

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 13-0775

STATE OF WEST VIRGINIA,

Plaintiff below, Respondent,

v.

ZACHARY ALLEN KNOTTS, JR.,

Defendant below, Petitioner.

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

| | Page |
|--|-------------|
| I. ASSIGNMENTS OF ERROR | |
| The Circuit Court erred by finding that the defendant’s statements to employees of a credit union amounted to a threat against the civil population | 1 |
| II. STATEMENT OF THE CASE | 1 |
| III. SUMMARY OF ARGUMENT | 3 |
| IV. ORAL ARGUMENT | 4 |
| V. ARGUMENT | |
| A. Standard of Review | 5 |
| B. The State produced sufficient evidence that the Petitioner’s acts in threatening to blow up the cars of Credit Union employees was intended to “intimidate or coerce the civilian population. | 6 |
| 1. There was sufficient evidence the Petitioner made the threat to blow p the cars in the Credit Union parking lot | 6 |
| 2. There was sufficient evidence that the Petitioner’s threat was intended to intimidate of coerce the civilian population | 7 |
| a. The civilian population at issue here is either the workforce of the Credit Union or all members or potential members of the Credit Union and these populations are sufficiently broad as to not come within the ambit of <i>Morales</i> that a street gang does not constitute a civilian population | 9 |
| b. The theat to blow up numerous cars in a parking lot abutting a public thoroughfare is not simply “street crime” but falls well within the mainstream paradigm for what constitutes terrorist activity that is meant to intimidate or coerce the civilian population | 12 |
| VI. CONCLUSION | 15 |

TABLE OF AUTHORITIES

| <u>CASES</u> | <u>Page</u> |
|---|--------------------|
| <i>Dickens v. United States</i> , 19 A.3d 321, 324 n.17 (D.C. 2011) | 11 |
| <i>In re Douglas D.</i> , 626 N.W.2d 725 (Wis. 2001) | 14 |
| <i>Jackson v. Virginia</i> , 443 U.S. 307 (1979) | 5 |
| <i>Lee-Norse Co. v. Rutledge</i> , 170 W. Va. 162, 291 S.E.2d 477 (1982) | 10 |
| <i>Meadows v. Wal-Mart Stores</i> , 207 W. Va. 203, 530 S.E.2d 676 (1999) | 11 |
| <i>Miners in General Group v. Hix</i> , 123 W. Va. 637, 17 S.E.2d 810 (1941) | 10 |
| <i>Morales</i> , 982 N.E.2d at 585-86, 982 N.E.2d at 586 | 13 |
| <i>Nakamoto v. Fasi</i> , 635 P.2d 946 (Hawaii 1981) | 7 |
| <i>People v. Morales</i> , 982 N.S.2d 580 (N.Y. 2012) | 7 |
| <i>State ex rel. Frazier v. Meadows</i> , 193 W. Va. 20, 454 S.E.2d 65 (1994) | 12 |
| <i>State ex rel. Harrison v. Coiner</i> , 154 W. Va. 467, 176 S.E.2d 677 (1970) | 5 |
| <i>State ex rel. Orlofske v. City of Wheeling</i> , 212 W. Va. 538, 575 S.E.2d 148 (2002) | 12 |
| <i>State v. Guthrie</i> , 194 W. Va. 657, 461 S.E.2d 163 (1995) | 3, 5-6 |
| <i>State v. Horn</i> , ___ W. Va. ___, 2013 WL 5433540 (2013) | 5 |
| <i>State v. Laber</i> , No. 12CA24, 2013 WL 3283218 (Ohio Ct. App. June 11, 2013) | 10 |
| <i>State v. LaRock</i> , 196 W. Va. 294, 470 S.E.2d 613 (1996) | 5, 7 |
| <i>State v. Malfregeot</i> , 224 W. Va. 264, 685 S.E.2d 237 (2009) (per curiam) | 6 |
| <i>Tennant v. Marion Health Care Foundation</i> , 194 W. Va. 97, 459 S.E.2d 374 (1995) | 5 |
| <i>United States v. Armel</i> , 585 F.3d 182 (4th Cir. 2009) | 14 |
| <i>United States v. Bronzino</i> , 598 F.3d 276 (6th Cir. 2010) | 6 |
| <i>United States v. Castellanos</i> , 731 F.2d 979 (D. C. Cir. 1984) | 6 |
| <i>United States v. Garcia-Ochoa</i> , 607 F.3d 371 (4th Cir. 2010) | 6 |

| | |
|--|----|
| <i>United States v. Grace</i> , 367 F.3d 29 (1st Cir. 2004) | 6 |
| <i>United States v. Laughlin</i> , 804 F.2d 1336 (5th Cir. 1986) | 6 |
| <i>United States v. Mazza-Alaluf</i> , 621 F.3d 205 (2d Cir. 2010) | 6 |
| <i>United States v. Moren</i> , 403 Fed. Appx. 212 (9th Cir. 2010) | 6 |
| <i>United States v. Parker</i> , No. 3:12-154, 2013 WL 1497432 (E. D. Tenn. Apr. 10, 2013) | 11 |

STATUTES

| | |
|--|----------|
| West Virginia Code § 61-6-24 | 4, 6, 14 |
| West Virginia Code § 27-6A-6 | 5 |

OTHER

| | |
|---|--------|
| American Academy of Osteopathic Surgeons, <i>Emergency Medical Technical Transition Manual</i> (2013) | 13, 14 |
| Collins, Hugh, <i>Authorities Warn of Possible Terrorist Attacks on Banks, CEOs</i> , www.dailyfinance.com/2011/02/01/authorities-warn-of-possible-terrorist-attacks-on-banks-report/ | 15 |
| <i>Combating Terrorist Use of Explosives in the United States</i> , Presidential Homeland Security Directive - 19 (Feb. 12, 2007) | 13-14 |
| Gay, Lance, <i>Threats Against Banks Cause Tightened NY, DC security</i> , www.globalsecurity.org/org/news/2004/040802-terror-threat.htm | 15 |
| Herlihy, Thomas I., <i>Development of Updated Standard Operating Guidelines for Response to Bombing Incidents by the District of Columbia Fire and Emergency Medical Services Department</i> (2000) | 13 |
| Madhani, Aamer, <i>Obama: “Lone Wolf” Attack is Biggest Concern</i> , National Journal (Aug. 16, 2011) | 4, 14 |
| White, Jonathan R., <i>Terrorism and Homeland Security</i> (7th ed. 2012) | 13 |
| Wilson, David S. Kris & J. Douglas, <i>National Security Investigations and Prosecutions</i> (2007) | 12 |

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RESPONDENT'S BRIEF

I.

ASSIGNMENT OF ERROR

The Circuit Court erred by finding that the defendant's statements to employees of a credit union amounted to a threat against the civil population.

II.

STATEMENT OF THE CASE

The Petitioner (who had previously suffered from an injury resulting in a loss of a portion of his brain) was a member of the Fairmont Federal Credit Union. App. 13. The Petitioner had approached pregnant employees and customers trying to talk to them about circumcision. App. 13. The Credit Union closed the Petitioner's account; the Petitioner believed such action was taken in retaliation for his conduct in speaking out against circumcision. App. 13, 47.

On the day he learned his account had been closed, the Petitioner called the Fairmont Federal Credit Union three times. App. 12-13, 24. The Petitioner spoke to Randi Lynn Morris, a call center representative. App. 12, 22. The Petitioner identified himself, and Ms. Morris, who had spoken to the Petitioner before and was familiar with his voice, recognized the Petitioner's voice. App. 23.

During the second of these calls, the Petitioner became upset and told Ms. Morris that “he would ‘come in and let the world know what he thought about the Credit Union’ by putting ‘explosive devices’ on the employees’ vehicles.” App. 13, 24-25. Ms. Morris testified she had “no doubt . . . [the Petitioner] did say to [her] that he was going to come and place explosive devices on the vehicles of people at the Fairmont Federal Credit Union and explode their cars[.]” App. 26. Further, the Petitioner was going to use DVDs to tape the explosions to “let everybody see what he was going to do, because he was going to put DVD’s across our property to let everybody watch.” App. 25.

After this conversation, the Credit Union was placed on lock down. App. 13, 25. When the Petitioner telephoned a third time, Ms. Morris immediately terminated the call. App. 13, 25.

At some point thereafter, the Petitioner physically went to the Credit Union because when Detective Clarence Phillips responded, he found the Petitioner sitting on the tailgate of the Petitioner’s vehicle across the street from the Credit Union’s employee parking lot. App. 35. Apparently, at least some of the employees told Detective Phillips they could see the Petitioner sitting across the street. App. 40. The parking lot was about 100 feet from where Ms. Morris and twenty-nine other co-workers were working on the day of the threat. App. 29. The police took the threat seriously enough to search the employee parking lot, but did not find any explosives. App. 37-38. The police also did not find any explosives on the Petitioner. App. 40.

The Petitioner was indicted for threatening to commit a terrorist act under West Virginia Code § 61-4-26. App. 2. The Petitioner was found incompetent to stand trial, App. 11-12, and his

counsel filed a “Motion for Opportunity to Offer a Defense to the Charges Pending Against the Defendant Before the Court.” App. 3.

At the hearing, and contrary to Ms. Morris’s testimony, the Petitioner denied threatening to blow up cars, but claimed he wanted to place e-mails and DVDs on the vehicles in the parking lot to expose the Credit Union’s purported attempts to silence him in violation of his First Amendment right to speak in opposition to circumcision. App. 13, 46-47.

The circuit court concluded that the State had adduced sufficient evidence for a jury to have concluded the Petitioner made terrorist threats. App. 16. The circuit court specifically found that notwithstanding the threat was only made to the Credit Union employees, there was sufficient evidence that the threat pertained to the civilian population at large, App. 16, that is, the risk an explosion or explosions would pose to the citizenry at large that were not Credit Union employees. App. 16.

III.

SUMMARY OF ARGUMENT

The Petitioner here threatened to blow up the cars of the employees of the Credit Union. Regardless of the fact he testified he did not make this threat, under the highly deferential sufficiency of evidence standard articulated by this Court in *State v. Guthrie*, 194 W. Va. 657, 667, 461 S.E.2d 163, 173 (1995), this Court must look at the evidence in a light most favorable to the State—and must, therefore, accept that the Petitioner made this threat.

At the very least, the Credit Union employees constituted a population as that term is used in West Virginia Code § 61-4-26. But this was not the only population at issue. Here, the Petitioner did not simply intend to blow cars up, he intended to let “*everybody* watch.” Thus, the Petitioner intended to intimidate and coerce, not just the Credit Union employees, but a much broader spectrum of the public—everybody who was a member of the Credit Union (to coerce them into quitting the Credit Union because it could not protect them physically or protect their assets) and everybody who was a potential member of the Credit Union (by intimidating them into not becoming a member of the Credit Union for the same reasons).

Additionally, the Petitioner’s threat to blow up cars falls well within the definition of intimidating and coercing a civilian population since the use of bombs has been, and continues to be, a standard terrorist tactic. Even if, as he insists in his brief, the Petitioner was “angry” and “incapable of articulating his displeasure in a socially acceptable manner[,]” Pet’r’s Br. at 10, “when you’ve got one person who is deranged or driven by a hateful ideology, they can do a lot of damage” Aamer Madhani, *Obama: “Lone Wolf” Attack is Biggest Concern*, National Journal (Aug. 16, 2011). And, the legislative history of the federal antecedents to the intimidate or coerce language in West Virginia Code § 61-6-24 specifically includes as an example of conduct intended to intimidate or coerce a civilian population, “detonation of bombs in a metropolitan area.”

IV.

ORAL ARGUMENT

Oral argument is not necessary in this case and this case is suitable for memorandum decision.

V.

ARGUMENT

A. Standards of Review.

This Court has held that “[q]uestions of law and interpretations of statutes and rules are subject to a *de novo* review.” *State v. Horn*, ___ W. Va. ___, ___, 2013 WL 5433540, 2 (W. Va. 2013) (quoting Syl. Pt. 1, in part, *State v. Duke*, 200 W. Va. 356, 489 S.E.2d 738 (1997)). However, the highly deferential clearly erroneous standard applies to findings of fact. *Tennant v. Marion Health Care Found*, 194 W. Va. 97, 106, 459 S.E.2d 374, 383 (1995). “This Court has uniformly held that findings of fact made by a trial court, sitting without a jury on in lieu of a jury, will not be reversed or set aside on appeal unless such findings are clearly wrong.” *State ex rel. Harrison v. Coiner*, 154 W. Va. 467, 474, 176 S.E.2d 677, 681 (1970).

Moreover, under West Virginia Code § 27-6A-6, a circuit court is permitted to release the defendant from criminal custody if it “finds insufficient evidence to support a conviction[.]” This implicates sufficiency of the evidence review which is also highly deferential. *State v. Guthrie*, 194 W. Va. 657, 667, 461 S.E.2d 163, 173 (1995).

West Virginia follows *Jackson v. Virginia*, 443 U.S. 307 (1979) in reviewing sufficiency of the evidence claims. *State v. LaRock*, 196 W. Va. 294, 303, 470 S.E.2d 613, 622 (1996). Thus,

[t]he function of an appellate court when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, is sufficient to convince a reasonable person of the defendant’s guilt beyond a reasonable doubt. Thus, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt.

Syl. Pt. 1, *State v. Guthrie*, 194 W. Va. 657, 461 S.E.2d 163 (1995). These standards apply to appeals from convictions at bench trials alleging insufficient evidence. *See, e.g., State v. Malfregeot*, 224 W. Va. 264, 271-72, 685 S.E.2d 237, 244-45 (2009) (per curiam).¹

B. The State produced sufficient evidence that the Petitioner’s acts in threatening to blow up the cars of Credit Union employees was intended to “intimidate or coerce the civilian population.”

The circuit court found there was sufficient evidence the Petitioner violated West Virginia Code § 61-6-24(b) (“Anti-Terrorism Threat” Statute or WVATS), which provides, in pertinent part, “[a]ny person who knowingly and willfully threatens to commit a terrorist act, with or without the intent to commit the act, is guilty of a felony[.]” A terrorist act is an act, in pertinent part, “[l]ikely to result in serious bodily injury or damage to property or the environment; and [i]ntended to: [i]ntimidate or coerce the civilian population[.]” *Id.* § 61-6-26(a)(3)(A) & (B)(I). Because the circuit court did not err in reaching its decision, it should be affirmed.

1. *There was sufficient evidence the Petitioner made the threat to blow up the cars in the Credit Union parking lot.*

The Petitioner argues the evidence was insufficient to show he threatened to blow up the cars in the employee parking lot. Pet’r’s Br. at 9. This is an insupportable position. Ms. Morris testified the Petitioner did make the threats. This was sufficient evidence to establish the Petitioner did

¹For courts also finding that the clearly erroneous and *Jackson* standards apply to bench trial convictions, *see United States v. Castellanos*, 731 F.2d 979, 984 (D.C. Cir. 1984); *United States v. Grace*, 367 F.3d 29, 34-35 (1st Cir. 2004); *United States v. Mazza-Alaluf*, 621 F.3d 205, 209 (2d Cir. 2010); *United States v. Garcia-Ochoa*, 607 F.3d 371, 376 (4th Cir. 2010); *United States v. Laughlin*, 804 F.2d 1336, 1339 (5th Cir. 1986); *United States v. Bronzino*, 598 F.3d 276, 278 (6th Cir. 2010); *United States v. Moren*, 403 Fed. Appx. 212, 213 (9th Cir. 2010).

threaten to blow up the cars in the employee parking lot. Even if the Petitioner’s testimony contradicted Ms. Morris’s, this Court is obligated to conclude the trial court resolved this “evidentiary conflict[] and credibility question[] in the prosecution’s favor[,]” Syl. Pt. 2, in part, *State v. LaRock*, 196 W. Va. 294, 470 S.E.2d 613 (1996)), i.e., it credited Ms. Morris’s testimony and discounted the Petitioner’s.²

2. *There was sufficient evidence that the Petitioner’s threat was intended to intimidate or coerce the civilian population.*

Further, the Petitioner’s claim that there was insufficient evidence that the threat to blow up the employees cars in the parking lot was intended to intimidate or coerce the civilian population is erroneous.

The Petitioner tries to find support for his position in *People v. Morales*, 982 N.S.2d 580 (N.Y. 2012). Pet’r’s Br. at 10-11. *Morales* gives the Petitioner no solace and actually supports the State’s position.

Morales was a street gang member of the “St. James Boys” or “SJB”— named apparently for the vicinity of the Bronx where the gang operated. *Id.* at 582. The SJB was originally created to protect its membership from other gangs with its predominant goal to be the most feared Mexican gang in the Bronx. *Id.* The SJB allegedly targeted and assaulted people who belonged to rival

² It is axiomatic that blowing up cars in a parking lot is “[l]ikely to result in . . . damage to property or the environment[,]” as well as “serious bodily injury[,]” both to Credit Union employees and—as the circuit court observed—other members of the community App. 16. *See Nakamoto v. Fasi*, 635 P.2d 946, 953 (Hawaii 1981) (noting “the threat of death or serious bodily injury to members of the public posed by the introduction of inherently lethal weapons or bombs.”). *Cf. Car Fire Explosion Close Call Reminder*, www.youtube.com/watch?v=Y-S_D_hFpM0; *We blow up THREE Police Cars! Justice!*, www.youtube.com/watch?v=gDTC3kCG2v8, *Exploding Bumper Shock Absorber Injures Firefighter*, www.youtube.com/watch?v=Klr0xUif8UA.

confederations, extorted monies from a prostitution business, and committed a series of robberies.

Id.

One night, Morales, and several other SJB members, attended a party in the Bronx. *Id.* at 583. The SJBs observed a certain “Miguel” who the SJBs thought belonged to a rival gang responsible for a friend’s death. *Id.* When Miguel refused their demand to leave the party, the SJBs planned to assault Miguel after the party. *Id.* Morales took a revolver from another SJB member and agreed to shoot Miguel if it appeared his cohorts were losing the battle. *Id.*

A fight broke out between the SJB members and Miguel and his companions, during which an SJB member directed Morales to shoot. *Id.* Morales fired five bullets, with three hitting one of the rivals, paralyzing him and a 10-year-old girl who died from her wound. *Id.*

Morales was charged with terrorism. *Id.* At trial, Morales challenged the sufficiency of the evidence supporting the terrorism charges. *Id.* The defense argued the SJBs activities were “directed at rival gangs, almost exclusively” and there was “no real evidence, certainly not evidence sufficient to get to the jury on the element of acting with intent to intimidate or coerce a civilian population.” The People argued the targeting of other gangs was terrorism and, in any event, there was adequate proof that the SJB engaged in acts intended to intimidate or coerce all Mexican-Americans in the pertinent geographical area. *Id.*

The New York Court of Appeals reversed the conviction. The court concluded the element of “intent to intimidate or coerce a civilian population” was not met. The court found it unnecessary “to precisely define the contours of the phrase ‘civilian population’” for two reasons. First, assuming all of the Mexican-Americans in the St. James area may be a civilian population, there was no evidence at trial to show Morales and the other SJBs committed the acts against Miguel and his

companions with the conscious objective of intimidating every Mexican–American in the territory identified at trial; instead the evidence showed Morales attacked Miguel because of Miguel’s assumed membership in a rival gang and his refusal to leave the party and, thus, the court did “not believe that this discrete criminal transaction against identified gang enemies was designed to intimidate or coerce the entire Mexican–American community in this Bronx neighborhood.” *Id.*

Second, while there was a valid line of reasoning and permissible inferences from which the jury could have concluded one of Morales’s goals for attacking Miguel was to intimidate or coerce another gang, there was no indication the legislature enacted the terrorism statute to elevate gang-on-gang street violence to the status of terrorism as that concept is commonly understood. *Id.* at 585.

Morales is factually distinct from this case in its approach to what constitutes a civilian population, but actually supports the conclusion that the Petitioner’s threat was not simple street crime but was a threat of a true terrorist nature.

- a. **The civilian population at issue here is either the workforce of the Credit Union or all members or potential members of the Credit Union and these populations are sufficiently broad as to not come within the ambit of *Morales* that a street gang does not constitute a civilian population.**

Assuming that *Morales* is properly decided and a street gang is not a civilian population, that is not dispositive here because the population at issue here was either (1) the Credit Union’s employees, and that differentiates this case from *Morales* or, more broadly (2) all members and potential members of the Credit Union.

For example, in *State v. Laber*, No. 12CA24, 2013 WL 3283218 (Ohio Ct. App. June 11, 2013), *appeal not allowed*, 2013-Ohio-4861 (Ohio Nov 06, 2013) (Table), while at his workplace, Laber talked with a co-worker and asked if she ever thought of shooting someone or bombing their place of employment. *Id.* at *1. When the co-worker replied no, Laber continued that he thought of shooting two other co-workers and that he had three bombs and “would start at the front office.” *Id.* Laber was convicted of making a terrorist threat. *Id.*

On appeal, Laber asserted that there was no evidence to show his statement was made “to intimidate or coerce a civilian population.” *Id.* at *3. The appeals court held there was sufficient evidence because Laber conveyed threats to a fellow employee against his employer while at his place of employment and this was “sufficient for the trier of fact to conclude that appellant meant to intimidate the population at the workplace.” *Id.* Thus, a “population at the workplace” should fall within West Virginia Code § 61-6-26.

Further, the Petitioner’s acts in threatening to blow up employees’ cars was not aimed only at the workplace. The Petitioner also threatened he was going to “let everybody see what he was going to do, because he was going to put DVD’s across our property to let everybody watch.” App. 25. Thus, the Petitioner did not simply intend to blow cars up, he intended to let “*everybody* watch.” Thus, the Petitioner intended to intimidate and coerce, not just the Credit Union employees, but a much broader spectrum of the public.

“In the absence of any definition of the intended meaning of words or terms used in a legislative enactment, they will, in the interpretation of the act, be given their common, ordinary and accepted meaning in the connection in which they are used.” Syl. pt. 1, *Miners in Gen. Group v. Hix*, 123 W. Va. 637, 17 S.E.2d 810 (1941), *overruled, in part, on other grounds* by *Lee-Norse Co. v. Rutledge*, 170 W. Va. 162, 291 S.E.2d 477 (1982). To intimidate or coerce have somewhat

overlapping definitions. “A modern dictionary definition of ‘intimidate’ is: ‘(1) to make timid; fill with fear; (2) to coerce, inhibit, or discourage by or as if by threats.’” *Dickens v. United States*, 19 A.3d 321, 324 n.17 (D.C. 2011) (quoting *American Heritage Dictionary* 439-40 (4th ed. 1994)). “The term ‘coerce’ means: (1) ‘to restrain or dominate by force’; (2) ‘to compel to an act or choice’; or (3) ‘to enforce or bring about by force or threat.’” *United States v. Parker*, No. 3:12-154, 2013 WL 1497432, at *7 (E.D. Tenn. Apr. 10, 2013) (quoting *Webster’s Ninth New Collegiate Dictionary* 256 (9th ed.1985)). Thus, if the ideas of intimidation and coercion are to be given independent effect, *see, e.g.*, Syl. Pt. 3, *Meadows v. Wal-Mart Stores*, 207 W. Va. 203, 530 S.E.2d 676 (1999) (“A cardinal rule of statutory construction is that significance and effect must, if possible, be given to every section, clause, word or part of the statute.”), then it is that the two words are obverse of each other, that is, “intimidate” carries with it the connotation of restraining action and “coerce” carries with it the connotation of compelling action.

The Petitioner’s aim here was both to coerce and intimidate; he intended to coerce all *current* members of the Credit Union by causing them to abandon the Credit Union in fear that the Credit Union could not guarantee their personal safety or the safety of their deposits, and to intimidate *potential* members from joining the Credit Union for those very same reasons. Thus, the population at issue was not limited to the employees of the Credit Union; it included “*everybody*,” or at least everybody who was or could have been a member of the Credit Union—all those who “live[d], work[ed], worship[ed] volunteer[ed] or [went to] school in, and businesses and other legal entities located within . . . Marion, Monongalia, Harrison and Taylor counties” as well as “[a]nyone in the immediate family of an eligible member . . . even if the eligible member d[id] not join [that is,] spouse, parent, child, sibling, grandparent and grandchild[,] [a]doptive and step-relationships[.]” Fairmont Federal Credit Union, *Eligibility Requirements*, [www.fairmontfcu.com/subpages.php? cat=1&s=1](http://www.fairmontfcu.com/subpages.php?cat=1&s=1).

And while the Petitioner asserts the WVATS requires the Petitioner be attempting “to promote some sort of social, political or economic agenda[,]” Pet’r’s Br. at 10, no such requirement appears in the WVATS. “The statute does not target terrorism of any particular political stripe or ideological orientation, and thus it does not matter whether the terrorist group is pursuing a political, religious, nationalist, ethnic, environmental, or nihilist goal or agenda, as long as the other requirements of the statute are satisfied.” David S. Kris & J. Douglas Wilson, *National Security Investigations and Prosecutions* § 8:26 (2007). Since “[c]ourts are not free to read into the language what is not there, but rather should apply the statute as written[,]” *State ex rel. Frazier v. Meadows*, 193 W. Va. 20, 24, 454 S.E.2d 65, 69 (1994), “this Court is not authorized to read such language into the statute.” *State ex rel. Orlofske v. City of Wheeling*, 212 W. Va. 538, 546, 575 S.E.2d 148, 156 (2002). All that is required is the Petitioner be acting to intimidate or coerce a civilian population, regardless of why the Petitioner is so acting. But, even if the agenda criteria the Petitioner advances does apply, it is manifestly met here, where the Petitioner’s act is to damage the Credit Union—surely an attempt to advance a social or economic agenda.

The Circuit Court should be affirmed.

- b. The threat to blow up numerous cars in a parking lot abutting a public thoroughfare is not simply “street crime” but falls well within the mainstream paradigm for what constitutes terrorist activity that is meant to intimidate or coerce the civilian population.**

The Petitioner’s reliance on *Morales* also founders because the type of activity threatened here, bombing cars, is not the type of common street crime that *Morales* concluded did not fall within the New York Anti-Terrorism Act. Indeed, use of explosive devices is *exactly* the kind of conduct that *Morales* would fall within the ambit of the New York Anti-Terrorism Act.

Morales specifically observed the intimidate or coerce language traces its roots to the Federal Intelligence Surveillance Act, *see* 982 N.E.2d at 586, and FISA’s legislative history identifies examples of activities that, *inter alia*, intimidate the civilian population include “detonation of bombs in a metropolitan area[,]” *Morales*, 982 N.E.2d at 585-86 * n.2 (quoting S. Rep. 95–701, 95th Cong., 2d Sess. at 30, *reprinted in* 1978 U.S. Code Cong. & Admin. News at 3999)—the *exact* kind of activity the Petitioner threatened here.

In point of fact, conventional “[b]ombings are one of the most likely manifestations that terrorism will take in this country[,]” Thomas I. Herlihy, *Development of Updated Standard Operating Guidelines for Response to Bombing Incidents by the District of Columbia Fire and Emergency Medical Services Department* at 6 (2000) and “[t]o date, the preferred W[eapon of] M[ass] D[estruction] for terrorists has been explosive devices.” American Academy of Osteopathic Surgeons, *Emergency Medical Technical Transition Manual* 352 (2013). Indeed, of the seven incidents that *Morales* cited from the legislative history of the New York Anti-Terrorism Statute as being terroristic, all but two were bombings. *Morales*, 982 N.E.2d at 585.³ In short, the Petitioner’s threats fall well within the common paradigm of terrorism since “the most common weapon of terrorism has been and is still the bomb.” Jonathan R. White, *Terrorism and Homeland Security* 137 (7th ed. 2012). *See also* *Combating Terrorist Use of Explosives in the United States*, Presidential Homeland Security Directive - 19 at 3 (Feb. 12, 2007) (“The threat of explosive attacks in the United States is of great concern considering terrorists’ ability to make, obtain, and use explosives, the ready availability of

³The bombing incidents were bombings of American embassies in Kenya and Tanzania in 1998, the 1995 Oklahoma City federal office building bombing, the 1993 World Trade Center bombing, and the 1988 the mid-air bombing of Pan Am Flight 103 over Lockerbie, Scotland. The legislative history also included the September 11, 2001 destruction of the World Trade Center Towers and attack on the Pentagon. The other events were the 1997 shooting from atop the Empire State Building and the 1994 murder of Ari Halberstam on the Brooklyn Bridge. *Morales*, 982 N.E.2d at 585

components used in I[mprovised] E[xplosive] D[evices] construction, the relative technological ease with which an IED can be fashioned, and the nature of our free society.”).

Additionally, that the Petitioner was acting alone does not mitigate the terrorist nature of his threats. So called “lone wolf” terrorist bombers have struck with devastating consequences in the past. For example, the 1996 Summer Olympic attacks in Atlanta were executed by one person. American Academy of Osteopathic Surgeons, *Emergency Medical Technical Transition Manual* 352 (2013). And the Petitioner’s mental status does not negate the threat; if anything, it compounds it. As the Petitioner’s brief states, the Petitioner was “angry” and “incapable of articulating his displeasure in a socially acceptable manner.” Pet’r’s Br. at 10. But, as President Obama has recognized, “when you’ve got one person who is deranged or driven by a hateful ideology, they [sic] can do a lot of damage . . .” Aamer Madhani, *Obama: “Lone Wolf” Attack is Biggest Concern*, National Journal (Aug. 16, 2011).

And while no one might have been physically hurt here because the Petitioner did not have the means of exploding the cars, this is beside the point. West Virginia Code § 61-6-24(b) provides, “[a]ny person who knowingly and willfully threatens to commit a terrorist act, with or without the intent to commit the act, is guilty of a felony.” Thus, “[i]t is not necessary that the speaker actually intended to carry out the threat or that the speaker had the actual ability to carry out the threat; it is only necessary that the speaker intended to convey a serious expression of an intent to inflict harm.” *In re Douglas D.*, 626 N.W.2d 725, 747 (Wis. 2001) (Bablitch, J., concurring). This is obviously a legislative recognition that “[a] defendant’s inability to carry out specific threats does not render them unthreatening or harmless.” *United States v. Armel*, 585 F.3d 182, 185 (4th Cir. 2009). It is the fear engendered from the threat—not its potential actuality—that is significant.

The employees here suffered from having the Credit Union locked down, and the Credit Union itself suffered because its members and potential members were forced to acknowledge that the place where they kept their money and finances was subject to being attacked, especially since terrorists

recognize the advantages of targeting financial institutions. *See, e.g.*, Hugh Collins, *Authorities Warn of Possible Terrorist Attacks on Banks, CEOs*, www.dailyfinance.com/2011/02/01/authorities-warn-of-possible-terrorist-attacks-on-banks-report (“An al Qaeda blogger named Abu Suleiman Al-Nasser recently wrote, ‘Rush my Muslim brothers to targeting financial sites and the program sites of financial institutions, stock markets and money markets.’”); Lance Gay, *Threats Against Banks Cause Tightened NY, DC Security*, www.globalsecurity.org/org/news/2004/040802-terror-threat.htm (“U.S. intelligence agencies have known for years that al Qaeda had planned to attack American banks but rich, detailed information on such attacks recovered in Pakistan prompted the government to raise the alert status for financial institutions in New York, New Jersey and Washington.”).

The Petitioner’s conduct falls squarely with the WVATS and the circuit court should be affirmed.

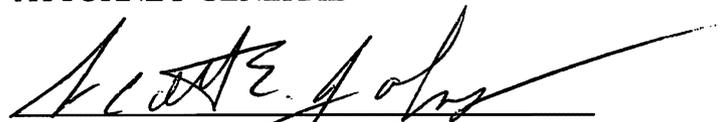
VI.
CONCLUSION

The circuit court should be affirmed.

Respectfully submitted,

STATE OF WEST VIRGINIA,
Respondent,
By counsel,

PATRICK MORRISEY
ATTORNEY GENERAL

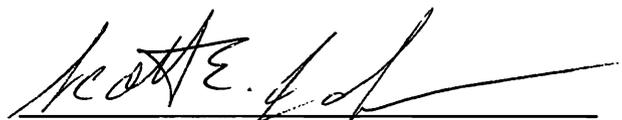


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CERTIFICATE OF SERVICE

I, Scott E. Johnson, Senior Assistant Attorney General and counsel for the Respondent, do hereby verify that I have served a true copy of the *Respondent's Brief* upon counsel for the Petitioner by depositing said copy in the United States mail, with first-class postage prepaid, on this 4th day of December, 2013, addressed as follows:

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