11-1642

IN THE CIRCUIT COURT OF WEBSTER COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA, **Plaintiff,**
vs.

DAVIS W. WOLVERTON, **Case No. 11-F-6**
and
KATHERINE WOLVERTON, **Case No. 11-F-7** **Defendants.**

FILED 2011 OCT 28 JEANNE

POST TRIAL MOTIONS
AND SENTENCING ORDER

On the 30th day of September 2011, 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 defendants, Davis Wolverton, in person and by counsel, Daniel Grindo, and Kathryn Wolverton, in person and by counsel, Bernard Mauser, for purposes of a hearing upon post trial motions and sentencing.

Thereupon, Daniel Grindo addressed the post trial motion for Davis Wolverton and further renewed all motions from the trial, as more fully set forth upon the record. Bernard Mauser addressed the Court and addressed Kathryn Wolverton's motions in reference to false testimony, as more fully set forth upon the record. The Court heard arguments of counsel for both parties and the State.

The Court FINDS that:

1. The motion for a new trial because a husband and wife sat on the jury is improper and there is no supporting authority for such motion. For those and other reasons on the record, this motion is hereby **DENIED.**

2. The motion for a new trial because one of the juror's was hesitant about the verdict when being polled is not sufficient grounds for a new trial and there is authority on point setting forth the same. Accordingly, this motion is hereby **DENIED.**

3. As to the motion for a new trial because of the false testimony of P. J. Payne, the attorneys had opportunity to cross-examine the witness and make argument to the jury regarding the testimony and the jury had an opportunity to consider the same. For those and other reasons set forth upon the record, this motion is hereby **DENIED.**

The Court then proceeded to sentencing. The parties noted that they had received a copy of the pre-sentence report, that no factual inconsistencies were found in the report.

Thereafter, Daniel Grindo called Sheila Ware and Keith Stout as witnesses and they were subject to cross examination. No other witnesses were presented.

Counsel for Davis Wolverton addressed the Court as to sentencing. Davis Wolverton, in his own person, addressed the Court.

Counsel for Kathryn Wolverton addressed the Court as to sentencing. Kathryn Wolverton, in her own person, addressed the Court.

Thereafter, the State addressed the Court as to sentencing.

Based upon all of which, the Court FINDS and ORDERS that:

1. The Court has carefully considered the facts in this case.

2. Although the witness, P. J. Payne's criminal charges were in other counties and were disposed of in those counties, the State's case is tainted in this case because of the deals made with Mr. Payne in Braxton and Nicholas County, for reasons more fully set forth upon the record.

3. The Court must consider impact of incarceration on Davis Wolverton's children, one of which has significant issues, and for those and other reasons more fully set forth upon the record.

4. The defendant Davis Wolverton is hereby sentenced to not less than One (1) nor more than Fifteen (15) years in the penitentiary on the charge of Delivery of a Schedule II Controlled

Substance, as charged in Count One of the Indictment; not less than One (1) nor more than Five (5) years in the penitentiary on the charge of Conspiracy to Deliver of a Controlled Substance, as charged in Count Two of the Indictment; and not less than One (1) nor more than Five (5) years in the penitentiary on the charge of Gross Child Neglect Creating Risk of Serious Bodily Injury or Death, as charged in Count Three of the Indictment. The sentences imposed on Counts One and Two shall run concurrently and the sentence imposed on Count Three shall be imposed consecutively to Counts One and Two.

5. As to Davis Wolverton, on the sentence imposed for Counts One and Two of the Indictment, the Court does suspend execution of the sentence and places the defendant upon home confinement with electronic monitoring, at the expense of the defendant. The defendant shall obey all of the rules and regulations of the home confinement program.

6. As to Davis Wolverton, on the sentences for Count Three, the Court suspends said sentence and, upon his release from home confinement, the Court places the defendant upon probation for a period of five years. The defendant must obey all of the rules and regulations for probation in the 14th Judicial Circuit.

7. As to the defendant Kathryn Wolverton, the Court defers imposition of sentence and places the defendant upon probation for a period of Five (5) years.

8. As terms and conditions of probation, he defendant Kathryn Wolverton must:

A. Within Twenty (20) days to submit a written medical opinion as to why she must have morphine in the home. Kathryn Wolverton must tell the Doctor of her criminal conviction, that she is convicted of selling morphine and why the Court wants the opinion. Should the defendant, Kathryn Wolverton, fail to get the written opinion, then the Court will not approve the taking of morphine. If the defendant provides the opinion then the Court will

consider the same and issue a written decision approving or disapproving the use of morphine.

B. The defendant shall be subject to random pill counts by the probation office or any CPS worker or provider that may be in the home.

C. The defendant must remain drug and alcohol free, except for such medications as are specifically approved by the Court.

D. The defendant must submit to random drug and alcohol screens.

E. The defendant must obey the rules and regulations for probation for the 14th Judicial Circuit.

9. The Clerk shall provide a certified copy of this order to all Counsel.

ENTERED this 28 day of October 2011.

JACK ALSOP, Judge

Prepared by:

DWAYNE C. VANDEVENDER
Prosecuting Attorney of Webster County

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

Original Order sent to Judge Alsop and copy mailed to Daniel Grindo and Bernard Mauser on 10/17/11.

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.

IN THE CIRCUIT COURT OF WEBSTER COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA, **Plaintiff,**

vs.

DAVIS W. WOLVERTON, **Case No. 11-F-6**

and

KATHRYN WOLVERTON, **Case No. 11-F-7** **Defendants.**

TRIAL ORDER

On the 4th and 5th days of August, 2011, 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 defendants, Davis W. Wolverton, in person and by counsel, Daniel Grindo, and Kathryn Wolverton, in person and by counsel, Bernard Mauser, for purposes of a jury trial.

Whereupon, both sides announced ready for trial. The Court gave general directions and instructions to the venire of jurors in attendance at this term of court. A panel of twenty jurors was then drawn by the Clerk, which was followed by voir dire by the Court, the State, and the defendants' attorneys, of the jurors drawn by lot. The Court also permitted individual voir dire of certain jurors. After excusing certain jurors for cause, there came a panel of twenty jurors who were pronounced competent and free from exceptions by the Court.

From said panel of twenty jurors the State struck two and the defendant struck six, leaving the following named jurors for the trial of this case, to-wit: Rochelle Valure, Bonnie Bragg, Jackie Tonkin, Alex Jack Cochran, Ashley Crowe, Thomas Benjamin, Sandra Havner, Peggy Brown, Robert Havner, Archie Moats, Carolyn Tanner (Foreperson), and Carol King. The jurors were then sworn by the Clerk, and the Court gave the jurors initial instructions. Thereafter, the witnesses were sequestered upon motion of the defendants.

Thereafter, the parties made their opening statements. The matter was then recessed for

the noon lunch hour. After the noon lunch recess, all parties and counsel reappeared before the Court.

The State then called Sheila Ware, Barbara Mosely, Phillip J. Payne, II, Sgt. M. A. Anderson, Farrah Machado and Sgt. A. J. Shingler as witnesses, and they were subject to cross-examination. Thereafter, the State did rest. The hour growing late, the jurors were then excused for the day.

Thereupon, the Court heard the defendants' motions for a judgment of acquittal and the State's objections thereto, all as more fully set forth upon the record. After due consideration, the Court did deny the motions for judgment of acquittal and the defendants' objections and exceptions were noted. The matter was then recessed for the day.

On the 5th day of August, 2011, all parties and counsel reappeared before the Court.

The defendant, Davis Wolverton then called Officer Mansel Gregory and Christopher Wolverton as witnesses and they were subject to cross-examination. The defendant, Kathryn Wolverton then called Chasity Arbogast as a witness and she was subject to cross-examination.

Thereafter, the jury was sent to the jury room. The Court then advised the defendants of their right to testify in this matter and their right to remain silent all as more fully set forth upon the record. After a recess to consult with their counsel, Counsel for the defendants advised the Court that the defendants had elected not to testify in this matter. Upon inquiry by the Court the defendants, in their own person, confirmed their decisions not to testify.

Thereupon, the Court reviewed the proposed jury charge and verdict form with the parties. Davis Wolverton, by Counsel objected to the proposed charge as more fully set forth upon the record. The Court then made a proposed amendment to the charge. Any further objections to the jury charge were overruled and the parties exceptions noted.

The defendants then objected to the verdict form stating that the "Not Guilty" language should be first on each count of the verdict form. The defendant's objections were overruled and noted for the record.

The defendants then renewed their motions for judgment of acquittal for the reasons previously set forth upon the record. The State resisted the motions for the same reasons previously set forth. The Court then denied the motions for the reasons previously set forth and the defendants' objections were noted.

The jury then returned to the Courtroom and the defendants then rested.

The Court then proceeded to instruct the jury. The State presented its closing argument. Thereafter, the jury heard the closing arguments offered by the defendants. Thereafter, the jury heard the closing rebuttal arguments of the State of West Virginia. The Court then instructed the jury on the jury verdict form and the jury was sent to their room to consider their verdict.

After approximately four and one half hours, including a one hour lunch recess, the foreperson advised the Court that the jury had reached a verdict and the jury returned into open Court and delivered the verdict, as follows:

JURY VERDICT FORM

COUNT ONE

1(a) We, the members of the petit jury, find beyond a reasonable doubt that the Defendant, **Davis W. Wolverton,** is **Guilty of Delivery of a Schedule II Controlled Substance**, as charged in Count One of the Indictment.

Dated this 5th day of August, 2011.

Carolyn Tanner
Foreperson

COUNT TWO

2(a) We, the members of the petit jury, find beyond a reasonable doubt that the Defendant,

Davis W. Wolverton, is **Guilty of Conspiracy to Deliver of a Controlled Substance**, as charged in Count Two of the Indictment.

Dated this 5th day of August, 2011.

Carolyn Tanner
Foreperson

COUNT THREE

3(a) We, the members of the petit jury, find beyond a reasonable doubt that the Defendant, **Davis W. Wolverton,** is **Guilty of Gross Child Neglect Creating Risk of Serious Bodily Injury or Death**, as charged in Count Three of the Indictment.

Dated this 5th day of August, 2011.

Carolyn Tanner
Foreperson

COUNT FOUR

4(a) We, the members of the petit jury, find beyond a reasonable doubt that the Defendant, **Kathryn Wolverton,** is **Guilty of Delivery of a Schedule II Controlled Substance,** as charged in Count Four of the Indictment.

Dated this 5th day of August, 2011.

Carolyn Tanner
Foreperson

COUNT FIVE

5(a) We, the members of the petit jury, find beyond a reasonable doubt that the Defendant, **Kathryn Wolverton,** is **Guilty of Conspiracy to Deliver of a Controlled Substance**, as charged in Count Five of the Indictment.

Dated this 5th day of August, 2011.

Carolyn Tanner
Foreperson

COUNT SIX

6(a) We, the members of the petit jury, find beyond a reasonable doubt that the Defendant, **Kathryn Wolverton,** is **Guilty of Gross Child Neglect Creating Risk of Serious Bodily Injury or Death**, as charged in Count Six of the Indictment.

Dated this 5th day of August, 2011.

Carolyn Tanner
Foreperson

The Court read the above verdict in open court. The parties did not desire to inspect the Jury Verdict Form. The Court did then inquire of the State if it desired to have the jury polled, which it did not, and further inquired of the defendants if they desired to have the jury polled. The defendant, Davis W. Wolverton requested that the jury be polled. The Clerk then called the names of each of the jurors and asked if this was their verdict, to which each, in turn, responded in the affirmative. The jury was then excused from further service in this case.

Based upon such verdict, it is the **JUDGMENT** and **ORDER** of this Court that the Defendant, **Davis W. Wolverton**, is hereby adjudged **GUILTY** of the felony offense of Delivery of a Schedule II Controlled Substance, as contained in Count One of the Indictment; **GUILTY** of the felony offense of Conspiracy to Deliver a Controlled Substance, as contained in Count Two of the Indictment; and **GUILTY** of the felony offense of Gross Child Neglect Creating Risk of Bodily Injury or Death, as contained in Count Three of the Indictment.

Based upon such verdict, it is the **JUDGMENT** and **ORDER** of this Court that the Defendant, **Kathryn Wolverton**, is hereby adjudged **GUILTY** of the felony offense of Delivery of a Schedule II Controlled Substance, as contained in Count Four of the Indictment; **GUILTY** of the felony offense of Conspiracy to Deliver a Controlled Substance, as contained in Count Five of the Indictment; and **GUILTY** of the felony offense of Gross Child Neglect Creating Risk of Bodily Injury or Death, as contained in Count Six of the Indictment.

The Court **ORDERED** that a pre-sentence investigation be performed by the Webster County Probation Department. It is **ORDERED** that the defendant shall have ten days from the entry of the trial order to file any post-trial motions. It is further **ORDERED** that a hearing upon any post-trial motions and a sentencing be set for **September 22, 2011 at 1:00 o'clock p.m.**

Thereafter, the State moved the Court to amend the terms of bond in this matter to

include a condition of home confinement. The defendants resisted the motion and asked the Court to permit the defendants to remain upon the bond heretofore given.

After due deliberation the Court does **DENY** the motion to modify bond for reasons more fully set forth upon the record.

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

ENTERED this 29 day of August, 2011.

JACK ALSOP, Judge

Prepared by:

DWAYNE C. VANDEVENDER
Prosecuting Attorney of Webster County

Original Order sent to Judge Alsop and a copy to Daniel Grindo and Bernard Mauser August 9, 2011.

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.

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

Jennie

IN THE CIRCUIT COURT OF WEBSTER COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

VS. 11-F-7

KATHRYN WOLVERTON

FILED
2011 APR 13 AM 9: 18
JEANIE MOORE, CLERK
WEBSTER CO.
CIRCUIT COURT, W. VA.

ORDER

It is ADJUDGED and ORDERED that Kevin Duffy be and is hereby relieved as counsel for the defendant in the above matter and that Bernard Mauser, a competent attorney practicing before the bar of this Court, is hereby appointed to represent the above-named defendant.

It is ADJUDGED and ORDERED that the clerk of this court send copies of this order to counsel of record, forthwith.

Entered this the 12 day of April, 2011.

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