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December 13, 2000

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

RELEASED

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RORY L. PERRY II, CLERK
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McGraw, J., dissenting:

What troubles me most about this case is that apparently one juror was unable to hear the judge, or understand his request, when he polled the jury at the conclusion of the trial. Indeed, two other jurors had to speak with the juror in question before he finally responded “guilty.”

While it is entirely possible that this juror had heard and understood all the testimony in the case, participated fully in deliberations with his fellow jurors, and had a perfect grasp of the case, which he reflected by eventually responding “guilty” to the judge, the majority is wrong to make all these assumptions in favor of a guilty verdict.

In prior cases we have addressed the important right of trial by jury. We have stated:

The right of a criminal defendant to a jury trial is a fundamental constitutional guarantee provided in Article III, Section 14 of the West Virginia Constitution which states, in relevant part, that “[t]rials of crimes, and misdemeanors, unless herein otherwise provided, shall be by a jury of twelve men [or women.]” Article VIII, Section 10 otherwise provides, in relevant part, that a jury in a magistrate court “shall consist of six jurors who are qualified as prescribed by law.”

State ex rel. Ring v. Boober, 200 W.Va. 66, 69, 488 S.E.2d 66, 69 (1997).

It strikes me as axiomatic that if Ms. Weaver is entitled to a trial by jury, she is equally entitled to a trial by jurors who can hear and understand the testimony in the case, and that the state is

entitled to the same. Because I have grave concerns that the juror in question may not have heard and understood all of the proceedings in this case, I must respectfully dissent.

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