

No. 32978 - *State of West Virginia v. Ernest J. Johnson*

**FILED**

**November 30, 2006**

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

Starcher, J., concurring:

I concur with the majority opinion and its result, but I wish to add a comment to this Court's brief discussion of the recidivism issue.

The record in this case shows a prosecutor straining to get improper evidence and innuendo in front of a jury on the recidivism issue. The State commendably acknowledges possible error by the trial court in its rulings on objections to the prosecutor's efforts, but suggests that any such errors were "harmless." However, there is no room for "harmless error" when the ultimate issue is whether a person will be imprisoned for life as the result of crimes for which he or she has already paid the legal penalty.

For these reasons, I would hold that the recidivism proceedings in the lower court were flawed, as well as the charging process.

Accordingly, I concur.