

Starcher, J., concurring:

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OF WEST VIRGINIA

The majority opinion in this case is well reasoned, and is founded on fundamental rules of fairness that we all learned in our high school civics class. The foundation of the American criminal justice system is that people are presumed innocent, and the government bears the burden of proving them guilty beyond a reasonable doubt.

This case centers on defendant Michael Cummings' conviction for attempting to operate a clandestine drug lab, and conspiracy to operate a drug lab. The defendant might very well be guilty of both offenses. The problem is, the State didn't introduce much evidence to support those charges. It is just as likely that the defendant could have been innocently riding in a car that was owned by someone else, James Foreman, whose own home was searched pursuant to a search warrant for evidence related to the operation of a methamphetamine lab.

My dissenting colleague takes the position that because methamphetamine is highly addictive, highly potent, and easy and inexpensive to make, then the defendant's presumption of innocence should be thrown out the window. Police officers should be allowed to search our homes, vehicles and pockets on a whim, and any suspicious-looking item within arm's length should be grounds for incarceration. Guilt by association and on the basis of suspicion should be the rule.

The dissenting opinion argues that because there were boxes of matches, syringes, and boxes of pseudoephedrine inside the car, within arm's reach of the defendant, then he must be guilty of something. Mr. Cummings must be guilty of conspiracy – even though no evidence was introduced to show with whom he was conspiring. And Mr. Cummings must be guilty of attempting to operate a drug lab, because he was riding in a car with household items that are, coincidentally, the same ingredients that could be used for making drugs. The other two female passengers in the car are innocent, but Mr. Cummings must be guilty of something, right? So let's throw the bum in jail.

My dissenting colleague's basic argument is that you have to break a few eggs to make an omelet. A few innocent people have to go to jail to make sure we get as many guilty people in there as possible.

At trial, the prosecution's entire case was based upon speculation and supposition. To find a defendant guilty doesn't just require "common sense," as the dissent suggests. It requires that the prosecutor eliminate all reasonable doubts about the defendant's guilt. And frankly, riding in a car with matches and pseudoephedrine isn't enough to say a defendant is operating a drug lab. There must be some proof that the defendant owned or controlled the drug ingredients, not merely that they were at arm's length. And it has to be real proof, not the "Gee whiz, oh come on, he had to know! How could he not know?" kind of supposition that plays well with the voters at election time, but has nothing to do with freedom and democracy.

The majority opinion rightly and boldly refused to sacrifice the presumption of innocence on the altar of expediency, as my dissenting colleague wishes.

I therefore heartily concur.

I am authorized to state that Justice Albright joins in this opinion.