

FILED

December 15, 1999

DEBORAH L. McHENRY, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED

December 17, 1999

DEBORAH L. McHENRY, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Maynard, Justice, dissenting:

I dissent in this case because I do not believe the admission of lay witness opinion testimony constituted reversible error. Also, I do not agree with the new law formulated by the majority in syllabus point 3 concerning the preclusion of evidence regarding prior convictions which constitute status elements of an offense.

The majority reverses the defendant's conviction for third offense DUI and driving on a suspended license based, in part, on the testimony of one of the witnesses to the defendant's automobile accident. Ms. Pinson testified, in part, that "[c]ommon sense would tell you it had to be [the defendant who was driving the automobile]. The driver's side windshield was busted and his head was cut up. And there was no one else around." Another witness, Mr. Mace, agreed with Ms. Pinson. The majority concludes that the introduction of this opinion evidence could have affected the verdict of the jury. I disagree. The opinion testimony of Ms. Pinson and Mr. Mace, if improper, was merely superfluous to the remainder of their testimony. The permissible testimony of these two witnesses was sufficient for the jury to conclude that the defendant was the driver of the automobile when it crashed. Therefore, I believe it is clear that the jury reached its own conclusion based on permissible testimony and was not affected by impermissible opinion testimony.

In addition, I believe the majority's creation of novel law in syllabus point 3 is an unwarranted rejection of recent precedent in violation of the doctrine of stare decisis. I also believe that the new law created by this syllabus point is bad. It seems to me that the only plausible explanation underlying the majority's reasoning is its belief that jurors are unable to properly use evidence of prior convictions. This belief also explains the majority's finding that jurors in this case could not disregard opinion testimony and decide for themselves, based on the evidence, that the defendant was the driver of the automobile. I, for one, do not share the majority's distrust of juries.

There was plenty of evidence in this case to conclude that the defendant was guilty of the charged crimes. Also, any error in the admission of evidence was harmless. Therefore, the conviction should be affirmed. Accordingly, I dissent.