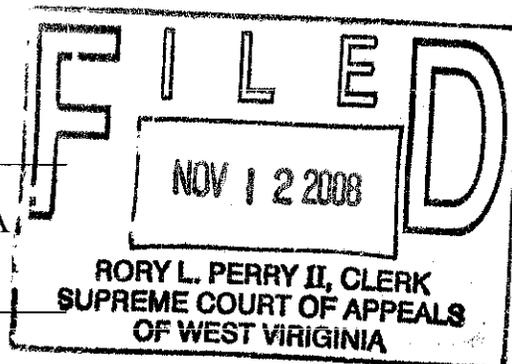


NO. 34266

IN THE SUPREME COURT OF APPEALS
OF
WEST VIRGINIA

CHARLESTON, WEST VIRGINIA



DANNY MINIGH,
Defendant Below - Petitioner

v

CIRCUIT COURT OF CALHOUN COUNTY
Criminal Case No. 05-F-15

STATE OF WEST VIRGINIA

APPEAL

**Appeal Granted on September 4, 2008 from Judgment of August 20, 2007
From the Circuit Court of Calhoun County**

Counsel for Petitioner
Rocky D. Holmes
West Virginia Bar #9851
Public Defender Corp.
P.O. Box 894
Spencer, WV 25276
(304) 927-1192

STATEMENT OF FACTS

On a day in July 2005, Danny Minigh, James "Bub" Jones and George Duskey were traveling in Braxton County, West Virginia. (pg 640, ln 2) Danny Minigh is a Gilmer County resident. James "Bub" Jones and George Duskey are Calhoun County residents.

While traveling in Braxton County, the trio was stopped by West Virginia State Trooper Yost for defective equipment. Upon questioning the driver, Danny Minigh, Trooper Yost became suspicious of the occupants and asked them to exit the vehicle. Trooper Yost then radioed for assistance. After additional West Virginia Troopers arrived, the vehicle was searched. The Troopers found what they believed to be precursors to the production of methamphetamine.

After discovering the alleged precursors, the Troopers separated the trio, read each his Miranda Rights and began to question each one of them separately.

Danny Minigh invoked his Constitutional Right to remain silent and was taken into custody. (pg 640, ln 7)

George Duskey stated that he was giving Mr. Minigh and Mr. Jones a ride to the store and had no knowledge as to what Mr. Minigh and Mr. Jones purchased.

James "Bub" Jones stated that a couple of days ago Mr. Minigh, a man he had met a week before, arrived at his residence, constructed a Meth Lab, produced methamphetamine and placed the lab under his house. Mr. Jones further stated that he was not at his residence while Mr. Minigh manufactured the methamphetamine and had no knowledge of him doing so until he returned home a couple days later to notice a strange smell. (pg 753, ln 1)

After giving his statement, Mr. Jones then signed a consent to search form for his residence in Calhoun County, West Virginia. The Braxton County State Troopers contacted the Calhoun County detachment and informed them of the Meth Lab in Mr. Jones' house. The Calhoun County Troopers applied for and secured a search warrant for the Jones residence. Upon searching the residence, the Troopers found a Meth Lab and other related items exactly where James "Bub" Jones said they would be found. (pg 749, in 14)

Upon finding the Meth Lab, Danny Minigh was charged with three felony counts of Conspiracy to Produce Methamphetamine, Operating a Clandestine Laboratory and Manufacturing a Controlled Substance in Calhoun County West Virginia. Mr. Minigh was also charged with related counts in Braxton County, West Virginia.

James "Bub" Jones was charged similarly in Calhoun County; however, he ultimately entered into a plea agreement whereby he agreed to plead guilty to Conspiracy to Produce Methamphetamine and to give testimony against Danny Minigh, in exchange, the State agreed to dismiss the remaining charges and to recommend Home Incarceration. (pg 763, in 9) James "Bub" Jones was never charged for any crime in Braxton County, West Virginia.

George Duskey was released and was never charged in either county.

Approximately one year later, Mr. Minigh went trial in Braxton County, West Virginia. A jury was impaneled and sworn and testimony was given. After the State's first two witnesses gave testimony, the Defendant moved to dismiss the charges due to the charges being in Double Jeopardy with the Calhoun County charges. Braxton County

Circuit Judge Facemyer agreed and granted Defendant's Double Jeopardy motion. The Braxton County charges were dismissed. (pg 322, ln 13)

After many pretrial issues, Mr. Minigh went to trial in Calhoun County approximately two years later in August of 2007. After a two day trial, the jury returned verdicts of not guilty for Operating a Clandestine Laboratory and Manufacturing a Controlled Substance and guilty for Conspiracy to Produce Methamphetamine. (pg 840, ln 11)

APPEAL

**TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

KIND OF PROCEEDING AND NATURE OF RULINGS BELOW

On September 6th 2005, Danny Minigh was indicted by a Grand Jury of Calhoun County for Manufacturing a Controlled Substance, Operating a Clandestine Drug Laboratory and Conspiracy to Commit Manufacturing a Controlled Substance.

On September 7th 2005, the Public Defender's Corporation of the Fifth Judicial Circuit was appointed to represent Mr. Minigh.

On September 7th, 2005, Mr. Minigh appeared with counsel for Return of Indictment. Bond was set at \$30,000 and the case were continued to October 13, 2005 for pre-plea motions and arraignment.

On October 13th, 2005, Mr. Minigh appeared with counsel for Arraignment. Mr. Minigh pled not guilty and the case was continued to November 8, 2005, for trial.

On November 10th, 2005, Mr. Minigh appeared with counsel for Entry of a Plea, pursuant to a Plea Agreement. The case was continued to December 5th, 2005, for a Suppression Hearing and to January 24th, 2006, for trial.

On December 5th, 2005, Mr. Minigh appeared with counsel for a hearing on the Defendant's Suppression Motions. Based on the evidence received, the Court found that the items seized were taken under a legally obtained search warrant. Further, the consent to search, obtained by the police also covers the items seized inside the Jones dwelling. The Motion to Suppress was denied. The Court also found no basis on which to suppress fruits of the Braxton County stop. However, the Court declined to rule on the issue of

whether said stop is covered under Rule 404(b) of the Rules of Evidence, unless the State files said notice.

On January 24th, 2006, Mr. Minigh appeared with counsel for Trial. Mr. Minigh moved the Court to continue the case due to a discovery issue. The Court found that the case could not be tried due to a discovery omission and granted Mr. Minigh's motion to continue. The case was continued to April 4, 2006, for Trial.

On March 13th, 2006, Mr. Minigh appeared with counsel for additional Pre-Trial Motions. Mr. Minigh moved to dismiss the case on the basis of double jeopardy springing from the trial in the Circuit Court of Braxton County. The Court ordered counsel to submit a brief on the issue of dismissing this action based on double jeopardy within ten days. The Court deferred consideration of the outstanding Motions and continued the case to April 4th, 2006, for Trial.

On April 6th, 2006, Mr. Minigh appeared with counsel for Pre-Trial Motions and a Scheduling Conference. Mr. Minigh moved the Court to continue the case to further develop the double jeopardy argument. The motion was granted and the case was set for a hearing on May 11th, 2006, on Mr. Minigh's double jeopardy motion. The case was set for Trial for July 5, 2006.

On May 11th, 2006, Mr. Minigh appeared with counsel for Pre-Trial Motions. Mr. Minigh moved to continue the case, which was granted. The case was continued to May 25, 2006, for Further Proceedings.

On May 25th, 2006, Mr. Minigh appeared with counsel for Further Proceedings on Motion to Admit Testimony and Motion to Dismiss for Double Jeopardy. The Defendant's Motion to Dismiss for Double Jeopardy was denied. The State's Motion to

Admit Testimony was taken under advisement. The case was continued until July 5th, 2006, for a Jury Trial.

On July 5th, 2006, Mr. Minigh appeared with counsel for a Jury Trial. The Defendant moved to dismiss due to untimely discovery, which was denied. The Defendant also moved the Court to continue to permit future examination of discovery, which was granted. The case was continued to August 15th, 2006, for Jury Trial.

On August 15th, 2006, the parties agreed to continue the case due to a death in Mr. Holmes's family and the Defendant's poor health. The case was continued to October 10, 2006 for Jury Trial.

On October 10th, 2006, Mr. Minigh was taken by ambulance to Minnie Hamilton Hospital with complaints of chest pains and seizures, therefore, upon the Defendant's motion, the case was continued. The case was set for November 6th, 2006, for entry of plea pursuant to a plea agreement.

On November 6th, 2006, Mr. Minigh appeared with counsel for Entry of a Plea pursuant to a plea agreement. Whereupon, the Defendant disavowed the Plea Agreement previously reached. The case was then continued to December 5, 2006, for Trial.

On December 5th, 2006, the case was continued to December 7th, 2006, due to another trial having priority.

On December 7th, 2006, the parties agreed to continue the case to February 13, 2007, for a Jury Trial.

On February 15th, 2007, the Mr. Minigh appeared with counsel for a Scheduling Conference due to the cancellation of the Trial by the Court. The case was continued to March 6, 2007, for a Jury Trial.

On March 5th, 2007, the Court continued the Trial due to Hospitalization of the Defendant. The case was continued to April 3, 2007, for Jury Trial.

On April 3rd, 2007, Mr. Minigh appeared with counsel for Trial. The Trial lasted two days. On April 4th, 2007, the Jury found Mr. Minigh gu

ASSIGNMENTS OF ERROR

1. The Court erred by not granting the Defendant's motion to dismiss based upon Double Jeopardy when a Braxton County Circuit Judge swore a jury, took evidence and granted the Defendant's motion to dismiss stating that the Braxton County charges are in Double Jeopardy with the Calhoun County charges due to the charges being similar in nature.
2. The Court erred by allowing the State to use evidence in the Calhoun County trial from the Braxton County stop ruling that this evidence is intrinsic to the charges.
3. The Court erred by not granting the Defendant's post-trial motion for Judgment of Acquittal when the State produced no evidence of a Conspiracy occurring within the jurisdiction of Calhoun County.

POINTS OF AUTHORITIES RELIED UPON

	PAGE
1. <u>Brooks v. Boles</u> , 151 W. Va. 576, 153 S.E. 2d 526 (1967).	14
2. <u>State v. Little</u> , 120 W. Va. 213, 197 S.E. 626 (1938).	14
3. <u>State v. Sayre</u> , 183 W. Va. 376, 395 S.E. 2d 799 (1990).....	14
4. <u>State ex rel. Dowdy v. Robinson</u> , 163 W. Va. 154, 257 S.E. 2d 167 (1979)...	14, 15
5. <u>State v. Porter</u> , 182 W. Va. 776, 392 S.E. 2d 216 (1990).	15
6. <u>State v. Youngblood</u> , 618 S. E. 2d 544 (2005).....	16, 17
7. <u>State v. LaRock</u> , 196 W. Va. 294, 470 S. E. 2d 613 (1996).....	19
8. <u>State v. Guthrie</u> , 194 W.Va. 657, 667-70, 461 S.E.2d 163, 173-76 (1995) 19, 20, 22	
9. <u>Jackson v. Virginia</u> , 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).	20
10. <u>State v. Starkey</u> , 161 W.Va. 517, 244 S.E.2d 219 (1978).	20
11. <u>Holland v. United States</u> , 348 U.S. 121, 139-40, 75 S.Ct. 127, 137-38, 99 L.Ed. 150, 166 (1954).....	21
12. <u>State v. Jenks</u> , 61 Ohio St.3d 259, 272, 574 N.E.2d 492, 502 (1991).....	21
13. <u>State v. Robinette</u> , 181 W.Va. 400, 383 S.E.2d 32 (1989).....	21
14. <u>State v. Dobbs</u> , 163 W.Va. 630, 259 S.E.2d 829 (1979);.....	21
15. <u>State v. Noe</u> , 160 W.Va. 10, 230 S.E.2d 826 (1976).....	21

ARGUMENT AND DISCUSSION OF LAW

- 1. The Court erred by not granting the Defendant's motion to dismiss based upon Double Jeopardy when a Braxton County Circuit Judge swore a jury, took evidence and granted the Defendant's motion to dismiss stating that the Braxton County charges are in Double Jeopardy with the Calhoun County charges due to the charges being similar in nature.**

In volume 31, number 10 of the Braxton Citizens' News an article titled "*Minigh case dismissed, charges still pending in Calhoun*" ran on March 7th, 2006. The article states that on "February 28, a jury trial was scheduled in the case of State of West Virginia vs: Danny Minigh in the Circuit Court of Judge Richard Facemire. Minigh was indicted by the October, 2004 Grand Jury on charges of operating or attempting to operate a clandestine drug laboratory. The defendant, through his counsel Christopher Moffatt, filed a motion to dismiss the charges alleging that Minigh was charged with the same offense in both Braxton and Calhoun Counties and therefore the local prosecution would constitute double jeopardy in violation of the defendant's Constitutional rights. The Prosecuting Attorney opposed the motion and Judge Facemire took the matter under advisement until he heard the State's case."

After taking the matter under advisement, Judge Facemire swore the jury, allowed the Prosecuting Attorney to call his first witness and upon the Defendant's renewed motion to dismiss, dismissed all charges in Braxton County against Danny Minigh stating this was one transaction and Mr. Minigh would be in jeopardy with the Calhoun County charges.¹

¹ This information did not come from an official court transcript or court order.

“One is in jeopardy when he has been placed on trial on a valid indictment before a court of competent jurisdiction, has been arraigned, has pleaded, and a jury has been impaneled and sworn. He is then in danger of conviction and punishment.” **Brooks v. Boles**, 151 W. Va. 576, 153 S.E. 2d 526 (1967).

“The power of a court in a criminal case to discharge a jury without rendering a verdict is discretionary; but the power ‘is a delicate and highly important trust’ and must be exercised soundly, else the discharge will become in effect an acquittal of the accused under the Constitution, which inhibits second jeopardy.” **State v. Little**, 120 W. Va. 213, 197 S.E. 626 (1938).

“The double jeopardy clause in this section [of the West Virginia Constitution] provides immunity from further prosecution where a court having jurisdiction has acquitted the accused. It protects against a second prosecution for the same offense after conviction. It also prohibits multiple punishments for the same offense.” **State v. Sayre**, 183 W. Va. 376, 395 S.E. 2d 799 (1990).

“The term ‘same offense’ as used in the double jeopardy provision of this section [of the West Virginia Constitution] shall be defined by either the ‘same evidence test’ which provides that offenses are the same unless one offense requires proof of a fact which the other does not, or the ‘same transaction test’ which provides that offenses are the same if they grow out of a single criminal act, occurrence, episode or transaction; therefore, whichever test affords the defendant the greater protection must be applied.” **State ex rel. Dowdy v. Robinson**, 163 W. Va. 154, 257 S.E. 2d 167 (1979).

If Judge Facemire ruled that this was one transaction, then any other court of competent jurisdiction is collaterally estopped from ruling otherwise. “The principle of

collateral estoppel applies in a criminal case where an issue of ultimate fact has once been determined by a valid and final judgment. In such case, that issue may not again be litigated between the state and the defendant.” State v. Porter, 182 W. Va. 776, 392 S.E. 2d 216 (1990).

In analysis of the facts most favorable to the Defendant, it could be argued that jeopardy attached when Judge Facemire swore and seated the jury in Braxton County. Furthermore, if Judge Facemire ruled that this was one transaction and dismissed the case due to being in jeopardy with Calhoun County, then jeopardy has been attached to the whole criminal transaction. In State ex rel. Dowdy v. Robinson, the West Virginia Supreme Court defined “same transaction” as offenses that grow out of a single criminal act, occurrence, episode or transaction. When jeopardy attaches to the whole criminal transaction through the “same transaction test,” then all charges filed against the Defendant that originated from that criminal transaction must be dismissed because the Defendant is now subject to double jeopardy.

Therefore, the Court erred when it did not grant the Defendant’s motion to dismiss due to double jeopardy.

2. The Court erred by allowing the State to use evidence in the Calhoun County trial from the Braxton County stop ruling that this evidence is intrinsic to the charges.

On the night of July 22nd, 2005, State Trooper Yost stopped a vehicle because it had a defective headlight. Trooper Yost stopped the vehicle as it exited Interstate 79 and turned onto Route 5 towards the city of Glenville, which is located in Gilmer County, West Virginia.

James "Bub" Jones, Danny Minigh and George Duskey were found to be the occupants of the vehicle. After gaining consent from the occupants to search the Vehicle, Trooper Yost found what he thought to be precursor chemicals used in the production of methamphetamine.

The occupants of the vehicle were questioned. At that time, James "Bub" Jones stated that a methamphetamine laboratory was located under his house and it belonged to Roger Minigh. He then signed a consent to search for his house which is located in Calhoun County, West Virginia.

Danny Minigh's residence is located in Glenville. Glenville is located on Route 5, Gilmer County, West Virginia. Route 5 runs from Braxton County to Calhoun County and Gilmer County lies between Braxton County and Calhoun County.

The State of West Virginia asked the Court to admit evidence that was gathered in Braxton County stop. The State's argument was the Court should view this evidence as "intrinsic evidence" and that it should be allowed to be admitted in the Calhoun County Trial. The defendant disagreed.

The State relied upon State v. Youngblood, 618 S. E. 2d 544 (2005) for its argument. After describing various examples of intrinsic evidence from Youngblood as stating intrinsic evidence is "various crimes intertwined and part of one criminal transaction." The examples the State quoted from Youngblood can be distinguished from this case. First, the examples of intrinsic evidence from Youngblood are violent crimes. Second, these crimes were proven beyond a reasonable doubt to be committed by one individual. And third, those examples of intrinsic evidence cannot be seen as remote and unrelated.

In this case, the State argued that the precursor chemicals found in the Braxton County traffic stop were part of a conspiracy to produce methamphetamine at the Jones dwelling. Therefore, the chemicals found in Braxton County should be brought into a Calhoun County trial as intrinsic evidence.

The State's logic is flawed especially when viewed by Youngblood. In Youngblood, it was proven beyond a reasonable doubt that the defendant committed those acts. In this case, the State cannot prove where the Braxton County precursor chemicals were going. There was no proof introduced at trial that the Braxton County chemicals were going to the Jones residence or going to Calhoun County. The only evidence the State produced at trial to show the precursor chemicals were going to Calhoun County was that the vehicle was stopped heading in that direction.

Therefore, the Court erred when it ruled that evidence of the Braxton County stop was intrinsic to the Calhoun County trial. The verdict in this case is evident that the Braxton County stop should have been ruled extrinsic and prejudicial. If the Court had ruled that the Braxton County stop was extrinsic, Mr. Minigh would have been acquitted of all charges.

3. The Court erred by not granting the Defendant's post-trial motion for Judgment of Acquittal when the State produced no evidence of a Conspiracy occurring within the jurisdiction of Calhoun County.

On a day in July, 2005, Danny Minigh, George Duskey and Bub Jones were stopped in Braxton County, West Virginia by a West Virginia State Trooper for having defective equipment. Upon further examination of the occupants and the vehicle, the

Trooper discovered what he believed to be precursors to the production of Methamphetamine.

At the stop, Bub Jones stated that Danny Minigh placed a Meth lab under his house located in Calhoun County, West Virginia. West Virginia State Troopers at the Grantsville detachment were contacted and informed of the situation. Search warrants were issued and a Meth lab was found at the Bub Jones residence in Calhoun County, West Virginia.

During the investigation, Bub Jones stated that he, Minigh and Duskey had gone to Braxton County to obtain a headlight. Jones stated that Minigh and Duskey made several stops and several purchases but he did not know what the items were. Furthermore, he stated that Danny Minigh had stayed at his house in Calhoun County on a previous date and that he had manufactured methamphetamine and placed the used lab under his house in several totes. Based upon this information, Danny Minigh was indicted on three counts relating to the production of Methamphetamine.

Prior to trial, the Court heard motions on whether or not to admit evidence of the Braxton County stop into the Calhoun County trial. The Defense argued that evidence of this stop was extrinsic and would be prejudicial if admitted. The Court determined, however, that the evidence of the Braxton County stop was intrinsic evidence that should be allowed into the Calhoun County trial.

Mr. Minigh went on trial on April 3, 2007. During the trial, the State failed to produce any evidence of a conspiracy occurring in Calhoun County. Bub Jones, the State's key witness, took the stand and denied any and all conspiracy. He repeatedly

stated that he had no idea what Danny was doing. The only evidence the State produced that could be construed as evidence of a conspiracy was a gym bag with a license and pictures of the Defendant found at the Jones residence. This evidence is wholly circumstantial. All other evidence of a conspiracy came from Braxton County, to which the Court gave a limiting instruction informing the Jury that they shall not consider this as evidence of a conspiracy occurring in Calhoun County.

At the end of the State and Defendant's cases-in-chief, Mr. Minigh moved the Court to acquit him of the charge of conspiracy due to the State not producing enough evidence of a Conspiracy. The Court took the motions under advisement. The Jury deliberated and returned verdicts of Not Guilty on Counts One and Two of the Indictment. The Jury returned a verdict of Guilty to Count Three, Conspiracy. The Defendant renewed his Motion of Acquittal and the Court directed that a Memorandum be filed addressing the issue.

In State v. LaRock, 196 W. Va. 294, 470 S. E. 2d 613 (1996), the West Virginia Supreme Court of Appeals stated "A convicted defendant who presses a claim of evidentiary insufficiency faces an uphill climb. The defendant fails if the evidence presented, taken in the light most agreeable to the prosecution, is adequate to permit a rational jury to find the essential elements of the offense of conviction beyond a reasonable doubt. Phrased another way, as long as the aggregate evidence justifies a judgment of conviction, other hypotheses more congenial to a finding of innocence need not be ruled out. We reverse only if no rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."

The Court further stated "In State v. Guthrie, 194 W.Va. 657, 667-70, 461 S.E.2d

163, 173-76 (1995), we recently revised our standard of review when a criminal defendant challenges the sufficiency of the evidence in support of a jury verdict. We adopted, both generally and in cases with circumstantial evidence, the standard set forth by the United States Supreme Court in Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). The Supreme Court held in Jackson that when reviewing a record in the light most favorable to the prosecution, an appellate court must determine whether “*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” 443 U.S. at 319, 99 S.Ct. at 2789, 61 L.Ed.2d at 573. (Emphasis in original; citation omitted).

Prior to Guthrie, the last time we addressed this issue was in State v. Starkey, 161 W.Va. 517, 244 S.E.2d 219 (1978). In Syllabus Point 1 of Starkey, we stated: “In a criminal case, a verdict of guilt will not be set aside on the ground that it is contrary to the evidence, where the state's evidence is sufficient to convince impartial minds of the guilt of the defendant beyond a reasonable doubt. The evidence is to be viewed in the light most favorable to the prosecution. To warrant interference with a verdict of guilt on the ground of insufficiency of evidence, the court must be convinced that the evidence was manifestly inadequate and that consequent injustice has been done.”

In adopting the Jackson standard, we retained a “highly deferential” and “strict” approach stating that “a jury verdict will not be overturned lightly” and concluded in Syllabus Point 1 of Guthrie, 194 W.Va. at 667-68, 461 S.E.2d at 173-74. “The function of an appellate court when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, is sufficient to convince a reasonable person of the defendant's guilt

beyond a reasonable doubt. Thus, the relevant inquiry is whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt.”

By so holding, we overruled our prior cases which applied the requirement the State's evidence must exclude *all* other reasonable hypotheses of innocence in circumstantial evidence cases. 194 W.Va. at 668, 461 S.E.2d at 174. See *Holland v. United States*, 348 U.S. 121, 139-40, 75 S.Ct. 127, 137-38, 99 L.Ed. 150, 166 (1954); *State v. Jenks*, 61 Ohio St.3d 259, 272, 574 N.E.2d 492, 502 (1991). We also recognized “there is no qualitative difference between direct and circumstantial evidence” and “[t]here should be only one standard of proof in criminal cases and that is proof beyond a reasonable doubt.” 194 W.Va. at 669, 461 S.E.2d at 175. Citing *State v. Robinette*, 181 W.Va. 400, 383 S.E.2d 32 (1989); *State v. Dobbs*, 163 W.Va. 630, 259 S.E.2d 829 (1979); *State v. Noe*, 160 W.Va. 10, 230 S.E.2d 826 (1976).

Thus, when a criminal defendant undertakes a sufficiency challenge, all the evidence, direct and circumstantial, must be viewed from the prosecutor's vantage, and the viewer must accept all reasonable inferences from it that are consistent with the verdict. This rule requires the trial court judge to resolve all evidentiary conflicts and credibility questions in the prosecution's favor; moreover, as among competing inferences of which two or more are plausible, the judge must choose the inference that best fits the prosecution's theory of guilt. The trial court's disposition of a motion for judgment of acquittal is subject to our *de novo* review; therefore, this Court, like the trial court, must scrutinize the evidence in the light most compatible with the verdict, resolve

all credibility disputes in the verdict's favor, and then reach a judgment about whether a rational jury could find guilt beyond a reasonable doubt.

“[A] jury verdict should be set aside only when the record contains no evidence, regardless of how it is weighed, from which the jury could find guilt beyond a reasonable doubt.” Syl. pt. 3, in part, *Guthrie, supra.*”

With Bub Jones denying a conspiracy, the State failed to produce any evidence that a conspiracy had occurred in Calhoun County. The only evidence that linked Mr. Minigh with a conspiracy in Calhoun County was a gym bag containing personal effects. Conspiracy requires more than one participate and this is contrary to the State’s evidence. Guilt requires more than mere presence.

Second, the Jury’s verdict is inconsistent with the evidence produced by the State. If the Jury had accepted the State’s version of events and also did not consider the events in Braxton County as evidence towards conspiracy, then the Jury should have convicted Mr. Minigh of Attempting to Operate and Manufacturing. Evidence produced by the State showed that Mr. Minigh had cooked Meth at the Jones residence while Mr. Jones was away for a few days having girlfriend trouble. Upon his return home, Mr. Jones discovered the lab. Mr. Jones stated that he had no idea that Danny was going to cook Meth. A few days later, Mr. Jones then went with Duskey and Minigh to get a head light for Duskey’s van. Mr. Jones stated that he went on this trip to ask Danny to get the lab out from underneath his house and dispose of it. Viewing the evidence in the light most favorable to the prosecution, a rational jury should have convicted Mr. Minigh on Counts One and Two of the Indictment and acquitted on Count Three

In this case, the Jury believed that Mr. Minigh was guilty of something but knew the State had failed to prove anything. Therefore, the Jury went with the lesser charge and acquitted Mr. Minigh on the higher penalty charges. The record contains no evidence, regardless of how it is weighed, from which the jury could find guilt beyond a reasonable doubt. The only evidence to support this verdict comes from Braxton County, and the Jury was instructed on its limited use. The verdict is inconsistent and irrational based upon instructions given by the Court and the evidence produced.

Therefore, the Court erred by not granting Defendant's Motion to Acquit.

PRAYER OF RELIEF

Therefore, the Petitioner respectfully prays that this Honorable Court will review his petition for appeal, reverse his conviction and remand the case with instructions.

DANNY MINIGH
By Counsel



Rocky D. Holmes
West Virginia Bar #9851
Public Defender Corp.
P.O. Box 894
Spencer, WV 25276
(304) 927-1192

CERTIFICATE OF SERVICE

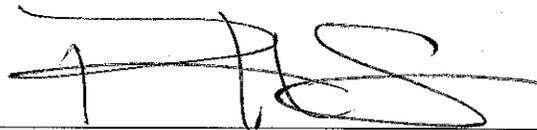
I, Rocky D. Holmes, hereby certify that I have served this **PETITION FOR APPEAL** on the 10th day of November 2008 by personal delivery to:

The State of West Virginia:

West Virginia Attorney General
State Capitol Complex
Charleston, WV

The West Virginia Supreme Court of Appeals:

Clerk, Rory Perry
State Capitol Complex
Charleston, WV

A handwritten signature in black ink, appearing to be 'R. Holmes', written over a horizontal line.

Counsel for Petitioner