

FILED

June 21, 2011

released at 3:00 p.m.

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

McHugh, J., dissenting

Despite its recognition of syllabus point one of *State v. Guthrie*, 194 W.Va. 657, 461 S.E.2d 163 (1995), as the standard for examining a criminal conviction to determine if the evidence was sufficient to support the verdict, the majority overlooks the significance of a related point of law in that same decision. In syllabus point three of *Guthrie*, this Court held:

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 assessment 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. . . .

Id. at 663, 461 S.E.2d at 169 (emphasis supplied).

In tossing out the jury verdict that was properly upheld by the circuit court under the *Guthrie* standard as being sufficient, the majority has ignored Justice Cleckley's admonition that "appellate review is not a device for this Court to replace a jury's finding with our own conclusion." *Id.* at 669, 461 S.E.2d at 175. The majority has further disregarded this Court's recognition that our review of criminal convictions is to be performed in a "highly deferential" manner. 194 W.Va. at 667, 461 S.E.2d at 173. Only when no rational jury could have found the defendant guilty beyond a reasonable doubt can the conviction be reversed on a sufficiency of the evidence challenge.

A jury, which included several individuals familiar with fishing, heard the conflicting evidence; was properly instructed in the law; and reached the conclusion that the defendant had committed the offense of willfully obstructing or impeding an individual who was lawfully engaged in fishing. *See* W.Va. Code § 20-2-2a. To reach its conclusion that Mr. Hedrick was entitled to an acquittal, the majority engaged in the proscribed act of serving as a super fact finder. The jury was the body charged with fact finding and the record in this

case is clear that Mr. Hedrick committed acts of his own volition that served to impede Mr. Reid who was lawfully engaged in fishing. Of additional concern is the fact that the majority, while issuing its decision through a memorandum opinion designed to address settled areas of the law, actually reached its decision by interpreting a criminal statute without adopting a new point of law.

I am authorized to state that Justice Davis joins in this dissenting opinion.