

13-0775

IN THE MAGISTRATE COURT OF MARION COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

PLAINTIFF,

V.

CASE NO. 10-F-457

ZACHARY ALLEN KNOTTS, JR.,

DEFENDANT.

ORDER APPOINTING COUNSEL

The above named defendant has filed, with this Court, an affidavit reciting financial inability to employ counsel in connection with certain proceedings before this Court. After reviewing the affidavit and considering the matter, the Court is of the opinion that the eligibility requirements of West Virginia Code 29-21-1, et seq, are satisfied. Accordingly, the Court ORDERS that:

MICHELLE MINUTELLI, ESQUIRE, a licensed lawyer practicing before the Bar of this Court, is hereby appointed to represent the defendant on the charge of THREATS OF TERRORIST ACTS and is instructed to contact the defendant forthwith.

The Circuit Clerk of Marion County shall provide a certified copy of this Order to the Prosecuting Attorney of Marion County; to Michelle Minutelli, Esquire at 229 Jefferson Street, Fairmont, West Virginia 26554; and to Zachary Allen Knotts, Jr. c/o North Central Regional Jail, #1 Lois Lane, Greenwood, West Virginia 26415.

ENTER: 01 OCTOBER 2010

CLERK OF THE CIRCUIT COURT

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FRED L. FOX, II, JUDGE

A COPY

TESTE



CLERK OF THE CIRCUIT COURT
MARION COUNTY, WEST VIRGINIA

IN THE CIRCUIT COURT OF MARION COUNTY, WEST VIRGINIA
DIVISION II

STATE OF WEST VIRGINIA

vs.

Case No. 10-B-439
Mag. Ct. No. 10-F-457

ZACHARY ALLEN KNOTTS, JR.

OCT 21 PM 1:03
CIRCUIT CLERK

ORDER SUBSTITUTING COUNSEL

This day came counsel for the Defendant, Michelle L. Minutelli, who advised the Court that she had been appointed by the Court's Order entered the 1st day of October, 2010, to represent the Defendant, Zachary Allen Knotts, Jr., and moved the Court to withdraw due to a conflict of interest.

Whereupon, the Court believing it proper to do so, does hereby ORDER that Michelle L. Minutelli be relieved as counsel for Defendant without obligation of any further duties and responsibilities in this matter and Orders that Sean Murphy be appointed by the Court to represent the Defendant in this matter.

Futher, the Court ORDERS that the Clerk of this Court tender certified copies of this Order to Michelle L. Minutelli, 229 Jefferson St., Fairmont, WV 26554; to Sean Murphy, 203 1/2 Route B Fairmont WV; and to the Marion County Prosecuting Attorney, Fairmont, WV 26554.

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[Signature]
JUDGE

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Barbara A. Case
CLERK OF THE CIRCUIT COURT
MARION COUNTY, WEST VIRGINIA

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NATURE OF CASE, RELIEF SOUGHT AND OUTCOME BELOW

On February 7, 2011 Zachary Allen Knotts, Jr. was indicted by the Marion County Grand Jury for the offense of Threats of Terrorist Acts, a felony in violation of W.Va. Code § 61-6-24. On March 11, 2011 the Court conducted a hearing on the issue of the defendant's competency to stand trial pursuant to W.Va. Code §27-6A-3. By order entered on March 23, 2011 the Court found Mr. Knotts incompetent to stand trial and ordered that he be committed to William R. Sharpe, Jr. Hospital or some other inpatient mental health facility as designated by the Department of Health and Human Resources for a term of three months or until such time as he became competent to stand trial. On the 29th day of June, 2011 the Court conducted another competency hearing and determined that Mr. Knotts was not competent to stand trial and was not substantially likely to regain competency. The Court ordered that Mr. Knotts be committed to a mental health inpatient facility until the court loses jurisdiction over the defendant on February 1, 2014 or whenever Mr. Knotts regained competency, whichever was sooner. On March 4, 2013 the defendant filed a Motion for opportunity to offer a defense to the charges pending against him pursuant to W.Va. Code § 27-6A-6. The Court conducted a bench trial on June 26, 2013. Following the bench trial the Court determined that there was sufficient evidence to convict the defendant of the charge of Threats of Terrorist Acts. The defendant is appealing this ruling and requests that this Court find that the actions of the defendant do not constitute the crime defined by W.Va. Code §61-6-24.

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ASSIGNMENTS OF ERROR

1. The defendant asserts that the Court's finding that his statements to employees of a credit union amounted to a threat against the civil population is erroneous. West Virginia Code §6-3-24(a)(3) defines a "Terrorist Act" as an act that is:

(B) Intended to:

(i) Intimidate or coerce the civilian population:

A threat made to a few employees of a credit union is not intended to intimidate or coerce the civilian population.

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IN THE CIRCUIT COURT OF MARION COUNTY, WEST VIRGINIA
DIVISION II

STATE OF WEST VIRGINIA,

PLAINTIFF,

vs.

ZACHARY ALLEN KNOTTS, JR.,

DEFENDANT.

RECEIVED & FILED
MAY 11 2 00 PM '11
CIRCUIT COURT
Case No. 11-F-33

**ORDER FINDING SUFFICIENT EVIDENCE OF CRIME TO SUSTAIN A
CONVICTION PURSUANT TO W. VA. CODE § 27-6A-6**

On the 26th day of June, 2013, this matter came before the Court for a bench trial pursuant to W. Va. Code § 27-6A-6 (2007). The defendant, Zachary Allen Knotts, Jr., appeared in person and by his attorney, S. Sean Murphy. The State of West Virginia was represented by Dana R. Shay, Assistant Prosecuting Attorney for Marion County. Evidence was presented through the taking of testimony and the introduction of exhibits. After due consideration of the evidence presented and the arguments of counsel, as well as reviewing the entire court file and researching the applicable law, the Court is of the opinion that there is sufficient evidence to sustain the defendant's conviction of the offense of Threats of Terrorist Acts, a felony and violation of W. Va. Code § 61-6-24, as charged in the criminal complaint herein. In support of this decision, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On February 7, 2011, the defendant, Zachary Allen Knotts, Jr., was indicted by the Marion County Grand Jury for the offense of Threats of Terrorist Acts, a felony and violation of W. Va. Code § 61-6-24 (2009).

2. On March 11, 2011, this Court conducted a hearing on the issue of the defendant's competency to stand trial pursuant to W. Va. Code § 27-6A-3 (2007). At the hearing, the Court

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heard testimony from Dr. Cheryl Hill that Mr. Knotts was not competent to stand trial and that he should be placed under medical supervision until such time as he may regain competency. The Court also heard testimony from Dr. Bobby Miller that, although the defendant met the minimum standard of competency, he was not criminally responsible.

3. By order entered herein on March 23, 2011, this Court found Mr. Knotts incompetent to stand trial and ordered that he be committed to William R. Sharpe, Jr. Hospital, or some other inpatient mental health facility as designated by the Department of Health and Human Resources, for a term of three months or until such time as he became competent to stand trial.

4. After having received the competency evaluation from Sharpe Hospital, this Court conducted an additional competency hearing on June 29, 2011. By order entered herein on July 19, 2011, the Court again found that Mr. Knotts was not competent to stand trial and was not substantially likely to attain competency. As such, the Court ordered that Mr. Knotts be committed to a mental health inpatient facility until the Court loses jurisdiction over the defendant on February 1, 2014, or whenever Mr. Knotts regained competency, whichever was sooner.

5. On March 4, 2013, Mr. Knotts, through his attorney, S. Sean Murphy, filed a Motion for Opportunity to Offer a Defense to the Charges Pending Against the Defendant with the Marion County Circuit Court Clerk pursuant to W. Va. Code § 27-6A-6. The State of West Virginia did not file a response to Mr. Knotts's motion.

6. As permitted by W. Va. Code § 27-6A-6, this Court conducted a bench trial on June 26, 2013, during which the Court heard testimony from the witnesses and defendant, as well as the arguments of counsel.

7. At the bench trial, Randi Lynn Morris, a call service representative at Fairmont Federal Credit Union (hereinafter Credit Union), testified that she had multiple phone conversations with Mr. Knotts on September 30, 2010, the day of the alleged threat. According to Ms. Morris, the defendant called the Credit Union three (3) times that day when he became aware that his account

was closed. During the first conversation, Mr. Knotts spoke with Ms. Morris for approximately thirty (30) minutes. Shortly thereafter, Mr. Knotts called again and asked to speak to management. Ms. Morris stated that Mr. Knotts became more upset during the second conversation and told Ms. Morris that he would "come in and let the world know what he thought about the Credit Union" by putting "explosive devices" on the employees' vehicles. Ms. Morris testified that she reported the explosive threat to her supervisor, Susan Hawkins. After this conversation, the Credit Union was placed on lock down and when Mr. Knotts called a third time, Ms. Morris immediately terminated his call.

8. Chief Investigating Officer C.L. Phillips testified that he was the investigating officer on September 30, 2010, the day on which Mr. Knotts made multiple calls to the Credit Union. According to Sergeant Phillips, he interviewed multiple bank employees who informed him that the Credit Union had previously made the decision to close Mr. Knotts's account because Mr. Knotts had been approaching pregnant employees and customers and attempting to engage in conversations regarding circumcision with them. Specifically, Sergeant Phillips stated that Mr. Knotts had approached one pregnant employee and asked her if she would have her unborn child circumcised. Sergeant Phillips also testified that he took a statement from Ms. Morris, during which she stated that Mr. Knotts threatened to place explosives on Credit Union employees' vehicles.

9. The defendant, Zachary Allen Knotts, Jr., also testified. Mr. Knotts denied telling Ms. Morris that he would place explosives on the employees' vehicles. Rather, Mr. Knotts claimed that he informed Ms. Morris that he wanted to place copies of e-mails and DVDs on the vehicles in the bank parking lot to expose the Credit Union's violation of his First Amendment right to speak freely about circumcision. According to Mr. Knotts, his account was improperly closed when he voiced his opinions regarding circumcision to a bank employee.

CONCLUSIONS OF LAW

1. Zachary Allen Knotts, Jr. was indicted by the Marion County Grand Jury during this Court's February 2011 Term of Court of Threats of Terrorist Acts, a felony and violation of W. Va. Code § 61-6-24.

2. W. Va. Code § 61-6-24(b) provides that:

Any person who knowingly and willfully threatens to commit a terrorist act, with or without the intent to commit the act, is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$25,000 or confined in a state correctional facility for not less than one year nor more than three years, or both.

3. A terrorist act, as defined in W. Va. Code Chapter 61, Article 6, Section 24, is an act that is "(A) Likely to result in the serious bodily injury or damage to property or the environment; and (B) Intended to: (i) Intimidate or coerce the civil population . . ." (emphasis added).

4. Mr. Knotts was declared incompetent to stand trial by order entered herein on March 23, 2011 and again on July 19, 2011. Pursuant to W. Va. Code § 27-6A-6, if a defendant has been deemed not competent to stand trial and believes that he or she can establish a defense of not guilty, other than the defense of not guilty by reason of mental illness, the defendant may request that the court afford him an opportunity to present such defense on its merits. Upon granting such request, the court shall conduct a bench trial to determine if there is sufficient evidence to support a conviction. Id. If the court cannot find sufficient evidence to sustain a conviction, it shall dismiss the indictment and order that the defendant be released from criminal custody. Id.

5. On March 4, 2013, Mr. Knotts, through his attorney, requested that the Court grant his request to present a defense pursuant to W. Va. Code § 27-6A-6. This Court conducted a bench trial on June 26, 2013, wherein it heard the testimony of witnesses and Mr. Knotts, as well as the arguments of counsel.

6. At the outset, the Court notes that there is disagreement between counsel for the State of West Virginia and counsel for Mr. Knotts regarding the level of proof required to sustain a

conviction pursuant to W. Va. Code § 27-6A-6.

7. Dana R. Shay, Assistant Prosecuting Attorney for Marion County, argued that “sufficient evidence,” as used in W. Va. Code § 27-6A-6, is not proof beyond a reasonable doubt. Rather, Mr. Shay asserts that the burden of proof for satisfying the sufficient evidence standard is comparable to that required for a Rule 29 motion for judgment of acquittal. *See* W. Va. R. Cr. P. Rule 29(a) (stating that a court shall grant a defendant’s request for an acquittal of one or more offenses charged in the indictment or information if the evidence is insufficient to sustain a conviction.) If a court refuses to grant a defendant’s request for acquittal under Rule 29, the case shall be submitted to the jury. *Id.*

8. On the other hand, Mr. Murphy, on behalf of Mr. Knotts, argues that the level of proof to sustain a conviction under W. Va. Code § 27-6A-6 is more than that represented by the State of West Virginia. Further, according to Mr. Murphy, the State has not shown that the defendant committed all elements of the offense as charged. According to Mr. Murphy, the alleged threat by Mr. Knotts, even if established as true, does not show that Mr. Knotts committed a terrorist act, as a threat to one employee of the Credit Union, or even multiple employees, does not constitute a threat to the “civilian population.”

9. The Court is of the opinion that the sufficient evidence standard, as used in W. Va. Code § 27-6A-6, is comparable to the level of proof required for finding sufficient evidence as set forth in Rule 29 of the West Virginia Rules of Criminal Procedure. With respect to what constitutes sufficient evidence in a Rule 29 motion, the West Virginia Supreme Court has found that a defendant’s motion for a judgment of acquittal may be denied where there is sufficient circumstantial evidence to allow a jury inference that the defendant committed the offense. *See State v. White*, 228 W. Va. 530, 722 S.E.2d 566 (W. Va. 2011).

10. Similarly, this Court concludes that there is sufficient circumstantial evidence in this case from which a jury could infer that Mr. Knotts made a terroristic threat to employees at the

Credit Union. Specifically, a Credit Union employee testified that Mr. Knotts called the bank frequently on the day of the alleged threat, and that she spoke with Mr. Knotts on three separate occasions that day. More persuasive, however, was testimony from Ms. Morris that the defendant stated to her that he would “come in and let the world know what he thought about the Credit Union” by placing “explosive devices” on all of the Credit Union employees’ vehicles. Additionally, Sergeant C.L. Phillips testified that he was the investigating officer on September 30, 2010, and that Ms. Morris gave a verbal statement to him wherein she informed him that Mr. Knotts said he would place explosive devices on the Credit Union employees’ vehicles. Finally, although he denied making any threat regarding explosives to bank employees, during Mr. Knotts’s direct testimony, Mr. Knotts admitted that he called the Credit Union eleven (11) times in one day.

11. Further, the Court is of the opinion that, although the alleged threat was made to members in a certain class, i.e., bank employees, there is sufficient evidence that the threat pertained to the civilian population at large. Mr. Knotts allegedly threatened to place explosive devices on employees’ vehicles in a parking lot used by the bank’s employees and customers. The Court cannot ignore the large risk that such a threat poses to citizens in the community who are not employees of the Credit Union.

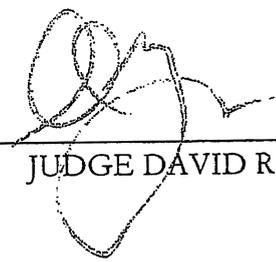
12. Therefore, the Court finds that the State’s evidence provides a sufficient basis for a jury to conclude that Mr. Knotts made a threat of terrorist acts.

Accordingly, the Court is of the opinion to, and does hereby, **ORDER** that defendant Zachary Allen Knotts Jr.’s request for a dismissal of the indictment and release from criminal custody pursuant to W. Va. Code § 27-6A-6 should be, and the same hereby is, **DENIED**, for the reasons stated herein.

Upon entry, the Circuit Clerk of Marion County is directed to prepare and distribute certified copies to S. Sean Murphy, Esquire, at his address: 265 High Street, Suite 601, Morgantown, West Virginia 26505; and to Dana R. Shay, Assistant Prosecuting Attorney for Marion County, at his

address: 213 Jackson Street, Fairmont, West Virginia 26554.

ENTER: 7/2/13



JUDGE DAVID R. JANES