

**FILED**

**June 19, 2012**

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

Ketchum, C.J., dissenting:

The defendant stabbed the victim during a single, brief episode. Following this single incident, the defendant was charged with three counts of malicious assault. Charging a defendant with three counts of malicious assault following a single incident is a clear double jeopardy violation.

In Syllabus Point 1 of *State v. Rummer*, 189 W.Va. 369, 432 S.E.2d 39 (1993), this Court held:

‘The Double Jeopardy Clause in Article III, Section 5 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.’ Syllabus Point 1, *Conner v. Griffith*, 160 W.va. 680, 238 S.E.2d 529 (1977).

Our *Constitution* prohibits multiple punishments for the same offense. The defendant was charged and sentenced on three counts of malicious assault following a single, brief incident. The defendant should have been charged with one count of malicious assault.

For this reason, I respectfully dissent. I am authorized by Justice Benjamin to state that he joins in this dissent.