

FILED

June 27, 2007

released at 10:00 a.m.

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

Maynard, Justice, dissenting:

This case required the Court to determine whether the appellant's conviction for the felony offenses of attempting to operate a clandestine drug lab and conspiracy to attempt to operate a clandestine drug lab should stand. The majority opinion concluded that the appellant's convictions should be reversed due to its conclusion that there was insufficient evidence to sustain his conviction. Specifically, the majority found that the State failed to prove the appellant had actual or constructive possession of the drug paraphernalia found in the vehicle he was driving. For the reasons outlined below, I believe that the majority of this Court has made a grave error in reversing the appellant's conviction. Therefore, I dissent.

First, I believe that the majority's decision minimizes the seriousness of drug crimes. The drug at issue in this case, methamphetamine, also known as "meth," is one of the most destructive drugs ever introduced into society. The dangers of methamphetamine cannot be overestimated. It is highly addictive, highly potent, and easy and inexpensive to make.

Meth destroys the mind and body and harms the unborn child. It promotes the

spread of HIV/AIDS and hepatitis B and C. Meth endangers law enforcement officers and burdens governments with the staggering costs of decontaminating and cleaning up meth labs. Chronic meth users often demonstrate highly violent behavior, increased nervousness, irritability, paranoia, severe depression, anxiety, schizophrenia and/or paranoia, self-absorption, auditory and visual hallucinations, mood disturbances, delusions, and homicidal or suicidal thoughts. These dangers are all the more alarming when one realizes that we are currently experiencing a meth epidemic parallel to that of crack cocaine usage in the inner cities decades ago.

In order to fully comprehend the majority's error in this case, it is necessary to review a few of the underlying key facts. The drug paraphernalia was discovered pursuant to a legitimate traffic stop as the appellant was speeding in a vehicle traveling from the direction of Parkersburg, West Virginia. Then, while approaching the driver's side of the vehicle, Trooper Cox noticed a yellow bag with six boxes of cold medicine containing pseudoephedrine, which is the main ingredient for making methamphetamine. Inside the bag was a receipt dated that same day for three of the boxes of cold medicine purchased from the Dollar General Store in Parkersburg, West Virginia.

When Trooper Cox asked the appellant for his driver's license and other vehicle information, Ms. Cummings, the appellant's wife, spoke up and said that the car was

not theirs and that she did not know where the vehicle information was located. Ms. Cummings, who was sitting in the middle of the back seat at the time, leaned across the seat and appeared to begin searching the glove compartment. Trooper Cox was unable to see Ms. Cummings' hands nor could he see the hands of Ms. Pritt, who was seated in the front seat on the passenger side of the vehicle. Trooper Cox explained to jurors that the hands of individuals in a vehicle are the number one thing to keep an eye on during a traffic stop and that the glove box is commonly used for concealing weapons. With that in mind, Trooper Cox asked Ms. Cummings and Ms. Pritt to step out of the vehicle so that he could search them for possible weapons.

Trooper Cox then asked the appellant to step out of the vehicle and began to pat him down in search of weapons. Thereafter, he noticed that the appellant's pants were bulging and asked him to empty his pockets onto the hood of the car. One of the items removed from his pockets was a knife. Attached to the knife was a container which contained three pills and two bags containing methamphetamine. Trooper Cox then placed the appellant in the police cruiser. As he was doing this, he noticed Ms. Cummings reaching across the hood of the vehicle in an attempt to hide the methamphetamine. After seeing all of the items and having safety concerns for himself, and with the full permission of the appellant and Ms. Cummings, Trooper Cox searched the vehicle and found 300 factory sealed books of matches and 20 syringes. (The foregoing facts illustrate just how silly the result in this case really is. How many people carry around 300 books of matches and 20

syringes in their car?).

Let us be clear about what happened here. Trooper Cox located mass quantities of items used to make methamphetamine including pseudoephedrine, the main ingredient in making the illegal drug; matches, another important ingredient used for its red phosphorus; and syringes used to shoot methamphetamine into the body. This, of course, was after Trooper Cox had already found methamphetamine on the appellant's possession, attached to a key ring and knife in his pocket.¹

There was no evidence presented that the individuals needed large amounts of cold medicine, matches, and needles for health or any other reason. Conversely, there was plenty of evidence showing that the appellant had constructive possession of the items which were all at arm's length, in plain view, stacked neatly in the floorboard behind the appellant's seat, and directly beside his wife, Ms. Cummings.

This case is about common sense. It is important to remember that the

¹Even though it is not an issue on appeal, I also want to briefly mention that I strongly disagree with the circuit court's ruling that the methamphetamine found on the appellant's possession was obtained in violation of his Fourth Amendment rights. The officer was well within his right to ask the appellant to empty the contents of the container which could have contained razor blades or another small sharp weapon that could have been used to injure or kill the officer. I believe police officers must have the ability to protect themselves as well as secure the safety of others during a traffic stop.

appellant was driving back from the direction of Parkersburg where at least some of the items were purchased that very day. The jurors heard all of the testimony below and convicted the appellant of the underlying crimes. Now, the majority of this Court has decided to set aside that verdict and replace it with their own judgment. Certainly an impartial trier of fact could reasonably find the appellant guilty of the underlying crimes.

Therefore, for the reasons stated above, I respectfully dissent.