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1 IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

2 STATE OF WEST VIRGINIA,

3 Plaintiff,

4 vs.

CASE NOS. 11-F-101
16-F-25

5 THOMAS DEEGAN,

6 Defendant.

7
8 SENTENCING HEARING

9 The following partial proceeding was held before the
10 Honorable Jeffrey B. Reed, Judge, on the 14th day of April,
11 2016.

12 APPEARANCES:

13 MR. SAMUEL C. ROGERS, II, Assistant Prosecuting Attorney, 317
14 Market Street, Parkersburg, WV 26101.
Counsel for the Plaintiff.

15 MR. F. JOHN OSHOWAY, Attorney-at-Law, P. O. Box 156,
16 Grantsville, WV 26147.
Standby Counsel for the Defendant.

17 MS. CASEY KUHN, Adult Probation Officer.

18 MR. THOMAS DEEGAN, Defendant.

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23 CYNTHIA A. SUTPHIN, CER, CET
24 #2 Government Square, Room 221
Parkersburg, WV 26101
25 (304) 424-1721

P R O C E E D I N G S

1
2 (Whereupon, the following proceeding was held on the 14th
3 day of April, 2016, beginning at 9:09 a.m. All parties
4 present.)

5 THE COURT: Case No. 16-F-25 and 11-F-101, both State
6 vs. Thomas Deegan. We're set here for sentencing.

7 We have the presentence report. We have a supplemental
8 report dated April 13, and another one dated April 9, which
9 was actually I think -- it was received April 5, so I'm
10 assuming that it was misdated. That's the one that contained
11 the defendant's handwritten objections. And I was thinking
12 there was another one, I don't have that here in front of me,
13 another one that -- yeah, and that was April the 5th, and that
14 was the one that dealt with the jail credit.

15 All right. And the defendant has objected to or filed
16 some objections. Mr. Deegan, is there anything else you want
17 to add to any of your written objections to the presentence
18 report?

19 THE DEFENDANT: Yeah, I just received one yesterday. It
20 was the officer's sentiment, or something.

21 THE COURT: Right.

22 THE DEFENDANT: And in it he was saying that I was non-
23 cooperative at the time of arrest, non-cooperative with the
24 investigation, and that I was sarcastic, or a few other
25 terms. But he had testified on the stand that we had never

1 met or never spoken. So I would object to those as being
2 something that he could not possibly know if he had never met
3 me. He couldn't know I was sarcastic, he couldn't know if I
4 was uncooperative at the time of arrest, he wasn't there. He
5 could say I was uncooperative with his investigation, but,
6 then again, he never talked to me. So how could I not
7 cooperate if no one's ever talked to me. So I would object
8 to those first few portions of that.

9 Everything else I corrected in the captions, both the
10 previous one, which I had never been allowed to see from
11 April of last year, because there were a lot of errors in it
12 that I saw. Did you get to see that one as well?

13 THE COURT: Right.

14 THE DEFENDANT: Okay. Yeah, no. I noted everything in
15 it.

16 THE COURT: Okay. Mr. Rogers, is there anything you
17 want to say in response to any of the defendant's objections
18 to the presentence report?

19 MR. ROGERS: Not -- I mean, not really, Your Honor. A
20 lot of these objections I can't even address due to the
21 nature of the objections that the defendant's making. Some
22 of them I wouldn't have an objection to. The defendant says
23 he quit school in 9th grade, not 11th. I mean, I wouldn't
24 object to that or have any comment to make. And I don't
25 think that a lot of these corrections that the defendant has

1 made would have much to do with my arguments on sentencing.

2 So I wouldn't -- other than that, I wouldn't -- and as
3 far as the officer's sentiment goes and the objections as to
4 those, I don't think I could speak to the officer's
5 sentiment. But I think it -- I mean, it does say how he
6 would characterize the defendant's attitude, it doesn't say
7 how he would characterize his attitude at the time of arrest.
8 So I'd like that to stand for itself, and then wouldn't make
9 any other comments to his objections, other than what I've
10 stated.

11 THE COURT: Well, you'll have to excuse me for a moment.
12 I must have left something in the office.

13 (Judge leaves room at 9:15 a.m., and returns at 9:19
14 a.m.)

15 THE COURT: All right. In terms of the objections to
16 the presentence report in this case, 16-F-25, the majority of
17 the exceptions or objections, I mean, I'm not going to
18 restate, because they really don't affect the sentence. For
19 example, the comment about how to spell the name; comment
20 about pro se; the fact that there's no victim; raise the
21 issue of the name not the defendant. The vast majority of
22 the issues don't affect the sentence, but I want to deal with
23 a couple of them.

24 One of them is the use of the LSCMI Risk Level. And the
25 use of that is discussed in a January 2015, they're called

1 memorandum opinions by the West Virginia Supreme Court.
2 That's the only place I can see it mentioned. It's State vs.
3 Rogers, the Opinion No. is 14-0373. It's 215 (sic) WL
4 869323. But it essentially says that the Risk of Needs
5 Assessments are provided for under West Virginia Code
6 62-12-6(a)(2), and the purpose of the memorandum opinion was
7 to make clear that these assessments are merely a tool that
8 may be used by circuit judges during sentencing.

9 So it's not required that the Court consider it, and the
10 Court is not going to consider the LSCMI evaluations for
11 either this case or the other case.

12 In the official version, there was objection to that.
13 I'm not going to consider the official version in this case,
14 because I heard the evidence. And I don't know -- I mean, I
15 didn't read the official version even before there was an
16 objection, because I heard the evidence. And it's -- I mean,
17 that's just my practice. When I have a jury trial and I hear
18 the evidence, I base a verdict upon the evidence that I hear
19 at trial, not about what may be included in the official
20 version, because it's my understanding the official version
21 generally comes from police reports, which may or may not be
22 what is -- what the evidence is.

23 So I did not consider the official version in imposing
24 sentence in this case.

25 In terms of the presentence report from 11-F-101, there

1 was something I think on the cover page, yeah, about not
2 knowingly, willingly or intelligently when there's a plea of
3 guilty. We discussed this previously, that certainly the
4 defendant can maintain that. But it's this Court's opinion
5 that if the defendant wants to in any way pursue that as some
6 kind of a collateral attack on that guilty plea in 11-F-101,
7 that the defendant would bear the burden of introducing
8 evidence to that effect. And there's been no evidence
9 presented to that effect.

10 And so, you know, I mean, certainly he can say that, but
11 the Court doesn't believe that he has -- the Court doesn't
12 believe that I have to rule on that, because in my opinion
13 it's not really been raised.

14 All the remainder of the corrections or comments to the
15 earlier presentence report, you know, one can make an
16 argument, and it would have, in my opinion, good weight, is
17 that waived -- it's been waived. Because we had a hearing in
18 11-F-101, we gave the defendant the opportunity to make
19 comments and objections to the presentence report, he was
20 represented by counsel, and it was stated on-the-record at
21 that point that, at least my recollection is, that there
22 weren't any corrections or additions. But whatever
23 corrections or additions were made were dealt with at that
24 time, and sentence was imposed.

25 But what corrections and additions and comments were

1 made to that earlier presentence report, again, would not
2 affect the sentence in this case. They're, you know, I
3 don't know how to characterize it, maybe clerical, but it
4 certainly does not, in this Court's opinion, affect the
5 sentence that will be imposed in this case.

6 So the court reporter is to transcribe the portion of
7 this hearing showing the defendant's objections and the
8 Court's ruling. And that transcript shall be provided to the
9 probation officer, who shall attach the transcript to the
10 presentence report so that the objections and the Court's
11 ruling on the objections and comments can follow the
12 presentence report.

13 (The portion requested to be transcribed ended at 9:26
14 a.m.)

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1 STATE OF WEST VIRGINIA,
2 COUNTY OF WOOD, to-wit:

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I, Cynthia A. Sutphin, Certified Electronic Reporter and Transcriber for the Circuit Court of Wood County, West Virginia, do hereby certify that the foregoing is a true and correct partial transcript of the proceedings held in the matter of STATE OF WEST VIRGINIA, Plaintiff vs. THOMAS DEEGAN, Defendant, Case Nos. 11-F-101 and 16-F-25, as recorded by me on the 14th day of April, 2016.

Given under my hand this 15th day of April, 2016.


CYNTHIA A. SUTPHIN, CER, CET

1 STATE OF WEST VIRGINIA,
2 COUNTY OF WOOD, to-wit:

3
4 I, Cynthia A. Sutphin, Certified Electronic Reporter and
5 Transcriber for the Circuit Court of Wood County, West
6 Virginia, do hereby certify that the transcript within meets
7 the requirements of the Code of the State of West Virginia,
8 Chapter 51, Article 7, Section 4 and all rules pertaining
9 thereto as promulgated by the Supreme Court of Appeals.

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Cynthia A. Sutphin
COPY

CYNTHIA A. SUTPHIN, CER, CET

DATED: 4/15/16



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2 (Whereupon, the following proceeding was held on the 14th
3 day of April, 2016, beginning at 9:26 a.m. All parties
4 present.)

5 THE COURT: All right. Now, there has been a motion
6 filed by the defendant. It's styled, "Demand and Prayer for
7 Post-Verdict Judgment of Acquittal, or in the Alternative,
8 For a New Trial." And so the Court would, of course, treat
9 that as a motion for judgment of acquittal and motion for new
10 trial under rule -- under the criminal rules.

11 Mr. Deegan, is there anything else you want to add or
12 any evidence you want to present on your motion for judgment
13 of acquittal, or for motion for new trial?

14 THE DEFENDANT: No, I mean, everything was clear on-the-
15 record from the trial. I stated everything that I thought
16 needed to be stated within it. I never did receive a
17 response from the State so that I could see if I needed
18 anything. I mean, this was something that was drafted mainly
19 by a bar attorney, and so I figured that it would have at
20 least gotten a response from the State so that I would know
21 what their argument was, notice, and I haven't received
22 anything. So I didn't think that anything needed to be
23 entered, other than it itself, it's quite clear.

24 THE COURT: Mr. Rogers, anything you want to say with
25 regard to the motion for judgment of acquittal, or motion for

1 new trial?

2 MR. ROGERS: Yes, Your Honor, I'll take up the issues
3 that Mr. Deegan has brought in his motion.

4 First, it appears to me that the first issue that Mr.
5 Deegan has is he states that this threat was not communicated
6 as required. Well, I think it was clear in the evidence that
7 we heard during trial that it was absolutely communicated, we
8 heard it. We heard it on the conference call. The jury
9 heard this communication of these terroristic threats. It
10 was communicated to this larger audience over this conference
11 call. It was also communicated over the Internet where the
12 defendant and his group posted this conference call, and it
13 was communicated through interviews that we heard, these
14 threats that the defendant wished to take over the
15 government, and we heard those interviews as well. So I
16 believe that this -- these terroristic threats were
17 absolutely communicated.

18 The defendant also has an issue with the fact that he
19 states that the victim didn't take the stand. This is a
20 crime against the State of West Virginia. The defendant
21 wanted to take over the State's government. We heard from
22 the West Virginia State Police who investigated this crime.
23 We also heard from the Fusion Center and the Wood County Home
24 Confinement Office. We had more than enough evidence through
25 them, as well as the audio and video that we heard, to prove

1 this case to the jury, and I think that's shown with their
2 verdict.

3 He questions the constitutionality of the charge. The
4 defendant states that it is protected speech under the
5 Constitution. This has been ruled on. The West Virginia
6 state court -- or Supreme Court has ruled on this issue in
7 State vs. Yocum. You can't just make terroristic threats
8 that will result in -- could result in serious bodily injury,
9 and the Supreme Court has stated you can't do that. So I
10 don't believe that that's a valid issue.

11 The defendant brings up jurisdiction issues in personam
12 and political jurisdiction issues. Jurisdiction issues were
13 ruled on and ruled on and ruled on prior to the trial, and
14 the State did prove jurisdiction in its case.

15 The defendant had an issue with the home confinement
16 office taking the stand. This issue was addressed prior to
17 trial, and the State informed the Court that it needed to
18 present this evidence to show where the defendant was at the
19 time this conference call was taking place, and the Court's
20 already ruled on that issue.

21 The defendant also has an issue with the recordings and
22 telephone calls, and states that these were downloaded from
23 the Internet without a lawful warrant. These were in a
24 public place. These were on Youtube and open forums where
25 anybody could go on the Internet where a warrant was not

1 needed.

2 The defendant has an issue with not getting a
3 continuance of the trial because he states late disclosure of
4 evidence. Again, this was addressed prior to trial. The
5 defendant had an opportunity to have this evidence well
6 before trial. He chose not to get this evidence through his
7 attorney that was appointed, Mr. Oshoway. He chose not to
8 work with Mr. Oshoway. And the State made every possible
9 concession, if you will. We bent over backwards to get this
10 information to the defendant. The Court bent over backwards
11 in talking to the Supreme Court to get this evidence to the
12 defendant. And, again, we've addressed this, and I think the
13 defendant had more than enough time to prepare his case.

14 The defendant has an issue with the fact that he states
15 that the Court didn't inform the jury of the four prohibited
16 consequences as set out in the code. I believe the defendant
17 is referring to the code which he was charged under where it
18 states that these terroristic threats must be intended to,
19 one of four things, intimidate, of course, civilian
20 population, influence the policy, affect the conduct or a
21 branch of government, or retaliate against a branch of
22 government. These were part of the jury instruction that was
23 actually approved by the defendant. These were part of the
24 jury instructions that went to the jury. They were informed
25 of these four issues in the code, and the State actually went

1 over these four, as the defendant states, prohibited
2 consequences as set out in the code as well.

3 The defendant has an issue with the Court denying the
4 demand for a directed verdict of acquittal. But I think it's
5 clear that the State did -- presented more than enough
6 evidence for a jury to take that evidence back, and come back
7 with a verdict of guilty. And we went over each of those --
8 each of those elements at that time, at the time that the
9 motion was made.

10 And I believe that's the issues that the defendant has
11 addressed. For those reasons, I don't believe any of these
12 issues have merit. They have been addressed, and I would ask
13 the Court to dismiss this motion.

14 THE COURT: Mr. Deegan, anything you want to say in
15 response to anything that the prosecutor said?

16 MR. DEEGAN: Well, I was having trouble following him
17 since he wasn't going quite in order there. And, of course,
18 his spin on everything is very nice. I think that, yes, it
19 would have been number -- let's see, protected speech, in the
20 first article of amendment, as well as the Constitution of
21 West Virginia. It does clearly state it shall not be
22 abridged, which means it cannot be limited in any way, shape
23 or form.

24 Number three, there are other ways of proving where a
25 person is, other than using a highly prejudicial home

1 confinement. They could have used phone records, which were
2 quite available. They had a warrant. They executed a
3 warrant in my home, tore it apart, and took many, many
4 things. So there would have been no problem to get a warrant
5 for the home line that was required for home confinement, and
6 the home line, you have to be at home to use it. And so that
7 would have been evidence of where I was at. And having an
8 officer take the stand and say that I was on home confinement
9 at the time is highly prejudicial.

10 He talked about the conference call and the video
11 interview, as well as the telephone calls from the Regional
12 Jail. Once again, that was prejudicial in and of itself,
13 because they're testifying that I was in jail while making
14 these phone calls.

15 There wasn't the proper foundation or authentication
16 required to have those entered into evidence, and the -- yes,
17 the interviews were on the Internet, but they were not
18 available for download. Youtube, you go and you stream it,
19 you watch it there. On the hudok.info site, you play the
20 file there. There's nothing that says on either of them that
21 you are permitted to extract it, take a copy of it, and then
22 use it for private purposes of any nature. And that is a
23 seizure of a protected - what would you want to call it - I
24 mean, it's personal -- it's personal property. I mean, it's
25 on -- the one on Youtube, the gentleman maintains that as his

1 own channel. It is his personal property to do with as he
2 wants. Now, if the State would have contacted him, they may
3 have been able to get a copy from him. Otherwise, you need a
4 warrant to take someone's property. Intellectual property,
5 that's -- and the same with hudok.info. You can listen to it
6 there, you can stream it there, but you can't take it. And
7 both were taken. And that's what my argument was with those,
8 as well as the authentication and proper foundation to get
9 them into evidence.

10 As I showed in there, that he had claimed -- and this
11 was Tpr. Williams, he claimed that he had downloaded it on
12 the 22nd, but the file itself was labeled as the 17th. So
13 someone else had downloaded it, and he was claiming it was
14 him. And he had no answer for that on the stand.

15 And I think that -- he said that I approved jury
16 instructions. I mean, I made -- I'm not sure which he's
17 talking about, if he's talking about the charge to the jury
18 or the instructions. I asked for many things to be changed
19 in the instructions, and got zero of them changed. So, you
20 know, to say that I approved it would be a stretch, by far.
21 You know, I -- even if just a few of the things would have
22 been changed I would have been happy, even just "defendant"
23 to my name would have been better than having "defendant"
24 prejudicially scattered throughout.

25 And I do not think that, as we define "threat," I think

1 that, you know, the jury being laymen would have a problem in
2 reading legalese contained within the code, and that the jury
3 charge should have been written, or at least some other
4 explanations given to let them know what it actually meant
5 there, because I think a lot of them would have problems
6 reading legalese. They're not trained in the law. I have
7 problems reading it, and I read it all the time.

8 I mean, a lot of these are rights protected by the
9 Constitution, and these rights say they shall not be
10 abridged, they shall not be infringed, and any infringement
11 or abridgment of them is a violation of that contract.

12 And I don't see anything else I need to say, I think. I
13 think that was it. Thank you.

14 THE COURT: Okay. The first general heading could be
15 described as insufficiency of the evidence, but,
16 specifically, that no evidence of terroristic threat was
17 communicated to the victim. The statute doesn't seem to
18 require that, it merely needs to be made. There's no
19 requirement that it be communicated to a victim. And I think
20 from the phone conference it's clear that there was a threat
21 that was communicated. It was communicated to several
22 different people. I have never sat down and counted up how
23 many people were on the phone call or the phone conference,
24 but there were several people on that phone conference just
25 listening to the phone conference.

1 The fact that no victim testified, again, the statute
2 doesn't require it. In fact, several crimes, you know,
3 there's no what one would, I guess, characterize as a
4 traditional victim. Driving offenses, all the driving under
5 the influence, driving on a revoked license, those don't have
6 traditional victims. A felon in possession of a firearm, you
7 know, there's no traditional victim. The victim is the
8 State. There's a whole article under the criminal code that
9 deal with crimes against the public policy, crimes against
10 different things, other than crimes against a victim.

11 And so the Court doesn't believe that simply because a
12 victim doesn't testify that that is any infirmity in this
13 case.

14 Protected speech, it is black letter law that not all
15 speech is protected. You cannot yell "fire" in a crowded
16 theater. That's your traditional law school way of showing
17 that not all speech is protected. And there's a case in West
18 Virginia, State vs. Yocum, 233 W.Va. 439, and it discusses
19 this statute. And, actually, in that case the challenge was
20 void for vagueness. But one of the things that it talks
21 about is permissible content based restrictions on speech,
22 and it cites a U.S. Supreme Court case that says that certain
23 categories of speech are considered to fall outside the
24 protections afforded by the First Amendment, and they go on
25 to list some of them: Incite imminent lawfulness -- lawless

1 action, obscenity, defamation, fighting words, child
2 pornography, true threats. And so those are just some of the
3 ones that are recognized types of speech that can be subject
4 to restrictions, and therefore fall outside the broad
5 protection of the First Amendment.

6 And the Court would find that this statute is a lawful
7 restriction on that free speech.

8 Again, to deal with personam -- in personam jurisdiction
9 and political jurisdiction, we've dealt with all those. No
10 new allegations are made in the motion. And so the Court
11 would stand on its prior ruling.

12 Also, the issue of error in the home confinement
13 evidence. The Court made the analysis that it needed to
14 under Rule 404(b), and it was admissible for an exception,
15 and that was to establish that the phone call was made in
16 Wood County and at a time when the defendant was in the home.
17 A cautionary instruction was given. Certainly, a warrant, as
18 the defendant has asserted here, could have been obtained.
19 Whether it would show it or not, I don't know, because I
20 don't know what a warrant would obtain if it was a phone call
21 over the Internet, but it also would not show who was on the
22 phone or who was using the Internet at the time. It would
23 only show that the Internet or the phone was being used in
24 that residence, but it wouldn't show who. And that's what
25 the home confinement evidence did was it established who was

1 in the home at the time that the phone call was made.

2 In terms of the jail phone calls, the Court has already
3 ruled that it was admissible under the statute that dealt
4 with phone calls from the Regional Jail. There was no new
5 evidence or argument made.

6 In terms of phone call from the Internet and the need
7 for a warrant or no permission of the owner, of course, this
8 is a fairly new, I think, area of the law. And so -- there
9 is a West Virginia case that deals with things that are put
10 out to the public, and the fact that no warrant is needed in
11 State vs. Aldridge, which is 172 W.Va. 218, 304 S.E.2d 671, a
12 1983 case by the West Virginia Supreme Court of Appeals. It
13 talks about somebody who had committed a crime, and I'm not
14 sure what the crime was and I don't know that it matters, but
15 anyway, he had an injured hand. And the Court said that:

16 "A person has no reasonable expectation of privacy
17 in what he knowingly exposes to the public."

18 And so, you know, if you knowingly expose a conversation to
19 the public on the Internet, you have no expectation of
20 privacy in that, and both of these were.

21 We have a couple federal cases, United States vs.
22 Meregildo, 883 F.Supp.2d 523, out of the Southern District of
23 New York, 2012. It says:

24 "When a social media user disseminates his
25 postings and information to the public, they

1 are not protected by the Fourth Amendment."

2 A case out of New York, People vs. Harris, 36 Misc.3d 613,
3 945 N.Y.Supp.2d 505, a 2012 case, and it cites a 2nd Circuit
4 case:

5 "That individuals do not have a reasonable
6 expectation of privacy in Internet postings
7 or emails that have reached their recipient.
8 Users would logically lack a legitimate
9 expectation of privacy in materials intended
10 for publication or public posting."

11 And United States Court of Appeals from the 6th Circuit, a
12 2001 case, 255 F.3d 325:

13 "Users would logically lack a legitimate
14 expectation of privacy in the materials
15 intended for publication or public posting.
16 They would lose a legitimate expectation
17 of privacy in an email that had already
18 reached its recipient. It's analogous to a
19 letter writer, whose expectation of privacy
20 ordinarily terminates upon delivery of the
21 letter."

22 So the Court believes that posting these, either the
23 phone call and/or this interview, on the Internet, that once
24 that's done there is no more expectation of privacy, which,
25 of course, is the hallmark standard for Fourth Amendment

1 analysis, and therefore no warrant would be required to copy
2 them, extract them, however you want to say it. It doesn't
3 matter, because there's no expectation of privacy.

4 In terms no proper foundation or authentication, of
5 course, first, it's a Rule of Evidence, 901(b)(5), opinion
6 about a voice, an opinion identifying a person's voice,
7 whether heard firsthand or through mechanical or electronic
8 transmission or recording based on hearing the voice at any
9 other time under circumstances that would connect it with the
10 alleged speaker. So that's really the standard.

11 There's a case, let's see, and this is another
12 memorandum opinion by the Supreme Court, and, of course, I
13 know it's not binding perhaps, but it's instructive. It's
14 State vs. Spaulding, 2015 WL 3875802, Slip Opinion No.
15 14-0718, and it cites Rule 901 concerning authentication.

16 But it says:

17 "Preliminary questions of authentication and
18 identification pursuant to Rule 901 are
19 treated as matters of conditional relevance,
20 and, thus, are governed by the procedures set
21 forth in West Virginia Rule of Criminal --
22 or of Evidence 104(b). In an analysis under
23 West Virginia Rule of Evidence 901 a trial
24 judge must find that the party offering the
25 evidence has made a prima facie showing that

1 there is sufficient evidence, 'to support a
2 finding that the matter in question is what
3 its proponent claims.' In other words, the
4 trial judge is required only to find that a
5 reasonable juror could find in favor of
6 authenticity or identification before the
7 evidence is admitted. The trier of fact..."

8 Or the jury in this case:

9 "...determines whether the evidence is credible.
10 Further, a trial judge's ruling on authenticity
11 will not be disturbed on appeal, unless there
12 has been an abuse of discretion."

13 So ultimately it is the jury to decide whether the voice was
14 that of the defendant. And the Court would conclude that,
15 based upon their verdict, that they did so find.

16 So the Court believes that it has been properly
17 authenticated and identified.

18 In terms of the ground as a continue due to a lack of
19 disclosure of evidence, again, there's no evidence or
20 allegation of prejudice. It's speculative and irrelevant at
21 this point. In other words, I think you have to be specific
22 in terms of this evidence was not presented, and this is how
23 we're prejudiced. And so those issues can be brought up
24 under Rule 35 or in a writ of habeas corpus if we get that
25 far.

1 In terms of the jury instructional error, this is a
2 statutory offense. The instructions follow the statute, with
3 added language that the defendant wanted. And, I mean, I
4 know he made some wholesale objections to the charge, the
5 Court overruled all those. But in terms of the actual jury
6 instruction on the elements, I'm not aware, maybe he did and
7 he can pursue that on appeal, but I'm not aware of any
8 objection being made to those -- to that instruction, the
9 actual elements instructions. But he did want some
10 clarification, and so the Court added a sentence or two or
11 three that was given to the jury. And I was not aware of any
12 other request for anything else, and so, you know, I can't
13 rule on something that wasn't brought to the Court's
14 attention. Either way, I think that everything was dealt
15 with, and that the instruction was proper.

16 So based upon that then, the Court would deny the
17 defendant's motion for judgment of acquittal, or for a new
18 trial.

19 Mr. Deegan, do you have any evidence you wish to present
20 on the issue of sentencing?

21 THE DEFENDANT: Just statements.

22 THE COURT: Okay. You may.

23 THE DEFENDANT: Do I get a rebuttal after the State
24 goes?

25 THE COURT: Well, we'll see. I mean, I don't know that

1 it's required, but I may very well give you the chance.

2 THE DEFENDANT: Okay. I will stand by my statements
3 over and over again that I never conveyed a threat of any
4 kind or nature to any man or woman, period. There has never
5 been a threat I've ever made in my entire life, let alone at
6 this time being accused. I'm innocent of those charges.

7 I did grow a plant, that is true. For that offense I
8 was serving time, and had served it dutifully without any
9 problems of any nature or kind.

10 I have been confined now for close to twenty, twenty-two
11 months roughly with no problems of any nature or kind, either
12 at the North Central or on home confinement. I was actually
13 at the fourteenth month mark when picked up by the State
14 Police, and was actually eligible for parole and had put in
15 for parole approximately two months before that on that first
16 charge. I now have seven months in on this second charge.

17 I looked at the presentence investigation report. It
18 appears that the index number stayed the same, which means
19 that I'm no more a threat than I was last time. I would say
20 I should be allowed to finish the original sentence pursuant
21 to the contractual agreement with the State, and parole off
22 it to the new charge.

23 And it appeared that in the presentence investigation
24 report that alternative sentencing was available. I would
25 ask for home confinement or probation on that. I would like

1 to see them served concurrently. But I feel that as I'm not
2 a threat, and the evidence, the property seized from my home,
3 they tore the home apart, could not find any weapon of any
4 kind. They've accused me many times of being dangerous, and
5 yet have actually been unable to prove that I'm dangerous to
6 society at large.

7 I've been in the regional for close to twelve months
8 now, and I've watched people that actually murder people,
9 harm people, molest children get out and go home. I've
10 watched people commit violation after violation of home
11 confinement and probation, and go back home. I am less of a
12 threat than any of them. The index, if it can be trusted,
13 shows I'm not really a threat to anyone.

14 The State's going to argue I'm this big monster. They
15 have not proven that I'm a monster in any way, and the fact
16 that they used and had zero evidence from my home to prove
17 that I was a danger solidifies that. We had Steve Stephens,
18 the head of home confinement, say I was a model client, never
19 had any problems with me, and that he would take me back.

20 With that, I would just restate it, incorporate herein
21 any and all of my arguments and/or papers that I've written
22 as part of the public record creation-wide.

23 THE COURT: Mr. Rogers?

24 MR. ROGERS: In February of 2010, Thomas Deegan was
25 arrested for growing not a plant, but sixty-three live

1 marijuana plants. In March of 2010, the defendant was placed
2 on bond. A hearing was set in February 2012, and the
3 defendant didn't show, he absconded. There was a capias
4 issued. The defendant didn't turn himself in. It wasn't
5 until July of 2014 that the defendant was found by a deputy,
6 and he was arrested. The defendant was sentenced in that
7 case to one to five years to be served on home confinement.

8 We did hear that the defendant didn't test positive for
9 drug while on confinement, and that he followed most of the
10 rules while on home confinement. However, he did something
11 much worse while on home confinement for his previous
12 conviction, he plotted and made threats to take over the West
13 Virginia state government. We heard the evidence of what he
14 did while he was on home confinement. And I know the Court
15 listened to all that evidence, so I won't go over all of it
16 at length.

17 But we heard a conference call with a large number of
18 people, and I believe that it was stated in that call that
19 there as a guy on the call that had, I believe, sixty-some
20 people just muted. So there were a large number of people on
21 this call where Thomas Deegan was leading this conversation,
22 where he told them that, "The soil has to be controlled, and
23 it starts with West Virginia." He told them to Google Earth
24 Charleston, West Virginia, to Google Earth the National
25 Guard, the West Virginia State Police, and the Kanawha County

1 Sheriff's Department. He wanted them to know where these
2 people were, and he told the military people that were on the
3 call, "You know how to deal with these forces."

4 And I think the most chilling of the statements and the
5 directives that this defendant gave while on this
6 conversation, when asked what to do if police arrive, he
7 stated, "The police are your enemy. And if you see the
8 police coming and pulling in a vehicle, I suggest you shoot
9 them." He had every intention of this being bloody.

10 The defendant made these threats on this conference
11 call, and he did more than that. He actually planned and
12 plotted and asked these people from all over the country, and
13 we heard that there were some people who were planning to
14 come from Arizona, from California, from Florida, from Texas,
15 all over the country. And this was while he was on home
16 confinement. These people were coming.

17 After we heard the conference call, we heard a video.
18 It was taken approximately a week later, where he was
19 interviewed by a guy out of Canada. He didn't back off of
20 his plans to take over the West Virginia state government.
21 The only thing he said is it wasn't going to go forward at
22 this time, because there were federal operatives on the phone
23 call and he was being watched. And he wouldn't be able to do
24 it directly himself, but he would love to support somebody
25 else who wants to do it. He planned on this going across the

1 United States, but it started with West Virginia. And we
2 even heard that he planned on going to Charleston and
3 violating his home confinement, because home confinement
4 wouldn't mean anything at that point.

5 We then heard a phone call that he made while he was
6 incarcerated. He knew he was guilty. He knew what he did
7 was against the law, and he stated that. He was guilty under
8 the statute.

9 The defendant hasn't shown -- and one of the most
10 concerning points in this sentencing I think for the Court to
11 consider, the defendant hasn't showed any remorse whatsoever.
12 He doesn't see anything wrong with getting on a call and
13 telling these at least tens, a number of people to come to
14 Charleston, West Virginia, bring arms, and take over the
15 state government, take people out of the capitol, shoot
16 police. He sees nothing wrong with that.

17 The defendant hasn't taken responsibility for his
18 comments, but he hasn't denied them either. We heard that he
19 argues that he should be able to say whatever he wants to
20 say. He hasn't taken responsibility. He hasn't denied it,
21 but he absolutely has shown no remorse. He sees nothing
22 wrong with what he did.

23 I think it's also telling, Your Honor, to look at the
24 conduct that this defendant has shown in your courtroom. He
25 kept saying he didn't understand, he kept giving the Court

1 issues. Some of them were valid, some of them he had issues
2 and questions of the law, that's fine. But then we heard on
3 phone conversations in the jail that he knew he was guilty,
4 but he was still going to give the Court a hard time. He
5 wanted to make a mockery of this Court. He wanted to slow
6 down the process and waste the Court's time.

7 All these things that the defendant did, even though we
8 did hear that he didn't violate all the rules of home
9 confinement, that he didn't test positive for drugs while on
10 home confinement, but these things that he did, plotting and
11 threatening to take over the West Virginia state government,
12 that was while he was on home confinement. That was while
13 this Court gave him a second opportunity after he had been
14 convicted for growing sixty-three live marijuana plants.

15 He states he isn't a threat to society at large, that
16 some of these other people in jail with him are much more of
17 a threat. But I would argue, and I think the jury found, and
18 I think anybody listening would agree that it's a huge threat
19 to society to get on a phone conversation with people from
20 all over the country, tell them to come to Charleston, West
21 Virginia, shoot our police, take our elected officials out of
22 office, and take over the government, liquidate our assets.
23 That's a huge threat, Your Honor, I would argue.

24 This defendant was given an opportunity on bond, he
25 absconded. There was a capias issued. He didn't turn

1 himself in. And he fled, he didn't show up.

2 This defendant was given an opportunity on home
3 confinement, as I've already stated. What did he do on home
4 confinement? He plotted to take over the government, asked
5 people to come down, shoot our police, kick our political --
6 our elected officials out.

7 For these reasons, Your Honor, I don't think there's any
8 option but to send Thomas Deegan to jail. I think --
9 whenever I look at this, and he took a plea and was sentenced
10 to one to five years for sixty-three live marijuana plants,
11 but then what he did, you could argue, was much worse in
12 trying to create all this violence and make these terroristic
13 threats in our home state, and all the Court can give him is
14 a one to three.

15 And for that reason, Your Honor, because he's been given
16 all these opportunities, because the Court can only sentence
17 this defendant to a one to three, I would ask that you impose
18 the one to three sentence on this defendant, that you run it
19 consecutive to a re-imposed sentence of his one to five for
20 his home confinement revocation.

21 THE COURT: Mr. Deegan, anything you want to say in
22 response?

23 THE DEFENDANT: Yeah. Yeah. He was reading a lot from
24 the complaint. That when questioned about his own complaint
25 on the stand, admitted that he had no factual basis for it.

1 He did leave out the fact that pursuant to an Act of
2 Congress, that we were declared enemies of our own country,
3 and that by definition, you would be at war then. He didn't
4 bring that up. He did say that I said, "If you see the
5 police coming and pulling up in a vehicle, I suggest you
6 shoot them." The word right there key is "suggest." Someone
7 asked me. This was a discussion that was over the course of,
8 I believe, ten or twelve phone calls that, as I had stated to
9 the jury, it was like taking a two-minute segment out of a
10 ten-minute call.

11 It was an educational process to where the people were
12 informed of what had happened, why the egregious violations
13 of our constitutions were happening nationwide. And people
14 wanted to know, based upon the case that is still open in the
15 Supreme Court of Appeals that I am a plaintiff in concerning
16 violations of the Constitution by the state government and
17 the elected officials thereof, how you go about correcting
18 something when the ones that are in charge are the criminals.
19 And so there was an open dialog.

20 I admit I had the phone call. I had several of them
21 that they did not play, because it wouldn't have helped them
22 any if the jury would have heard the entire process from
23 beginning to end, starting in 1917 to present day. And, of
24 course, I know that his duty as an attorney for the State is
25 to only show what's beneficial for his client. But his

1 client is not alive, his client is not a person, it's a
2 creature of the mind, an artificial abstraction as the
3 Supreme Court has ruled over the course of our history in
4 this country from 1795 on, and that I'm a live person here
5 sitting. And that there was no actual harm.

6 And he failed to play the Thursday call, which was two
7 days later, when I told him that the people misconstrued what
8 was said, and there's a maxim of law, a slip of the tongue
9 shall not be harshly punished. And during this hour call two
10 days later, which they failed to provide as evidence because
11 it wouldn't help their case any, I did state that my tongue
12 had slipped several times in the passion of the argument in
13 the phone call, and that the three of us that had sued the
14 State and was still in suit with State would not support any
15 violent actions, because we do not wish to see bloodshed. We
16 were doing this for the benefit of our children, our
17 grandchildren, and children of the communities that have a
18 right to liberty, because without God there is no liberty.
19 And there is no God left in this country at this point.

20 The two plaintiffs that I sued with, one is a school
21 teacher, still employed, who sees no problem with me and is
22 still actively assisting me in my defense, and the other is a
23 retired postal worker. Both of them work for the government,
24 and they see the problem with the government, they see the
25 violations. That's why we sued.

1 And the Thursday call was our apology for things getting
2 out of hand, as -- those in government need to have bigger
3 budgets, they like to incite things in people. And in the
4 heats of moment, many things are said by many people all over
5 this country that would be crimes; that because it was said
6 in the heat of the moment, the people understand that. Once
7 again, a slip of the tongue should not be harshly punished.

8 In the complaint there's only one thing that he could
9 actually quote that I said, and it was a slip of the tongue
10 because I did not frame it properly, and that was, "If you
11 see the police coming and pulling up in the vehicle, I
12 suggest you shoot them." And it was not framed properly by
13 me at the time, and it should have been. If I would have
14 framed it properly, I would have said that our Congress
15 declared us as enemies of the nation in '33 during the
16 bankruptcy, and as an enemy by definition, you are at war,
17 and you are permitted to take arms against the arms, another
18 maxim of law, another time tested truth. You may take arms
19 against the arms.

20 Now, I have never advocated violence. Like I said, when
21 they tore my home apart the last time, they could not find
22 any weapon of violence, or any evidence of any crime on any
23 of my property. All they had was a portion of a -- I mean,
24 we're looking at twenty-four to thirty hours of a phone call
25 with the same people week-after-week discussing,

1 brainstorming the same problems facing our country.

2 It was a slip of the tongue. He says I'm not
3 remorseful. The Thursday call quite clearly showed it,
4 that's why he did not want it played. The portion that I got
5 to play of the Monday call clearly showed that, no, this was
6 not what I meant, people, and that people took it out of
7 context. And that during the heat of the moment things were
8 said that should have been worded better, should have been
9 worded better.

10 You do have the right to defend yourself. You do have
11 the right to defend your children. I never advocated any
12 violence of any kind. There was active duty military that
13 were on that call that had spoken to me personally. And
14 being as they're active duty, that's part of the government.
15 So part of it -- the own structure itself said something is
16 wrong, and wanted to know are the people looking for the
17 change, because the military follows a civil order. The
18 civil authority is the people.

19 And so I think he has shed a -- tried to shed a dark
20 light upon me. I'm a person. I'm a human being. I'm a
21 father. I'm a son. Just like everyone else here. And had
22 the entire educational conference been played, and I did give
23 him the entire and I did wish to seek all of them in there to
24 be played. Of course, once listening to it I realized that
25 the Court would rule that a lot of it had to do with the law,

1 and that the people can't understand the law, and that that's
2 better left for the judges and the lawyers. And so I did not
3 bother to bring it up. But they did play the following
4 Monday call. They also played the Robert J. Morris call.

5 Yes, I said I would continue doing things, because you
6 are allowed to protect your country, your state, and your
7 children from infringements upon the God given and
8 constitutionally protected rights of those people. You have
9 a duty to protect them. You have a duty to make sure the
10 children in your community are safe, and that the government,
11 the elected officials are following their employment
12 contract, the Constitution. He's failing to show and say
13 that there are violations, outright violations by elected
14 officials. We proved it in the West Virginia case that's
15 still open, still open. And as a matter of fact, one of the
16 parties has ruled on a matter in this case when he did not
17 even have the authority to rule at that point, because he was
18 a defendant and should have excused himself from it.

19 I'm not going to seek an appeal in any of these matters.
20 I simply wanted the record corrected on both the PSI and
21 other things. I wanted it so that I would have a chance to
22 state what I thought, not just what the State and its
23 employees thought throughout the record. I do not wish an
24 appeal. I'm not going to waste the time of an appeal. There
25 is nowhere to appeal it to at this point. And even if there

1 was, I still wouldn't appeal it. It is what it is at this
2 point.

3 Now we're just trying to pick up the pieces of my life,
4 because no one else's life has actually been affected. The
5 trooper's life was not affected. The gentleman from the
6 Fusion Center's life was not affected. There was not a
7 single government official whose life was affected. Only
8 mine, my children, and the children who have lost years and
9 decades through violence by government and its officials in
10 the oppression of the people. The people are the supreme
11 power in our republican form of government. We have the
12 right to speak out against it. Patrick Henney -- Henry made
13 some beautiful statements against the British government that
14 were much worse than mine ever were. And, you know, at
15 points in time, debate, an open debate is required.

16 With that, once again I will say, I simply wanted the
17 record correct on all of my documentation that I filed,
18 that's all I wanted, my name proper. You know, if they want
19 to do it in a proper format, that's fine; if not, I just
20 wanted to say my side of things as the State and all of their
21 employees always have their say.

22 The same with the presentence investigation. The one
23 from last year I did not get to see, even though I was
24 represented by counsel. There were many problems with that
25 counsel. And I just wanted the record corrected since it is

1 part of a permanent record for people to see in the future.
2 That is all I wanted from it. I was not trying to be
3 sarcastic in any way as the trooper has said or non-
4 remorseful, I just simply want the truth out there. And it
5 takes both sides to get to the truth.

6 With that, that's all I have to say. I've said that I
7 think, you know, that I'm not a threat. The report shows it.
8 It said that I was eligible for alternative sentencing. Once
9 again, I'm just going to ask for that. I've done -- you
10 know, I want to go home. I want to see my kids. I want to
11 see my family, just as the State employees get to go home
12 too.

13 And, once again, there was no one that can get up there
14 and say that I harmed them in any way, shape or form. And
15 with that, I think that I've been as remorseful as I can for
16 doing something that I believe in. And no actual harm was
17 caused by me upon any person or property at any time.

18 With that, I thank you for allowing me to speak. I
19 think that I have tried to be as respectful as I could in
20 fighting for my freedom. If I disrespected anyone in any way
21 -- I even apologized to the cop. I felt bad about the way I
22 had to treat him on the stand. But I was sitting here
23 fighting for my life, and I think that anybody in my place
24 would do the same. I'm not trying -- you know, we have
25 differences of opinions, that's why we're human.

1 But with that, I am a respectful person. I've tried to
2 show as much respect here as I can. If I didn't show as much
3 as you thought, it wasn't me on purpose, I'm just -- like I
4 said, I wanted the record -- my side to be heard, that's all.

5 With that, I thank you.

6 THE COURT: The Court would find, order and adjudge that
7 the defendant is guilty by a finding of guilt by a jury in
8 Case No. 16-F-25 of the offense of making terroristic
9 threats, a felony, as contained in Indictment No. 16-F-25.

10 Pursuant to said finding, it is ordered that the
11 defendant be committed to the custody of the West Virginia
12 Division of Corrections for a term and period of not less
13 than one nor more than three years, said sentence to begin as
14 of April 14, 2016, and no fine.

15 The Court further finds, orders and adjudges that the
16 defendant has violated his home confinement, and the sentence
17 of home confinement in 11-F-101 is set aside, and the
18 defendant's original sentence is reinstated.

19 It is accordingly ordered that the defendant be
20 committed to the custody of the West Virginia Division of
21 Corrections upon his conviction of manufacture of a
22 controlled substance for a term and period of not less than
23 one nor more than five years, said sentence to begin as of
24 the completion of the sentence imposed above, with no fine.

25 The sentences are to be served consecutive to each

1 other, with the sentence of making terroristic threats to be
2 served first.

3 The defendant is entitled to 626 days credit, that is
4 348 days of actual confinement and 278 days of home
5 confinement.

6 The Court would deny motion for probation or other
7 alternative sentence. Of course, the biggest thing is, he
8 was on home confinement for the commission of a felony when
9 he committed this offense. And it's easy for the defendant
10 to sit there and say he wasn't a threat, but this Court
11 interprets the information in the evidence contrary to that.
12 It's easy to say that it was a slip of the tongue when he
13 said, "If you see law enforcement, shoot them." First of
14 all, I don't think that's a slip of a tongue. But his other
15 statements that he made in that phone call about Googling the
16 sheriff's department in Kanawha County, Googling the I think
17 it was the National Guard in Kanawha County, Googling the
18 West Virginia State Police barracks, those were not slip of
19 the tongues. When he said, "Those of you with military
20 background, you know how to deal with them," that wasn't a
21 slip of the tongue. That was planned language.

22 And so, you know, it's easy to sit here now and say
23 you're not a threat. The problem is that when you get on a
24 phone call with people from across the country and have a
25 conversation that they had during that phone call, you put in

1 -- you put into action perhaps other people that may take it
2 upon themselves to carry out the plan, even though you may
3 withdraw the plan.

4 It is further ordered that the defendant shall pay to
5 the Clerk of this Court the costs of this proceeding:
6 Clerk's Fee of \$150, Prosecuting Attorney Fee of \$35, Law
7 Enforcement Training Fund Fee of \$2, Community Corrections
8 Fee of \$10, Community Corrections Fund of \$25, Crime Victims
9 Compensation Fund Fee of \$50, Magistrate Court Fee of \$10,
10 Court Reporter Fee of \$120, Jury Fees of \$4,596.44.

11 There is no restitution. Said costs and counsel fees
12 are to be paid within four years of the defendant's release.

13 All right. Mr. Deegan, you do have the right to appeal
14 the decisions of this Court to the Supreme Court of this
15 state. If you wish to appeal, you only have 120 days to file
16 that appeal, and that is to be filed with the Clerk of the
17 Supreme Court. You must also file a document entitled
18 "Notice of Intent to Appeal," and that must be filed within
19 thirty days of today. And if you don't meet those deadlines,
20 you may lose your right to appeal. Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: You also have the right to file a motion for
23 reconsideration or reduction of your sentence. You have 120
24 days to do that. And if you don't file your motion within
25

1 120 days, then you may lose your right to have a hearing and
2 a favorable ruling on that motion. Do you understand that?

3 THE DEFENDANT: Is that -- that would be with this
4 Court?

5 THE COURT: That is with this Court, that's correct.

6 THE DEFENDANT: Yeah.

7 THE COURT: You also have the right, if you wish, to
8 have court-appointed counsel to represent you in those
9 matters if you want an attorney and you cannot afford to hire
10 an attorney. It is, however, your obligation to fill out the
11 necessary financial affidavit to show that you are
12 financially eligible for court-appointed counsel. All right.

13 THE DEFENDANT: Can I get some clarification on --

14 THE COURT: What?

15 THE DEFENDANT: -- something? You said the conviction
16 for terroristic threats starts today?

17 THE COURT: Yes.

18 THE DEFENDANT: And that's one to three?

19 THE COURT: Yes.

20 THE DEFENDANT: Okay. And so the other credit, which
21 was six hundred and some days, right, I mean, six hundred and
22 some total, that's credited to the one to five?

23 THE COURT: Well, the way I understand the law is that
24 when there's two sentences like this, that I just give a
25 credit for the sentences, and the Division of Corrections or

1 Department of Corrections, whoever it is, makes the decision
2 as to how they're allocated. In other words, when they get
3 you into their custody, they're going to see a one to three
4 and a one to five. And so it's my understanding that what
5 they say is, okay, that's a two to eight, and then they give
6 you those days' credit that you're entitled to receive, which
7 is 626 days.

8 THE DEFENDANT: As of today.

9 THE COURT: As of today.

10 THE DEFENDANT: So I would need to speak with the
11 Department of Corrections concerning that then, the
12 clarification of that, how it's awarded?

13 THE COURT: How it's allocated?

14 THE DEFENDANT: Yeah.

15 THE COURT: I would assume that they're the ones that
16 would be able to assist you with that, yes. But the thing
17 you need to keep in mind is that those 278 days on home
18 confinement, I'm not sure -- those may come off the top and
19 not off the bottom.

20 THE DEFENDANT: What do you mean by that?

21 THE COURT: Well, on a one to three and a one to five,
22 you have to serve a minimum of two years --

23 THE DEFENDANT: Correct.

24 THE COURT: -- before you're eligible for parole. The
25 home confinement may not go towards those two years.

1 THE DEFENDANT: According to the statutes I read, you do
2 get credit for it even when it's revoked, because I did
3 check.

4 THE COURT: Yeah, you get credit for it --

5 THE DEFENDANT: Yeah.

6 THE COURT: -- but you don't credit -- you don't get
7 credit towards your parole time, you get credit at the end of
8 the sentence coming down towards where you actually discharge
9 your sentence.

10 Now, I don't work for the Division of Corrections, I
11 don't make those computations. I'm just going -- that's just
12 how I understand it.

13 THE DEFENDANT: Okay.

14 THE COURT: But I may be wrong on that, because I don't
15 deal with it. I just impose it.

16 THE DEFENDANT: Okay.

17 THE COURT: And they interpret them.

18 THE DEFENDANT: Okay.

19 THE COURT: All right. Thank you.

20 (Proceeding ended at 10:28 a.m.)

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1 STATE OF WEST VIRGINIA,
2 COUNTY OF WOOD, to-wit:

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I, Cynthia A. Sutphin, Certified Electronic Reporter and Transcriber for the Circuit Court of Wood County, West Virginia, do hereby certify that the foregoing is a true and correct partial transcript of the proceedings held in the matter of STATE OF WEST VIRGINIA, Plaintiff vs. THOMAS DEEGAN, Defendant, Case Nos. 11-F-101 and 16-F-25, as recorded by me on the 14th day of April, 2016.

Given under my hand this 4th day of May, 2016.


CYNTHIA A. SUTPHIN, CER, CET

1 STATE OF WEST VIRGINIA,
2 COUNTY OF WOOD, to-wit:

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I, Cynthia A. Sutphin, Certified Electronic Reporter and
Transcriber for the Circuit Court of Wood County, West
Virginia, do hereby certify that the transcript within meets
the requirements of the Code of the State of West Virginia,
Chapter 51, Article 7, Section 4 and all rules pertaining
thereto as promulgated by the Supreme Court of Appeals.

Cynthia A. Sutphin
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CYNTHIA A. SUTPHIN, CER, CET

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