13-1265

ORIGINAL

IN THE CIRCUIT COURT OF WEBSTER COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA, **Plaintiff,**

vs. **Case No. 13-F-12**

MICHAEL S. YORK, **Defendant.**

2013 NOV 14 AM 9:44
JEANIE [illegible]
WEBSTER CO.
CIRCUIT COURT, W.VA.
FILED

HEARING ON POST-TRIAL MOTIONS

On the 1st day of November 2013, before Judge Jack Alsop, came the State of West Virginia, by and through her Prosecuting Attorney of Webster County, Dwayne C. Vandevender, and came the defendant, Michael S. York, via video and by counsel, Steven Nanners, pursuant to a hearing upon the defendant's post-trial motions.

Whereupon, the Court noted that the defendant was appearing by video at his request.

Whereupon, counsel for the defendant addressed the Court regarding the post-trial motions previously filed herein, all as more fully set forth upon the record.

Counsel for the State did resist the motions for reasons set forth upon the record.

Based upon which, the Court did **FIND** and **ORDER** that:

1. The Court has received and reviewed the motions for a new trial.

2. The Court must consider the evidence in the light most favorable to the State.

3. The Court believes that the evidence in this case supported the verdicts returned by the jury.

4. The jury was properly instructed in this case, including the elements of self-defense.

5. The Court's refusal of the "imperfect self-defense" instruction was not error and the case law citing by counsel for the defendant does not support his argument regarding the same.

6. The grounds raised by the defendant which is most troubling to the Court is the difference in verdicts between the two counts of First Degree Murder and one count of Second

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Degree Murder returned against Michael York versus the three counts of voluntary manslaughter returned against Amanda York.

7. The jury was instructed that each count of the indictment was to be considered as a separate criminal offense and that the jury was to consider the evidence and the acts of the defendants separately regarding each count.

8. The mere fact that a jury finds one defendant guilty does not require the jury to find a co-defendant guilty of the same crimes.

9. Based on the evidence in this case the jury could have found malice and premeditation by Michael York and also found that Amanda York acted in the heat of passion and the verdicts are not inconsistent.

10. For those and other reasons which may be set forth upon the record, the defendant, Michael York's, motions for a new trial are **DENIED**.

11. The defendant's objections are noted.

12. The Court previously sentenced Michael York and reserved unto him the right to file post-trial motions.

13. The appeal time for Michael York shall begin to run upon entry of this order.

14. Steven Nanners is appointed represent the defendant upon any appeal.

Thereafter, the Court noted that:

1. Michael York, who had appeared by video at his request for the purposes of his post-trial motions hearing, which was conducted simultaneously with Amanda York's post-trial motions hearing, had thereafter remained in the Courtroom, via video, during Amanda York's sentencing.

2. During the hearing Michael York had engaged in outbursts on two occasions and was

warned by the Court on each occasion that if he continued with the outbursts the Court would remove him from the Courtroom.

3. While Dustin Brown's family members were addressing the Court regarding the sentencing of Amanda York, Michael York had engaged in a third outburst directed toward the family members and the Court had removed him from the Courtroom by discontinuing the video conference.

The Clerk shall provide certified copies of this Order to counsel of record.

ENTERED this 14 day of November 2013.

JACK ALSOP, Judge

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office
Attest: Jeanie Moore
Webster County, West Virginia
By
Deputy Clerk

Prepared by:

DWAYNE C. VANDEVENDER
Prosecuting Attorney

Original Order sent to Judge Alsop and copy mailed to STEVEN NANNERS on 11-16-13.

Counsel is hereby notified that any objections to this order must be filed, in writing, with the Court, within five (5) days of receipt of the proposed order. Otherwise, the Court shall consider the order approved as to form for entry by the Court.