
**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
At Charleston**

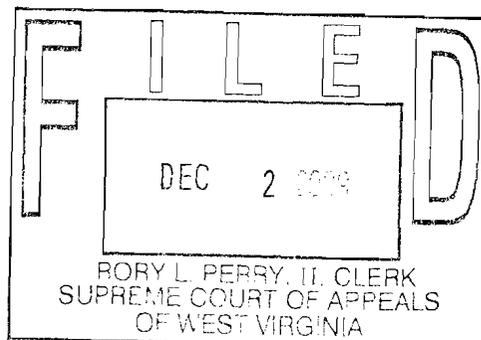
STATE OF WEST VIRGINIA,

Appellee,

vs.

JAMIE TURNER,

Appellant.



SUPREME COURT NO. 35292

APPELLANT JAMIE TURNER'S BRIEF ON APPEAL

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I. KIND OF PROCEEDING AND NATURE OF RULING IN THE LOWER TRIBUNAL

The Appellant herein and defendant below, Jamie Turner, was indicted on three (3) counts of First Degree Robbery and one (1) count of Fleeing as contained in Indictment No. 06-F-292.

Following a trial by jury before the Honorable Alfred Ferguson in the Circuit Court of Cabell County, West Virginia, commencing August 1, 2007 and continuing through August 3, 2007, Turner was convicted of three (3) counts of First Degree Robbery and one count of Fleeing.

On October 9, 2007, trial counsel filed a motion for new trial. This motion was denied on October 9, 2007 and Appellant was also sentenced on this date. Mr. Turner was sentenced to the custody of the Warden of the West Virginia Penitentiary for assignment to a penitentiary of this State for a period Sixty (60) years on each of the three 1st Robbery convictions to run concurrently. He was sentenced to six months of confinement by the West Virginia Regional Jail Authority on the misdemeanor offense of Fleeing to be run consecutive to the Robbery sentences.

A pro se Notice of Appeal was filed by the Appellant on November 8, 2007. Subsequently, present counsel was appointed to the Appellant and directed to aid the Appellant in filing this Appeal.

Present counsel filed a motion for reconsideration of sentence which was denied on March 17, 2008. Subsequently, Appellant counsel requested that Mr. Turner be resentenced to permit additional time to perfect this appeal. The circuit court resentenced Mr. Turner on February 10, 2009. An Order extending the time period of filing an appeal was entered on June 16, 2009.

Appellant filed his Petition for Appeal on August 26, 2009. This Honorable Court granted the Appellant's Petition for Appeal on October 29, 2009. Counsel for Appellant received the Order on November 3, 2009.

Introduction

In the early morning hours of the 12th day of July, 2006, three individuals were robbed of money at gunpoint while walking home after a night of drinking at the bars in Huntington, West Virginia. The victims' initial description of the two men that robbed them were black males dressed in all black with pantyhose over their faces. Shortly thereafter, a police officer passed two black males in his cruiser and after turning around found the car empty with the doors open. Inside the car the officer found a green du-rag, a black semi-automatic pistol, and various items of trash. Mr. Turner fingerprints were found on a bottle and the rearview mirror. Approximatley seven minutes later, Mr. Turner was apprehended. The police then conducted a show up and the victims were unable to identify either defendant.

At a joint trial, evidence displayed that appelant codefendant robbed the men at gunpoint and that Mr. Turner at most was present with a green du-rag, not panyhose, on his head but not covering his face. The trial lasted longer than anyone expected. The jury started deliberations on Friday afternoon. At 4:49 Friday afternoon, the jury reported it was deadlocked and asked to retire and return on Monday. Because the judge and a juror were to leave for vacation on Saturday morning, the judge denied this request, gave an *Allen* charge offer only three hours, and implicitly set a time limit on the jury deliberations. Due to this time limit, and without a sufficient amount of evidence, the

jury was coocered into returning a verdict of guilty late Friday evening convicting Mr. Turner of three counts of first degree robbery and one count of fleeing.

The Appellant requests that this Court accept his appeal, reverse his convictions and sentence in this matter, remand this case to the Circuit Court either with directions to enter an Order granting Appellant's Motion for Judgment of Acquittal or his Motion for a New Trial.

II. STATEMENT OF FACTS

The Trial

In the early morning hours of the 12th day of July, 2006, three individuals were allegedly robbed at gunpoint while walking home after a night of drinking at the bars in Huntington, West Virginia.

Victim Christopher Chiles testified that as he was walking home from the bar after consuming approximatley five shots of liquor and five beers. As the group was walking eastbound on Fifth Avenue, his attention was drawn to a 5 '1 black man walking on the perpendicular 14th Street. This black male allegedly had an aqua du-rag on his head but Mr. Chiles testified on direct that he was unable to determine if it was obscuring his face. However, on cross examination, Chris Chiles testified that he could not identify either victim at the show-up because hey had masks on. (Tr. Transcript, pp. 146). He further testified that this man, supposedly Mr. Turner, was jumping as if to pump himself up. At this point, another black male emerged from another direction with a gun and robbed him. (Tr. Transcript, pp. 111-115). This was the extent of Christopher Chiles testimony regarding Mr. Turner's involvement.

Andrew Chiles, whose twenty-first birthday the group was celebrating, was walking home when he saw the first man hopping with his back to the group. At the time of the robbery, Andrew had consumed eight beers and a few shots. (Tr. Transcript, pp. 458). When asked on cross examination if the man without the gun had his back to him the whole time, Andrew stated that he was not sure. (Tr. Transcript, pp. 490). He further stated at trial that the first man, believed to be Mr. Turner, had on a green du-rag with strings running down the back although he admitted on cross examination that this was not reported in his initial statement to police. (Tr. Transcript, pp. 486). Andrew was unsure if the first man was even black.

The third victim, Marco Cipriani, testified only that two men came around the corner and demanded money. (Tr. Transcript, pp. 508). He further testified that both mens faces were covered with masks. Mr. Cipriani stated he had consumed five beers and one shot of liquor. (Tr. Transcript, pp. 496).

Huntington Police Department officer Jason Young participated in the defendants' show-up after their arrest. Initially, he testified that the victim positively identified the defendant based upon their clothing descriptions. Not satisfied with this answer, the prosecutor led Officer Young to state that a positive identification was not made. (Tr. Transcript, pp. 191-2).

Scott Ballou, of the Marshall University Police Department, apprehended Mr. Turner at Buffington Avenue and Nineteenth Street approximately thirty to forty minutes after the crime was reported. (Tr. Transcript, pp. 238).

Sid Hinchman, a fourteen year veteran of the Huntington Police Department, spotted two black males in a car traveling on Seventh Avenue shortly after the robbery

report as they drove in opposite directions. Officer Hinchman testified that he turned around to follow the black males because they looked away from him as he passed and made a left turn onto Thirteenth Street where cars do not normally turn at night. (Tr. Transcript, pp. 289). Upon turning around, Officer Hinchman saw the red Ford Escort parked with both doors open and no passengers in sight. (Tr. Transcript, pp. 290). He never turned his siren on or made any actions that would put the car passengers on notice that they were being arrested. (Tr. Transcript, pp. 355). Inside the car was a black semi-automatic handgun which he secured in the trunk of his patrol car, a dark piece of cloth on the floor, miscellaneous trash, and a green du-rag with strings. During Officer Hinchman's testimony, the radio dispatch traffic was played which listed the description of the two suspects as two black males with a black shirt and jeans, pantyhose over their face. (Tr. Transcript, pp. 325). According to Officer Hinchman, the call came out at 3:14 a.m. and Mr. Pannell was apprehended six or seven minutes later in the viaduct of the Hal Greer Boulevard underpass. (Tr. Transcript, pp. 339).

On cross examination, officer Hinchman reviewed the three victims statements and agreed that there was no mention of green or du-rag in any of the victim descriptions.

Officer Eddie Prichard, Jr. testified that after receiving the robbery call and taking up position he saw a black male wearing a white t-shirt and black jeans jump from the top of the Hal Greer Boulevard underpass. He then apprehended Mr. Panell and later assisted in the capture of Mr. Turner. Officer Prichard eventually took the men to headquarters for processing where he found three wads of money in Mr. Turner pockets, one wad amounting to forty-eight dollars, another of six dollars, and one of seven dollars.

(Tr. Transcript, pp. 409-12). Upon cross examination and counsel presentation of the victim statements, the officer testified that Andrew Chiles had not listed an amount of money taken, Marco Cipriani had twenty dollars cash taken and Chris Chiles had twenty-nine dollars cash taken. (Tr. Transcript, pp. 430-1).

John Ellis, a detective in the HPD investigative unit, responded to the robbery call in the early morning hours of July 12, 2006. Detective Ellis testified that he spotted both suspects on the railroad tracks but never announced himself to either. (Tr. Transcript, pp. 445). His testimony was propounded by the state because he found a black t-shirt on the railroad tracks thus explaining why Mr. Pannell was found in a white t-shirt, contrary to the initial report of both suspects wearing black t-shirts.

HPD crime scene investigator David Castle testified regarding forensic evidence found in the red Ford Escort. The .45 caliber High Point gun found in the car did not reveal any identifiable fingerprints. (Tr. Transcript, pp. 537). Detective Castle first processed the Escort on August 23, 2006 at which time Mr Pannell fingerprints were found on a Lipton Tea bottle and Mr. Turner fingerprint was found on a 7-11 plastic bag. Investigator Castle later reexamined the evidence and found Mr. Pannell print on a rearview mirror.

Defense Case

Mr. Turner testified that at 1:00 a.m., on July 12, 2006, he and his friend Chris Jackson went to the the nightclub Chickadees on Fourth Avenue in Huntington. (Tr. Transcript, pp. 647). After Mr. Jackson met a female, Mr. Turner left the nightclub on foot. He testified that Mr. Panell picked him up in the red Escort and as they were traveling on Seventh Avenue, a patrol car passed. Mr. Turner testified consistent with

Officer Hinchman testimony that he did turn his head as the patrol car passed because he had an active warrant for drug charges out of Logan County, West Virginia. (Tr. Transcript, pp. 658, 675). He admitted that they pulled over after the patrol car passed and traveled on foot through the railroad tracks until capture. (Tr. Transcript, pp. 662). He stated that he had known Mr. Pannell for about one year and that Mr. Pannell was aware of his drug charges on Logan County. (Tr. Transcript, pp. 685-6). When asked if he had informed Mr. Pannell of his drug charges on July 11, 2006, he testified he could not have because Mr. Pannell had just been released from jail on that date. *Id.* Mr. Turner further testified that he did not have any involvement in a robbery on July 12, 2006. (Tr. Transcript, pp. 676).

Jury Deliberation

On Wednesday morning of August 1, 2007, as the Court Clerk prepared the numbers in the lottery bin to pick those individuals who would comprise the jury pool, prospective juror James Blankenship sat in an wooden pew and hoped that his name would not be called. Mr. Blankenship did not want jury duty to interfere with his vacation that he was set to leave for on Saturday morning. Mr. Blankenship was likely happy when Judge Ferguson addressed the jury pool for the first time and stated we should be able to finish this case tomorrow, but it will definitely be today and part of tomorrow. (Tr. Transcript, pp. 809). Had potential juror Blankenship known that Judge Ferguson was also leaving for vacation on Saturday morning, he probably would not have worried at all about missing his vacation.

During voir dire, another fateful decision was made by the Court when it ignored

Mr. Pannell attorney suggestion that an alternate be impaneled:

Mr. Laishley: Are you going to pick an alternate today?

Court: Can we will finish tomorrow: won we?

Mr. Laishley: Yes, I would assume it will go past today.

..

Court: We will finish tomorrow, and I will tell the jury it will go into tomorrow.

(Tr. Transcript, pp. 7).

Only twelve jurors were impaneled.

Immediately after Mr. Blankenship was impaneled as a member of the jury, he was again reassured that he would not miss his vacation when the Court stated you will probably be coming back tomorrow. (Tr. Transcript, pp. 81). On Thursday morning before trial resumed, out of the presence of the jury, the Court inquired as to the witnesses for the day. After being informed by the prosecution that its two witnesses would definitely take a while, the Court stated that it “could really like to finish today if we possibly can. What I do, if it gets to the jury, I normally just tell the jury, we will stay here until you want to go home. Any time you want to go home, let us know and we will let you go home.” (Tr. Transcript, pp. 280). Although the previous comment was out of the jury presence, the court expressed its concern with time to the jury on Thursday before lunch by stating:

We are going to recess until 1 o'clock come right back at 1 o'clock. A couple of you have been just a few minutes late and it has delayed us a little bit. So, try to be back here just a few minutes before 1.

Its going slower than what I anticipated, and I am still trying to get through today but we are going slower than what I thought.

(Tr. Transcript, pp. 399).

The trial thereafter continued throughout Thursday and Friday. On Friday, the defense rested and the jury began deliberating at 1:05 p.m., immediately requested a lunch break at 1:11 p.m., and resumed deliberations at 2 p.m. (Tr. Transcript, pp. 861, 866). At 3:23 p.m., the jury sent a note requesting a CD player, the 911 call recording, the trial transcript, and the victim witness statements. (Tr. Transcript, pp. 867, 868). The jury was provided a CD player and told they should have the witness statements. The Court was unable to provide the trial transcript or original call to 911 as it was not on the previously introduced police radio traffic. Deliberation resumed at 3:27 p.m. (Tr. Transcript, pp. 870).

At 4:49 on Friday afternoon, the jury sent out another note asking “how long can we deliberate today?” and also “we are not making any ground in either direction. Can we continue Monday?” (Tr. Transcript, pp. 870-1). Outside of the jury presence, the judge stated that continuing Monday created a problem because him and a juror were leaving for the beach the next day. (Tr. Transcript, pp. 871). After bringing the jury in, the Court answered the first question by stating they could deliberate for as long as they wanted to stay. Answering the second question, the judge informed the jurors he was leaving for vacation the next day and could have another judge take over but worse than that...one of the jurors was supposed to go on vacation next week. (Tr. Transcript, pp. 872). The Court then asked the juror about his vacation plans who responded that he was leaving at 6 o'clock the next morning. Referring to stopping deliberations and returning on Monday, the Court stated it was not a good solution and informed the jury it could take a dinner break and stay as long as it wanted. (Tr. Transcript, pp. 872). The jurors were then excused for a ten minute break. After the jurors were excused, the Court

suggested that the trial could continue with less than twelve jurors to which defense counsel simply responded o. (Tr. Transcript, pp. 874). The Court responded to defense counsel that if it would not agree to less than twelve jurors then it was impossible to allow them to go home and resume on Monday. Upon Mr. Turner's counsel informing the Court that the jury said it was not making headway in either direction, the Court suggested a modified *Allen* Charge to which both defense counsel promptly objected. (Tr. Transcript, pp. 875). Defense counsel then suggested the Court to ask the juror if he could postpone his vacation which the Court denied. (Tr. Transcript, pp. 877). At 5:07 p.m. the jury returned and the Court stated that they could use the phone and they would get something to eat. "I am trying to help here, but he has got to go and -- You and I might be riding together in the morning down I am going down to the beach." (Tr. Transcript, pp. 882). The modified Allen charge was then given to the jury who resumed deliberations at 5:13 p.m.

At 5:54 p.m., the jury sent another note with three additional questions requesting the time the first 911 call was made reporting the robbery, what time the 911 dispatcher put the call ut over the air, and what time the vehicle was seen. (Tr. Transcript, pp. 887-8). The Court informed the jury there was no written evidence of these matters and they would have to use their memories. Deliberation continued at 5:58 p.m. At 7:14 p.m. the jury returned its verdict convicting both defendants of all charges. The court then sent the jury back for deliberation as to Mr. Turner, excluding Mr. Pannell, for an interrogatory regarding his use of a firearm in the commission of the crime which was quickly answered in the affirmative. (Tr. Transcript, pp. 900-4).

III. ASSIGNMENTS OF ERROR

A. The Court Violated Appellant's Right to a Fair Trial Pursuant to the Sixth Amendment as Made Applicable to the States Through the Fourteenth Amendment Of the *United States Constitution* And Article III, s 10 and 14 Of The *West Virginia Constitution* by Invading The Province of the Jury and Coercing a Guilty Verdict Through Time Constraint.

B. Appellant's Robbery Conviction on Count II Should Be Overturned Because the Alleged Victim Did Not Have Any Personal Property or Money Stolen and The Jury Was Not Instructed on Attempted Robbery.

IV. POINTS AND AUTHORITIES

1. Whether a trial court's instructions constitute improper coercion of a verdict necessarily depends upon the facts and circumstances of the particular case and cannot be determined by any general or definite rule. Syl. Pt. 2, *State v. Spence*, 173 W. Va. 184; 313 S.E.2d 461 (1984)(citing *Janssen v. Carolina Lumber Co.*, 137 W.Va. 561, 73 S.E.2d 12 (1952).
2. The verdict shall be unanimous. *West Virginia Rule of Criminal Procedure* 31(a).
3. While we clearly must, according to our precedent, construe the evidence in the light most favorable to the State where a defendant challenges the sufficiency of the evidence, this is not to say that we must abandon sound reasoning in so doing. Instead, we construe the evidence in the light most favorable to the State, and then apply it to the relevant legal standard. *State v. Harden*, 2009-WV-0605.493 (W.Va. 2009).

V. ARGUMENT

A. The Court Violated Turner's Right to a Fair Trial Pursuant to the Sixth Amendment as Made Applicable to the States Through the Fourteenth Amendment Of the *United States Constitution* And Article III, s 10 and 14 Of The *West Virginia Constitution* by Invading The Province of the Jury and Coercing a Guilty Verdict Through Time Constraint.

West Virginia Law

Pursuant to the Sixth Amendment of the *United States Constitution* and Article III, s 10 and 14 of the *West Virginia Constitution*, criminal defendants are entitled to a jury by impartial peers. "Errors involving deprivation of constitutional rights will be regarded as harmless only if there is no reasonable possibility that the violation contributed to the conviction." Syl. pt. 20, *State v. Thomas*, 157 W. Va. 640, 203 S.E.2d 445 (1974).

Pursuant to *West Virginia Rule of Criminal Procedure 31*, the verdict in a criminal case "shall be unanimous." This unanimity requirement creates a problem for judges cognizant of the costs of mistrial and managing their busy dockets when deliberating jurors reach an impasse. Although the "Allen Charge" and its variants are approved by this Court, many factors are generally involved beyond just the written instruction when determining if a jury verdict has been coerced against an unanimous jury. The general rule in West Virginia is that "[w]hether a trial court's instructions constitute improper coercion of a verdict necessarily depends upon the facts and circumstances of the particular case and cannot be determined by any general or definite

rule. Syl. Pt. 2, *State v. Spence*, 173 W. Va. 184; 313 S.E.2d 461 (1984)(citing *Janssen v. Carolina Lumber Co.*, 137 W.Va. 561, 73 S.E.2d 12 (1952); *State v. Hobbs*, 168 W.Va. 13, 282 S.E.2d 258, 272 (1981)). While this rule specifically mentions the trial court instructions, the caselaw interpreting this rule also considers other relevant factors such as time and other remarks, aside from an *Allen* instruction, from the judge to the jury. *Id.* at 463-4. While the applicable syllabus point speaks directly to the instructions, in practice the test resembles the federal test of totality of the circumstances.

In *Spence*, this Court considered a situation similar to the case at bar holding that the trial court's remarks amounted to improper coercion of the jury to reach a verdict within a time limit set by the court. *Spence*, 173 W.Va. at 186. The trial judge made comments such as "you will be out of here by noon tomorrow, I don't want to hold you unduly but I need your help, and you have to reach a verdict." *Id.* Reversing the jury verdict, the Court held the trial judge remarks then considered in their entirety throughout the course of the trial, had the effect of improperly coercing the jury to reach a verdict, and to reach it quickly. *Id.*

Persuasive Authority; Federal law

fair trial in a fair tribunal is a basic requirement of due process. *In Re Murchison*, 349 U.S. 133, 136 (1955). The test for jury coercion is whether the Court statements in context and under all circumstances of the case were coercive. *Jenkins v. U.S.*, 380 U.S. 445 (1965). Numerous circuits have held that the trial court may not put the jury under conscious time demands. See *United States v. Amaya*, 509 F.2d 8 (5th Cir. 1975); *United States v. Lansdown*, 460 F.2d 164, 169 n. 3 (4th Cir. 1972); *Goff v.*

United States, 10 Cir. 1971, 446 F.2d 623(10th Cir. 1971); *Burroughs v. United States*, 365 F.2d 431 (10th Cir. 1966). *Burroughs*' facts are simliar to those at bar; the jury began deliberation at 5 p.m., were asked by the judge to attempt a verdict within one hour, an hour and twenty minutes later the jury informed the court it was deadlocked, the court gave the Allen charge and soon after the jury convicted. *Id.* Reversing the conviction, the appellate court held:

But, in any event, it is one thing to recall the jury to beseech them to reason together, and it is quite another to entreat them to strive toward a verdict by a certain time. When these admonitions are considered in their context, they are subject to the clear inference that the judge was unduly anxious to conclude the lawsuit, and we think it entirely reasonable to infer that the jury was aware of his anxiety. This type of verdict-urging on the part of the court tends to undermine the proper function of the common law jury system as contemplated by the Seventh Amendment. We must guard against any such subtle inroads.

Burroughs, 365 F.2d at 434.

Federal law is in agreement with West Virginia that a supplemental jury charge, including the official Allen charge but also other statements by the court to the jury, is proper in certain circumstances. *Allen v. United States*, 164 U.S. 492 (1896). However, any charge which leaves the jury with the impression that they have to reach a verdict has a coercive effect. *Jenkins v. United States*, supra. When a jury reports a deadlock, the *Allen* charge approaches the limits to which the court should go in suggesting to jurors the desirability of agreement and avoidance of necessity of a retrial before another jury. *United States v. Rogers*, 289 F.2d 433, 435 (4th Cir. 1961). Further, after prior indications of deadlock, a verdict returned soon after a supplemental charge "at the very

least, gives rise to serious questions of jury coercion.” *United States v. Gypsum Co.*, 438 U.S. 442, 462 (1978).

Application of Facts to Law

The court remarks regarding time throughout the course of Mr. Turner’s trial demands reversal of his conviction. From the outset, the court believed and told the jurors, that the trial would last at most two (2) days. While neither counsel disagreed with the Court, the transcript reveals that counsel was trying to inform the Court it could go longer. Both Mr. Pannell and Mr. Turner’s counsel asked if an alternate would be picked and the Court stated that “we will finish tomorrow, won’t we?” Counsel’s reply was it will likely go past today. The prosecutor responded to the same inquiry by stating it depends how long it will take to pick the jury. The Court replied it would not take long. The prosecutor then reminded the Court that due to the joint trial of codefendants, there would be three openings instead of two and two cross of every witness requiring extra time. Reading between the lines, the Court is saying this case will be finished tomorrow while counsel for both sides is trying to inform the judge that it may take longer.

The aforementioned colloquy was outside of the presence of the jury but soon after empanelment on Wednesday, the jury was also instructed that the trial would last two days. The court then asked if the jurors had a problem with coming back on Thursday. None of them did, but one juror and the judge both had a problem if the trial went past Friday because they were both going to the beach on Saturday morning.

Although it was not stated until later that the time limit set by the Court for the trial was Friday, it was already set when the juror and judge scheduled their vacations.

As often happens when co-defendants are tried together, the trial went long than expected. On Thursday morning, the Court was informed the witnesses may take awhile. Outside the jury presence, the Court stated it would like to finish that day. However, the time limit and subsequent coercion began on Thursday as the jury was leaving for lunch and the Court informed them to return punctually because the day before some members had been late thus delaying the trial. While the trial court obviously has the authority to manage a trial efficiently, blaming the jurors for delaying the trial by being a few minutes late began the coercion and informed the jury that the court wanted to be done quickly.

The final time limit was set on Friday as the jurors sent out a note asking “we are not making any ground in either direction. Can we continue Monday?” (Tr. Transcript, pp. 870-1). Previously the court had informed the attorneys that any time the jury wanted to go home they could. However, the court did not allow the jury to go home.

In summation, at 4:40 p.m. on Friday afternoon, when the judge and a juror were scheduled to leave for vacation the next morning, the jury reported it was not making headway and asked to come back after the weekend. Discarding all other options, the Court gave the jury the *Allen* charge and sent the jurors back to deliberate.

In *Waldron*, this Court noted the distinction between a trial court forcing a time limit and quick verdict on the jury from that of inquiring as to the jurors schedules and availability. *State v. Waldron*, 218 W.Va. 450 (2005). Had the trial court simply inquired into the juror’s vacation on Saturday and stopped, the court remarks may not have arisen to coercion. But the Court stated that coming back on Monday was not a solution, that

the Judge was going to the beach, and that he was not going to keep the juror from his vacation. By stating to the juror that they might ride to the beach together, clearly the court was telling the jury that this trial will end today.

At this point on Friday afternoon at 5 p.m., the jury had been in a three (3) day trial and was likely tired, had reported they were deadlocked and asked to leave, they were likely hungry, and they did not want to keep their fellow juror or the judge from missing their respective vacations. Mr. Turner had testified earlier in the day and informed the jury that both he and Mr. Pannel were not from Huntington, that he was wanted for drug charges in Logan County, West Virginia, and that Mr. Pannell was released from jail the day before the robbery occurred. The jurors that carefully considered the reasonable doubt standard earlier in deliberations and voted for acquittal, and the complete lack of evidence against Mr. Pannell, were not going to keep the judge and a fellow juror from their vacations because two black males from out of town with criminal records might be innocent.

The remarks by the trial court placing a time restraint and coercing the jury to reach a quick verdict were ongoing throughout the trial and contributed to the coerced verdict. However, one statement by the Court clearly demanded the jury to reach a verdict within a time limit set by the court. When the jury asked to come back on Monday, the Court responded at 5:58 p.m., “if we could, we would send you home and bring you back Monday, but that’s just not possible.” (Tr. Transcript, pp. 889). The court had already informed the jury that it would not continue the trial until after the juror vacation stating it is “not a healthy situation” and it had never one that “in the thirty years

I have been here.” (Tr. Transcript, pp. 881). No other conclusion can be made from this remark other than you must reach a verdict tonight.

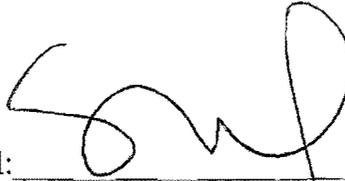
B. Appellant’s Robbery Conviction on Count II Should Be Overturned Because the Alleged Victim Did Not Have Any Personal Property or Money Stolen and The Jury Was Not Instructed on Attempted Robbery.

Quite simply, Andrew Chiles did not have anything taken from him. While the applicable statute includes attempted robbery and is punishable the same as completed First Degree Robbery, attempted robbery was excluded from the court’s instructions to the jury. As per his testimony, Andrew Chiles dropped his wallet which was subsequently recovered where it was dropped without anything missing. As the verdict form did not mention attempted robbery, nor did the instruction, there is absolutely no evidence to support the jury’s finding that Andrew Chiles had items taken from his person with the intent of permanent deprivation.

VI. PRAYER FOR RELIEF

Appellant prays that this Court will grant his appeal, reverse his convictions and sentence in this matter, and remand this case to the Circuit Court either with directions to enter an Order granting Appellant’s Motion for Judgment of Acquittal or his Motion for a New Trial. This Appeal is being presented pursuant to Rule 3 of the West Virginia Rules of Appellate Procedure. The Appellant has caused a transcript of the trial to be prepared.

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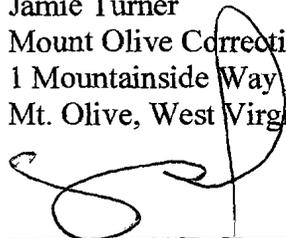
Appellant.

CERTIFICATE OF SERVICE

I, Kerry A. Nessel, do hereby verify that I served the foregoing **Appellant Jamie Turner's Brief On Appeal** by U.S Mail, postage prepaid, this 2nd day of December, 2009, addressed to the following:

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