

STATE OF MISSOURI

vs.

JEFFREY WEINHAUS

**BEFORE THE HONORABLE JUDGE KEITH SUTHERLAND
TRANSCRIPT OF SENTENCING HEARING
TAKEN NOVEMBER 25TH, 2013**

REPORTED BY KIM WROCKLAGE, CCR



**WROCKLAGE REPORTING, LLC
467 BROOKFIELD DRIVE - WASHINGTON, MO 63090
(636) 583-1953 or (314) 210-6917**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE CIRCUIT COURT OF FRANKLIN COUNTY

STATE OF MISSOURI

STATE OF MISSOURI,

PLAINTIFF,

vs.

No. 12AB-CR02409-01

JEFFREY WEINHAUS,

DEFENDANT.

Sentencing Hearing taken at the Franklin
County Justice Center, 401 E. Main Street, Union, in
the County of Franklin, State of Missouri, on the
8th day of October, 2013, before Kim Wrocklage, CCR.

1 APPEARANCES OF COUNSEL:

2

3 FOR THE PLAINTIFF:

4 Mr. Robert "Bob" Parks

5 Franklin County Prosecuting Attorney's Office

6 20 N. Church Street, 2nd Floor

7 Union, MO 63084

8 (636) 583-6370

9

10 FOR THE DEFENDANT:

11 Mr. Hugh A. Eastwood (heastwood@eastwoodlawstl.com)

12 Law Offices of Hugh A. Eastwood

13 7777 Bonhomme, Ste. 1603

14 Clayton, MO 63105

15 (314) 727-3533

16

17 Mr. Christopher M. Combs (combschris1@gmail.com)

18 Law Offices of Christopher M. Combs

19 4542 West Pine Blvd.

20 St. Louis, MO 63108

21 (314) 578-1465

22

23 ALSO PRESENT: Jeffrey Weinhaus

24

25

1 JUDGE SUTHERLAND: Good morning.

2 MR. PARKS: Good morning.

3 MR. EASTWOOD: Good morning.

4 MR. COMBS: Good morning.

5 JUDGE SUTHERLAND: We have several motions
6 we need to take up before we do anything else.
7 Please be seated. What would you like to take up
8 first?

9 MR. EASTWOOD: Your Honor, we have several
10 housekeeping motions related to attaching deposition
11 Court costs of the State and the defendant too.

12 JUDGE SUTHERLAND: Comment on that?

13 MR. PARKS: We'd ask the Court to accept
14 both.

15 JUDGE SUTHERLAND: Those motions are granted
16 and deposition costs and other costs are ordered
17 taxed as costs. We also have the State's motion to
18 forfeit the pistol, I can't remember what the style
19 of it was.

20 MR. PARKS: State's motion to forfeit the
21 weapon, the nine millimeter.

22 JUDGE SUTHERLAND: Mr. Eastwood?

23 MR. EASTWOOD: I would oppose that, Your
24 Honor. Judy Kropf, who was married to Mr. Weinhaus
25 at the time of the incident at the gas station, has

1 filed an affidavit, including a sales receipt. She
2 is the owner of the weapon and as such as I read the
3 statute, No. 1, if the State cannot show that the
4 defendant owned the weapon or that the lawful owner
5 of the weapon consented or gave permission for the
6 defendant to carry the weapon, then the State has
7 not met its burden for forfeiture. If the Court is
8 inclined to grant Mr. Parks' motion, nevertheless,
9 I'd ask the Court to stay any order pending further
10 process.

11 MR. PARKS: Your Honor, I believe the
12 statute is clear in this matter that if a weapon is
13 used in the commission of a crime, it is to be
14 forfeited to the State. The defendant was married
15 at the time, joint possession between husband and
16 wife of the gun, the gun had been found previously
17 at the home, and I believe that the State has met
18 all burdens to have this weapon forfeited to the
19 State. The only thing that I would ask is if you do
20 grant the order or the motion, that that order be
21 stayed until the appeals are final.

22 JUDGE SUTHERLAND: All right. Mr. Eastwood,
23 any comment on that?

24 MR. EASTWOOD: No, I simply think that there
25 is evidence in the affidavit and with the sales

1 receipt that the weapon is owned by Ms. Kropf alone,
2 so I do think that's an issue.

3 JUDGE SUTHERLAND: Well, I will grant the
4 State's motion to forfeit the -- it's just the one
5 pistol that Mr. Weinhaus was carrying because this
6 does not apply to the weapons found in the car after
7 the shooting.

8 MR. PARKS: We are not asking for the
9 forfeiture of those weapons at this time, Your
10 Honor.

11 JUDGE SUTHERLAND: State's motion is
12 granted; however, the forfeiture is ordered stayed
13 pending resolution of any appeal in the case. Well,
14 appeal and any post conviction motions as well. We
15 also have another Motion for Judgment of Acquittal,
16 is that what it was?

17 MR. EASTWOOD: Yes, Your Honor. There are
18 actually two documents before the Court. There's a
19 second Motion for Judgment of Acquittal. There is
20 also a supplemental suggestion of law in support of
21 each of the original renewed and second Motions for
22 Judgment of Acquittal.

23 JUDGE SUTHERLAND: Right.

24 MR. EASTWOOD: First off, there are two
25 issues before the Court. No. 1, whether the State

1 produced sufficient evidence of the defendant's
2 intent to attempt to assault Sergeant Folsom, and I
3 believe as a matter of law the State has not done
4 that. Judge Limbaugh writing for the Missouri
5 Supreme Court on Bank instructs us that merely
6 pulling a gun out is not enough to show attempt. At
7 most it can show negligence, even great or extreme
8 negligence, but it is not a substantial step towards
9 the assault, and the case law reflects that. Here
10 the disputed evidence, if the jury believed the
11 trooper's testimony that the defendant did in fact
12 withdraw the gun and say you're going to have to
13 shoot me man, which obviously was hotly disputed at
14 trial, if the jury believed that, nevertheless that
15 does not show a substantial step towards assault in
16 the first degree. I think at best it makes out, at
17 best, third degree assault, which would be to put
18 Sergeant Folsom in a reasonable apprehension of
19 harm. Obviously a very different offense, a Class A
20 misdemeanor, and if you look at the case law on
21 attempt, where the courts have upheld the attempt is
22 not just pulling out a weapon but actually pointing
23 it at the person, putting it against their head
24 saying, "I'm going to kill you," slashing the victim
25 with a knife and then in fact not really injuring

1 them, just drawing a bit of blood or something like
2 that, but that's enough to show an attempt to cause
3 serious physical injury. Here the disputed evidence
4 showed only that the defendant pulled out the gun,
5 at best. He did not point it at the trooper. He
6 did not say anything like, "I'm going to kill you
7 man," and therefore I believe as a matter of law the
8 State just has not met its evidentiary burden for
9 first degree assault.

10 The second issue, and we've also argued that
11 there are -- in order to preserve the argument, that
12 armed criminal action is barred by double jeopardy.
13 And I think that's important, by the way, because
14 going back to the first issue. If you look at the
15 verdict director, the instruction was that the
16 defendant attempted to cause serious physical injury
17 to Sergeant Folsom by trying to draw a weapon to
18 shoot Sergeant Folsom. I believe as a matter of
19 law, that is just not first degree assault or
20 attempted assault.

21 Turning to the drugs, the evidence showed that
22 the defendant lived in his home with his then wife
23 and teenage son. The one and one-half tablets of
24 Morphine, this is the felony drug conviction, were
25 found in a basement in Camel brand snuff box. It

1 was a common area of the house adjacent to a teenage
2 boy's bedroom, and I think that if you look at the
3 cases where the Court of Appeals has overturned
4 constructive possession --

5 JUDGE SUTHERLAND: I have one of those.

6 MR. EASTWOOD: Sure, the facts are just not
7 there. I mean the Court has overturned for a lady
8 where she knew of meth being in the kitchen ice box,
9 in the fridge, and she even told the police that,
10 and even that did not indicate sufficient
11 constructive control since the kitchen was a common
12 area of the house.

13 Similarly the Court has overturned constructive
14 possession where they found a duffel bag with
15 marijuana on it in the garage of a jointly
16 controlled premises. Here I think the evidence
17 shows that the basement was a common area of the
18 house. We all saw the You Tube video. Of course we
19 know the defendant at some point in time had been in
20 that basement, but there was no evidence on the day
21 of the arrest, or not the arrest, the visit to his
22 home by the troopers that the defendant had even
23 been in the basement, and therefore I would ask that
24 the Court acquit Mr. Weinhaus on the felony drug
25 possession.

1 The marijuana is a little bit different.
2 Sergeant Folsom did say that he smelled marijuana on
3 the defendant's person, but there was no marijuana
4 on his person and again the drug -- the marijuana
5 was found in the basement, and for that reason I do
6 not think that they have proved up constructive
7 possession. After all, hypothetically, the
8 marijuana could have belonged to someone else and
9 the defendant had merely smoked it and still that
10 would not show constructive possession. So for
11 those reasons we ask the Court to enter a Judgment
12 of Acquittal on each of the charges.

13 JUDGE SUTHERLAND: Mr. Parks.

14 MR. PARKS: Yes. Taking up the marijuana
15 and the drugs first. Those drugs, the Morphine and
16 everything, were found in a container in the
17 defendant's personally controlled area, his command
18 center or what he told the officers was his command
19 center and where you saw on the video he made all of
20 his videos and his pod casts from. These were items
21 that were found in the drawers, in the desk that he
22 used showing that they were items that were found.
23 As to the marijuana, again as the defendant's
24 attorney pointed out, when -- the whole reason for
25 the search was the smell of marijuana coming from

1 the house and from the odor of marijuana on the
2 defendant's person. This is the probable cause that
3 they used to get the search warrant. There was
4 marijuana found in the command center with the other
5 items, then there was also a large bag found on a
6 shelf right outside the door. The defendant
7 presented no evidence that there was anyone else
8 that had access to that area. This is not a common
9 area. These are the items or this is the area that
10 the man cave, the command center, the area where the
11 defendant had primary control over all of the items
12 in the area. The State feels that it has more than
13 met its burden on these.

14 As to the assault first, Your Honor, the
15 testimony was that the defendant was staring down
16 Sergeant Folsom, that he went for his gun, he was
17 going to shoot Sergeant Folsom. Corporal Mertens
18 testified that he thought the defendant was going to
19 shoot at Sergeant Folsom. That's why the officers
20 fired. You do not have to wait until you're shot at
21 to have an attempted assault first of a law
22 enforcement officer, and the State again feels that
23 it has more than met its burden to show an assault
24 first on Sergeant Folsom.

25 JUDGE SUTHERLAND: Mr. Eastwood, additional

1 argument?

2 MR. EASTWOOD: Yes, Your Honor. On the
3 drugs, previously I think the issue of whether or
4 not the defendant is the primary user of that
5 basement space is insufficient to show exclusive
6 control, and that's really the test here. There was
7 also evidence that the 19 year old teenage son's
8 bedroom was adjacent to that space. Common sense
9 and experience tells us that basements are typically
10 communal areas of the house, and I think there was
11 enough evidence of that, that the basement was not
12 under the defendant's exclusive control. And we
13 know from common sense and experience that family
14 members share computer equipment. This was not a
15 wealthy family. It was a family computer, and so
16 for that reason I think the State has not met its
17 burden.

18 Turning to the more serious crime, I agree with
19 Mr. Parks in the sense that we heard plenty of
20 testimony about trooper training, and that's not the
21 issue that's before the Court. The issue is not
22 whether or not Sergeant Folsom was justified in
23 shooting the defendant, that's an issue for another
24 day. The issue is what did the defendant do. If
25 you believe, and the jury apparently did, that the

1 defendant pulled a gun out, didn't point it at
2 anyone, didn't say he was going to hurt anyone, he
3 said, "You're going to have to shoot me, man,"
4 that's not a threat. That put Sergeant Folsom, at
5 best, in apprehension of immediate physical injury,
6 that's third degree assault. It's a very different
7 crime. Here the issue is whether the defendant
8 attempted to kill or knowingly caused or attempted
9 to cause serious physical injury, and he never got
10 that far. He never pointed it at anyone. He never
11 threatened anyone. So for that reason I think that
12 the State at best may have proved up third degree
13 assault. That's a different crime, different
14 elements, but it did not prove up first degree.
15 Thank you.

16 JUDGE SUTHERLAND: Well, the motion is
17 denied. Any other motions to take up prior to
18 sentencing?

19 MR. EASTWOOD: Yes, Your Honor, we have a
20 motion for a new trial.

21 JUDGE SUTHERLAND: I'm sorry, yeah, that's
22 the primary reason we set this, go ahead.

23 MR. EASTWOOD: Okay. I think from the
24 minute that Mr. Parks showed that You Tube video,
25 and we all saw it and it was pretty extreme speech,

1 First Amendment protected but pretty extreme speech.
2 I think from the moment that the jury saw that
3 video, the defendant could not get a fair trial.
4 The State failed in its burden of proving up the
5 judicial tampering charge and for that reason the
6 Court acquitted Mr. Weinhaus at the end of the
7 State's evidence. Nevertheless, we can never unring
8 that bell. Since the charges were not severed, the
9 defendant was essentially -- could not get a fair
10 trial on the issues before the jury as to what went
11 on at the gas station because they had seen him in a
12 video a month before talking about blasting judges,
13 "these mother fucking judges, I want to blast them
14 out of there," and talking about other people that
15 he believed needed to be removed from office
16 potentially by violent means. And so what the jury
17 did is think that the defendant was a dangerous man
18 and acting as a kind of roving commission almost
19 decided that based -- that he went to the gas
20 station with bad intent, even though there was no
21 evidence to show separate from this video that the
22 defendant was anymore dangerous than any other
23 person on the street. And because of that, I
24 believe on that issue alone merits a new trial.

25 There are several other issues. There were

1 several offers of proof made. During the
2 defendant's impeachment of Sergeant Folsom's
3 testimony, the defendant made an offer of proof on a
4 letter from the Franklin County Sheriff to the
5 defendant. The sheriff was present in the courtroom
6 at the time and that letter would help impeach
7 Sergeant Folsom's inconsistent testimony as to
8 whether or not he notified the Franklin County
9 Sheriff pursuant to the statutory requirements of
10 RSMo 43.200. Sergeant Folsom's credibility was
11 perhaps the most disputed issue in this case. Both
12 sides spent a lot of time going over the trooper
13 testimony, particularly Sergeant Folsom's testimony
14 because he was the shooter and he was the one with
15 the direct view of the defendant. And therefore for
16 that reason as well, because the defendant was not
17 allowed sufficiently to impeach Sergeant Folsom's
18 testimony, a new trial should be granted. And
19 indeed at trial Sergeant Folsom made up wholly new
20 excuses for his failure to contact the sheriff. He
21 said he had bad cell phone reception near the
22 defendant's house. That was something entirely new.
23 It wasn't in the police report, wasn't in his depo,
24 it was just a new thing.

25 The defendant also made an offer of proof as to

1 his wounds and the location, the entry and exit
2 angle of the wounds was necessary because that also
3 went to Sergeant Folsom's credibility particularly
4 as to his testimony as to where he shot the
5 defendant and at what angle. One of the issues in
6 the case was whether or not the defendant was
7 getting down on the ground, and of course shooting a
8 person at an angle as they're going down will be
9 quite apparent from the entry and exit wounds.
10 There's no Fifth Amendment waiver issue with a
11 defendant showing his wounds, it's not testimony,
12 and it's rather just -- it's not testimonial in
13 nature in any way, it's like a line-up, DNA,
14 fingerprints, and for that reason a new trial should
15 be granted.

16 Levi Weinhaus' text message: Sergeant Smith,
17 the investigating trooper into the shooting, had
18 evidence of a text between Levi Weinhaus, who is the
19 defendant's son, and Mr. Weinhaus' father concerning
20 a weed plant. Sergeant Smith never passed that
21 information on, but that text message does go to the
22 issue of defendant's guilt on the possession of
23 marijuana. A reasonable jury can infer that based
24 on the text message that the marijuana belonged to
25 the defendant's son.

1 The weapons in the Subaru. After the defendant
2 was shot at the scene and the scene was secured and
3 the defendant was cuffed and air lifted to St.
4 John's Mercy, the defendant's wife's Subaru, which
5 was the vehicle that Mr. Weinhaus drove to the gas
6 station that day, that car was inventoried, and
7 during that inventory the troopers found additional
8 firearms, including a rifle and a handgun.

9 Critically Sergeant Folsom and Corporal Mertens
10 testified they had no idea those firearms were in
11 the car during the altercation between Mr. Weinhaus
12 and the troopers, and that had nothing to do with
13 any crime committed and therefore by permitting that
14 evidence to be admitted over a timely objection, the
15 State was allowed to depict the defendant as coming
16 to the gas station loaded for bear, I think that was
17 Mr. Parks' words, and I think that was improper and
18 therefore had no probative value but it was highly
19 prejudicial. Again, for that reason a new trial
20 should be issued.

21 Finally, there was freeze framed demonstrative
22 evidence from the wrist watch video. I used it
23 throughout I think the State's case and also perhaps
24 in the defendant's case. That demonstrative
25 evidence from the wrist watch video, the video was

1 evidenced properly, those still frames were used by
2 me without objection throughout the State's case.
3 As such, when an exhibit is not formally offered or
4 received into evidence but is published to the jury,
5 it is treated by both the prosecution and defense as
6 if it had been received into evidence and is never
7 objected to, and the exhibit is effectively in
8 evidence for all purposes as if it had been formally
9 offered and received by the Court. The reason this
10 is important is because during the deliberations,
11 the jury asked to see the video and asked to see the
12 freeze frames, and it went to this critical issue of
13 what the defendant's left hand was doing in the
14 moment before he was shot. They did get to see the
15 video, and those freeze frames would aid the jury
16 because it shows the defendant's hand going back,
17 and the video screen shows the gas station sign in
18 the background and then moments later the shots rang
19 out. It does suggest that at least the defendant's
20 left hand was in the air. That's a critical,
21 critical issue. That was the issue in this case.
22 What was -- what were Mr. Weinhaus' hands doing
23 moments before Sergeant Folsom shot him. And so for
24 those reasons I ask the Court to grant a new trial.
25 Thank you.

1 JUDGE SUTHERLAND: Mr. Parks.

2 MR. PARKS: Your Honor, I believe all this
3 has already been covered in the -- at the trial and
4 that the Court has already ruled. I would like to
5 make a few comments, though, on issue seven on the
6 freeze frame. Your Honor, the Court has complete
7 discretion on what it sends back to the jury. At
8 this time the defendant did not object when the
9 State raised the issue that these freeze frames had
10 never been put into evidence, and this was after the
11 closing arguments, when defendant had already had a
12 chance to argue this and everything to the jury. So
13 whether or not they went back to the jury, I believe
14 that is in the complete discretion of the Court, and
15 I would ask the Court to deny defendant's motion for
16 a new trial.

17 JUDGE SUTHERLAND: Well, with regard to the
18 freeze frame pictures, of course I did not allow
19 them to be sent back to the jury room because they
20 had not been introduced into evidence. The video
21 itself from the wrist watch video was not obviously
22 sent back to the jury, as we discussed at the time,
23 the jury was brought into the courtroom and shown
24 the video again, and I believe, and I don't want to
25 swear to it, but I believe I asked them if they

1 wanted any of that done, video shown in slow motion
2 or freeze frame-by-frame and they did not, so that
3 didn't seem to be such a big issue with the jury.
4 In any event, all these issues were argued
5 previously during and after the trial or at the
6 conclusion of the trial. The motion for a new trial
7 is denied. Is there anything else we need to take
8 up prior to sentencing?

9 MR. WEINHAUS: Yeah, well I've got something
10 to say.

11 JUDGE SUTHERLAND: You'll have a chance
12 momentarily, Mr. Weinhaus.

13 MR. PARKS: Not for the State, Your Honor.

14 MR. EASTWOOD: Not at this time, Your Honor.

15 JUDGE SUTHERLAND: I assume based on the
16 brief conversation we had prior to coming into the
17 courtroom, you both got a copy of the sentencing
18 assessment report?

19 MR. PARKS: The State does, Your Honor.

20 MR. EASTWOOD: Yes, Your Honor.

21 JUDGE SUTHERLAND: Mr. Parks, any comment as
22 to sentencing?

23 MR. PARKS: On the SAR?

24 JUDGE SUTHERLAND: Or sentencing, anything.

25 MR. PARKS: Yes, Your Honor. The State

1 believes that the defendant has been fairly tried
2 and found guilty by a jury of four counts. The jury
3 has recommended a jail sentence and a two year -- a
4 jail sentence on the misdemeanor marijuana and a two
5 year sentence on the Morphine. State would ask that
6 the Court follow the recommendation of the Court.
7 As Sergeant Folsom said in his statement to the
8 jury, none of this would have happened if the
9 defendant would just have gotten down on the ground.
10 We wouldn't be here facing it, but the defendant
11 coming armed to this confrontation decided at that
12 point that he was not going to go quietly, that he
13 was going to have it out with Sergeant Folsom. And
14 if the Court remembers the testimony of Corporal
15 Mertens, he said they were locked eye to eye, he was
16 ready to shoot Sergeant Folsom if Sergeant Folsom
17 would not have shot him first. Under those
18 circumstances, Your Honor, the State would ask that
19 the Court follow the recommendation of the jury and
20 to run all sentences consecutively.

21 JUDGE SUTHERLAND: Mr. Eastwood?

22 MR. EASTWOOD: Your Honor, as the Court is
23 aware, the defendant has been incarcerated in the
24 county jail for over a year. There are four charges
25 before the -- four convictions before the Court, a

1 Class A misdemeanor and three felonies, possession
2 of the controlled substance, assault on law
3 enforcement and armed criminal action. The Court
4 heard testimony during the sentencing phase that the
5 defendant has never been the same since he was shot.
6 He was in St. John's Mercy for a couple months and
7 then since then has been receiving therapy. I would
8 ask the Court, No. 1, to of course run the sentences
9 concurrent; and No. 2, to impose, to grant time
10 served on the drug charges. On the assault and the
11 armed criminal action, I would ask the Court to
12 impose the minimum sentence allowed by law for a
13 Class A felony. That is 10 years; however, the
14 Court does have discretion and I would, under the
15 circumstances, I think in the SAR this defendant
16 received a six, he is not a recidivist risk. He has
17 one misdemeanor conviction from a year ago, from 10
18 years ago, excuse me, and therefore I would ask the
19 Court to depart significantly downward from the jury
20 sentence. Thank you.

21 JUDGE SUTHERLAND: Mr. Parks, anything
22 further?

23 MR. PARKS: No, Your Honor.

24 JUDGE SUTHERLAND: Mr. Weinhaus, do you have
25 any legal reason why a judgment of sentence should

1 not be pronounced at this time?

2 MR. WEINHAUS: Yes, sir, I do. Now let me
3 make my case. Is there any way I can get my hand --
4 you have the zapper on me, you can zap me anytime
5 you want.

6 JUDGE SUTHERLAND: He can have one hand
7 free, yes.

8 MR. WEINHAUS: Thank you. Your Honor, 13
9 months ago I walked into this Court, surrendered
10 after being shot four times by members of the
11 Missouri Highway Patrol. In the trial, the facts
12 show that my actions posed absolutely no threat or
13 danger whatsoever to society in general, thus this
14 verdict was not in the interest of justice or to
15 protect the public from me or my free speech. This
16 is clearly and unequivocally a manifest in justice.
17 I've harmed no one. The only victim in this matter
18 has been myself. The State in their case did not
19 prove that I harmed anybody. There was no other
20 injured party. I was shot four times, twice here,
21 once in the side of my head and once in my neck
22 while I was on the ground. The bullet ended up in
23 the ground. The evidence clearly shows that
24 Sergeant Folsom was lying throughout the whole
25 trial. My attorneys, and God bless them for doing

1 what they could, but my attorneys failed to show
2 this Court or that jury there's a gun -- there's a
3 picture of a reflection of my gun in my car, it's in
4 the video, shows that gun was right there on the
5 left-hand side. That wasn't introduced into this
6 trial. I don't understand why it wasn't introduced
7 in this trial. Now I don't know what's going on
8 with these guys, but we paid them good money and it
9 wasn't introduced in the trial. That evidence is
10 right now on the Internet. That video is out there
11 on the Internet right now. That shows that weapon
12 was right here two seconds before I was shot.
13 One-sixth of a second before I was shot it shows
14 Corporal Mertens walking up on me, his gun is out
15 like this. Those are freeze frame videos, which
16 supposedly the jury wanted to see but you wouldn't
17 allow, all right. So when Mertens is walking up on
18 me, he's got his gun out like this. If I'm trying
19 to draw my weapon like they allege I was trying to
20 do, wouldn't you think Corporal Mertens would take a
21 different posture from the time he walked to the
22 back of his trunk until the time he walked up on me?
23 That wasn't showed to the Court either. Could I get
24 a glass of water, please. Please.

25 MR. EASTWOOD: I'll get him some water.

1 We're getting you water.

2 MR. WEINHAUS: Thank you.

3 JUDGE SUTHERLAND: You can go ahead,
4 Mr. Weinhaus. It will take a minute.

5 MR. WEINHAUS: I can't go any further, my
6 mouth is dry. I'm fighting for my life here. I'm
7 about ready to -- you know. The bible says, "Out of
8 the mouth of two or three witnesses let every word
9 be established." How many witnesses did the State
10 put on, other than the people that shot me, alleged
11 I tried to draw a weapon. Zero. The only people
12 who allege I tried to draw were the ones who shot me
13 in cold blood, attempted to murder me on that day.
14 That's attempted murder. I'm about ready to be an
15 offender. Who have I offended? Has the State even
16 failed -- has the State even introduced an offense
17 in this matter? Allegedly trying to draw a weapon?
18 Who did I hurt? Who was offended? If I'm going to
19 be an offender, then there needs to be an offense.
20 There has been no offense showed to this Court.

21 This Court, if you pronounce sentence on me
22 today and put me in jail for any more time than I
23 have already served, this is a kangaroo Court
24 because it has done nothing to protect me from these
25 predators. They lied to me. They came to my house

1 to steal my printing press, in effect, by stealing
2 my computers, because they didn't like what I was
3 writing and printing and what I was speaking as a
4 free speech. Obviously you agree with that or you
5 wouldn't have acquitted those charges.

6 Resisting arrest, how can you charge me with
7 assaulting a cop when you don't charge me with
8 resisting arrest. Another thing my attorneys failed
9 to do, Your Honor, is in the video or in the audio
10 interviews to the Highway Patrol Sergeant Folsom
11 allegedly said, "Get your hand off the gun." Folsom
12 states, "Get your hand off the gun" at 20:31 in the
13 video and the audio of the Missouri Highway Patrol
14 before the shots were even fired. That's the first
15 thing -- that's the last thing he supposedly said to
16 me before the shots were fired, "Get your hand off
17 the gun." Did you hear that introduced anywhere?
18 Don't you think the jury would want to hear that?
19 No one alleges I did anything other than the people
20 who shot me. The picture of the gun on my left-hand
21 side would cast reasonable doubt as to what Folsom
22 and Mertens said my gun was on my right-hand side.
23 There were two FBI agents there that day. These
24 people took testimony of them, depositions, all
25 right. You didn't hear anything about them

1 saying -- they didn't even see a weapon on me. My
2 defense attorneys did not even call them to testify.
3 Mr. Parks did not call them to testify. Now, you
4 don't believe that's a reason for another trial?
5 You let that video play, then you acquit me on those
6 charges but did you instruct the jury to disregard
7 the video when they went out?

8 Sergeant Folsom repeatedly lied throughout his
9 testimony. The jury not being able to see the
10 freeze frame, you know what, and throughout my
11 trial, I have no idea how many -- I don't even
12 believe they introduced any evidence on my behalf.
13 The FBI depositions weren't introduced into
14 evidence. Sergeant Folsom's depositions weren't
15 introduced into evidence. None of my -- none of
16 these videos, the freeze frames, you said just a
17 minute ago that they weren't introduced, there are
18 freeze frame videos on the Internet right now. Did
19 you happen to see the pictures of me while I was in
20 the emergency room? Where my wounds are? I had one
21 come in here, go out down there. One come in here,
22 go out down there. That can only happen if someone
23 is standing on top of me basically. There's a
24 bullet in the ground. I was shot when I was laying
25 on the ground. That evidence was not introduced.

1 Sergeant Folsom throughout the testimony, if
2 you actually are interested in justice, or you know
3 what, then you would go back and realize and
4 understand, you would read the depositions. You
5 would read the testimony that my gun is on the
6 right-hand side, and then you'll go to the video on
7 the Internet and it says right there, gun
8 reflection, you can see the picture, that holster is
9 right here on me, it's not on my right-hand side,
10 it's on my left-hand side.

11 Mertens is inconsistent with his testimony.
12 Sergeant Folsom is inconsistent with his testimony.
13 I've got video proof evidence that that gun is on my
14 left-hand side. The facts of the matter are I was
15 not injuring or harming anybody. I showed up there
16 to get my computers. I was lied to. After they
17 took my computers, they lied to me, called me up and
18 said come get your computers. I didn't trust them.
19 That's why I was videotaping. I was audiotaping.
20 Did you hear their videotape or audiotape? No. You
21 know why you didn't hear it, and I guarantee you
22 they had it, why would they not show up with
23 videotape, I'm videotaping, they weren't
24 videotaping, you know why, because it shows a cold
25 blooded attempted murder. I got out of my car, I

1 walked to the back of my car to get my computers.
2 They said why do you got a gun on. Article 1,
3 Section 23 of the Missouri Constitution states, and
4 I quote, "My right to own a gun shall not be
5 questioned. My right to carry a firearm shall not
6 be questioned." The first thing Sergeant Folsom
7 does is question my right to own and carry a
8 firearm. If I'm there to do them harm, if I'm there
9 to do them ill intent, I've got a 12 gauge shotgun
10 sitting in the back seat of that car. Now if I was
11 there to harm them or do anything of ill content,
12 don't you think I would have exited the vehicle with
13 the shotgun after I rammed their car? They were
14 worried about me ramming their car. Well, I didn't
15 ram their car. I got out, I'm the one videotaping.

16 You know what, Your Honor, this is a manifest
17 injustice. I hired these people right here. These
18 people on the Internet came up with the money for
19 them. I didn't even want a lawyer. I needed a
20 lawyer because I thought they were going to work in
21 my best interest, but my case was put on within a
22 half hour. We called three witnesses when we could
23 impeach Folsom and Mertens over and over and over.
24 Now all that stuff is on the Internet. The facts of
25 the matter are very clear, I didn't harm anybody. I

1 didn't show up to harm anybody. My intention was
2 never to harm anybody. You know right now there are
3 people in the militia, Missouri militia who want to
4 come and go to war with you folks over this. I've
5 asked them not to do that, to show remarkable
6 restraint. If you go on my website, you'll see
7 that, but you're going to try to put me in jail for
8 30 or 60 years when I didn't harm anybody. You can
9 rape a girl in this county and get 90 days. You can
10 go around and shoot up the whole county and get 120
11 days. You can murder your husband and get 14 years.
12 Is that justice? I've harmed nobody. A crime as
13 far as I'm concerned, and that's why I believe they
14 wanted to come silence me is because I believe a
15 crime is an act that causes proveable personal
16 injury, loss or harm. If there is no victim, there
17 is no crime. No victim, no crime. Simple as that.
18 80 percent of this Court's business is victimless
19 so-called crimes. When there is no victim, there is
20 no crime. In my matter, I'm the victim, they are
21 the criminals. Mr. Parks is the biggest criminal.
22 For him to file false instruments against me. He
23 knows the evidence that is there. He's known it for
24 six months. You should know the evidence that's
25 there if you're reading the Court file. It's very

1 clear. You can't change these facts. I didn't make
2 up these facts. Listen to Sergeant Folsom's
3 interview and go back and look at the depositions.

4 Now I'm a praying man. I got shot right here,
5 a bullet went out the top of my head. I got shot
6 twice right here, one in the back of my neck. God
7 didn't allow me to die. They tried to murder me.
8 The whole thing comes down to what side my weapon
9 was on. If it's on my left-hand side, you got to
10 acquit. You got to drop these charges right now.
11 If it's on my right side, then go ahead and throw me
12 in jail for as long as you want, but I can prove
13 that weapon was right here, and the reason why it
14 would be right here is I was driving my car that
15 day. I have my seat belt on. I couldn't buckle my
16 seat belt with the weapon right there, that's why it
17 ended up right there. Was I stupid to wear a
18 holstered weapon, yeah, real stupid, but did I try
19 to draw that holstered weapon, no, sir. And if my
20 intention was to harm the police, if my intention
21 was to do what they did to me, I wouldn't have
22 exited my car with a nine millimeter holstered. I
23 would have exited my car with a 12 gauge shotgun
24 unholstered and the .22 I had in my pocket, I could
25 have put in my pocket, the .22 that would have went

1 through a bulletproof vest. They didn't believe I
2 was a danger that day. They weren't wearing their
3 bulletproof vests. They lied to me to get me up
4 there. You're sanctioning attempted murder. They
5 tried to kill me, sir. They weren't there to play
6 games. Within 12 seconds of me getting out of my
7 vehicle I'm shot on the ground. That videotape is
8 on the Internet.

9 Now, if I go to jail for a long time over this,
10 that's going to keep building and building and
11 building, and that's the stuff revolutions are made
12 of, sir. The whole thing comes down to what side my
13 weapon is on. Reasonable doubt is achieved by the
14 picture of the gun on my left-hand side. The
15 sequence of pictures of Mertens as he walks back
16 from the trunk, he walks and has his gun out like
17 this, excuse me. From the time he walks out of the
18 trunk, walks from the back of his trunk until the
19 time he walks up on me, he's like this, that's all
20 on the Internet, it's a sequence of pictures. His
21 posture totally changes after Sergeant Folsom shoots
22 me. He comes back up like that like he's going to
23 shoot then. Now, if I'm trying to draw my weapon,
24 why isn't he in a defensive posture then. That's
25 all there, and why these guys didn't introduce that

1 information is beyond me. And how you can say
2 there's not enough evidence for a new trial when I
3 just explained to you the evidence, which is clear
4 for all the world to see. One-sixth of a second
5 before I was shot, Sergeant Mertens is not alarmed.
6 That's why he's still like this, what they call high
7 ready.

8 The proper purpose of Government in the State
9 of Missouri, the first thing our Government is
10 supposed to do is protect people from physical
11 force, regardless of whether it's the police that do
12 it or anyone else. The No. 1 job of our Government
13 is life. Article 1, Section 2 of the Missouri
14 Constitution, do we still go by the constitution in
15 the State of Missouri? What's up with the gold
16 fringe around the flag? That is not the United
17 States flag. The United States flag doesn't say
18 anything about a gold fringe on it. Read the United
19 States code. So the Missouri Constitution is still
20 in effect in this country, is that correct? If the
21 Missouri Constitution is still in effect, then you
22 need to go by the constitution. Article 1, Section
23 2 of the Missouri Constitution says, "The whole
24 point and purpose of our Government is to promote
25 the general welfare of the people." That would be

1 getting predators such as the Highway Patrol, the
2 ones who shot me, attempted to murder me, predators
3 such as Bob Parks off the street, and they're the
4 ones that need to be locked up. Promote the general
5 welfare of the people. To protect the people from
6 predators such as Bob Parks and the Highway Patrol,
7 and Bill Miller too. He's the biggest predator too.
8 You wouldn't let us have cameras in the courtroom.
9 You let him come in the courtroom with a camera.

10 All persons have the natural right to life, No.
11 1. I had a natural right to life on September 11th,
12 sir. I got out of my car, within 12 seconds I'm on
13 the ground bleeding from four holes. They didn't
14 even call an ambulance for seven minutes. They
15 didn't do anything to try -- they thought I was
16 dead. Sergeant Folsom got on the phone and called
17 his boss, "He's down." It wasn't until the other
18 Highway Patrolmen showed up that they realized I was
19 alive. My No. 1 thing was natural right to life.
20 That day, Your Honor, they tried to take my life.
21 They tried to murder me.

22 Liberty, that's No. 2. I've been incarcerated
23 in this jail 390 days now. I didn't harm anybody.
24 The State has not proved anything. That trial was a
25 sham and you know it. That's why you allowed that

1 video to come in, the jury was tainted and then you
2 didn't even tell the jury to disregard that video.
3 Shame on you. Shame on you for not giving me
4 another trial. Hugh came out in the paper and said
5 you were an upright man. Jason, the probation and
6 parole officer, said you were an upright man. I
7 want to believe that, Your Honor. I don't believe
8 that many judges would have done what you did by
9 dropping that charge against a judge. I want to
10 believe that. I want to believe that there is a
11 justice system in this country, not just us, because
12 you see a lot of just us these days, you don't see a
13 lot of justice.

14 Pursuit of happiness. I haven't been able to
15 pursue any happiness in a long time. While I sat in
16 this jail I spent well over \$2,000.00 just to make
17 phone calls. I've been isolated this whole time. I
18 got divorced over it. I haven't been able to see my
19 children in 14 months, sir. I have six children out
20 there. I haven't seen them in 14 months. I have an
21 eight, 10 and 12 year old who cry every night
22 because they don't have their father around them. I
23 haven't been able to pay my child support. I've
24 been able to give my ex-wife \$51.00 since I've been
25 in this jail. I can't go out and protect and

1 provide for my children because Mr. Parks wants to
2 cover up his bogus search warrant. They came to my
3 house to steal my computers with a search warrant
4 concerning marijuana. How is that probable cause?
5 Mr. Parks is a predator. That man is the one who
6 needs to be in jail. He's the one that went out and
7 caused injury, loss and harm.

8 Enjoyment of the gains of my industry. I
9 haven't been able to enjoy the gains of my industry
10 because I was dared to come out and say hey, our law
11 enforcement establishment is not honoring the
12 constitution, it's not upholding the constitution of
13 the State of Missouri. We reserve the right to
14 remove you, that's why there is a Second Amendment
15 in this country, sir. It's not to go hunting, it's
16 to protect people from tyranny, and what we see
17 today in this country is judicial tyranny, black
18 robe terrorists who ignore the constitution, who are
19 playing word games. Why is my name always
20 capitalized? There's a lot to that. You look on
21 all the Court documents, why is that? Why do I have
22 a nom de guerre, which is name of war, there's
23 something more going on than meets the eye here, and
24 I was trying to point that out to the people, and
25 they were so afraid of it they tried to kill me. I

1 was running for the office of coroner in Crawford
2 County. Why was I running for coroner, because
3 there's two murders down there committed by law
4 enforcement. I was looking into that. That's why
5 they tried to murder me. The office of the coroner,
6 which this county doesn't have a coroner anymore,
7 but the coroner can investigate murder and panel a
8 grand jury. Every day the Court preys on the
9 followless, the poor, the widow, the weak. I've
10 stood up against that tyranny for 16 years, and then
11 on September 11th they tried to murder me for my
12 political views.

13 "That all persons are equal and entitled to
14 equal rights under the law." Assault on a law
15 enforcement officer, that's more valuable than
16 regular assault? Is that equal rights? That's
17 what's on the front of the Supreme Court in
18 Washington, D.C., equal rights under the law. The
19 police are more important than me? Was Henry Folsom
20 charged with attempted murder, first degree assault
21 on myself? Is he facing 30 to 60 years, no, but the
22 Highway Patrol fired him. And we still -- why is
23 that, why was he relieved? This is the second time
24 he tried to kill somebody. He already did it once
25 and they still paid the man. This is the second

1 time, maybe two strikes he's gone but he got fired
2 over this.

3 They tried to kill me, sir, and if you allow
4 this to go down, if you allow a sentence to be
5 pronounced upon me in any way, you're just as
6 guilty. To give security to these things, equal
7 rights and opportunity under the law, the general
8 welfare of the people, taking predators off the
9 street like Bob Parks. Taking predators off the
10 street like the Highway Patrolmen who went out and
11 callously shot at me, tried to kill me that day,
12 that's the general welfare of the people being
13 supreme. I believe the Governor of the State of
14 Missouri is the one who ordered this entire
15 investigation. I believe that's what Mr. Parks said
16 in open court. Why would the governor of the State
17 of Missouri want to be concerned about eliminating
18 me? He's familiar with me. We grew up in the same
19 county. I've been doing my paper in Jefferson
20 County for 16 years. He's well aware of who I am.
21 To give security to these things is the principal
22 office of Government. Equal rights, life, liberty,
23 the pursuit of happiness, equal rights under the
24 law, to protect people from physical force first and
25 foremost. The only job of our Government is to

1 protect our people from physical force first and
2 foremost. It has failed to protect me. Our
3 Government has failed its chief design.

4 When the only victim stolen from, I'm the only
5 victim in this matter, Your Honor. If the State can
6 prove -- put another person up on the stand to say
7 that I victimized them, they failed to do so. I'm
8 the only victim. The only one who suffered injury,
9 loss or harm is myself. I was lied to, stolen from
10 first of all. The free press, the right of the free
11 press, the only business specifically protected by
12 the United States Constitution is a free press, and
13 they came and stole my computers. They lied to me
14 and said hey, come get your computers. When I got
15 there, they tried to kill me. Now they want to lock
16 me up for the rest of my life, and I've harmed
17 nobody? This is not America. If you allow that to
18 happen, this is not America. This is not why
19 thousands and millions of people have died on the
20 battlefields to protect. The Gettysburg address was
21 delivered 150 years ago, "Government of the people,
22 for the people and by the people shall never perish
23 from the face of the earth." It's just about
24 perished if you allow this to happen. There is no
25 evidence whatever to sustain a conviction. That's a

1 legal reason for you to overturn this conviction
2 right now, and maybe my lawyers couldn't convey that
3 strongly enough to you because they're going to be
4 able to go home tonight. Should you not act and do
5 the right thing here, I'm going to have to go back
6 to a jail cell and make phone calls for 50 cents a
7 minute when I have no money to call anybody. I'm
8 going to have to go to prison, go to no-more-victims
9 lane when there is no victim in this matter. I'm
10 the only victim, Your Honor. I'm the only victim.

11 Our Government has failed its chief design
12 should you not do your responsible thing today. You
13 took an oath to uphold the constitution I would
14 assume, or you should have. I would appreciate if
15 you honor that oath. Therefore there is no evidence
16 to sustain a conviction, none whatsoever. The only
17 evidence you had to sustain a conviction was the
18 testimony of Henry Folsom, and I've just
19 demonstrated beyond a reasonable doubt that my
20 weapon was right there on my left-hand side. If
21 you're interested in justice, maybe we can review
22 the tapes. Maybe you can freeze frame it. Maybe my
23 lawyers can introduce that into evidence. Maybe
24 they'll want to introduce the fact that Henry Folsom
25 said, "Hey, get your hand off the gun." Did you

1 hear that? I didn't hear it. It's not on any of
2 the tapes. He said, "Hey, I've got papers for you
3 to sign for your computers." That's not on any of
4 the tapes. Henry Folsom, as a matter of fact, said,
5 "Jeff, I got your computers right here. Jeff, I got
6 your papers right here. Get your hand off the gun."

7 And then 20 minutes later in his interview with
8 the Highway Patrol the question is asked to him,
9 "How long did it take until you pulled into the
10 parking lot until shots were fired?"

11 "12 to 15 seconds, just long enough to say what
12 are you doing with that gun." That's your star
13 witness. Three things right there he was impeached
14 on. Two of the three things my lawyers didn't even
15 bring up to you.

16 Now, I don't know what the definition of
17 ineffective assistance of counsel is, but I believe
18 that is right there. Now I don't know why they want
19 to play assistant prosecutor, but at the Erwin
20 Rommel School of Law we're talking the battlefield
21 is the courtroom. The Judge and the enemy -- the
22 Judge and the PA are your enemy and your lawyer is
23 the enemy's spy, and in this matter that's exactly
24 what's happened here. The evidence, the facts of
25 the matter dictate a judgment of acquittal today,

1 and I'd be able to walk out of this and go back to
2 my life. I'd be able to go hug my children this
3 evening. That I'd be able to provide for my family.
4 That's what justice dictates today, not just us.
5 You have no obligation to protect this wicked
6 system, and it is wicked, Your Honor. You as a man
7 can stand up against this tyranny and say let him
8 go. Justice demands that the convictions be
9 sustained, the convictions be overturned. There is
10 no evidence to sustain a conviction and I be set
11 free.

12 So I've said my piece and I appreciate you
13 letting me say it, but justice demands that I be set
14 free today. There is no evidence whatsoever to say
15 that I tried to draw a weapon on them. I don't care
16 what Mr. Parks alleges because he had nothing to
17 sustain a conviction. He had two witnesses and I
18 both proved that they've impeached themselves
19 throughout their testimony. So Your Honor, I ask
20 you to do the right thing and set me free in Jesus'
21 name, Amen.

22 JUDGE SUTHERLAND: The motion for new trial
23 is denied. I will point out a very important fact
24 here and that is that the jury is the decider of
25 facts.

1 MR. WEINHAUS: The jury is only good enough
2 to act on the information that was provided and
3 you --

4 JUDGE SUTHERLAND: That's what I have to act
5 on as well.

6 MR. WEINHAUS: You know what Your Honor,
7 you're a fraud. If you allow this conviction to
8 stand, you are a fraud, sir, and you will be judged.
9 Judge not lest you be judged, and if you don't set
10 me free, then you're just as bad as they are.
11 You're an attempted murderer.

12 JUDGE SUTHERLAND: No one having shown any
13 legal reason why judgment of sentence --

14 MR. WEINHAUS: I believe I did show legal
15 reason.

16 JUDGE SUTHERLAND: Should not be pronounced,
17 it is the judgment and sentence of the Court on
18 Count 1, that's the felony possession of a
19 controlled substance charge, that the defendant
20 serve a term of two years in the Missouri Department
21 of Corrections. On Count 3, that's the misdemeanor
22 possession of a controlled substance charge, the
23 defendant serve a term of one year in the Franklin
24 County jail. On the count, I believe it's Count 4,
25 the charge of attempted assault of a law enforcement

1 officer in the first degree, that the defendant
2 serve a term of 30 years in the Missouri Department
3 of Corrections, and on Count 5, the armed criminal
4 action charge, the defendant also serve a term of 30
5 years in the Missouri Department of Corrections. I
6 will point out that those were the recommendations
7 that the jury made after the sentencing hearing, and
8 it's my practice not to override or undercut, either
9 way, the jury's recommendation as to sentence;
10 however, it is the judgment or the order of the
11 Court that those four sentences be served
12 concurrently. It would be the intention of the
13 Court that the defendant serve a total of 30 years
14 in the Missouri Department of Corrections.

15 MR. WEINHAUS: For what?! For what?!

16 JUDGE SUTHERLAND: Credited with all time
17 served awaiting disposition. There will be a crime
18 victim's compensation final judgment in the amount
19 of, what is it, \$68.00, \$68.00 which is directed to
20 be entered.

21 Mr. Weinhaus, there's two things that can
22 happen at this point, and I suspect both will.
23 First of all, you do have the right to appeal the
24 conviction to the Missouri Court of Appeals Eastern
25 District in St. Louis. That needs to proceed first.

1 Mr. Eastwood, are you going to file a motion, or
2 excuse me, a Notice of Appeal?

3 MR. EASTWOOD: Yes, sir, I'm going to timely
4 file a Notice of Appeal with this Court.

5 JUDGE SUTHERLAND: Notice of Appeal has to
6 be filed within 10 days, and then you have time to
7 get transcripts made and all that sort of thing.
8 Normally the trial attorney is not hired for trial
9 and appeal. You can, of course, hire Mr. Eastwood
10 for the appeal or another attorney for the appeal.
11 If you are indigent, you may apply for the public
12 defender as well. If you wish to file an
13 application for public defender services --

14 MR. WEINHAUS: I believe the Court has one
15 on file already.

16 JUDGE SUTHERLAND: That's some months old,
17 they usually --

18 MR. WEINHAUS: It's current. I haven't been
19 able to do anything for the last eight months. I've
20 been in jail locked up, and you know what --

21 JUDGE SUTHERLAND: I understand that.

22 MR. WEINHAUS: You know what, you're a
23 fraud.

24 JUDGE SUTHERLAND: I would recommend that
25 you file a new application for public defender

1 services. Do you have those at the sheriff's
2 office?

3 MR. WEINHAUS: 30 years for what?

4 MR. PARKS: I believe it would be filed in
5 the Department of Corrections for the appeal
6 attorney because it wouldn't be the local attorneys
7 that would represent him on the appeal.

8 JUDGE SUTHERLAND: Well, at any rate you
9 need to get that filed.

10 MR. WEINHAUS: I want to know why you
11 wouldn't give me another trial.

12 JUDGE SUTHERLAND: Mr. Weinhaus, I'm not
13 going to debate that with you.

14 MR. WEINHAUS: The debate is over, buddy.
15 You're doomed.

16 JUDGE SUTHERLAND: At any rate the appeal
17 has to proceed first. I can't put a time limit on
18 that, could be looking at six months, eight months,
19 10 months, even up to a year before the appeal gets
20 decided, that's not up to me. Once that appeal is
21 ruled on, the Court of Appeals, of course, can do
22 one of two things: They can affirm the conviction
23 or they can reverse all the convictions or somewhere
24 in between, affirm some, reverse some, that's going
25 to be up to them. But in the event that one or more

1 of these convictions is affirmed, after that you
2 have the right to proceed with your post conviction
3 rights under Rule 29.15, and that's what I need to
4 inform you about now.

5 I don't know if you've been informed of this or
6 not, but I need to go over it in any event. You
7 have the right to file the post conviction motion in
8 this Court to vacate, set aside or correct your
9 conviction or the sentence in this case if you claim
10 first, that your conviction or the sentence imposed
11 violates the constitution of the United States.

12 MR. WEINHAUS: Which it does and you're
13 aware of that, sir.

14 JUDGE SUTHERLAND: Or the constitution or
15 laws of the State of Missouri; or two, that this
16 Court was without jurisdiction.

17 MR. WEINHAUS: I believe it is. That's not
18 the American flag. My name is not all capitalized.

19 JUDGE SUTHERLAND: Mr. Weinhaus --

20 MR. WEINHAUS: You know what, you need to do
21 your job, Your Honor.

22 JUDGE SUTHERLAND: You've had your
23 opportunity to speak. I am doing my job and it's my
24 turn to speak.

25 MR. WEINHAUS: No, you're not, you're a

1 fraud! You're a fraud!

2 JUDGE SUTHERLAND: No. 3, the third grounds
3 is if the sentence imposed is in excess of the
4 maximum sentence authorized by law.

5 MR. WEINHAUS: You are a fraud.

6 JUDGE SUTHERLAND: Or four, that you
7 received ineffective assistance of counsel, which
8 you already referred to. A post conviction motion
9 is an exclusive procedure by which you can seek
10 relief for those four types of claims. The forms
11 will be provided for you at the Department of
12 Corrections upon your request. No cost, deposit,
13 filing fees are necessary in order to file that
14 motion. What normally happens, if you file the post
15 conviction rights, since the case is assigned to me,
16 it would come to me, I would appoint appellate
17 counsel out of Columbia to represent you on those
18 post conviction rights and they would have an
19 opportunity to file an amended motion.

20 MR. WEINHAUS: Let me ask you this. Post
21 conviction, we're at post conviction right now. Why
22 won't you do the right thing. The evidence is very
23 clear, Your Honor.

24 JUDGE SUTHERLAND: Mr. Weinhaus, the
25 evidence is not very clear because most of the

1 things you were talking about, there was no evidence
2 of at trial. What I'm trying to explain to you is
3 the timing of filing the post conviction.

4 MR. WEINHAUS: I can read, Your Honor, and I
5 appreciate that, but you need to do your job and set
6 me free now.

7 JUDGE SUTHERLAND: Mr. Weinhaus.

8 MR. WEINHAUS: I've harmed nobody!

9 JUDGE SUTHERLAND: If the convictions are
10 appealed, the Court of Appeals will issue a written
11 opinion affirming them. About 30 days thereafter,
12 they will issue what's called a mandate, a single
13 sheet of paper basically affirming that they affirm
14 the convictions. From the date that mandate is
15 issued, you have 90 days within which to file the
16 post conviction motion. If you're 91 days, you're
17 out of luck, so you've got to file that within 90
18 days, and that's the important thing I want to
19 explain to you today. If you don't file it within
20 90 days after the Court of Appeals mandate is
21 issued, you will have completely waived your post
22 conviction rights. If you do file that motion, you
23 must include every ground known to you for vacating,
24 setting aside or correcting the judgment or
25 sentence. If you're indigent and file your own

1 motion, a lawyer will be appointed for you. Your
2 lawyer would then have 60 days to file an amended
3 motion. A written request for a hearing must be
4 made within the time limits, because if no request
5 for a hearing is timely made, no hearing will be
6 held. Do you understand what I've just told you?

7 MR. WEINHAUS: No, please do it again.

8 JUDGE SUTHERLAND: The whole thing again or
9 examples?

10 MR. WEINHAUS: Yes, sir.

11 JUDGE SUTHERLAND: You have a right to file
12 a post conviction motion under Rule 29.15 in this
13 Court to vacate, set aside or correct your
14 conviction or the sentence in this case if you claim
15 that your conviction or the sentence imposed
16 violates the constitution of the United States or
17 the constitution or laws of the State of Missouri.

18 MR. WEINHAUS: All right.

19 JUDGE SUTHERLAND: Or that this Court was
20 without jurisdiction to impose the sentence or the
21 sentence imposed is in excess of the maximum
22 sentence authorized by law, or that you received
23 ineffective assistance of counsel.

24 MR. WEINHAUS: I have and all those things
25 have been noticed to the Court, and the Court is

1 refusing to act on that. What is your legal reason?

2 JUDGE SUTHERLAND: Mr. Weinhaus --

3 MR. WEINHAUS: Answer my question. Quit
4 playing the game. This is a charade.

5 JUDGE SUTHERLAND: Mr. Weinhaus, am I going
6 to have to send you out and do this on Polycom or
7 have you gagged?

8 MR. WEINHAUS: Whatever you think is
9 necessary. I just want some justice today, Your
10 Honor, and the fact of the matter is I've harmed
11 nobody and you know it.

12 JUDGE SUTHERLAND: Mr. Weinhaus, you made
13 your statement, it's my turn, okay. I do want to
14 ask about the assistance of counsel that you
15 received. You made some comments about your
16 representation.

17 MR. WEINHAUS: I'd love to talk about my
18 counsel.

19 JUDGE SUTHERLAND: Is there any other
20 comments you want to make about your representation
21 of counsel?

22 MR. WEINHAUS: Yes, sir, I've got a whole
23 thing here. First of all, these folks were hired to
24 defend me. They were paid -- I don't know how much
25 money were they paid, six, eight, \$10,000.00, I

1 don't know, I didn't raise the money, it was all
2 raised on the Internet because there are people out
3 here who love this country and believe in this
4 country, but my first question is how many exhibits
5 did you put in there, Hugh? How many exhibits did
6 you enter on my behalf?

7 JUDGE SUTHERLAND: Mr. Eastwood is not a
8 witness at this point.

9 MR. WEINHAUS: Okay, the point being I don't
10 remember any. He didn't put on a defense. He
11 called three witnesses. And by the way, all three
12 of the witnesses saw my hands empty as I fell to the
13 ground after being shot at six times, hit four, but
14 those people are still on the street today. As a
15 matter of fact, they got all their cheerleaders
16 right there with them.

17 JUDGE SUTHERLAND: Mr. Weinhaus, you're
18 getting off the subject.

19 MR. WEINHAUS: I've got 30 years here, Your
20 Honor.

21 JUDGE SUTHERLAND: I understand that. I'm
22 interested in comments you have to make about your
23 representation.

24 MR. WEINHAUS: They failed to introduce
25 pictures of me in the hospital. Highway Patrol was

1 there taking pictures. As soon as I got to the ER,
2 showed a hole right there in my head, two holes in
3 my head, didn't show the jury that. Mr. Parks even
4 said, "Hey, he looks fine to me." My lawyers didn't
5 say anything about that. Throughout the course of
6 the trial, Folsom basically impeached himself.
7 Folsom basically wrote a novel of what happened in
8 less than 12 seconds. Folsom claims in audio
9 interviews of the event conducted by the Highway
10 Patrol, he stated he said to the victim, "I got your
11 computers right here. Jeff, I got papers for you to
12 sign right here." They brought that up to
13 Mr. Folsom but they failed to bring up the fact that
14 he said, "Jeff, get your hand off the gun." That's
15 not anywhere in this trial, but it's there on the
16 tape, if you care to listen to the tape if you're
17 concerned about justice or is it just us.

18 And then later on in the interview Folsom was
19 asked Jeff -- how long was it until Jeff got out of
20 his car until the time he was shot. 12 to 15
21 seconds, just long enough to say what are you doing
22 with that gun. That wasn't brought up in my trial.
23 There's a reflection of me in the car. By the grace
24 of God it ended up, I got a copy of 1/30th of a
25 second, shows that gun right there. I asked him at

1 the trial, introduce that, put that in there. They
2 refused to. They were more concerned about meeting
3 your deadline to be done with my case by 11 o'clock
4 that day than they were about serving me justice.

5 JUDGE SUTHERLAND: Mr. Weinhaus, I will say
6 right now there was no deadline.

7 MR. WEINHAUS: You know what, you had an
8 agenda throughout the whole thing. You're the
9 fixer, you came from the Missouri Supreme Court,
10 you're a fraud, simple as that. And tonight you
11 won't be able to sleep, unless you're heavily
12 medicated or drunk.

13 The FBI was not called. The FBI testified in
14 their depositions, they didn't even see a weapon on
15 me. I told them to call the FBI. They didn't call
16 the FBI. Depositions, we paid for depositions or
17 maybe the Court is paying for it, how does the Court
18 cost work? We paid for depositions. They didn't
19 introduce them. They didn't put them before the
20 jury.

21 JUDGE SUTHERLAND: Normally depositions are
22 not admissible.

23 MR. WEINHAUS: Well, they should have been.
24 They both said hey, we've got papers for you to
25 sign, that wasn't brought up. Mertens wasn't

1 brought up. The reason for the probable cause,
2 Mr. Mertens didn't even smell marijuana that day.
3 Folsom is the only one that smelled marijuana, that
4 wasn't brought up. The bullet, where Mr. Folsom
5 said hey, I think I shot at the gutter guys, they
6 didn't bring that up. There's a hole in the wall of
7 the gas station. That wasn't brought up. There is
8 a picture --

9 JUDGE SUTHERLAND: Actually I believe it
10 was.

11 MR. WEINHAUS: Did you see the picture, no.
12 Picture tells the story. How about the picture of
13 the bullet in the ground. How does a bullet get in
14 the ground unless you're on the ground when they
15 fire the gun? They shot me when I'm laying on the
16 ground. Are you proud of them? You allowed that.
17 You're just as bad as they are. I mean my goodness
18 gracious. The still shot of Mr. Mertens, there's a
19 sequence of pictures, there's a sequence of
20 pictures, about 8 or 10 pictures --

21 JUDGE SUTHERLAND: Mr. Weinhaus, I'm sorry
22 for interrupting but you covered all this before.

23 MR. WEINHAUS: Well, it needs to be covered
24 again because you haven't changed your mind. I'm
25 giving you an opportunity to do the right thing

1 here, Your Honor.

2 JUDGE SUTHERLAND: I'm not going to change
3 my mind at this point, Mr. Weinhaus. Let me ask you
4 another question. Were there any witnesses you
5 asked your attorney to interview that they didn't
6 interview or take depositions of?

7 MR. WEINHAUS: I wasn't aware of anymore
8 witnesses other than the ones I said, the FBI. They
9 weren't called to the stand. The three witnesses --
10 I don't know about all the people who were in the
11 gas station. Why was the troopers who showed up on
12 the scene first, why were they not interviewed. Why
13 was the dash cam not introduced. Hey, whose side
14 are they on? The still shots.

15 JUDGE SUTHERLAND: You had copies and an
16 opportunity to review the police reports; is that
17 right?

18 MR. WEINHAUS: Yes, sir. Obviously I have
19 reviewed the police reports. Have you reviewed the
20 police reports?

21 JUDGE SUTHERLAND: Mr. Weinhaus, I'm not on
22 the stand either.

23 MR. WEINHAUS: Indulge me, you just gave me
24 30 years and I didn't hurt anybody. I didn't harm
25 anybody. You gave me 30 years and I haven't harmed

1 anybody, nobody. I'm the one who's been harmed.
2 I'm the victim. That makes you the criminal, and
3 you'll be able to sleep tonight, huh? Go home to
4 your family, hug your grandkids, huh? You're the
5 criminal. You're the one who's caused injury, loss
6 or harm. You are a black-robed terrorist, an enemy
7 combatant, no different than Osama Bin Laden. Oh,
8 you think that's funny?

9 JUDGE SUTHERLAND: I do, it is rather
10 amusing.

11 MR. WEINHAUS: Really, you think that's
12 funny? My lawyers didn't have the jury
13 instructed -- to ask you to instruct the jury to
14 disregard that video, did he? Why wouldn't you
15 instruct a jury to disregard that video?

16 JUDGE SUTHERLAND: Once again these are all
17 things you covered already. It's on the record.

18 MR. WEINHAUS: And it's going on the record
19 again. You asked me if I had reason for ineffective
20 assistance of counsel. I'm trying to give you those
21 reasons. Now will you allow me to do that? I'm
22 already going away for 30 years.

23 JUDGE SUTHERLAND: You've done it once.

24 MR. WEINHAUS: I didn't hurt anybody or rape
25 anybody. I didn't get 90 days. I didn't kill

1 anybody and get 14 years. I didn't go around and
2 shoot up the county and get 120 days. I didn't have
3 a drug deal go bad, shoot up people and get
4 probation. The jury was not instructed to say hey,
5 if he doesn't testify, then don't hold that against
6 him. Did you tell the jury that, no. My lawyers
7 didn't call up Jim Burn. Jim Burn is a computer
8 expert who spent hours researching this case. He's
9 the one that showed my hands were in the air when
10 they shot me, that I was going down on the ground
11 when they shot me, okay. None of that was -- they
12 didn't bring up any of that. He wasn't interviewed.
13 He wasn't called as a witness. Jim Burn is the one
14 that said, "hey, he didn't say you're going to have
15 to shoot me, man, he said you don't have to shoot
16 me, man." Now would that make a difference to the
17 jury if I said you don't have to shoot me and I'm
18 going down on the ground and my hands are in the
19 air, I'm surrendering? Do you think that would make
20 a difference? I do.

21 No picture was shown of the bullet in the
22 ground, introduced. How about the communication
23 officer talking to Dave Bauer of the Highway Patrol.
24 The CD, audio CD that said David Bauer was asked on
25 the phone, "what's going on?"

1 "Oh, Weinhaus, they're messing with Weinhaus."

2 And Bauer comes back and says, "Oh, they're
3 messing with Weinhaus again."

4 And then Communication Officer Smith says,
5 "Hey, maybe he learned his lesson this time." That
6 wasn't introduced. That's all on there.

7 Did not show the entire watch video. Did not
8 call my ex-wife Valerie to testify hey, he called us
9 up, they didn't even play that video. That video
10 wasn't even introduced. That video wasn't even
11 introduced that I called my ex-wife and said, "Hey,
12 you need to record this. I don't trust the Highway
13 Patrol. They said they're going to give me back my
14 computers." Didn't play that. Didn't play the
15 entire watch video. There's 23 minutes on that
16 watch video. The first five minutes is me going
17 down there praying and God being gracious enough to
18 answer my prayer and not letting me die that day
19 after they tried to murder me, after you tried to
20 murder me because you're just as guilty now and woe
21 unto you.

22 When the road officer pulled in, they didn't
23 show the dash cam of the road officer pulling in and
24 Folsom and Mertens standing there "get away, get
25 away, get away." They tried to kill me that day,

1 Your Honor. The still shots were not introduced
2 into evidence. How could he not introduce those
3 still shots into evidence. They vindicate me.
4 Ain't nothing changed. But you're just as bad as he
5 is because you won't come off of your high -- your
6 bench there and do the right thing and set an
7 innocent man free. "Woe unto them to call evil good
8 and good evil, that put light for darkness and
9 bitter for sweet. Woe to them that are wise in
10 their own eyes and prudent in their own ways." I
11 mean how can you even look at me? By his on
12 admission Folsom admitted that he tried to shoot at
13 the people who were there with the gutters. That
14 wasn't introduced. He tried to kill other people
15 who were there. There was no videotapes of the
16 depositions. My counsel, and I like Hugh, I don't
17 know why he sold me out or didn't adequately defend
18 me.

19 JUDGE SUTHERLAND: Mr. Weinhaus, at this
20 point I am going to interrupt you, pardon me. I
21 have seen and heard nothing that indicates any such
22 thing. As a matter of fact I think Mr. Eastwood did
23 an exceptionally good job.

24 MR. WEINHAUS: Really, that's why I got 30
25 years.

1 JUDGE SUTHERLAND: You started with eight
2 counts, two of them got dismissed after the State's
3 evidence, two more you were found not guilty of, and
4 I was impressed with Mr. Eastwood's representation
5 of you throughout the trial, let's put it that way.

6 MR. WEINHAUS: Really. If you're so
7 impressed, then do the right thing and acquit me
8 after you've been made aware of the facts. If you
9 don't acquit me right now, you don't unloose my
10 hands and let me go home to my children and my
11 family, you're just as guilty as they are. You're
12 just as guilty as Folsom is. You're just as guilty
13 as Mertens is. You're just as guilty as Bob Parks
14 is. You are a black-robed terrorist, and that's the
15 reason why I put my paper out and do my videos is to
16 get people like you off the bench, because I don't
17 believe you did a good job at all here. You're
18 perverting justice. This Court is a kangaroo Court.
19 I walked into this Court as the victim, and I'm
20 walking out of it as the victim, and you're well
21 aware of the facts of the matter, and the fact of
22 the matter is very simple, I'm the one who was shot
23 at. I'm the victim here. That would make you the
24 criminal. It would make these Highway Patrolmen the
25 criminal, and I just pray that the American people

1 wake up and realize what's going on in this country
2 because we've been overthrown by black-robed
3 terrorists such as yourself. And shame on you for
4 not doing the right thing. And God as my witness
5 will deal with you. "Vengeance is his sayeth the
6 Lord, he will repay." I'm not going to threaten you
7 to do anything, that's not who I am. Psalm 94 is
8 very clear, "Oh, Lord God through vengeance
9 belongeth, show yourself," and he will show himself
10 in your life. You have come against a child of the
11 most high God. I was shot four times. I should be
12 dead. He's allowed me to live to tell you --

13 JUDGE SUTHERLAND: Mr. Weinhaus --

14 MR. WEINHAUS: That you need to repent and
15 get right with the Lord.

16 JUDGE SUTHERLAND: Mr. Weinhaus, that's
17 enough. We are done. The Court finds there's no
18 probable cause to believe the defendant has received
19 ineffective assistance of counsel.

20 MR. WEINHAUS: Oh, come on.

21 JUDGE SUTHERLAND: The defendant is remanded
22 into the custody of the sheriff. We're in recess.

23 (HEARING ADJOURNED)

24

25

1 State of Missouri

2 SS.

3 County of Franklin

4 I, Kim Wrocklage, duly commissioned, qualified
5 and authorized to administer oaths and to certify to
6 depositions, do hereby certify that pursuant to
7 agreement in the civil cause now pending and
8 undetermined in the Circuit Court of Franklin
9 County, State of Missouri, to be used in the trial
10 of said cause in said court, I was attended at the
11 Franklin County Justice Center, 401 E. Main Street,
12 Union, in the County of Franklin, State of Missouri
13 on the 25th day of November, 2013.

14 Said hearing was reported by me in shorthand
15 and caused to be transcribed into typewriting, and
16 the foregoing pages correctly set forth the
17 testimony, together with the questions propounded by
18 counsel and remarks and objections of counsel
19 thereto, and is in all respects a full, true,
20 correct and complete transcript.

21 I further certify that I am not of counsel or
22 attorney for either of the parties to said suit, not
23 related to nor interested in any of the parties or
24 their attorneys.

25 _____/s/ Kim Wrocklage, CCR No. 885_____