflett that she recovered some of her property and Trooper Shifflett "took pictures of the items that were collected." (App. 138.) The photographs of Melissa Goins's recovered purses, jewelry, and makeup that were entered in evidence by the State during trial were those taken by Trooper Shifflett. (*See* App. 138–40.)

Trooper Shifflett testified that the crimes were committed "around midnight" (App. 149) and that the alleged value of Melissa Goins's stolen property was greater than $1,000 (App. 148). Trooper Shifflett stated that, in his determination, the value of Melissa Goins's *recovered* property, which did not include all items of property that were allegedly taken, was $810. (App. 154.)

Trooper Shifflett further testified that, during the course of his investigation, there was no indication that Melissa Goins's property would be returned to her. (App. 149.)

F. Criminal Complaints in Evidence

During Trooper Shifflett's testimony, the State sought to introduce the criminal complaints in evidence. (App. 150.) Defense counsel advised it was his "contention" that if the criminal complaints were "going to [be] admit[ted]," then "some of the[ ] items, interviews and things . . . may need redacted from the files." (App. 150.) The State and defense counsel redacted certain portions of the criminal complaints (App. 151–52), and they were subsequently offered and admitted in evidence without any objection from the defense (App. 152). The criminal complaints indicated that Jerry Goins, Jr.,

> stated that on Thanksgiving he walked to [Petitioner's] residence to hang out with her and her family. He stated that when he got there they were talking and he told them that his parents weren't home and they could go to his house to shoot pool and drink. He stated that he, [Petitioner], and David Laney went to his house and started drinking and shooting pool. Mr. Goins stated that while he and David were shooting pool [Petitioner] went through the house to use the bathroom a couple of times. He stated that each time she went to the bathroom it was for a long period of time. He stated that the second time [Petitioner] went to the bathroom, he noticed it had been a long time and he went through the house looking for her. He stated that he found [Petitioner] in M[r]s. Goins['s] bedroom closet. [Jerry Goins, Jr.] stated that shortly after that, [Petitioner] told Mr. Laney that she was ready to go home and they left.

(App. 216; *see also* App. 222, 228.) The criminal complaints also provided that "M[r]s. Goins . . . expressed the belief that [Petitioner] had been in her residence more than once taking her belongings." (App. 218; *see also* App. 224, 230.)

Further, the complaints detailed that Tina Riffe stated "the day after she bought the purses from [Petitioner], [Petitioner] contacted her and told her not to be seen with the purses because they were stolen from M[r]s. Goins'[s] residence." (App. 218; *see also* App. 224, 230.) Tina Riffe

advised that David Laney was with Petitioner when Ms. Riffe purchased the stolen items from Petitioner. (App. 218; *see also* App. 224, 230.)

G. Petitioner's Motion for Judgment of Acquittal

At the close of the State's case-in-chief, Petitioner moved for a judgment of acquittal[7] as to all three counts. (App. 159–162.) With respect to the burglary charge, Petitioner argued that because she and David Laney were "invited" into the victim's home and, therefore, "no unlawful or felonious entry into th[e] ho[me]" occurred, the State did not set forth sufficient evidence to support an unlawful entry in order to sustain a burglary conviction. (*See* App. 160.)

With respect to the grand larceny charge, Petitioner argued that the State failed to prove the existence of certain property that was allegedly stolen from the home. (App. 160.) Petitioner argued that the value of the *recovered* property was only $820 [*sic*] and, therefore, "d[id] not meet the threshold of $1,000" for grand larceny. (*See* App. 161.)

With respect to the conspiracy charge, Petitioner argued that the indictment charged conspiracy "with two or more people," as opposed to just one other individual, and that the State failed to set forth any evidence of a conspiracy involving Petitioner and two or more persons. (App. 162.) Petitioner's counsel further argued that there was no evidence of a conspiracy whatsoever, let alone a conspiracy between Petitioner and two or more persons. (*See* App. 162, 165.) Regarding an alleged conspiracy with David Laney, Petitioner's counsel contended:

> I've heard mention of a co-defendant; I've heard mention of Mr. Laney that was shooting pool with Jerry Goins, Jr., but there is no evidence of any conspiracy, and especially there is no evidence of a conspiracy with two or more persons."
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> . . . .

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[7] Petitioner's counsel moved for a "directed verdict." (App. 159.) Under Rule 29 of the West Virginia Rules of Criminal Procedure, motions for judgment of acquittal are used in place of motions for directed verdict. W. Va. R. Crim. P. 29(a).

> We've heard evidence that David Laney was there at the [victim's] house with [Petitioner]. We haven't heard any evidence that they had some kind of an agreement or any kind of inferred plans to go in and rob these people. They were at home doing nothing when Mr. Goins, Jr., shows up and invites them over.

(App. 162, 165.) The circuit court denied the motion. (App. 165.)

H. Jury Verdict and Sentencing

The defense rested without presenting any evidence. (App. 167.) The circuit court instructed the jury as to the law (App. 171–83) and the jury retired to deliberate (App. 197). On June 19, 2019, the jury found Petitioner guilty on all three counts. (App. 199, 254.) Following the jury verdict, Petitioner did not renew her motion for judgment of acquittal and did not file a motion for judgment of acquittal notwithstanding the verdict. (*See* App. 204; *see generally* App. 276–306.)

Via its order entered on April 21, 2021, the circuit court sentenced Petitioner to not less than one nor more than fifteen years for her conviction of nighttime burglary, not less than one nor more than ten years for her conviction of grand larceny, and not less than one nor more than five years for her conviction of conspiracy to commit burglary. (App. 301.) The court ordered Petitioner's sentences to run concurrently. (App. 301.)

Petitioner now appeals the circuit court's denial of her oral motion for judgment of acquittal, arguing insufficiency of the evidence. (*See* Pet'r's Br. 1, 4.)

III. SUMMARY OF ARGUMENT

The evidence introduced by the State at trial was sufficient for a rational jury to convict Petitioner on all three counts. With respect to the burglary charge, the State provided sufficient evidence to prove that Petitioner, in the nighttime, entered without breaking the dwelling house of the victim, Melissa Goins, with the intent to commit a crime therein. *See* W. Va. Code § 61-3-11(a) (1993). The fact that the victim's son invited Petitioner into the victim's home does

not shield Petitioner from a burglary conviction. *See* Syl. Pt. 1, in part, *State v. Plumley*, 181 W. Va. 685, 384 S.E.2d 130 (1989) ("The statutory requirement of entry [for burglary] is . . . fulfilled when a person with consent to enter exceeds the scope of the consent granted."); *State v. Slater*, 222 W. Va. 499, 504, 665 S.E.2d 674, 679 (2008) (citing *Plumley* for the determination "that consent to enter is not an absolute defense to a charge of burglary in the nighttime").

With respect to the grand larceny charge, the State provided sufficient evidence to sustain Petitioner's conviction. The victim testified to her missing personal property, some of which Petitioner sold to other individuals and the victim later recovered. The evidence revealed that Petitioner admitted to taking the victim's personal property from her home. The missing items included jewelry, purses, and makeup, the value of which, based on the victim's trial testimony, was well over $1,000. *See* Syl. Pt. 4, in part, *State v. Jerrome*, 233 W. Va. 372, 758 S.E.2d 576 (2014) (providing that "[t]he owner of stolen property may offer evidence of its value" in the form of "the owner's reasonable belief as to its value"). The victim testified that she did not give anyone permission to borrow or take any of her property. Furthermore, insofar as Petitioner attempts to set forth an insufficient indictment claim with respect to the grand larceny charge, that attempt should be rejected by this Court. This appeal concerns the circuit court's denial of Petitioner's oral motion for judgment of acquittal at the close of the State's case-in-chief. None of Petitioner's assignments of error raise an insufficient indictment claim and, notably, Petitioner did not present that claim to the circuit court below. Accordingly, this Court should refuse to consider it.

Finally, from the evidence presented, viewed in the light most favorable to the State, *see* Syl. Pt. 1, in part, *State v. Guthrie*, 194 W. Va. 657, 461 S.E.2d 163 (1995), the jury could infer that Petitioner agreed with David Laney to commit the offense of burglary and that Petitioner took

an overt act in furtherance of that conspiracy, *see* Syl. Pt. 4, *State v. Less*, 170 W. Va. 259, 294 S.E.2d 62 (1981).

As held by this Court, "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, *Guthrie*, 194 W. Va. 657, 461 S.E.2d 163 (emphasis added). The evidence presented by the State supports the jury's finding of guilt beyond a reasonable doubt as to all three counts. Accordingly, this Court should affirm the circuit court's denial of Petitioner's oral motion for judgment of acquittal.

IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Oral argument is not warranted in this case as "the facts and legal arguments are adequately presented in the briefs and record on appeal, and the decisional process would not be significantly aided by oral argument." W. Va. R. App. P. 18(a)(4). This case is suitable for memorandum decision.

V. STANDARD OF REVIEW

Petitioner's assignments of error challenge the circuit court's denial of her oral motion for judgment of acquittal as to all counts.

> The trial court's disposition of a motion for judgment of acquittal is subject to [this Court's] *de novo* review; therefore, this Court, like the trial court, must scrutinize the evidence in the light most compatible with the verdict, resolve all credibility disputes in the verdict's favor, and then reach a judgment about whether a rational jury could find guilt beyond a reasonable doubt.

State v. LaRock, 196 W. Va. 294, 304, 470 S.E.2d 613, 623 (1996).

> 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.
>
> . . . .
>
> 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. Pts. 1 and 3, *Guthrie*, 194 W. Va. 657, 461 S.E.2d 163.

VI. ARGUMENT

A. The evidence in support of the burglary charge was sufficient for a rational jury to convict Petitioner.

Petitioner's argument in support of her first assignment of error is that the State did not prove the breaking element to support the burglary charge and that no one witnessed her take any property from the victim's home. (*See* Pet'r's Br. 5–6.) Petitioner contends she was a guest who was invited to the victim's home by Jerry Goins, Jr., the victim's son, to "shoot pool and drink." (Pet'r's Br. 5.)

The May 2016 indictment alleges that Petitioner committed burglary on November 26, 2015. (App. 7.) Therefore, the 1993 version of West Virginia Code § 61-3-11 applies.[8] *See* Syl. Pt. 4, *State v. Easton*, 203 W. Va. 631, 510 S.E.2d 465 (1998) ("The statute in force at the time of the commission of an offense governs the character of the offense, and generally the punishment prescribed thereby, unless, as provided by our statute, the defendant elects to be punished as

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[8] Section 61-3-11 was amended in 1973, 1993, and 2018. *See* W. Va. Code § 61-3-11 (credits).

provided in an amendment thereof." (internal quotation omitted) (quoting Syl. Pt. 4, *State v. Wright*, 91 W. Va. 500, 113 S.E. 764 (1922))). The 1993 version of § 61-3-11(a) provided, in pertinent part, "If any person shall, in the nighttime, break and enter, *or enter without breaking* . . . the dwelling house . . . of another, with intent to commit a crime therein, he shall be deemed guilty of burglary." W. Va. Code § 61-3-11(a) (1993) (emphasis added).

First, to the extent that Petitioner argues she was an invited guest in the victim's home and, therefore, could not have been convicted of burglary (*see* Pet'r's Br. 5), that argument has been rejected by this Court. In *State v. Plumley*,[9] the petitioner claimed that because he was "voluntarily allowed" into the victim's home, "the trial court erred in allowing the jury to consider the burglary charge." 181 W. Va. at 688, 384 S.E.2d at 133. In concluding that authorized entry is not a defense, this Court advised: "Because the legislature has deleted the 'breaking' requirement with regard to entry in the nighttime, the statutory offense of burglary of the dwelling house of another involves no unlawfulness of entry except as the entry becomes unlawful by reason of the criminal intent of the person entering." *Id.* at 689, 384 S.E.2d at 134. "The statutory requirement of entry [under § 61-3-11(a)] is . . . fulfilled when a person with consent to enter exceeds the scope of the consent granted." *Id.* at Syl. Pt. 1. This Court has held that even for the crime of daytime burglary by breaking and entering under West Virginia Code § 61-3-11(a) (1993), unauthorized entry is not required. Syl. Pt. 4, *Slater*, 222 W. Va. 499, 665 S.E.2d 674.

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[9] *Plumley* addressed the 1973 version of § 61-3-11(a). The only difference between the 1973 and 1993 versions of the statute is that, under the 1973 version, the burglary must have been committed "with [the] intent to commit a felony or any larceny therein." W. Va. Code § 61-3-11(a) (1973). The 1993 version required that the burglary be committed "with [the] intent to commit a crime therein." W. Va. Code § 61-3-11(a) (1993).

Petitioner cites to *State v. Louk*, 169 W. Va. 24, 285 S.E.2d 432 (1981), in support of her argument that a "burglary is complete once there has been an unauthorized entry and a showing that there was an intent to commit a felony." (Pet'r's Br. 5.) In *Slater*, this Court

> f[ou]nd the statement in *Louk* upon which the appellant relie[d], that "burglary is complete once there has been an unauthorized entry[,]" to be dicta. Significantly, this language from *Louk*, which applied to both nighttime and daytime burglary, was later criticized by the Court in *State v. Wallace*, 205 W. Va. 155, 517 S.E.2d 20 (1999), in which we opined that "[i]t is by no means clear that [the] nighttime burglary statute requires an unauthorized entry." 205 W. Va. at 161 n.10, 517 S.E.2d at 26 n.10.

222 W. Va. at 504 n.1, 665 S.E.2d at 679 n.1. Thus, because invited or authorized entry is not a defense, Petitioner's argument fails in this respect.

Second, there was sufficient evidence for the jury to find, beyond a reasonable doubt, that Petitioner entered the victim's dwelling house, in the nighttime, with the intent to commit a crime therein. *See* W. Va. Code § 61-3-11(a) (1993). "It is well settled . . . that such intent may be inferred by the jury from the facts and circumstances of the case." Syl. Pt. 3, in part, *State v. Ocheltree*, 170 W. Va. 68, 289 S.E.2d 742 (1982).

In this case, the evidence demonstrated that prior to the burglary and larceny on November 26, 2015, Petitioner and the victim maintained a friendship. (App. 62, 93.) The victim had known Petitioner's "family for quite a while." (App. 93.) At some point in time, however, the victim told Petitioner that she was not allowed in her home. (App. 83.) The victim expressed to law enforcement her "belief that [Petitioner] had been in her residence more than once taking her belongings." (App. 218; *see also* App. 224, 230.)

At trial, the victim's son, Jerry Goins, Jr., testified that on the night[10] of November 26, 2015, he walked over to Petitioner's residence and invited both Petitioner and David Laney over

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[10] Trooper Shifflett testified that the crimes were committed "around midnight." (App. 149.)

to his parents' home to drink and "shoot some pool." (App. 62–63.) While he was at Petitioner's residence, Jerry Goins, Jr., informed Petitioner and David Laney "that his parents weren't home." (App. 216; *see also* App. 222, 228.) When the three returned to the victim's house, Jerry Goins, Jr., and David Laney began to drink and play pool, but Petitioner was "in and out" of that area. (App. 63.) Petitioner "went through the house to use the bathroom a couple of times" and "each time she went to the bathroom it was for a long period of time." (App. 216; *see also* App. 63, 222, 228.) When Jerry Goins, Jr., went looking for Petitioner, he found her in his mother's "bedroom closet" (App. 216; *see also* App. 63, 65) "looking through clothes" (App. 65). Shortly after Jerry Goins, Jr., located Petitioner in his mother's closet, Petitioner told David Laney she was ready to leave. (App. 216; *see also* App. 222, 228.)

The following morning, Jerry Goins, Jr., "noticed cabinet doors being open" (App. 64) and that things were "rummaged" (App. 67). No one else had been inside the home other than himself, Petitioner, and David Laney, and no one else had access to his mother's property. (App. 64, 68.)

When the victim returned with her husband from their trip to Tennessee, she knew someone had been in her home. (App. 70, 78.) She "knew exactly what was missing." (App. 67.) The victim's jewelry, makeup, and purses were gone. (*See* App. 72–73, 78–79, 81–82.) She was able to recover some, but not all, of her stolen property (App. 84), including two purses, costume jewelry, and Mary Kay makeup, from Tina Riffe (*see* App. 84–85, 91, 110–12, 209–10). Ms. Riffe testified that she purchased the victim's property from Petitioner (App. 109–12) and informed law enforcement that "the day after she bought the purses from [Petitioner], [Petitioner] contacted her and told her not to be seen with the purses because they were stolen from [the victim's] residence" (App. 218; *see also* App. 224, 230). The victim recovered more of her personal belongings,

including Mary Kay makeup, two purses, and a bracelet, from Kelly West (App. 84–86, 112–14, 211), which Ms. West also purchased from Petitioner (*see* App. 112–14).

Based on the above, Petitioner cannot plausibly maintain that there was "no evidence . . . from which the jury could find guilt beyond a reasonable doubt" as to her burglary conviction. *See* Syl. Pt. 3, *Guthrie*, 194 W. Va. 657, 461 S.E.2d 163. Because Petitioner does not meet the "heavy burden" announced by this Court in Syllabus Point 3 of *Guthrie*, and because the evidence supports guilt beyond a reasonable doubt, this Court should affirm the circuit court's denial of Petitioner's motion for judgment of acquittal as to the burglary charge.

B. The evidence in support of the grand larceny charge was sufficient for a rational jury to convict Petitioner.

Petitioner contends that because some of the goods allegedly stolen from the victim's home were either not recovered or were "not properly identified" and because the victim's valuation of the goods was allegedly "speculative," the evidence was insufficient for the jury to find her guilty of grand larceny. (*See* Pet'r's Br. 6, 8–9.) Petitioner further argues what appears to be an insufficient indictment claim (*see* Pet'r's Br. 6–8), but that claim is improperly before this Court.

1. Petitioner's argument regarding the sufficiency of the indictment with respect to her grand larceny charge should not be considered.

At the conclusion of the State's case-in-chief, Petitioner moved for a judgment of acquittal. (App. 159–62, 164–65.) The circuit court denied Petitioner's motion (App. 165) and, here, Petitioner appeals that denial (*see* Pet'r's Br. 1, 4).

Under Rule 29 of the West Virginia Rules of Criminal Procedure,

> The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment or information after the evidence on either side is closed *if the evidence is insufficient to sustain a conviction of such offense or offenses.*

W. Va. R. Crim. P. 29(a) (emphasis added). Motions for judgment of acquittal do not attack the sufficiency of an indictment, but rather contest the sufficiency of the State's evidence at trial. *See* W. Va. R. Crim. P. 29(a). Insofar as Petitioner attempts to challenge the sufficiency of her indictment through a motion for judgment of acquittal, that attempt should be rejected.

Moreover, Petitioner's second assignment of error specifically sets forth a sufficiency of the evidence claim. (*See* Pet'r's Br. 1; *see also* Pet'r's Br. 4 (summarizing argument).) None of Petitioner's assignments of error in her Brief set forth an insufficient indictment claim (*see* Pet'r's Br. 1) and none of Petitioner's assignments of error raised in her Amended Notice of Appeal set forth an insufficient indictment claim as to the grand larceny charge (*see* Dec. 21, 2021 Am. Notice of Appeal at 6–7[11]). Therefore, Petitioner's insufficient indictment argument, found on pages six through nine of her Brief, should be disregarded. *Cf. Canterbury v. Laird*, 221 W. Va. 453, 457–58, 655 S.E.2d 199, 203–04 (2007) (declining to consider argument that "was first raised in [petitioner's] brief" and not raised as "an assignment of error in his petition for appeal to this Court"); *Conrad v. Council of Senior Citizens of Gilmore Cnty., Inc.*, No. 14-1262, 2016 WL 6778918, at *2 n.3 (W. Va. Supreme Court, Nov. 16, 2016) (memorandum decision) (same).

Furthermore, the record demonstrates that Petitioner did not argue below, and the circuit court did not consider, any insufficiency of the indictment claim with respect to the grand larceny charge. (*See* App. 159–62, 164–65; *see generally* App.) As such, this Court should refuse to address the issue on appeal in the first instance. *See, e.g.*, Syl. Pt. 3, *Voelker v. Frederick Bus. Props. Co.*, 195 W. Va. 246, 465 S.E.2d 246 (1995) ("In the exercise of its appellate jurisdiction, this Court will not decide nonjurisdictional questions which were not considered and decided by the court from which the appeal has been taken." (internal quotations and citations omitted)); Syl.

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[11] The pinpoint citation to the Amended Notice of Appeal is based on a manual page count.

Pt. 1, in part, *State v. Baker*, 169 W. Va. 357, 287 S.E.2d 497 (1982) ("[E]rrors assigned for the first time in an appellate court will not be regarded in any matter of which the trial court had jurisdiction or which might have been remedied in the trial court if objected to there." (internal quotation and citation omitted)).

2. Count Two of the indictment is sufficient.

Notwithstanding these failures by Petitioner, a review of the indictment shows that the grand larceny charge is sufficient. Count Two provides

> That on or about the 26th day of November, 2015 in Wyoming County, West Virginia, [Petitioner] committed the offense of "Grand Larceny" by unlawfully and feloniously stealing, taking and carrying away numerous household items, makeup, purses, class ring, pendant and assorted jewelry and coins a value of more than $1,000.00 of the property of Melissa Goins, in violation of West Virginia Code 61-3-13a.

(App. 7.) "All components of grand larceny—i.e., jurisdiction, date, specific property, value, owner, intent, taking and asportation—are set out." *See State v. Goodnight*, 169 W. Va. 366, 367, 287 S.E.2d 504, 506 (1982). As this Court has recognized, "no particular form of words is required . . . so long as the accused is adequately informed of the nature of the charge and the elements of the offense are alleged." *State v. Hall*, 172 W. Va. 138, 143–44, 304 S.E.2d 43, 48 (1983) (first citing Syl. Pt. 3, *State ex rel. Whitman v. Fox*, 160 W. Va. 633, 236 S.E.2d 565 (1977); then citing Syl. Pt. 1, *State v. Casdorph*, 159 W. Va. 909, 230 S.E.2d 476 (1976), *receded from on other grounds by State v. Persinger*, 169 W. Va. 121, 286 S.E.2d 261 (1982)). "[T]he sufficiency of an indictment is determined by practical rather than technical considerations." Syl. Pt. 2, in part, *State v. Miller*, 197 W. Va. 588, 476 S.E.2d 535 (1996). Here, the indictment adequately informed Petitioner of the grand larceny charge against her.

3. The trial evidence demonstrated Petitioner's guilt beyond a reasonable doubt as to grand larceny.

With respect to Petitioner's sufficiency of the evidence claim, West Virginia Code § 61-3-13(a) provides, in pertinent part: "If a person commits simple larceny of goods or chattels of the value of one thousand dollars or more, such person is guilty of a felony, designated grand larceny." "To support a conviction for larceny at common law, it must be shown that the defendant took and carried away the personal property of another against his will and with the intent to permanently deprive him of the ownership thereof." *State v. Tharp*, 184 W. Va. 292, 296, 400 S.E.2d 300, 304 (1990) (internal quotation omitted) (quoting Syl. Pt. 3, *Louk*, 169 W. Va. 24, 285 S.E.2d 432, *disapproved on other grounds by State v. Jenkins*, 191 W. Va. 87, 443 S.E.2d 244 (1994)).

The evidence at trial revealed that while Petitioner was in the victim's home on the night of November 26, 2015, she "went through the house to use the bathroom a couple of times." (App. 216; *see also* App. 222, 228.) Each time she went to the bathroom "it was for a long period of time." (App. 216; *see also* App. 222, 228.) When the victim's son went looking for Petitioner, he found Petitioner in the victim's closet (App. 63, 65, 216; *see also* App. 222, 228) "looking through clothes" (App. 65). Shortly after Petitioner was located, she said "she was ready to go home" and left with David Laney. (App. 216; *see also* App. 222, 228.) The next morning, the victim's son "noticed cabinet doors being open" (App. 64) and things were "rummaged" (App. 67). No one other than Petitioner, David Laney, and the victim's son were inside the victim's home while the victim was out of town and no one else had access to the victim's personal property. (App. 64, 68.)

When the victim returned home, she "went to the bedroom and . . . looked in [her] closet"; she noticed "things [were] gone through, and everything was out of order." (App. 78.) She

realized that certain pieces of her jewelry, makeup, and purses were missing. (App. 78–79, 81–82.) Specifically, the victim's missing personal property included jewelry (about five or six rings, five or six bracelets, earrings, and costume jewelry); approximately ten purses; and unused makeup. (App. 78–79, 81–82.) The victim advised the average value of each of her purses was between $300 and $400 (App. 79) and testified that the total value of the missing jewelry was "around $7,000" (App. 81).

The trial evidence demonstrated that Petitioner was in possession of at least some of the missing items identified by the victim. (*See* App. 109–14.) Tina Riffe and Kelly West purchased some of the victim's personal property directly from Petitioner, including jewelry, purses, and makeup. (App. 109–14.) The victim initially approached Tina Riffe and Kelly West about the missing items because Petitioner told the victim "where some of the merchandise was [located]." (App. 119–20.) Tina Riffe told law enforcement that "the day after she bought the purses from [Petitioner], [Petitioner] contacted her and told her not to be seen with the purses because they were stolen from [the victim's] residence." (App. 218; *see also* App. 224, 230.)

Trooper Shifflett testified that, in his determination, the value of the victim's *recovered* property was $810 (App. 154), but not all of the victim's stolen property was located (*see* App. 154; *see also* App. 84, 95, 98). During the course of Trooper Shifflett's investigation, there was no indication that the victim's property would be returned to her. (App. 149.) Moreover, the victim testified that, at some point in time, she told Petitioner that she was not allowed in her (the victim's) home and further testified that she did not give anyone permission to borrow or take any of her property. (App. 83.)

Petitioner's argument that the stolen property "was not properly identified or valued" (Pet'r's Br. 9) is without merit as similar arguments have been rejected by this Court. In Syllabus Point 4 of *State v. Jerrome*, this Court held

> The owner of stolen property may offer evidence of its value, at the time and place of the crime, based upon the property's fair market value. In addition to fair market value, other ways of showing the value of stolen property include the purchase price, replacement cost, or *the owner's reasonable belief as to its value*. The weight to be given the owner's testimony as to the value of the property is for the trier of fact to decide.

233 W. Va. 372, 758 S.E.2d 576 (emphasis added). The *Jerrome* Court further advised that "'[t]he state does not need to prove the value of property with exactitude,'" it "'is required only to lay a foundation which will enable the trier [of fact] to make a fair and reasonable estimate.'" *Id.* at 383, 758 S.E.2d at 587 (quoting *State v. Sherman*, 13 A.3d 1138, 1151 (Conn. App. Ct. 2011)). Articulating that "it was within the exclusive province of the jury to assess credibility and the weight of the evidence," the *Jerrome* Court did "not disturb the jury's resolution of the conflicting evidence on the value of the stolen property." *Id.* (citing *People v. Cox*, No. 299279, 2011 WL 6382095, at *2 (Mich. Ct. App. Dec. 20, 2011)).

Here, the victim's testimony supported a larceny of her personal property totaling $1,000 or more (App. 78–81) and, based on its verdict, the jury found that testimony credible. Accordingly, the jury's verdict should not be disturbed and the circuit court's denial of Petitioner's motion for judgment of acquittal with respect to the grand larceny charge should be affirmed.

C. The evidence in support of the conspiracy charge was sufficient for a rational jury to convict Petitioner.

Petitioner claims there was "no proof" at trial "that [she] conspired with either [Jerry] Goins [Jr.] or Laney." (Pet'r's Br. 9.) She asserts there was no testimony "establish[ing] that Goins or Laney assisted, participated or counseled [her] in her alleged crimes." (Pet'r's Br. 10.)

> In order for the State to prove a conspiracy under W. Va. Code, 61-10-31(1), it must show that the defendant agreed with others to commit an offense against the State and that some overt act was taken by a member of the conspiracy to effect the object of that conspiracy.

Syl. Pt. 4, *Less*, 170 W. Va. 259, 294 S.E.2d 62. "The agreement to commit an offense is the essential element of the crime of conspiracy—it is the conduct prohibited by the statute." *Id.* at 265, 294 S.E.2d at 67. Such an agreement "may be inferred from the words and actions of the conspirators, or other circumstantial evidence, and the State is not required to show the formalities of an agreement." *Id.* (first citing *Am. Tobacco Co. v. United States*, 328 U.S. 781 (1946); then citing *Interstate Cir. v. United States*, 306 U.S. 208 (1939); and then citing *State v. Wisman*, 94 W. Va. 224, 118 S.E. 139 (1923)). In addition, not all of the conspirators need to commit an overt act. *Id.* "The overt act triggering the conspiracy as to all the conspirators can be committed by any one of their number." *Id.* (first citing *Bannon v. United States*, 156 U.S. 464 (1895); then citing *United States v. Montgomery*, 440 F.2d 694 (9th Cir. 1971)).

"By its very nature, a conspiracy is clandestine and covert, thereby frequently resulting in little direct evidence of such an agreement." *United States v. Burgos*, 94 F.3d 849, 857 (4th Cir. 1996) (first citing *Blumenthal v. United States*, 332 U.S. 539, 557 (1947); then citing *United States v. Wilson*, 721 F.2d 967, 973 (4th Cir. 1983)). "Indeed, a conspiracy may be proved wholly by circumstantial evidence." *Id.* at 858 (first citing *Iannelli v. United States*, 420 U.S. 770, 777 n.10 (1975); then citing *United States v. Durrive*, 902 F.2d 1221, 1229 (7th Cir. 1990); and then citing *United States v. Laughman*, 618 F.2d 1067, 1074 (4th Cir. 1980)). "[T]he fact that a conspiracy is loosely-knit, haphazard, or ill-conceived does not render it any less a conspiracy—or any less unlawful." *Id.*

Viewing the evidence in the light most favorable to the State, *see* Syl. Pt. 1, *Guthrie*, 194 W. Va. 657, 461 S.E.2d 163, there was sufficient evidence from which the jury could find

Petitioner guilty of conspiracy to commit burglary. First, as discussed above, the evidence was sufficient to demonstrate, beyond a reasonable doubt, that Petitioner committed burglary. Second, the evidence was sufficient to show that Petitioner conspired with David Laney to commit that offense.

On the night of November 26, 2015, Jerry Goins, Jr., walked to Petitioner's residence and invited her and David Laney over to his home to drink and play pool. (*See* App. 62–63, 216.) When he arrived at Petitioner's residence, Jerry Goins, Jr., told Petitioner and David Laney "*that his parents weren't home.*" (App. 216 (emphasis added); *see also* App. 222, 228.) The group then went over to the victim's residence, where Petitioner soon disappeared from view, alleging that she wasn't feeling well and had to use the restroom. (*See* App. 63, 216.) While Petitioner was "in and out" (App. 63), David Laney stayed with Jerry Goins, Jr., to play pool (App. 63, 216). When Jerry Goins, Jr., went looking for Petitioner, he located her in his mother's closet (App. 63, 216) "looking through clothes" (App. 65). After Petitioner was discovered, she told David Laney she was ready to leave. (App. 216.) Thereafter, Petitioner acknowledged that she stole the victim's property (App. 218) and began selling it (App. 109–14). David Laney was present with Petitioner during the sales. (App. 218; *see also* App. 224, 230.)

This evidence was sufficient to demonstrate that Petitioner conspired with David Laney to commit burglary. Accordingly, the Court should affirm the circuit court's denial of Petitioner's motion for judgment of acquittal as to the conspiracy charge.

VII. CONCLUSION

The State requests that this Court affirm the Wyoming County Circuit Court's denial of Petitioner's motion for judgment of acquittal.

Respectfully submitted,

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By Counsel

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
NO. 21-0424

STATE OF WEST VIRGINIA,

Plaintiff Below, Respondent,

v.

CANDICE T. SALMONS,

Defendant Below, Petitioner.

CERTIFICATE OF SERVICE

I, Katherine M. Smith, counsel for Respondent, hereby certify that on March 14, 2022, I served the foregoing ***"Respondent's Brief"*** on the below-listed counsel by depositing a true and accurate copy of the same in the United States mail, postage prepaid, in an envelope addressed as follows:

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