

**No. 31342– *Kedron Setser v. Neil Browning***

**FILED**

McGraw, J., dissenting:

**December 10, 2003  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA**

I dissent from the majority’s decision in this case because I believe the trial judge improperly resolved genuine issues of material fact regarding Appellee’s use of alcohol prior to the accident and the jeep’s previous history of stalling-out. The parties presented conflicting evidence on these issues. The trial judge should not have taken the liberty of weighing the evidence presented or to otherwise encroach upon the all-important function of the jury as fact-finder.

For the reasons stated, I respectfully dissent.