No. 25404 -- ***State of West Virginia v. Banner Catlett***

McGraw, J., dissenting:

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Like many of the cases we face on this Court, this case presents a fact pattern for which our case law and statutes have not prepared us. The defendant, who had been charged with arson, committed a murder before his arson trial ever occurred. That first jury, correctly limited to the facts of the arson charge, found the defendant not guilty by reason of insanity. A later jury in a subsequent case, confronted with a more heinous set of circumstances, rejected the insanity defense, and found the defendant guilty of murder. So we are faced with two difficult questions: is the defendant "insane" or not, and where should he be sent in accordance with the law?

I sympathize with both the majority and the circuit court judge in facing this dilemma of either putting a mentally ill defendant in with the general prison population or sending him back to a facility from whence he had already escaped. However, I cannot agree with the holding of the majority opinion.

In saying that an intervening conviction constitutes a judicial determination of sanity, the Court is essentially making appellate judges out of the jurors in the second trial, and allowing them to overturn the prior decision. Of course, the State does not get to appeal a criminal case; our protections against double jeopardy do not allow the State a second bite at the apple.

In general, we apply a binary analysis to a person's sanity. A person is either guilty of the crime ("sane"), or is not guilty by reason of insanity. If found not guilty by reason of insanity, there is a prescribed course of action set forth in the law that a court must follow. Of course, because of the unusual situation in this case, two juries were asked to judge the defendant's sanity at two different points in time. Thus the defendant, according to the two juries, was both insane and sane - deserving of both hospitalization, and incarceration.

This case underscores our need in West Virginia to provide a truly secure facility where individuals such as the defendant may receive the proper treatment, while ensuring that the more dangerous patients cannot escape. Mixing the mentally ill in with the general prison population does a disservice to all. It makes prison life more dangerous for inmates and guards, it works a grave injustice upon the mentally ill defendant, and it prevents society from reaching its goal of a fair and equitable criminal justice system. Because the majority opinion leaves us with such a result, I respectfully dissent.

I am authorized to state that Justice Starcher joins in this dissent.