

COPY

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA  
STATE OF WEST VIRGINIA,

Plaintiff,

vs.

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

THOMAS DEEGAN,

Defendant.

MOTION TO REVOKE HOME CONFINEMENT

The following proceeding was held before the Honorable  
Jeffrey B. Reed, Judge, on the 19<sup>th</sup> day of February, 2016.

APPEARANCES:

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

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

MR. STEVE STEPHENS, Chief Home Confinement Officer.

MR. THOMAS DEEGAN, Defendant.

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

P R O C E E D I N G S

(Whereupon, the following proceeding was held on the 19<sup>th</sup> day of February, 2016, beginning at 1:38 p.m. All parties present.)

THE COURT: Case Nos. 11-F-101 and 16-F-25, both State vs. Thomas Deegan. We're set here actually on a -- in the 11-F-101, the motion to revoke home confinement. But I called both cases because there's been some filings by the defendant, and he has sort of intermingled the cases, making the same motions in both cases, which is fine.

But one of the things that caught my attention I think that we need to deal with and deal with in both cases is the issue of counsel again. And the reason I say that is -- the only thing I can go by is the date that it was received in my office, but I received something on the 8<sup>th</sup> of February, 2016, and it is titled, "Declaration, Affidavit and Notice of Non-Understanding, Non-Disclosure, Non-Notice and Negative Averment, Declaration, Affidavit and Notice of Rebuttals of Assumptions, Presumptions and Statements."

And the reason I bring that up is that on page two -- actually -- yeah, on page two it says, "I deny that I am acting pro se or as my own attorney or counsel." And, of course, that's in direct conflict with what I understood was the request at the last hearing, which is that the defendant represent himself. And he did it again on page five. It

1 says, "I am not acting as my own counsel, attorney, pro se,  
2 or any other term of art."

3 So, I guess, Mr. Deegan, I'm trying to get you to  
4 clarify whether you want to represent yourself or whether you  
5 don't want to represent yourself?

6 THE DEFENDANT: I do not wish to re-present myself in  
7 any other capacity than what I am.

8 THE COURT: Well, that's not my question. Are you going  
9 to represent yourself in this case or not?

10 THE DEFENDANT: Then I don't understand what you're  
11 saying then.

12 THE COURT: Okay. What is it that you don't understand?  
13 You're either your counsel or you're not your own counsel.

14 THE DEFENDANT: I just don't understand the way you're  
15 putting it.

16 THE COURT: Okay. What is it that you don't understand?

17 THE DEFENDANT: Because I'm not trying to re-present  
18 myself in any other capacity than what I actually am.

19 THE COURT: Okay. And what is that?

20 THE DEFENDANT: A man, a living man.

21 THE COURT: Okay. Nobody's saying you're not. Are you  
22 going to be your counsel?

23 THE DEFENDANT: I mean, I'm not understanding that  
24 question. I mean, I'm trying to understand what you're  
25 saying, but I'm not understanding obviously. I'm saying that

1 --

2 THE COURT: Well, there's three ways -- there's three  
3 ways that you can act in this case. You can be your own  
4 attorney, you can have standby counsel, which is what's --  
5 the situation we have now -- I can't remember which one I  
6 said first. You can be your own attorney, you can have  
7 standby counsel, or you can be -- you can have an attorney to  
8 represent you in this case. Those are the three options.  
9 And I'm just asking you which one you want to do?

10 THE DEFENDANT: I mean, I just -- I wish to stay in my  
11 capacity as a real man to retain all of my rights,  
12 privileges, freedoms and immunities --

13 THE COURT: Okay.

14 THE DEFENDANT: -- as secured by the original contract,  
15 lawfully amended 1819, Constitution for the United States of  
16 America.

17 THE COURT: Okay. Well, you're not answering my  
18 question.

19 THE DEFENDANT: I just -- I don't understand what you're  
20 trying to ask me. I'm here as a real man.

21 THE COURT: You've said that three times and I've heard  
22 you every time, so you don't need to repeat that again.

23 THE DEFENDANT: I know. And I don't want anybody  
24 talking for me. I can speak for myself.

25 THE COURT: So you're going to be your own counsel,

1 you're going to be your own attorney?

2 THE DEFENDANT: Well, I don't like to be classified as  
3 an attorney. I'm not an attorney, and I don't want to commit  
4 any crimes saying that I'm an attorney.

5 THE COURT: Well, okay, I understand what you're saying.  
6 I'm not going to say you're attorney, but you're going to  
7 represent yourself?

8 THE DEFENDANT: Well, I will present myself.

9 THE COURT: Well, then I guess I don't understand what  
10 you're saying when you say, "I deny that I am acting pro se,  
11 or as my own attorney or counsel."

12 THE DEFENDANT: Well, those would be capacities in my  
13 opinion, and I can only act as me.

14 THE COURT: Somebody's talking back there. Don't do  
15 that. Whoever's talking needs to stop.

16 (Judge speaking to spectators in the back of the  
17 courtroom.)

18 (Pause.)

19 THE COURT: All right. Well, we'll see how that works.  
20 I just did not understand, because you said several times  
21 that you weren't going to act as your counsel or pro se.  
22 Well, you're acting pro se by representing yourself.

23 All right. The State has asked that this hearing today  
24 be continued. Do you still stand on that motion?

25 MR. ROGERS: Yes, Your Honor. Just to add to what's in

1 the motion, we do have a witness that is not present due to a  
2 serious medical illness. That testimony and evidence  
3 presented through that witness will make up probably almost  
4 half of the State's case. I would like to present the entire  
5 case to the Court. At the very least -- well, that's the  
6 State's stance as of right now, Your Honor.

7 THE COURT: Well, it was my understanding you had three  
8 witnesses. You had this witness -- is this the witness that  
9 was scheduled to be at another trial someplace else in this  
10 thing?

11 MR. ROGERS: No. That witness has made it here, Your  
12 Honor.

13 THE COURT: Okay. So you've got two of the three  
14 witnesses here?

15 MR. ROGERS: Two of the three are here. The witness  
16 that is not here will be -- we'll be introducing evidence  
17 through that witness that the trooper who is here will be  
18 testifying to as well.

19 THE COURT: Are you saying the trooper can't testify  
20 until after that other witness testifies?

21 MR. ROGERS: That's correct. Well, he can testify as to  
22 other things, just to -- a certain portion of his testimony  
23 would be based off of that other witness' testimony.

24 THE COURT: And as I understand it, Mr. Deegan, you  
25 object to the motion to continue?

1 THE DEFENDANT: I never said that. I haven't put  
2 anything into the Court.

3 THE COURT: Well, I thought there was something filed  
4 that said you returned the --

5 THE DEFENDANT: Oh, I refused it because it doesn't have  
6 -- I'm a little confused, because I have documentation with  
7 different names, and I'm confused as to who and what is  
8 happening here. I have documentation from the Supreme Court  
9 of Appeals. I have documentation from the Magistrate Court.  
10 And everything is different, and I'm confused. And so I  
11 returned it because it did not appear to be to me. I have it  
12 all right here.

13 THE COURT: Here, will you give him this? Let him see  
14 that so that he knows exactly what the motion is.

15 (Bailiff shows document to the defendant.)

16 THE DEFENDANT: Okay, yes. That was -- yeah, and that's  
17 addressed to someone other than I've been recognized as by  
18 the Supreme Court of Appeals.

19 THE COURT: Well, I don't know anything about what the  
20 Supreme Court of Appeals has recognized you as.

21 THE DEFENDANT: Well, I have that here today with me.

22 THE COURT: Do you object to the motion to continue?

23 THE DEFENDANT: Well, I had in subpoenas, and I don't  
24 even know if -- have the subpoenas been issued pursuant to  
25 Rule 17?

1 THE COURT: Well, did you properly request them?

2 THE DEFENDANT: I sent in a notice to the clerk. I sent  
3 notice to everyone involved in the case. I know two notices  
4 go to the clerk, because I have two case files.

5 THE COURT: Madam Clerk?

6 THE CLERK: I have not gotten any subpoenas from --

7 THE DEFENDANT: The Clerk of the Court, Carole Jones.

8 THE COURT: Uh-huh (yes).

9 THE DEFENDANT: Because that's according to the rules, I  
10 think it's 17(a) and (b), I believe. I don't have that right  
11 here in front of me, but that --

12 THE COURT: The clerk's office has indicated that  
13 they've not received any requests to have issued -- subpoenas  
14 issued.

15 THE DEFENDANT: Oh, I will have to find it then, because  
16 I had it, and I had the declarations of service with it.

17 THE COURT: Okay.

18 MR. OSHOWAY: If I may, Judge. This might be an  
19 appropriate moment to note for the record that I've received  
20 no communication from Mr. Deegan or anyone on his behalf  
21 since the last hearing.

22 THE COURT: Okay.

23 THE DEFENDANT: And I would say that I do not have any  
24 contact information for him, and that my assistant counsel  
25 has been doing quite fine in making sure that the things get



1 filed for me. And the research that I'm doing would probably  
2 be in violation of Rule 11, as you discussed with him the  
3 other day or the last time we were here. And I have very  
4 little time to prepare, so I don't have time to argue with  
5 him.

6 (Pause.)

7 THE DEFENDANT: Eleventh of January, there's one here.  
8 And that was -- yeah, 11<sup>th</sup> of January, Carole Jones, it's  
9 signed by Phillip Hudok, declaration of service. It was --

10 THE COURT: Get the document that you submitted, please.

11 THE DEFENDANT: Okay.

12 THE COURT: So we can show it to the clerk. And the  
13 reason I say that, sir, is because most of the documents that  
14 you are submitting have not been in compliance with the rules  
15 as it relates to motions. And so the clerk may have received  
16 it, and did not recognize it as a request to have a subpoena  
17 issued.

18 THE DEFENDANT: Well, I mean, I can't type it. I have  
19 to handwrite it.

20 THE COURT: The rules allow for handwriting.

21 THE DEFENDANT: And the titles are always on there, and  
22 the file numbers.

23 THE COURT: Not in the way that the rules provide and  
24 not in the spacing that the rules provide. And if you're  
25 going to represent yourself, you have to abide by all the

1 rules of procedure, all the evidentiary rules as anyone else.

2 THE DEFENDANT: Yeah, I can't find it through all this.

3 I mean, I'm handcuffed here. I've got stacks of papers here  
4 that have been unanswered by anyone. And I sent the second  
5 one in February here.

6 THE COURT: Can you show that to him, and see if that is  
7 the document that he's referring to?

8 (Bailiff shows document to the defendant.)

9 THE DEFENDANT: That -- yes, that looks like that's it,  
10 because I went back and actually put in the private corporate  
11 Rules of Criminal Procedure 17(a) and 17(b). And then  
12 according to those provisions, that I was a prisoner of war  
13 and kidnappee in a military prison, unable to earn money, so  
14 therefore I was indigent. And I went ahead and was -- gave  
15 her the --

16 THE COURT: Can I have that document back, please?

17 (Bailiff hands document to the Judge.)

18 THE DEFENDANT: That was the second one.

19 THE COURT: Madam Clerk, do you recall seeing that? It  
20 would have -- I received it in my office on February the 8<sup>th</sup>.  
21 I don't know when you all received it, probably on the same  
22 date, but --

23 (Pause.)

24 THE COURT: Did somebody come by to get the subpoenas,  
25 Mr. Deegan?

1 THE DEFENDANT: No.

2 THE COURT: Because the rules --

3 THE DEFENDANT: Because I'm indigent, she was -- she's  
4 supposed to have them returned. To have them served, and  
5 then they be returned to her.

6 THE COURT: Okay. And what's the address that these  
7 people are to be returned -- or served on?.

8 THE DEFENDANT: I have no idea. I'm in a military  
9 prison, I have no idea.

10 THE COURT: Well, it's not the clerk's job to find out  
11 the address.

12 THE DEFENDANT: Yeah, I mean, and she won't speak with  
13 my assistant counsel that comes in to file them.

14 THE COURT: That's why you need an attorney. It's not  
15 the clerk's job --

16 THE DEFENDANT: All right. I'll --

17 THE COURT: -- to do your work in terms of finding the  
18 addresses. For all the clerk's office knows, there's  
19 multiple people with that same name. So how are they to know  
20 which of the multiple addresses they're supposed to do it at?

21 THE DEFENDANT: All but two are either state or state  
22 employees. But I can find them, and I will send them in.  
23 That is no problem.

24 THE COURT: So do you object to the continuance or do  
25 you agree with the continuance?

1 THE DEFENDANT: I have no problem with that, because my  
2 witnesses aren't here either, not a single one.

3 THE COURT: You have no problem with the continuance, is  
4 that what you're --

5 THE DEFENDANT: I have no problem to continue it,  
6 because I wish to seek a full defense of myself.

7 THE COURT: Okay. A couple other things, I've received  
8 some documents. Mr. Rogers, I received documents this --  
9 well, I think I got this yesterday, about this thick  
10 (indicating). Did you receive anything like that?

11 MR. ROGERS: I received a packet today. I'm not sure if  
12 I received anything yesterday.

13 THE COURT: Received this thick (indicating) on the 12<sup>th</sup>?  
14 Did you receive anything like that?

15 MR. ROGERS: There's something about that thick.

16 THE COURT: Okay. All right.

17 THE DEFENDANT: I have something from the 10<sup>th</sup> it looks  
18 like, February 10<sup>th</sup>.

19 THE COURT: Let's see. I have one here, it's challenge  
20 to jurisdiction. Actually, it's called, "Challenge of  
21 Purported Jurisdiction."

22 THE DEFENDANT: How many pages is it? I mean, I have  
23 several hundred pages of stuff here that I've done in my own  
24 defense.

25 THE COURT: Well, I think I got this yesterday, but

1 perhaps not. It was signed on the 26<sup>th</sup> of January, but --

2 THE DEFENDANT: Okay. Well, then that would have been  
3 February 10<sup>th</sup> or 12<sup>th</sup>.

4 THE COURT: For some reason I'm thinking I --

5 THE DEFENDANT: I have the green cards here. Eleventh  
6 or 12<sup>th</sup>, 10<sup>th</sup> it looks like when they were received. It would  
7 have been part of a pack.

8 THE COURT: Right.

9 THE DEFENDANT: With a Dismissal Limine --

10 THE COURT: Well, no, no, not that one. Not that one.  
11 I think we'll get to that. But the one I'm talking about  
12 right now is a -- it's two things, Challenge of Purported  
13 Jurisdiction and a Cross-complaint, Counterclaim, and Bill of  
14 True Accounting of a Trust, also Criminal in Nature and  
15 Cause.

16 THE DEFENDANT: Was that the original cross-complaint  
17 and counterclaim, forty-six pages, or was it an amendment to?

18 THE COURT: It's forty-six pages.

19 THE DEFENDANT: Okay. That would have been the 20<sup>th</sup> of  
20 January, actually. I think that was served in hand.

21 THE COURT: This says signed on the 26<sup>th</sup> of January.

22 THE DEFENDANT: Okay. Then it would have been the 26<sup>th</sup>.  
23 That was the day of that hearing then, the 26<sup>th</sup>. Okay. That  
24 is a Cross-Complaint, Counterclaim in Admiralty, with a  
25 Notice of Criminal Violations, and a Bill of True Accounting

1 of a Trust in Equity.

2 THE COURT: All right. And a challenge of purported  
3 jurisdiction.

4 THE DEFENDANT: I don't think that's a part of it, I  
5 mean, the argument may be within it. I have other documents  
6 that actually outright challenge the jurisdiction, venue and  
7 law form. But, I mean, you would have to be a little more  
8 specific.

9 THE COURT: Well, sir, it's your document.

10 THE DEFENDANT: I mean, I have two stacks here of things  
11 that I've written in my own defense, and I'm a little  
12 hampered here. It's hard for me to go through anything.

13 So are we going back to the stuff that was on the 26<sup>th</sup>,  
14 or are we going with the stuff that was in early February?  
15 That is not part of the counterclaim --

16 THE COURT: Sir, that's the document I want to discuss  
17 now.

18 THE DEFENDANT: Okay. Well --

19 THE COURT: Okay. Let him have that. I don't need it I  
20 don't think at this point.

21 (Bailiff hands document to the defendant.)

22 THE COURT: Is there anything else you want to say with  
23 regard to that, any evidence you want to present? Anything  
24 else you want to say with regard to that document?

25 THE DEFENDANT: With this document right here. Can I

1 read it real quick?

2 THE COURT: Sure.

3 (Brief pause.)

4 THE DEFENDANT: Okay. Okay. No, I know what this one  
5 is, yeah.

6 THE COURT: Anything else?

7 THE DEFENDANT: That I want to add with it?

8 THE COURT: Right.

9 THE DEFENDANT: Yeah. I have the stuff from the Supreme  
10 Court of Appeals --

11 THE COURT: Okay.

12 THE DEFENDANT: -- addressing me, and the envelope from  
13 them with the proper address.

14 THE COURT: Can you get that document back from him?  
15 I'll need that.

16 (Bailiff retrieves document from the defendant.)

17 THE COURT: Do you need to see it? Let Mr. Rogers see  
18 it.

19 (Bailiff shows document to Mr. Rogers, and returns  
20 document to the Judge.)

21 THE COURT: You guys are not supposed to be taping this  
22 thing.

23 (The Court speaking to spectators in the back of the  
24 courtroom.)

25 (Pause.)

1 THE DEFENDANT: Well, to start with, I have the -- from  
2 the Supreme Court, I have the envelope 85, it's not  
3 returnable, it's not a valid address.

4 (Pause.)

5 THE DEFENDANT: It looks like I have two copies here of  
6 each, which you both can take a look.

7 THE COURT: Can you get me the copy, please?

8 (Bailiff hands document to the Judge.)

9 THE DEFENDANT: Do you need copies of the bail agreement  
10 or the criminal complaint to see the contradiction between --

11 THE COURT: No, I think I've seen most of those. I  
12 think you've already submitted those.

13 THE DEFENDANT: I thought I filed them, yeah.

14 THE COURT: All right. Anything else?

15 THE DEFENDANT: Does he need a copy?

16 THE COURT: Mr. Rogers, do you want to see a copy of  
17 those things?

18 MR. ROGERS: Is this them?

19 (Bailiff shows document to Mr. Rogers.)

20 THE COURT: Anything else, Mr. Deegan?

21 THE DEFENDANT: For that specific one?

22 THE COURT: Yeah.

23 THE DEFENDANT: Yeah.

24 (Bailiff returns document to the defendant.)

25 THE COURT: Can you get those documents, please?



1 THE BAILIFF: Hmm?

2 THE COURT: Can you get those documents?

3 (Bailiff hands documents to the Judge.)

4 THE BAILIFF: Do you want --

5 THE COURT: Nope, they're his.

6 (Bailiff hands documents to the defendant.)

7 THE COURT: Anything else, Mr. Deegan?

8 THE DEFENDANT: For that specific one?

9 THE COURT: Yes, sir.

10 THE DEFENDANT: No.

11 THE COURT: Mr. Rogers, anything you want to say with  
12 regard to that motion?

13 MR. ROGERS: Your Honor, to be -- I mean, I don't -- not  
14 really, I have nothing to say.

15 THE COURT: Okay. It raises the issue of a lack of  
16 jurisdiction, in personam jurisdiction. Well, the  
17 defendant's present here in person, and that's what "in  
18 personam" means. So that motion is denied.

19 Subject matter jurisdiction. This Court has subject  
20 matter jurisdiction over felony matters, and so that motion  
21 is denied.

22 Territorial jurisdiction. I guess I'm going to  
23 interpret that to mean geographic jurisdiction. And it's  
24 alleged that these things happened in Wood County, West  
25 Virginia. This Court has jurisdiction over crimes occurring

1 within Wood County, West Virginia. So that is denied as to  
2 that aspect.

3 Political. The Court is not aware of any type of  
4 political jurisdiction. And so since it's not aware of any  
5 type of political jurisdiction issue, then that is also  
6 denied.

7 It also raises the issue of venue. It's alleged in the  
8 indictment and in the motion to revoke home confinement that  
9 these things occurred in Wood County. And so the motion with  
10 regard to a lack of venue is also denied.

11 So that motion is denied.

12 You also have one in the same packet, I guess, Cross-  
13 Complaint, Counterclaim, Criminal Complaint and Bill of Trust  
14 -- or, I'm sorry, True Accounting of a Trust, All Civil and  
15 Criminal in Nature and Cause. Anything else you want to add  
16 to that forty-six page document and the allegations contained  
17 in it?

18 THE DEFENDANT: I'm presently working on amending it to  
19 include the specific Constitutional original contract and  
20 international treaty violations.

21 THE COURT: Okay. Mr. Rogers, anything you want to say  
22 with regard to that?

23 MR. ROGERS: I don't have that specific motion I don't  
24 believe, Your Honor, but I'm not sure what Mr. Deegan is  
25 asking. But if he's asking for some type of counter-claim, I

1 don't think -- I would raise some procedural issues.

2 THE COURT: All right. First of all, this is a criminal  
3 case, and there is no provision in the Rules of Criminal  
4 Procedure or Trial Court Rules, or any other rules that  
5 govern these proceedings for a cross-complaint, a  
6 counterclaim in a criminal proceeding. So to the extent that  
7 it is styled a cross-complaint or counterclaim, it's  
8 dismissed.

9 In terms of a criminal complaint, certainly the  
10 defendant is entitled to file a criminal complaint against  
11 people, against entities, but not as it relates to this  
12 action. In other words, you don't file a criminal complaint  
13 within another criminal complaint. So to the extent that he  
14 desires to do that in this case, it's dismissed.

15 In terms of bill of true accounting of a trust, again,  
16 there is no provision in the law that would allow a bill of  
17 true accounting of a trust, whatever that might be, to be  
18 filed in a criminal case.

19 So to the extent that this forty-six page document is  
20 entitled, "A Cross-Complaint, Counterclaim, Criminal  
21 Complaint, and Bill of True Accounting of a Trust, All Civil  
22 and Criminal in Nature and Cause," it is dismissed.

23 All right. I have some other documents. This set of  
24 documents were -- was provided to my office on the 12<sup>th</sup> of  
25 February, and it has listed on the declaration of service,

1 "Instructions and Contents, Authorities and Principles,  
2 Notice and Demand for Discovery, Challenge to Use of  
3 Privilege, Assistance of Counsel, Calls and Communication."

4 There's nine documents, but those are the first four.

5 THE DEFENDANT: And then it would be also the Notice,  
6 Declaration of a Further Challenge..." --

7 THE COURT: Right, right. Notice, Demand --

8 THE DEFENDANT: "...Demand to Dismiss Alleged  
9 Revocation..." --

10 THE COURT: Right.

11 THE DEFENDANT: -- "...Limine..." --

12 THE COURT: Right.

13 THE DEFENDANT: -- "the Constitution of the United  
14 States Instructive Fraud, and Copy..." --

15 THE COURT: Historic Lien.

16 THE DEFENDANT: -- "...of a Historic Lien." Okay.  
17 Yeah, I know the one you're talking about.

18 THE COURT: All right. First of all, I did not get a  
19 instructions and contents, although I don't know that that  
20 really matters.

21 THE DEFENDANT: I think that was just for Carole Jones  
22 --

23 THE COURT: Okay.

24 THE DEFENDANT: -- so that she would know which case  
25 files they were for.

1 THE COURT: All right. The authorities and principles,  
2 there's nothing to rule on in this.

3 THE DEFENDANT: No.

4 THE COURT: It's just a statement of statements --

5 THE DEFENDANT: Well, the --

6 THE COURT: A three-page doc -- sir, I'm ruling. And  
7 there's no -- as the rules of these procedures state, if it  
8 is a motion, it has to have a request for relief. There is  
9 no request for relief in this document. And so to the extent  
10 that I need to, I'm going to deny, although, again, there's  
11 no request for relief, but I'm going to deny this document  
12 entitled, "Authorities and Principles."

13 THE DEFENDANT: Can I speak on that real quick?

14 THE COURT: No, because there's no request for relief.

15 THE DEFENDANT: It wasn't a motion.

16 THE COURT: All right. We next have the Notice and  
17 Demand for Discovery. Is there anything you want to say with  
18 regard to that?

19 THE DEFENDANT: I don't -- I mean, I'd have to dig for  
20 it to see exactly what it said.

21 THE COURT: George?

22 (Bailiff shows document to the defendant.)

23 THE DEFENDANT: Okay. I know what we're talking about  
24 here, yeah. Okay. All right.

25 THE COURT: Anything you want to add?

1 THE DEFENDANT: No, it's all written there.

2 THE COURT: Mr. Rogers, anything you want to say with  
3 regard to this document?

4 MR. ROGERS: I don't have it, Your Honor. I'm not sure  
5 if he's asking something specific.

6 (Bailiff shows document to Mr. Rogers.)

7 MR. ROGERS: To save the Court's time, Your Honor, what  
8 I can say is the State has provided all discovery that it  
9 plans to use in this proceeding.

10 THE COURT: Are we talking about both cases?

11 THE DEFENDANT: It was for both though.

12 MR. ROGERS: This case. There will be more for the case  
13 16-F-25.

14 THE COURT: That's what I mean. Okay. I'm going to  
15 treat this as a Rule 16 request for discovery, at least as it  
16 relates to the new indictment. You just indicated you've  
17 already given him stuff in the other case. But, again, as  
18 I've said in other cases and I just want to make sure the  
19 record's clear, I'm not aware of any actual revocation  
20 procedure for home confinement, other than it says something  
21 -- the language in the statute is something about treated as  
22 a motion for probation revocation, or something like that.  
23 And it's my understanding in a probation revocation there's  
24 supposed to be discovery provided. So the State has the  
25 obligation in the motion to revoke home confinement to

1 provide discovery.

2 As it relates to the underlying new felony case, I'm  
3 going to treat this as a Rule 16 request for discovery. And  
4 so the State should provide the information that is provided  
5 in the rules to give to the defendant. And then, Mr. Deegan,  
6 once you get that, if you want additional evidence, you need  
7 to make a motion for further discovery or a motion for bill  
8 of particulars, or other type of a motion to get any specific  
9 information that is not otherwise provided.

10 THE DEFENDANT: I was quite particular in that.

11 THE COURT: And what I'm saying is, some of that  
12 information is not necessarily provided and is not  
13 necessarily required to be provided. And if you want it, you  
14 need to make a motion for a more -- a more particular motion.

15 THE DEFENDANT: As to the revocation, I received a total  
16 of I think four phone calls, and that was it, a transcript.  
17 And I don't have the actual CD of the calls to hear if  
18 there's anything exculpatory contained within it.

19 And I haven't heard the actual purported conference  
20 call, all I have is a transcript, and it doesn't match the  
21 criminal complaint. And so I'm kind of confused as to maybe  
22 something has been mixed up here, or something.

23 THE COURT: Well, I don't know, because I've not seen  
24 any of it. So I don't know.

25 THE DEFENDANT: Because I don't have the CD. I don't

1 have the actual recordings in my possession so that I can at  
2 least listen to them, if not even get them transcribed.

3 THE COURT: Okay.

4 THE DEFENDANT: There might be something to use. I  
5 don't know.

6 MR. ROGERS: It's all been provided when -- this was  
7 provided when Mr. Deegan was represented by Mr. Oshoway. It  
8 was my understanding in the last hearing we had that I was to  
9 provide transcripts for the phone calls that the State was  
10 going to use, which I did provide to Mr. Deegan. And I  
11 believe he stated at the last hearing that he wasn't allowed  
12 to have discs, although a disc of the phone calls has been  
13 provided -- was provided to his attorney when he was  
14 represented by an attorney.

15 THE COURT: The next document is --

16 THE DEFENDANT: What do I do?

17 THE COURT: -- Challenge of Assist -- Challenge to Use  
18 of Privilege, Assistance of Counsel, Calls, or Communications  
19 of any Nature and Kind. Do you need to see that document?

20 THE DEFENDANT: No, I'm --

21 THE COURT: Anything else you want to add to it?

22 THE DEFENDANT: No. Just what was stated in open court  
23 is that you had said it appeared that I had assistance of  
24 counsel that had just served you, and that they were doing  
25 fine. And because of that, they are privileged



1 communications.

2 THE COURT: Anything you want to say, Mr. Rogers?

3 MR. ROGERS: No, Your Honor.

4 THE COURT: To the extent that is motion seeks to  
5 recognize the individuals listed, Leonard Hayview, Phillip  
6 Hudok, Gene Stalnaker, Alice Lutz, I can't read the writing,  
7 Rolow, and Darlene Deegan as counsel for purposes of invoking  
8 the privileged communication, it is denied. They are not  
9 attorneys or counsel that is contemplated by the law, and I  
10 think there's even -- I didn't get a chance to look it up,  
11 but there's an exception, I think, to communication with  
12 counsel if it relates to the commission of a crime. So I  
13 don't even know whether that would apply. But, anyway -- so.

14 THE DEFENDANT: Is there a way then that I can get the  
15 rest of the phone calls then? If they're going to be used, I  
16 should at least be able to go through them. All he provided  
17 me with was four.

18 THE COURT: Well, I thought that's what -- you said that  
19 that's all you were going to use.

20 MR. ROGERS: That's correct, Your Honor.

21 THE DEFENDANT: But there may be some exculpatory.

22 THE COURT: Well, exculpatory evidence is not -- the  
23 State has an obligation to provide exculpatory information.  
24 It is not -- the allegation that there may be exculpatory  
25 information is not -- cannot be used as the ability to get

1 information that would not otherwise be discoverable.

2 Is there a reason why you're not providing him  
3 everything?

4 MR. ROGERS: We didn't have transcripts, and there are a  
5 ton of phone calls. I do have -- the disc that I provided  
6 did have all the phone calls.

7 THE COURT: The disc that you gave counsel?

8 MR. ROGERS: That's correct.

9 THE COURT: Okay. So, I mean, Mr. Oshoway, do you mind  
10 giving him a copy of the disc?

11 MR. OSHOWAY: Not at all, but it's my understanding that  
12 he can't take it with him back to jail.

13 THE COURT: I don't know. So, Mr. Deegan, it's  
14 available to you, you just can't get it in jail.

15 THE DEFENDANT: But, I mean, I need it. I mean, that's  
16 part of the evidence. And they said in it that if there was  
17 any exculpatory evidence in the stuff that they turned over,  
18 that I was given notice of it. I can't be given notice of it  
19 if I don't have it --

20 THE COURT: Well --

21 THE DEFENDANT: -- and I can't utilize it.

22 THE COURT: -- that's the jail rules.

23 THE DEFENDANT: I mean, I'm trying to defend here  
24 against allegations.

25 THE COURT: Well, I don't know how to resolve that,

1 because the jail says you can't have them.

2 THE DEFENDANT: But I don't know. I mean, all I know is  
3 that the Court orders the jail to do things, just like I  
4 couldn't bring a pen to do my work this morning while I was  
5 waiting for Court. All they said was that I had to get  
6 something from the Court. So as far as I know the Court can  
7 order them to do things.

8 THE COURT: I'm not going to order them to allow you to  
9 have a sharp object like a disc.

10 THE DEFENDANT: I don't want to have it -- no, I mean,  
11 I'd like to be able to listen and/or have it transcribed, if  
12 necessary.

13 THE COURT: If you want Mr. Oshoway to give a copy of  
14 that disc to somebody on your behalf, that can happen.

15 THE DEFENDANT: Would it be my assistance of counsel?

16 THE COURT: It's between you and Mr. Oshoway as to what  
17 happens to that disc.

18 THE DEFENDANT: No, no. I mean, would he be giving it  
19 to my assistance of counsel or --

20 THE COURT: It is between you and Mr. Oshoway as to how  
21 that --

22 THE DEFENDANT: But I have no contractual relation with  
23 him.

24 THE COURT: The next document is a Notice, Declaration  
25 and Further Challenge. Do you want to see that document, Mr.

1 --

2 THE DEFENDANT: Absolutely, yes. Yes.

3 (Bailiff shows document to the defendant.)

4 THE DEFENDANT: Okay.

5 THE COURT: Anything you want to add, Mr. Deegan?

6 THE DEFENDANT: I think it was stated quite clearly that  
7 there's been no firsthand fact evidence of my allegiance or  
8 my contractual nexus with any creature of the mind, fiction  
9 of law, in any way, shape or form, and I'm just simply asking  
10 for it. If I'm bound by contract, I will absolutely adhere  
11 to a contract that's lawful in nature.

12 THE COURT: Anything you want to say, Mr. Rogers?

13 MR. ROGERS: No, Your Honor.

14 THE COURT: All right. I'm not -- it's hard to decipher  
15 exactly what this document asks for. But in terms of -- at  
16 least as it relates to the issue of jurisdiction, I've  
17 already ruled on that. As it relates to the issue of venue,  
18 I've already ruled on that.

19 There's some mention in here about excessive bail. As I  
20 think Mr. Oshoway stated at the last hearing, there's been no  
21 motion for bail reduction, so I don't know whether the bail  
22 is excessive or not.

23 It raises an issue in here, I think, about freedom of  
24 speech. To the extent that that is raising an issue of being  
25 punished for speech only or for protected speech, that's an

1 issue that would need to be raised and dealt with at trial,  
2 because at this point I'm not sure exactly what the evidence  
3 is that the State has.

4 So -- and if I've missed something in this motion --

5 THE DEFENDANT: There were --

6 THE COURT: -- then it needs to be refiled and be more  
7 specific in terms of what is being requested, and make it  
8 comply with the rules for filing motions.

9 Next is a Notice of Demand to Dismiss. Do you need to  
10 see that?

11 THE DEFENDANT: There's been several of them, so I  
12 probably would.

13 (Bailiff shows document to the defendant.)

14 THE DEFENDANT: Okay. I know the one we're speaking of  
15 here. Here to present a lawful cause of action, real crime,  
16 the fact that they have presented no actual firsthand actual  
17 evidence or competent witnesses. Yes, it stands upon its  
18 own. It is --

19 THE COURT: So there's nothing else you want to add?

20 THE DEFENDANT: I mean, I didn't know that that's what  
21 this was for today. I thought this was a revocation. I  
22 mean, I'm not prepared to hear any of those. No one said  
23 that that's what it was today.

24 THE COURT: So you're not prepared for the Court to rule  
25 on any of these motions that you keep filing?

1 THE DEFENDANT: I mean, I haven't -- I haven't had any  
2 response from the State to make an argument.

3 THE COURT: Well, and so far they haven't said anything  
4 with regard to most of them.

5 THE DEFENDANT: I know. And that's why I can't  
6 understand they're being denied, because he's not raising any  
7 objections or issues. I thought it was adversarial.

8 THE COURT: I don't follow what you say. I don't follow  
9 what the State says. I rule on them as I see fit.

10 THE DEFENDANT: No, I was not given notice that that's  
11 what this way today.

12 THE COURT: All right.

13 THE DEFENDANT: The only thing I was aware of was that  
14 it was a motion to continue the revocation hearing that was  
15 scheduled for today, and that I had a deadline of the 19<sup>th</sup> to  
16 get all the motions in for the purported 16-F-25. And so  
17 that's what I was doing was attempting to get them in before  
18 then.

19 THE COURT: All right. Well, then we won't rule on any  
20 more of them.

21 MR. ROGERS: Your Honor, if I may for a second? Just  
22 for the record, I'd like it to reflect that the State didn't  
23 respond to some of these motions not because the State agrees  
24 with these things, but for the most part the State doesn't  
25 believe that -- I don't believe I've seen one yet that has

1 been proper or said something that the State should reply to.  
2 So for those reasons, I'll just leave it up to the Court.

3 THE COURT: Okay. All right. And we need the calendar,  
4 please.

5 (Bailiff retrieves calendar.)

6 THE DEFENDANT: And so will I need to prepare for all of  
7 them that I filed, because some of them go back to when it  
8 was still in Magistrate, then when it went to 15-B-328. I  
9 mean, I have some going back to the very beginning --

10 THE COURT: Well --

11 THE DEFENDANT: -- the 5<sup>th</sup> of October, I believe.

12 THE COURT: -- if you've got motions pending, you need  
13 to bring them to the Court's attention so that I know which  
14 ones you're doing. Because if you filed something over in  
15 Magistrate Court, I don't know anything about it.

16 THE DEFENDANT: No, no. They were always filed into the  
17 other cases. Because they were refiled -- whenever the case  
18 numbers changed, we refiled those previous ones again because  
19 we weren't sure if they had been transferred. I can have a  
20 copy of everything from the beginning re-sent again. Is that  
21 necessary?

22 THE COURT: Umm --

23 THE DEFENDANT: With the declarations of service, I  
24 mean, and the green cards, return receipts.

25 THE COURT: Well, I don't know what you're talking

1 about, okay? I mean, I've ruled on the ones that I have.  
2 I'm ready to rule on some other ones. But I don't know what  
3 you filed, and I don't know whether the ones you filed in  
4 other cases have come to me or not. So I don't know what to  
5 tell you on that, Mr. Deegan.

6 THE DEFENDANT: They've always been to the case file and  
7 Wharton, which was at the time the only one I knew.

8 THE COURT: This witness that's getting medical  
9 attention, how -- when will that witness be available?

10 MR. ROGERS: I informed him of the trial date set right  
11 now, March -- towards the end of March, and he said that he  
12 believes he'd be available towards the end of March.

13 THE COURT: He doesn't think he's going to be available  
14 before then?

15 MR. ROGERS: It didn't sound like it to me. I can  
16 confirm that. I can try to confirm that in the meantime.

17 THE COURT: March 15 is what my calendar says.

18 MR. ROGERS: He thought -- and he thought he'd be  
19 available by that time. But it sounds like he was going to  
20 be off for a little bit of time, at least a couple weeks.

21 THE COURT: I'm not sure I can get to it before -- I  
22 mean, that's really just about a month away.

23 How long do we need for this hearing?

24 MR. ROGERS: I believe an hour, Your Honor.

25 THE DEFENDANT: I would say longer.



1 THE COURT: How long?

2 THE DEFENDANT: I would say longer than that. I mean,  
3 I've called six, seven things.

4 THE COURT: Well, why don't we just go with Tuesday,  
5 March the 15<sup>th</sup>?

6 THE DEFENDANT: And that's revocation?

7 THE COURT: That's revocation. Of course, that's the  
8 same day that your trial is set, so --

9 THE DEFENDANT: I don't have the resources to do that.

10 THE COURT: You don't have the resources to do what?

11 THE DEFENDANT: To be prepared for both at the same  
12 time. I mean, I'm locked down twenty-three-and-a-half hours  
13 a day in a cell.

14 THE COURT: It would be the same evidence, is it not?

15 MR. ROGERS: Yes, Your Honor.

16 THE DEFENDANT: He said it wasn't. He said he had more  
17 for the trial.

18 MR. ROGERS: I'll be providing a bit more evidence for  
19 the trial, but I'll be getting that to Mr. Deegan soon. Not  
20 that much different, Your Honor.

21 THE COURT: Well, let's go ahead and keep the hearing on  
22 the motion to revoke home confinement for Tuesday, March the  
23 15<sup>th</sup>, at nine o'clock.

24 And after -- Mr. Deegan, after you get the discovery  
25 from the State, if you don't think you can be prepared for

1 trial on that date, then you can make a motion to continue,  
2 or deal with it otherwise, and we'll see what happens. But,  
3 I mean --

4 THE DEFENDANT: When does he need to turn the discovery  
5 over by?

6 THE COURT: Yeah, how soon? I mean, I'm surprised it  
7 hasn't been done yet.

8 MR. ROGERS: He's gotten almost everything. There's one  
9 report that I've yet to receive, and I'm supposed to have  
10 that early next week.

11 THE DEFENDANT: Well, he can't say I've gotten  
12 everything, because I don't have an independent transcription  
13 of anything and I haven't heard any of it. So I don't have  
14 everything.

15 MR. ROGERS: I've provided most of it, Your Honor, to --

16 THE DEFENDANT: But he was never counsel.

17 MR. ROGERS: -- previously to defendant's counsel.

18 THE COURT: Well, you need to provide it to Mr. Deegan  
19 now then, I guess.

20 MR. ROGERS: I don't -- I mean, he's requesting these  
21 CDs. I don't know that I can send those to the jail. I'll  
22 confirm with the Regional Jail. But if they don't allow me  
23 to send -- I mean, I know I wasn't allowed to send staples --

24 THE COURT: We'll expand standby counsel's obligation,  
25 Mr. Oshoway, to get CDs from the State. And then, Mr.

1 Oshoway, you need to be in contact with your client and pass  
2 those CDs on to whomever he designates, either himself at the  
3 Regional Jail if they'll allow him to have it; and if not  
4 himself at the Regional Jail, then to whoever he designates  
5 to pass those CDs along to.

6 THE DEFENDANT: If he's being --

7 THE COURT: Do you understand?

8 MR. OSHOWAY: Yes.

9 THE DEFENDANT: Is he being imposed as assistance of  
10 counsel? Because, if so, then I would say -- I would order  
11 him to go ahead and get an independent verified  
12 transcription, and then we don't have to deal with the discs.  
13 I can --

14 THE COURT: Do you have the resources to do that, Mr.  
15 Oshoway?

16 MR. OSHOWAY: I would have to find someone who is  
17 prepared to -- who is able to make such a transcription. I  
18 don't know -- I mean, I don't have anyone available right  
19 offhand that I know. I mean, I --

20 THE COURT: Are those services readily available? I  
21 mean, I don't know.

22 MR. OSHOWAY: There are folks who frequently or  
23 routinely transcribe preliminary hearings from discs and so  
24 forth, so that would be one of the first places I would  
25 inquire.

1 THE COURT: Okay. When can those -- when can those  
2 discs be turned over to -- or have you already turned those  
3 discs over?

4 MR. OSHOWAY: I have discs -- I have the discs right  
5 now, Judge.

6 THE COURT: Okay. All right. So you can -- okay.  
7 Well, if you can do that, that would certainly --

8 THE DEFENDANT: I would like to use those for the  
9 revocation as well, since that's what they were offered for  
10 initially.

11 THE COURT: Okay. Tuesday, March the 15<sup>th</sup>, nine o'clock.  
12 Anything else?

13 THE DEFENDANT: Yeah. I just have the last two. Since  
14 the 19<sup>th</sup> was the last day, I have a copy for each of you.

15 THE COURT: What?

16 THE DEFENDANT: Challenge to the Use of Transcripts and  
17 Calls.

18 THE COURT: Okay.

19 THE DEFENDANT: Completed on -- I figured I was going to  
20 be here, and today was the last day.

21 (Bailiff hands document to the Judge.)

22 THE DEFENDANT: So will all of the motions be heard on  
23 that day as well, the 15<sup>th</sup>?

24 THE COURT: I'm going to try to.

25 THE DEFENDANT: Okay. So if I -- it may take the

1 weekend to get copies of everything made back to the 5<sup>th</sup>, even  
2 though they've all been filed in all the case files. Will  
3 that be okay, so that you have a full set?

4 THE COURT: Well, Mr. Deegan, that's what I said, you've  
5 got to do whatever you feel like you need to do. I don't  
6 know what you filed. I don't know what I've been served with  
7 that's been filed and not been filed.

8 THE DEFENDANT: Well, I know everything's been filed  
9 with the clerk, with you, with Beane, and with Wharton since  
10 the -- well, for you and Beane since it was transferred in  
11 mid-October. Before that it was the Magistrate Court case  
12 file, and the clerk said that everything gets transferred  
13 when it changes. I mean, do you --

14 THE COURT: That doesn't mean I get a copy, that's what  
15 I'm saying. And I don't know what you've copied -- or what  
16 you've previously sent and what you have filed since. That's  
17 what I'm saying.

18 THE DEFENDANT: Okay. Well, what I'm trying to find out  
19 is what has she removed from the file?

20 THE COURT: I don't know that she's --

21 THE DEFENDANT: Because we've sent everything --

22 THE COURT: -- I don't know that she removed anything.

23 THE DEFENDANT: The last time he came said that she --  
24 couldn't be filed until it was your -- under your approval,  
25 so I don't know what's in there.

1 THE COURT: Those were documents that -- what were  
2 those? I can't remember now, but she had -- she filed them.  
3 She just didn't file them in the case. She kept them.

4 THE DEFENDANT: Right, that's what I'm saying. I'm not  
5 sure what's in the file.

6 THE COURT: I can't remember now why she --

7 THE DEFENDANT: So would it -- do I need to send you and  
8 the case files an entire set then, that's what I'm asking,  
9 because I don't know what's in there and what's not. I mean,  
10 I know that she signed for everything.

11 THE COURT: I guess the answer's yes, to be on the safe  
12 side.

13 THE DEFENDANT: Okay. And that's okay even though it'll  
14 be past the 19<sup>th</sup>, because it'll take the weekend to get it  
15 out, and it should be mailable by Monday.

16 THE COURT: Uh-huh (yes).

17 THE DEFENDANT: And maybe two days mail time, three days  
18 at the most.

19 THE COURT: Yes.

20 THE DEFENDANT: Okay.

21 THE COURT: All right. Thank you.

22 (Proceeding ended at 2:41 p.m.)  
23  
24  
25

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 foregoing is a true and  
7 correct transcript of the proceedings held in the matter of  
8 STATE OF WEST VIRGINIA, Plaintiff vs. THOMAS DEEGAN,  
9 Defendant, Case Nos. 11-F-101 and 16-F-25, as recorded by me  
10 on the 19<sup>th</sup> day of February, 2016.

11 Given under my hand this 25<sup>th</sup> day of March,  
12 2016.

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15 CYNTHIA A. SUTPHIN, CER, CET  
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1 STATE OF WEST VIRGINIA,  
2 COUNTY OF WOOD, to-wit:  
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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.  
10

11   
12 CYNTHIA A. SUTPHIN, CER, CET  
13

14 DATED: 3/25/16  
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