

No. 33188

State of West Virginia v. David Nelson

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Starcher, J., concurring:

Four members of this Court, including jurists who could hardly be characterized as coddlers of criminals, concluded that the defendant's criminal trial was so flawed that there must be a "redo." Objecting to this Court's action we find – no surprise here – a "tough on crime" "sound bite" dissent.

It's also no surprise that the dissent bears no relation to the facts of the case. As the Court's opinion points out, the circuit court *could* have weighed the "other crimes" evidence, and given a limiting instruction, if that evidence was found to be relevant and reliable, etc., after a hearing. But this never happened.

"Who cares?" says the dissent. "It was a gruesome murder, the defendant is probably guilty – end of story!"

Thankfully, this Court did care, and protected the integrity of our justice system. Accordingly, I concur.