STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

State of West Virginia,
Plaintiff Below, Respondent

vs) No. 11-0281 (Wood County 09-F-259)

Toney Michael Tibbs,
Defendant Below, Petitioner

FILED
December 2, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Toney Michael Tibbs appeals the circuit court's order sentencing him to serve one to five years, following his conviction by jury of unlawful assault. This appeal was timely perfected by counsel, with petitioner's appendix accompanying the petition. The State has filed its response.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

Petitioner was indicted for allegedly assaulting his wife after an argument. The victim was badly injured, resulting in having to have several teeth wired after they were knocked out. She was found in a church parking lot just after the assault. Shortly following the incident, petitioner was served with a domestic violence petition by two police officers, at which time he stated: "I knocked the hell out of both of them and I am not shy about admitting it." Petitioner also told the officers that another man was having an affair with his wife, and that he was the other person petitioner assaulted, although petitioner was never charged in that crime. The State moved to admit the statement, and after an in camera hearing, the evidence was allowed at trial. Petitioner was convicted by a jury of unlawful assault, and was later sentenced to one to five years.

On appeal, petitioner argues that his conviction should be overturned because the evidence adduced at trial did not support a guilty verdict beyond a reasonable doubt. Although not specifically stated as such, this argument is treated by this Court as a sufficiency of the evidence argument. "'The function of an appellate court when reviewing

the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, is sufficient to convince a reasonable person of the defendant's guilt beyond a reasonable doubt. Thus, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt.' Syl. Pt. 1, *State v. Guthrie*, 194 W.Va. 657, 461 S.E.2d 163 (1995)." Syl. Pt. 1, *State v. Juntilla*, 227 W.Va. 492, 711 S.E.2d 562 (2011). In the present case, petitioner argues that the victim's testimony was not credible, and that there were no other eyewitnesses to the incident. However, the petitioner ignores the fact that the emergency room doctor and the emergency room records support the victim's version of events. Further, the jury heard the testimony of the victim and clearly found it to be credible. Thus, this Court finds that the evidence was sufficient to support the conviction.

Petitioner next argues that the circuit court erred in allowing the State to admit evidence which should have been treated as faulty under Rule 404(b) of the West Virginia Rules of Evidence under the guise that the statement made by the petitioner was voluntary and did not require Miranda warnings. However, the State points out that the evidence was never admitted nor challenged as Rule 404(b) evidence, because it was direct evidence in the form of an admission. The police officer who heard the statement testified, and the petitioner admitted to making the statement, although he claimed it related to a different incident. This Court finds no error in the admission of the statement.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: December 2, 2011

CONCURRED IN BY:

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