

FILED

December 12, 2006

released at 10:00 a.m.

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

Starcher, J., dissenting:

The evidence in the record rather clearly demonstrates that the appellant, Michael Lee Kendall, was a “rogue cop” who repeatedly violated both the law and applicable police procedure.

For reasons that are nowhere apparent, the majority opinion repeatedly recites factual assertions by Mr. Kendall that were controverted by the State – and were disbelieved by the jury. In other words, the majority opinion contradicts a fundamental appellate rule – we assume that the facts are in accord with the jury’s verdict. *See State v. Easton*, 203 W.Va. 631, 638, 510 S.E.2d 465, 472

Properly looking at the factual record, the evidence in this case showed an officer who initiated a dangerous high-speed chase, then rammed and shot point-blank into a vehicle – and then *lied* about why he did so. (Forensic evidence contradicted to the officer’s story that the fleeing suspect tried to strike the officer.)

Then, hours later, the officer broke into a house with his gun drawn, without a warrant or backup, and out of his jurisdiction. This was, of course, the house where the fugitive turned out *not* to be.

At every step, the officer violated proper police procedure, endangering himself, fellow officers, and innocent people.

On the issue of exigent circumstances, the majority fails to mention that Mr. Kendall first radioed to his headquarters that he had *broken off pursuit* – and then Mr. Kendall *broke into* the house with his weapon drawn. As a matter of law, once Mr. Kendall had officially broken off pursuit, and with no legal authority to be on a frolic of his own, there were no “exigent circumstances,” and the trial judge so properly ruled.

It is a rare day when a police officer engages in such egregious misconduct that a prosecuting attorney brings charges. And it is even rarer that a jury disbelieves the officer’s story, and convicts him. The majority opinion is a slap in the face of a courageous trial judge who made proper rulings on the law and an equally courageous jury who did the right thing to protect society against official lawlessness.

Accordingly, I dissent.