UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA CHARLESTON

UNITED STATES OF AMERICA

v. **CRIMINAL NO. 2:18-cr-00134**

ALLEN H. LOUGHRY II

MOTION *IN LIMINE* REGARDING
DEFENDANT'S SELF-SERVING OUT-OF-COURT STATEMENTS

Comes now the United States of America, by Philip H. Wright and R. Gregory McVey, Assistant United States Attorneys for the Southern District of West Virginia, and files this Motion *in Limine* to preclude the introduction by Defendant of self-serving, exculpatory statements. Any such statement is hearsay and is inadmissible by Defendant.

During the course of the investigation of this case, investigating agents conducted several interviews with Defendant. Those interviews contain self-serving statements, which may be viewed as exculpatory. For example, Defendant expressed his disagreement with the manner in which the West Virginia Supreme Court of Appeals spent public funds. He also expressed concerns over the lack of fiscal oversight by the other justices and court administration.

A statement is not hearsay if "[t]he statement is offered against a party and is (A) the party's own statement, in either an individual or representative capacity or . . . (C) a statement by a person authorized by the party to make a statement concerning the subject." Fed. R. Evid. 801(d)(2)(A) and (C).

Neither Defendant nor any defense witness, however, may offer Defendant's out-of-court statements into evidence. Such statements are hearsay pursuant to Rule 801 and are not

"admissions by a party opponent" under Rule 801(d)(2) when offered by the party himself, rather than the party's "opponent." *United States v. Wilkerson*, 84 F.3d 692, 696 (4th Cir. 1996) ("Admissions by a party-opponent are not considered hearsay and therefore can be admitted against that party . . . . The rules do not, however, provide an exception for self-serving, exculpatory statements made by a party which are being sought for admission by that same party."); *see also, United States v. Yousef*, 327 F.3d 56, 153 (2d Cir. 2003) ("[W]hile the Government was free to introduce the statement as an admission by a party-opponent, see Fed. R. Evid. 801(d)(2)(A), [the defendant] had no right to introduce it on his own.").

Based on the above, the United States moves this court to preclude Defendant from introducing his self-serving statements at trial.

Respectfully submitted,

MICHAEL B. STUART

United States Attorney

By:

s/R. Gregory McVey

R. GREGORY McVEY
Assistant United States Attorney
WV State Bar No. 2511
300 Virginia Street, East
Charleston, WV 25301
Telephone: 304-345-2200
Fax: 304-347-5104
E-mail: greg.mcvey@usdoj.gov

PHILIP H. WRIGHT
Assistant United States Attorney
WV State Bar No. 7106
300 Virginia Street East
Room 4000
Charleston, WV 25301
Telephone: 304-345-2200
Fax: 304-347-5104
Email: philip.wright@usdoj.gov

CERTIFICATE OF SERVICE

It is hereby certified that service of the foregoing "MOTION *IN LIMINE* REGARDING DEFENDANT'S SELF-SERVING OUT-OF-COURT STATEMENTS" has been electronically filed and service has been made on opposing counsel by virtue of such electronic filing on this 28th day of August, 2018, to:

John A. Carr, Esq.
John A. Carr Attorney at Law, PLLC
179 Summers Street, Suite 209
Charleston, WV 25301

s/R. Gregory McVey
R. GREGORY McVEY
Assistant United States Attorney
WV State Bar No. 2511
300 Virginia Street, East
Charleston, WV 25301
Telephone: 304-345-2200
Fax: 304-347-5104
E-mail: greg.mcvey@usdoj.gov