Starhcer, J., Dissenting Opinion, Case No.23548 State of West Virginia v. Darrell Eustace Sampson

No. 23548 -- State of West Virginia v. Darrell Eustace Sampson

Starcher, J., dissenting:

I respectfully dissent to the majority opinion. My dissent is based on two propositions which appear to me to be common sense.

First, a cage made out of fencing is not a building.

I have worked as a carpenter since I was old enough to pick nails out of a box for my dad. I have built several houses myself, and worked on many, many more. I have built sheds, barns and chicken houses. For a number of years I have spent my vacation building homes for low-income people with President Jimmy Carter and Habitat for Humanity. I also have wired and plumbed many buildings. I know what people mean when they use the word "building." They do not mean a wire cage, nor do I believe the Legislature meant a cage when drafting our criminal statute on breaking and entering.

If I told my twelve-year-old niece to "fetch a jug of water out of the building around back," and all she saw was a wire cage, she'd probably have enough sense to get the jug, but when she came back, she'd tell me: "Uncle Larry, I didn't see any building back there; all I saw was a cage or fenced-in place." And she'd think her Uncle Larry was being sloppy in his language, which a busy carpenter is entitled to do every now and then.

But a court of law isn't entitled to twist words to mean what everyone knows they don't mean. A wire cage is not a building, even if it is along side a building.

Second, a fair jury pool in a criminal case does not include police officers and employees of the victim.

The one challenged juror was not just a former police officer; he was a former chief of police and a current auxiliary officer whose services had been and would likely be used in the future in local law enforcement. In fact, his police officer services were available at the very time he was sitting as a juror. The other challenged juror, the hospital employee, would have to defend the jury's verdict before the victims of the theft -- her bosses. The law has historically and wisely given a defendant the right to object to such jurors, and this right should have been enforced. And, these matters are particularly important in a small community as we have in this case.

I am mindful of the recent O. J. Simpson cases which have sent a terrible message to most Americans -- that justice is a game, and that the verdict depends not on the evidence, but on the biases in the jury pool. To try to send an opposite message, it is imperative that we *reduce* the reasons for people to feel that they cannot get a fair trial because of perceived biases in the jury pool. The holding of the majority does nothing to attack the cynicism that the O. J. case has bred.

We have spoken of the importance of fairness and the need to avoid even the appearance of impropriety on the civil side of our courts; those concepts are equally important to the criminal side. This Court has recently held:

The legal system will endure only so long as members of society continue to believe that our courts endeavor to provide untainted, unbiased forums in which justice may be found and done. The right to a fair and impartial trial is fundamental to a litigant; fundamental to the judiciary is the public's confidence in the impartiality of our judges and proceedings over which they preside. . . . avoiding the appearance of impropriety is as important in developing public confidence in our judicial system as avoiding impropriety itself. *Tennant v. Marion Health Care Foundation, Inc*., 194 W.Va. 97, 108-109, 459 S.E.2d 374, 384-85 (1995).

The defendant was probably guilty of larceny, but not guilty of breaking and entering a building. And the jury pool was so constituted as to permit fair-minded people to conclude that the deck was stacked against the defendant. Accordingly, I dissent.