

FILED

June 25, 2004

released at 10:00 a.m.

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

Starcher, Justice, dissenting:

I agree with the principles of statutory construction that are recited by the majority opinion. But I disagree with their application in the instant case.

“Strict construction” of a statute means that if there is any plausible reading of the statute that goes against the State, that construction must be followed. The majority’s reasoning offers a barely plausible construction of *W.Va. Code*, 52-1-17(c) that goes for the State – but clearly it is not the only possible construction.

To read the statute as permitting an award of jury costs only if there has been a conviction is also plausible. This plausible construction, being favorable to the defendant, is the one that we are required to adopt.

The bottom line in the instant case is that a criminal defendant is being required to pay the costs of an illegal criminal proceeding, where his constitutional rights were grossly violated, and in which he ultimately prevailed.

That is like making me pay for a paint job on my car, when the paint shop used the wrong color. This would not be fair to me, and the majority opinion’s result is not fair to Mr. Myers.

Accordingly, I dissent.