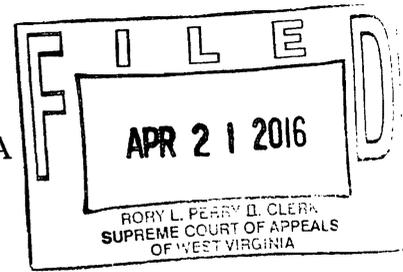


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



STATE OF WEST VIRGINIA,
Plaintiff Below, Respondent,

v.

DOCKET NO.: 15-0878
(Berkeley County Case No.: 14-F-45)

RASHAUN R. BOYD,
Defendant Below, Petitioner.

RESPONDENT STATE OF WEST VIRGINIA'S BRIEF

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PETITIONER'S ASSIGNMENT OF ERROR

- I. WHETHER SYL. PT. 3, STATE V. GUTHRIE, 194 W.Va. 657, 461 S.E.2d 163 (1995) VIOLATES CONSTITUTIONAL DUE PROCESS REQUIREMENTS IN REVIEWING SUFFICIENCY OF EVIDENCE CLAIMS?
- II. WHETHER THE CIRCUIT COURT ERRED BY DENYING THE PETITIONER'S MOTIONS FOR JUDGMENT OF ACQUITTAL BASED UPON THE SUFFICIENCY OF THE EVIDENCE PRESENTED AT TRIAL?

STATEMENT OF THE CASE

The Petitioner was indicted by a Berkeley County grand jury jointly with his co-defendant on one (1) felony count of Murder, one (1) felony count of Attempted Murder, one (1) felony count of Conspiracy to Commit Murder, one (1) felony count of Wanton Endangerment, and one (1) felony count of being a Prohibited Person in Possession of a Firearm on or about February 19, 2014. [Appendix Record, hereinafter referred to as AR, Vol. 1, pg. 1-4.] The charges were based upon allegations that the Petitioner began a physical altercation with two males in the parking lot of a local bar at closing time. During the altercation, the co-defendant produced a firearm and shot at the victims, causing the victims to flee. The Petitioner then produced a firearm and began to pursue the fleeing victims, discharging his weapon after them in the parking lot. One of the shots fired during the incident struck and killed one of the victims.

Following a trial by jury on January 13 - January 22, 2015, the Petitioner was found guilty of one (1) felony count of Attempted Murder in the First Degree, one (1) felony count of Wanton Endangerment, and one (1) felony count of being a Prohibited Person in Possession of a Firearm. [AR, Vol. 1, pg. 81-82.] The Petitioner was acquitted on the other charges. [Id.] The parties appeared before the court on March 23, 2015, to argue post-trial motions. [AR, Vol. 1, pg. 334-340.] Upon review of the written filings of the parties and presentation of arguments, the court denied the Petitioner's motions. [AR, Vol. 1, pg. 334-340, Vol. 2, pg. 2125-2180.]

On or about February 5, 2015, the State filed a timely recidivist information alleging that the Petitioner had previously been convicted of felony offenses such that the Petitioner would be subject to an enhanced life sentence pursuant to **W.Va. Code §61-11-18**. On July 16, 2015, the Petitioner admitted to have once been previously convicted of a qualifying offense for recidivism purposes.

On August 3, 2015, the Court sentenced the Petitioner to serve the statutory term of not less than three (3) nor more than fifteen (15) years in the penitentiary pursuant to his conviction for Attempted Murder in the First Degree, a determinate term of ten (10) years in the penitentiary pursuant to his conviction for Wanton Endangerment and the recidivist enhancement, and a determinate term of five (5) years in the penitentiary pursuant to his conviction for being a Prohibited Person in Possession of a Firearm. [AR, Vol. 1, pg. 341-343, Vol. 2, pg. 2196-2235.] The court ordered said sentences to run consecutively to one another. [Id.] It is from that final order that the Petitioner appeals.

SUMMARY OF ARGUMENT

State v. Guthrie, infra., is in conformity with Jackson v. Virginia, infra., concerning the proper analysis of claims regarding sufficiency of evidence and is in no way violative of State or Federal Constitutional Due Process requirements.

There was sufficient evidence introduced at trial in support of the jury's verdict of guilt regarding the offenses of conviction. The court did not abuse its discretion in denying the Petitioner's motions for judgment of acquittal at the close of the State's case and again at the close of all the evidence.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The State avers that the facts and legal arguments are adequately presented in the briefs

and record on appeal and that the decisional process would not be significantly aided by oral argument. As such, oral argument would be unnecessary in this matter pursuant to Rule 18. If, however, this Court were to find oral argument necessary, the State believes argument pursuant to Rule 19 would be appropriate.

ARGUMENT

I. SYL. PT. 3 OF STATE V. GUTHRIE, 194 W.Va. 657, 461 S.E.2d 163 (1995) IS NOT VIOLATIVE OF CONSTITUTIONAL DUE PROCESS REQUIREMENTS.

State v. Guthrie, 194 W.Va. 657, 461 S.E.2d 163 (1995) is wholly consistent with the United States Supreme Court’s ruling in Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). The Petitioner erroneously states that Syl. Pt. 3 of Guthrie, *supra.*, requires that the record contain “no evidence of guilt before setting aside a jury verdict for insufficient evidence.” The relevant portion of that syllabus point from Guthrie actually states as follows:

“...a jury verdict should be set aside only when the record contains no evidence, regardless of how it is weighted, from which the jury could find guilt beyond a reasonable doubt...”

Syl. Pt. 3, in part, Guthrie, *supra.* Therefore, although the language in that syllabus point includes the words “no evidence,” Guthrie expressly requires the presence of evidence *from which the jury could find guilt beyond a reasonable doubt*. The actual language of the syllabus point differs entirely from the Petitioner’s assertion that Guthrie forbids the setting aside of a jury’s verdict as long as there is the presence of any amount of evidence at all. Because Guthrie expressly requires the presence of evidence to support a jury’s finding of proof beyond a reasonable doubt, it is Constitutionally sound and in conformity with Jackson v. Virginia, *supra.*

II. THE CIRCUIT COURT DID NOT ERR IN DENYING THE PETITIONER'S MOTIONS FOR JUDGEMENT OF ACQUITTAL AS THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE JURY'S VERDICT OF GUILT.

The evidence adduced at trial was sufficient to support the jury's verdicts of guilt with regard to one (1) felony count of Attempted Murder in the First Degree pursuant to **W.Va. Code §61-2-1**¹ and **W.Va. Code §61-11-8**;² one (1) felony count of Wanton Endangerment pursuant to **W.Va. Code §61-7-12**,³ and one (1) felony count of being a Prohibited Person in Possession of a Firearm pursuant to **W.Va. Code §61-7-7(b)(2)**.⁴

“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 weighted, from which the jury could find guilt beyond a reasonable doubt. To the extent that our prior cases are inconsistent, they are expressly overruled.”
Syllabus Point 3, State v. Guthrie, 194 W. Va. 657, 461 S.E.2d 163 (1995).

Syl. Pt. 1, State v. Miller, 204 W. Va. 374, 513 S.E.2d 147 (1998); Syl. Pt. 3, State v. Williams,

¹ **W.Va. Code §61-2-1** states in relevant part that “murder by poison, lying in wait, imprisonment, starving, or by any willful, deliberate and premeditated killing...is murder in the first degree.”

² **W.Va. Code §61-11-8** provides in pertinent part that “every person who attempts to commit an offense, but fails to commit or is prevented from committing it, shall, where it is not otherwise provided, be punished as follows: (1) If the offense attempted be punishable with life imprisonment, the person making such attempt shall be guilty of a felony and, upon conviction, shall be imprisoned in the penitentiary not less than three nor more than fifteen years.” **W.Va. Code §61-2-2** states that “murder of the first degree shall be punished by confinement in the penitentiary for life.”

³ “Any person who wantonly performs any act with a firearm which creates a substantial risk of death or serious bodily injury to another shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary for a definite term of years of not less than one year nor more than five years...” **W.Va. Code §61-7-12**.

⁴ **W.Va. Code §61-7-7(b)(2)** makes it a felony offense punishable by confinement of not more than five (5) years in the penitentiary for a person who has been convicted of a felony offense in this state or any other jurisdiction involving a schedule I controlled substance other than marijuana or a schedule II or schedule III controlled substance to be in possession of a firearm.

198 W. Va. 274, 480 S.E.2d 162 (1996); Syl. Pt. 2, State v. Hughes, 197 W. Va. 518, 476 S.E.2d 189 (1996).

The surviving victim, Antoine Stokes, identified the Petitioner and his co-defendant in open court as the attackers. [AR, Vol. 1, pg. 1004.] Mr. Stokes testified that he and Mr. Edmond, the deceased victim, left the bar and walked a friend, Ms. Parker, to her car. [AR, Vol. 1, pg. 987.] Ms. Parker corroborates that testimony. [AR, Vol. 1, pg. 1113.] All of the witnesses who were at the bar described that it was a busy night, the shooting occurred shortly before last call, and people were just beginning to leave the bar.

On the way from Ms. Parker's vehicle to their vehicle, Mr. Stokes and Mr. Edmond passed two young ladies walking toward another car. [AR, Vol. 1, pg. 989.] The young lady in the back had a number of visible tattoos. Mr. Edmond commented that he liked one of her tattoos. [AR, Vol. 1, pg. 989-990.] The young lady smiled and continued to walk toward the car. [Id.] However, at that car were two males: one wearing a light blue polo shirt and one wearing a dark blue t-shirt. The man in the light blue polo shirt approached Mr. Edmond angrily asking him if he thought it was ok to talk to another man's girl. [AR, Vol. 1, pg. 991.] Both Mr. Edmond and Mr. Stokes put their hands up, backing away, saying they didn't want any trouble. [AR, Vol. 1, pg. 991-992.] The man in the light blue polo shirt ran at them and began to punch Mr. Edmond. [AR, Vol. 1, pg. 992.] Mr. Stokes approached and intervened in the fight between the guy in the light blue polo and Mr. Edmond. [AR, Vol. 1, pg. 993.] As he did this, Mr. Stokes testified that he caught a glimpse of the man in the dark blue t-shirt in his peripheral vision. [AR, Vol. 1, pg. 993-994.] It was then, Mr. Stokes stated, the first shot rang out. [AR, Vol. 1, pg. 994.]

Mr. Stokes testified that he and Mr. Edmond began to run. [AR, Vol. 1, pg. 994-995.]

Mr. Stokes recounted hearing several shots. [Id.] The first two sounded distinctly different from the following shots. He stated from his experience in the military that it sounded like the first two shots came from a smaller caliber weapon than the rest of the shots. [AR, Vol. 1, pg. 995.] Officers recovered casings in the parking lot from both a .25 and a .40 caliber weapon. [AR, Vol. 2, pg. 1290-1292; 1628-1630.] After they had first began to run, Mr. Stokes testified that Mr. Edmond cried out that he had been hit. [AR, Vol. 1, pg. 995-996.] Mr. Stokes looked back and saw the two men in blue shirts pursuing them and he saw Mr. Edmond fall to the ground. [Id.] Mr. Stokes went back to try to drag Mr. Edmond along with him. At some point, Mr. Stokes abandoned that course of action and hid for a matter of seconds until he believed the men were leaving. [AR, Vol. 1, pg. 996-998.] Mr. Stokes testified that the men left the parking lot of the bar in a newer model Cadillac that was black or dark green in color. [AR, Vol. 1, pg. 1001.] Mr. Stokes called 911. A “be on the lookout” or BOLO was also issued for the suspect vehicle as described by Mr. Stokes. [AR, Vol. 1, pg. 964, 1165.]

Ms. Burnett testified that she and her friend, who had many distinctive tattoos, were at the bar that night and had misplaced their car keys. [AR, Vol. 1, pg. 1178-1180.] Some men that her friend knew, which Ms. Burnett identified as the Petitioner, Mr. Wyche, and Mr. Vick, were leaving the bar at the same time and indicated that Ms. Burnett and her friend could come with them if Ms. Burnett agreed to drive. [AR, Vol. 1, pg. 1181-1183.] Ms. Burnett testified that she and her friend then walked to the vehicle, which was a newer model black Cadillac, where she was handed the keys and got into the driver’s seat. [Id.] Ms. Burnett stated that her friend with the tattoos was walking behind her on the way to the Cadillac. [Id.] Ms. Burnett stated that her friend got into the front passenger’s seat of the car. [AR, Vol. 1, pg. 1184.] Ms. Burnett further testified that when she and her friend got into the vehicle that Mr. Vick was

already passed out in the back seat. [AR, Vol. 1, pg. 1183.] She stated the Petitioner, who was wearing a light blue shirt, and Mr. Wyche, who was wearing a dark blue shirt, were outside the vehicle. [AR, Vol. 1, pg. 1183-1184.] She further testified that when she got into the vehicle, she began to text with her boyfriend and was not paying attention to anything happening around her. [AR, Vol. 1, pg. 1183, 1185.] Ms. Burnett stated that when she heard gunshots, she put the car in gear and started to drive. [AR, Vol. 1, pg. 1186.] She said that the car had moved a bit before the Petitioner and Mr. Wyche jumped into the back passenger side of the car. [Id.] She stated that they just kept telling each other to shut up and not say anything. [Id.] Ms. Burnett further testified that she took I-81N into Maryland and after taking exit 4 toward I-70, Maryland State Police got behind her and activated lights and siren. [AR, Vol. 1, pg. 1187-1188.] She stated that she pulled over and stopped, but the Petitioner kept telling her to keep driving. [AR, Vol. 1, pg. 1188-1190.] She stated that there was argument in the car, but she complied with the officers' instructions and began to exit the vehicle. [Id.] Ms. Burnett said the driver's door was barely open when the Petitioner jumped into her seat, pushed her out of the car and sped away. [Id.]

Officers from the Maryland State Police testified that they performed a felony stop on a black Cadillac that matched the description of a BOLO issued by West Virginia authorities in connection with a shooting. [AR, Vol. 1, pg. 1154-1155, 1165, 1171; AR., Vol. 2, pg. 1613-1614.] Trooper Miller stated that the vehicle stopped and there was a commotion inside in car. [AR, Vol. 1, pg. 1168-1169.] Trooper Miller then indicated that the female driver began to exit the vehicle and a male jumped into the driver's seat and sped away. [Id.] Maryland State Troopers then pursued the vehicle until the use of stop sticks caused the vehicle to wreck off of the side of the road. Trooper Miller stated that they then took custody of the occupants of the

vehicle. [Id.] A video of the dash camera footage from the stop and ensuing chase was introduced into evidence. [AR, Vol. 2, pg. 1611.]

Officers from the Berkeley County Sheriff’s Department testified as to their parts of the investigation of the case. Cpl. Christian and Sgt. Hall testified that they had taken GSR lifts from the Petitioner, Mr. Wyche, and Mr. Vick while they were in the custody of Maryland authorities following the chase. [AR, Vol. 2, pg. 1428-1429, 1620-1621.] A forensic analyst testified that there was gunshot residue found on the hands of both the Petitioner and Mr. Wyche.⁵ [AR, Vol. 2, pg., 1563-1564.] Cpl. Christian and Sgt. Hall further took photographs of the Petitioner and Mr. Wyche. [AR, Vol. 2, pg. 1427, 1624.] The Petitioner was wearing a light blue polo shirt, and Mr. Wyche was wearing a dark blue shirt. Officers further testified that they obtained the video surveillance footage from outside of the bar, which shows all of the subjects leaving the bar. [AR, Vol. 2, pg. 1625, 1643-1655.] The video also captures Mr. Stokes and Mr. Edmond running around the side of the bar away from the shots. [Id.] The video also captures the Petitioner following Mr. Stokes and Mr. Edmond with his arm outstretched in front of him. [Id.]

Following the shooting, Mr. Edmond was taken to the hospital where he was pronounced dead. The medical examiner determined the cause of death was a gunshot wound, which entered through the left side of his neck and exited through his right shoulder, severing two major arteries. [AR, Vol. 2, pg. 1251-1253.] The manner of death was determined to be homicide. [Id.]

The Petitioner entered into a stipulation that he had been convicted of a felony offense prior to the date of the shooting which was a qualifying offense under **W.Va. Code 61-7-7(b)(2)**.

⁵ The analyst further concluded there was no gunshot residue on the hands of Mr. Vick. [AR, Vol. 2, pg. 1563.]

[AR, Vol. 2, pg. 1825-1826.]

The evidence indicated, and the State argued, that the first two shots were fired by Mr. Wyche since he was not directly engaged in fisticuffs with the two victims. It was one of those shots that would have had to have struck and killed Mr. Edmond.⁶ Thereafter, once the fight was already broken up in the wake of the first two shots fired by Mr. Wyche, the Petitioner pulled a weapon, as Mr. Stokes and Mr. Edmond were already running away, and fired several shots after them as they were fleeing. Because the victims were actively retreating when the Petitioner pulled his weapon, fired, and pursued them, the jury was able to find his actions were deliberate and premeditated and done with malice and the intent to kill.

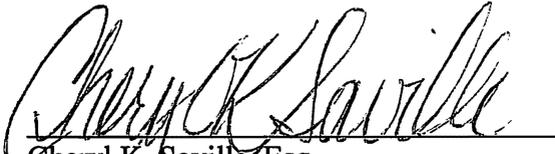
Based upon the evidence presented, the jury had sufficient evidence, both direct and circumstantial, taken in light most favorable to the State, to convict the Petitioner of attempted murder in the first degree, wanton endangerment, and being a prohibited person in possession of a firearm. State v. Guthrie, supra.; State v. Miller, supra., State v. Williams, supra., State v. Hughes, supra.

CONCLUSION

For the foregoing reasons, this Court is respectfully requested to affirm the conviction and sentence of the Petitioner and deny the Petition for Appeal.

⁶ The jury convicted Mr. Wyche of one (1) felony count of voluntary manslaughter, one (1) felony count of wanton endangerment, and one (1) felony count of being a prohibited person in possession of a firearm.

Respectfully submitted,
State of West Virginia,

A handwritten signature in cursive script, reading "Cheryl K. Saville". The signature is written in black ink and is positioned above a horizontal line.

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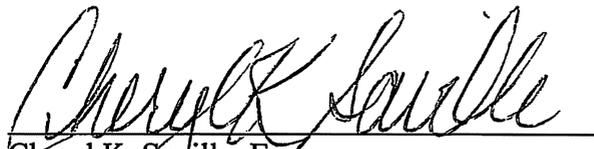
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CERTIFICATE OF SERVICE

I, Cheryl K. Saville, Assistant Prosecuting Attorney, hereby certify that I have served a true and accurate copy of the foregoing Respondent State of West Virginia's Brief by mailing of the same, United States Mail, postage paid to the following on this 20th day of April, 2016:

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