

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 because I do not believe that the circuit court erred in failing to order a second competency evaluation when there was no reliable evidence that the defendant was mentally incompetent to stand trial. Accordingly, I would affirm the conviction.

This defendant is malingering and manipulating the Court. To use a bad cliché, he is “crazy like a fox,” and this Court fell for it. Let us look at the facts of this case. The defendant was convicted by a jury of second degree murder for shooting his girlfriend in the head during a drinking binge. Prior to trial, upon motion for a mental status examination, the defendant was evaluated by a psychologist who concluded that the defendant was competent to stand trial. The defendant’s counsel were apparently content with the evaluation and its results. From that time throughout all of the pre-trial proceedings, the defendant was normal in demeanor and conduct. However, on the day before the trial, the defendant suddenly and conveniently became “delusional,” “heard voices and believed that the prosecuting attorney represented him.” The trial judge, based upon his observation of the defendant in all the prior proceedings, concluded, “I have seen nothing about his conduct that would cause me to have him to be examined again in this case.”

The majority now reverses the defendant's conviction for second degree murder and remands for a new trial. Why? Simply because it finds, based on W.Va. Code § 27-6A-1(a), that the defendant's competency evaluation was inadequate because it was conducted by a psychologist instead of a psychiatrist. In other words, the defendant's conviction for shooting his girlfriend in the head is being reversed because of a technicality. This is the type of judicial decision which rightly outrages the public.

There is nothing in the record, *beyond the representations of the defendant's counsel*, to suggest that the defendant did not have the present ability to consult with his counsel with a reasonable degree of rational understanding and factually understand the proceedings. Consequently, there was simply no bona fide doubt as to the defendant's competency to stand trial. Accordingly, no reason exists for this Court to conclude that the trial court abused its discretion in refusing to order a second competency evaluation.

For the above reasons, I respectfully dissent.