13-0713 m-pavepi

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

v. CASE NO. 13-F-7

GINA MARIE JERROME,

Defendant.

ORDER

On a previous day came Defendant, Gina Marie Jerrome (hereinafter "Defendant") with a Motion to Strike Surplusage, Amend And/Or Dismiss the Indictment. Also came Defendant with a Motion Pursuant to Rule 6(e) For Transcript of Grand Jury Proceedings and All Grand Jury Instructions. After reviewing Defendant's Motions, the State's responses to the same, the applicable law, and after considering the arguments made during the pretrial hearing of March 6, 2013, the Court is prepared to issue its decision.

I.
FACTUAL/PROCEDURAL HISTORY

On January 14, 2013, Defendant was indicted on one count of Grand Larceny and one count of felony Conspiracy as a result of an incident on December 8, 2012 at Generations, a bar and restaurant in Wheeling, West Virginia. In said incident, Defendant, along with another alleged co-

conspirator, allegedly stole several purses each containing items including, but not limited to, an iPod, an iPhone 4, Kyocera Rise cell phone, and a Razor Maxx cell phone.[1] The purses and various other property allegedly stolen belonged to four (4) different people: Sadie Atkinson, Karen Jewell, Lisa Bauer and Chris Violet.

Defendant has filed pre-trial motions in this matter. A pre-trial hearing was held on March 6, 2013. Following said pre-trial hearing, the Court took two of Defendant's pre-trial motions under advisement. The Court will discuss those motions herein.

II.
Motion to Strike Surplusage, Amend And/Or Dismiss the Indictment

A. Arguments of the Parties

Defendant contends that the State is improperly trying to aggregate or combine the values of the items stolen from several different persons to pursue the charge of grand larceny against Defendant. Defendant argues that any attempt to aggregate the values of the items at issue in order to pursue the charge of grand larceny, is improper and therefore, the indictment must be dismissed. Defendant also argues that, because the State did not set forth any values for any of the items allegedly stolen by Defendant, the indictment is deficient.

[1] These items are among those listed in the indictment.

B. Discussion

After reviewing Defendant's Motion, the State's response, the applicable law, and after considering the arguments made during the pre-trial hearing of March 6, 2013, the Court is satisfied that Defendant's Motion to Dismiss the indictment should be denied insofar as Defendant contends the State improperly aggregated the value of the items allegedly stolen from multiple victims to pursue a charge of grand larceny. In the instant case, Defendant is charged with stealing various items from several different persons within a small, finite span of time while at one location: Generations in Wheeling, WV. It also appears from the allegations that Defendant allegedly stole the various items, which includes multiple purses and their contents, within a small window of time, and the items allegedly stolen were in close proximity to each other just prior to the alleged theft. The Court notes particularly that Defendant's actions occurred (1) at one location, i.e. Generations in Wheeling, WV; (2) within a small and finite window of time; and (3) in a confined area of physical proximity; accordingly, the Court hereby **FINDS** and **CONCLUDES** that the Defendant's alleged crime arose out of a single occurrence. As a result, the Court is satisfied that the State's aggregation of the value of the items stolen in order to pursue a felony grand larceny charge with respect to Defendant's actions on the date in question, is appropriate in this case.

Additionally, after reviewing Defendant's Motion, the applicable law and the arguments presented during the pre-trial hearing, the Court is satisfied that the indictment is sufficient vis-a-vis the description of the individual items

Defendant is alleged to have stolen. "An indictment need only meet minimal constitutional standards, and the sufficiency of an indictment is determined by practical rather than technical considerations." *State ex rel. Day v. Silver*, 210 W.Va. 175, 556 S.E.2d 820, 823 (2001). Further,

> [a]n indictment for a statutory offense is sufficient if, in charging the offense, it substantially follows the language of the statute, fully informs the accused of the particular offense with which he is charged and enables the court to determine the statute on which the charge is based.

See Silver, supra at 823.

In the instant case, Defendant is charged with, among other things, committing grand larceny in violation of W. Va. Code § 61- 3-13. W. Va. Code § 61-3-13 provides in relevant part as follows:

> If a person commits a simple larceny of goods or chattels of the value of one thousand dollars or more, such person is guilty of a felony, designated grand larceny, and, upon conviction thereof.

After reviewing the above-noted case law and the relevant charging statute, i.e. W. Va. Code § 61-3-13, the Court is satisfied that the indictment in this case sufficiently placed Defendant on notice of the crime with which she is charged, and sufficiently delineates the property with which she is accused of having stolen. Indeed, the indictment provides the date of the alleged incident, the location of the same, a list of the property allegedly stolen, and a value of all of the allegedly stolen items. The Court is further satisfied that the specific value of the individual items which Defendant is alleged to have stolen is a question of fact for the jury to determine after they have heard the evidence from both Defendant and the State. As a result, Defendant's Motion to Strike Surplusage

and/or Dismiss the Indictment is **DENIED** insofar as the above-noted issues are concerned.

III.
Motion Pursuant to Rule 6(e) For Transcript of Grand Jury Proceedings and All Grand Jury Instructions

A. Arguments of the Parties

Defendant contends that, in light of her contest of the sufficiency of the indictment, she should be permitted to obtain the instructions and the law given to the grand jury during grand jury proceedings. Consequently, Defendant is requesting a copy of the grand jury indictment.

The State opposes Defendant's request for the grand jury transcript and, in support thereof, argues that the Supreme Court has long held that Courts should not look behind the indictment to test the sufficiency thereof. The State relies upon *State v. Woodrow*, 58 W.Va. 527, 52 S.E.2d 545 (1905).

B. Discussion

After reviewing Defendant's Motion, the State's response, the applicable law and after considering the arguments made during the pre-trial hearing of March 6, 2013, the Court is satisfied that no reason has been given that warrants the early release of the grand jury transcript and/or the entire transcript including the Court's instructions. In so holding, the Court acknowledges the Supreme Court's long-standing position against looking behind an indictment. *See, State v. Adams,* 193 W.Va. 277, 456 S.E.2d 4, 11 (1995). The Court, at the appropriate time, however, will permit release of

those portions of the grand jury transcript in accordance with Rule 26.2 of the West Virginia Rules of Criminal Procedure. The Court will also consider a brief recess of the trial, if necessary, in order for the Defendant to review said transcript.

IV.
CONCLUSION

Accordingly, and for all of the foregoing reasons, Defendant's Motion to Strike Surplusage, Amend, and/or Dismiss the Indictment is hereby **DENIED** insofar as discussed above. Additionally, and for all of the foregoing reasons, Defendant's Motion for Transcript of Grand Jury Proceedings and All Grand Jury Instructions is hereby **DENIED.**

It is so **ORDERED.**

It is further **ORDERED** that the clerk of the Court shall send attested copies of this Order to Mark Panepinto, Esq., 955 National Road, Wheeling, WV 26003; Shawn Turak, Esq., Assistant Ohio County Prosecuting Attorney, 1500 Chapline Street, 2nd Floor, Wheeling, WV 26003.

ENTER this 15th day of March, 2013.

JAMES P. MAZZONE, JUDGE

A copy, Teste:

Brenda L. Miller

Circuit Clerk

M. Panepinto

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

vs. CASE NO. 13-F- 7 JM

GINA MARIE JERROME,

Defendant.

VERDICT ORDER

On 19th of March, 2013, came the State of West Virginia by Shawn R. Turak, Assistant Ohio County Prosecuting Attorney; and as well came the Defendant, Gina Marie Jerrome, in person, and by her counsel Mark Panepinto, Esquire.

THEREUPON, the Court noted that the matter was scheduled today for a Jury Trial.

THEREUPON, the Court did proceed to jury selection and the Jury Panel was sworn, Voir Dire was conducted and the parties exercised their respective peremptory strikes. A Petit Jury was then duly sworn and empaneled.

THEREUPON, the Court called upon the State to present its case and the State did present its case-in-chief. The State then rested.

THEREUPON, the Court called upon the Defendant and the Defendant presented her case-in-chief. The Defendant then rested.

THEREUPON, the State did not present any evidence in rebuttal.

THEREUPON, following a Motion by the Defendant for judgment of acquittal, the Court did proceed to hear argument by both parties relative to that motion. After considering the parties'

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respective positions, the Court did

ORDER judgment of acquittal in favor of the Defendant, Gina Marie Jerrome, as to Count Two of the Indictment and did allow the case to go to the jury as to Count One of the Indictment.

WHEREUPON, the Jury was duly instructed and the parties gave their respective closing arguments. The Jury then retired to the jury room to begin its deliberations. The Jury notified the Court when it had completed its deliberations and the Jury returned to the Courtroom and delivered its Verdict Form to the Court and the following verdict was announced and read into the record:

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

vs. CASE NO. 13-F-7 JPM

GINA MARIE JERROME,
Defendant.

VERDICT FORM

CHARGED OFFENSE: GRAND LARCENY

You may choose only one of the following four (4) options:

(1) We, the members of the jury, find the Defendant, Gina Marie Jerrome, GUILTY of the felony offense of Grand Larceny.

03/20/13 /s/ Harold White
Date Foreperson

OR

(2) We, the members of the jury, find the Defendant, Gina Marie Jerrome, GUILTY of the felony offense of Attempted Grand Larceny

_____ _____
Date Foreperson

OR

(3) We, the members of the jury, find the Defendant, Gina Marie Jerrome, GUILTY of the misdemeanor offense of Petit Larceny.

_____ _____

Date Foreperson

OR

(4) We, the members of the jury, find the Defendant, Gina Marie Jerrome, NOT GUILTY.

_____ _____

Date Foreperson

WHEREUPON, the Court inquired as to whether either party objected to the verdict form and whether either party requested for the jury to be polled.

THEREUPON, counsel for the Defendant indicated that there was no objection to the verdict form and that the Defendant did request to have the jury polled.

THEREUPON, counsel for the State indicated that there was no objection to the verdict form and that the State did not request to have the jury polled.

WHEREUPON, the Court did poll the jury and each and every of the twelve individual jurors did affirmatively respond that they voted "Guilty" of Grand Larceny.

WHEREUPON, the verdict was accepted by the Court and the Court did adjudge the Defendant, Gina Marie Jerrome, GUILTY of the felony offense of "Grand Larceny" It is accordingly

ORDERED that the Defendant Gina Marie Jerrome, is ADJUDICATED GUILTY of the felony offense of "Grand Larceny".

THEREUPON, the Court

ORDERED that a Pre Sentence Investigation Report be completed by William Ball, which will then trigger the scheduling of a Sentencing Hearing. It is further

ORDERED that the Defendant be remanded to the West Virginia Northern Regional Jail.

ORDERED that the Clerk of the Circuit Court of Ohio County is to provide an attested copy of this Order to all counsel of record and William Ball.

ENTER this 29th day of March, 2013.

/s/ James P. Mazzone

JAMES P. MAZZONE, JUDGE

PREPARED BY:

Shawn R. Turak

Shawn R. Turak
Assistant Prosecuting Attorney

A copy, Teste:

Brenda L. Miller

Circuit Clerk

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

vs. CASE NO. 13-F-7 JPM

GINA MARIE JERROME,

Defendant.

SENTENCING ORDER

On the 17th day of May, 2013, came the State of West Virginia by Shawn R. Turak, Assistant Prosecuting Attorney; and as well came the Defendant, Gina Marie Jerrome, in person, and by her counsel, Mark D. Panepinto, Esquire, this day and time having been set for a Sentencing Hearing in the above referenced matter.

WHEREUPON, the Court noted that the Defendant was convicted of the felony offense of "Grand Larceny" as charged in Count One of the Indictment following a jury trial which concluded on March 20, 2013. The Court did further note that Count Two of the Indictment was dismissed at the close of the State's case in chief on the Defendant's Motion for Judgment of Acquittal.

THEREUPON, in response to inquiry by the Court, both parties acknowledged receipt of the Pre Sentence Investigation Report prepared by William Ball, and further, neither party had any objections, modifications or alterations to the same. Accordingly, the Court

ORDERED the Pre Sentence Investigation Report FILED and made a part of the record of these proceedings.

WHEREUPON, the Court advised the Defendant of her right of allocution and the Defendant did exercise her right to allocute.

WHEREUPON, counsel for the Defendant spoke to sentencing in this matter and had a member of the Defendant's family address the Court

WHEREUPON, counsel for the State addressed the Court regarding sentencing in this matter.

THEREUPON, the Court did spread upon the record its rationale for its sentence, noting the Defendant's lengthy arrest history and drug addiction history. Accordingly, the Court

ORDERED that the Defendant is and shall hereby be sentenced to not less than one (1) nor more than ten (10) years in the custody of the Department of Corrections. It is further

ORDERED that no fines shall be imposed but any and all of the usual and customary court costs shall be assessed. It is further

ORDERED that the Defendant, Gina Marie Jerrome, shall receive credit for all time served while incarcerated with an effective sentence date of March 20, 2013.

THEREUPON, the Court did review with the Defendant her appellate rights relative to the sentencing hearing, to which the Defendant, Gina Jerrome, indicated that she understood. There being nothing further, it is

ORDERED that the Defendant, Gina Jerrome, be remanded to the custody of the Department of Corrections. It is further

ORDERED that the Clerk of the Circuit Court of Ohio County, West Virginia, shall provide an attested copy of this Order to counsel of record and to the West Virginia Department of Corrections.

ENTER this 10th day of June, 2013.

/s/ James P. Mazzone

JAMES P. MAZZONE, JUDGE

A copy, Teste:

Brenda L. Miller

Circuit Clerk

PREPARED BY:

Shawn R. Turak
Assistant Prosecuting Attorney

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

Plaintiff,

vs.

CASE NO. 12-F-495
Joseph E. Roxby, Magistrate

GINA JERROME,

Defendant.

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ORDER

It having been made known to the Court that the First Judicial Circuit Public Defender Corp., hitherto appointed as counsel for the above-entitled Defendant, now has a conflict of interest inasmuch as the Public Defender Corporation represents the alleged co-defendant in another matter. It is, therefore, accordingly

ORDERED that the First Judicial Circuit Public Defender Corp. be and hereby is permitted to withdraw as the attorney for this Defendant; and it is further

ORDERED that MARK PANEPINTO, identification No. 236-92-4453 (Social Security) (Federal Employer) be and he/she hereby is appointed to represent the said Defendant, in the place and stead of the said First Judicial Circuit Public Defender Corporation, in the above-entitled action; and it is further

ORDERED that the clerk of this Court provide an attested copy of this Order to the aforementioned **attorney** and **Public Defender Corporation** as well as the Office of the **Prosecuting Attorney** of Ohio County, West Virginia, and **Ohio County Magistrate.**

DATED this 3RD day of ~~December 2012~~ January 2013.

ENTER:

Hon. James P. Mazzone, Judge

A copy, Teste:

Brenda L. Miller
Circuit Clerk

PREPARED BY:

Shayne M. Welling, Chief Public Defender