

Maynard, Justice, dissenting:

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OF WEST VIRGINIA

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I agree with the majority that the trial court abused its discretion in admitting the co-defendants' plea agreements without redacting the language that neither co-defendant would be placed in the same correctional facility as Mr. Swims. However, I disagree with the majority that the challenged language constitutes reversible error.

The language at issue states: "In consideration of the foregoing, [the] State will agree to request a safe placement for defendant in a correctional facility physically separate from that where codefendant Jessie Swims is housed." The majority concludes that "[w]ithout the insertion in the plea agreements of the qualifying word "if," the plea agreements became impermissible substantive evidence of Mr. Swims' guilt." This conclusion defies good old-fashioned common sense. Any reasonable person who reads this language would understand it to mean that *in the event Mr. Swims is convicted of the charged crime and incarcerated*, he will not be placed with his co-defendants.

Significantly, the language at issue was never discussed in front of the jury during trial. Further, there is no indication that the jury was not instructed properly concerning presumption of innocence and the State's burden of proving guilt. Finally, substantial evidence

of Mr. Swims' guilt was presented at trial. In light of all this, I simply find it incredible that this one sentence buried in a plea agreement affected the outcome of the trial.¹ Accordingly, I dissent.

¹I also disagree with the majority's conclusion that another provision of Mr. Young's plea agreement constituted plain error.