

SCANNED

IN THE CIRCUIT COURT OF BOONE COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

v.

CASE NO. 17-F-74
(Judge Thompson)

KEVIN WOODRUM,

Defendant.

ORDER DENYING MOTION FOR NEW TRIAL

On the 10th day of October, 2018, appeared the State of West Virginia by Keith Randolph and Jennifer Anderson, and appeared the Defendant, Kevin Woodrum, in person and with counsel, Mark Hobbs, this day having been set for a hearing on Defendant's Motion for New Trial.

After hearing argument of counsel, and reviewing the filed briefs of the parties, the Court made the following findings of fact and conclusions of law:

1. That Defendant seeks a new trial on the grounds that the Court erred in instructing the jury on the felony offense of Kidnapping – specifically, that the Court failed to instruct the jury that W. Va. Code § 61-2-14a(a)(2) required the element of “transport.”¹
2. That in response, the State argues that subparagraph (a)(2) sets for two distinct ways to commit the crime of Kidnapping, and that the two distinct ways are separated by the word “or.”
3. That the State chose to pursue its case on the theory set out in the second way to commit the offense in subparagraph (a)(2) which required the State to prove the Defendant

¹ West Virginia Code § 61-2-14a(a) reads as follows:

“(a)Any person who unlawfully restrains another person with the intent:

- (1) To hold another person for ransom, reward, or concession;
- (2) To transport another person with the intent to inflict bodily injury or to terrorize the victim or another person; or
- (3) To use another person as a shield or hostage. . . .”

“unlawfully restrain[ed] another person with the intent: . . . to terrorize the victim or another person.”

4. That in reviewing the statute, the Court FINDS that section 61-2-14a(a)(2) is written in the disjunctive with two separate and distinct acts in subparagraph (a)(2) that form the criminal offense of Kidnapping.
5. That as such, the State was not required to prove that the Defendant transported the victim in order to prove the Defendant guilty of the offense of Kidnapping.
6. Thus, the Defendant’s motion for a new trial is DENIED on that ground.
7. That Defendant also seeks a new trial on grounds that the State violated his right against double jeopardy by obtaining convictions for the offenses of Malicious Assault and Assault During the Commission of a Felony.
8. That “[w]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of an additional fact which the other does not.” *State v. George*, 185 W.Va. 539, 543, 408 S.E.2d 291, 295 (1991).
9. That the offense of Malicious Assault requires proof of maliciousness and intent to maim, disable, disfigure, or kill which is not necessary to prove Assault During the Commission of a Felony.
10. That the offense of Assault During the Commission of a Felony requires proof of the commission, or attempt to commit a felony which is not necessary to prove Malicious Assault.
11. That since both statutes require proof of additional facts for which the other does not, the Defendant’s right against double jeopardy has not been violated.

12. Thus, Defendant's motion for a new trial on that ground is hereby DENIED.

The Clerk of this Court shall furnish an attested copy of this Order to counsel for Defendant, Mark Hobbs; and to the Prosecuting Attorney upon entry thereof.

All of which is ADJUDGED, ORDERED, and DECREED.

Done this 15th day of October, 2018.

ORDER

ENTER:

Walt S T

WILLIAM S. THOMPSON, JUDGE

Prepared By:

D. Keith Randolph
D. Keith Randolph (9097)
Jennifer L. Anderson (8504)
Prosecuting Attorney

A COPY ATTEST

Lee Ann Zickel

CIRCUIT COURT