

VOLUME I  
PAGES 6

COMMONWEALTH OF MASSACHUSETTS  
MIDDLESEX, SS. DISTRICT COURT  
NO. 1149-CR-2236

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COMMONWEALTH OF MASSACHUSETTS, )  
 Plaintiff, )  
 vs. )  
 HAROLD WOLFE, )  
 Defendant. )

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MOTION BEFORE THE HONORABLE DAVID W. CUNIS

APPEARANCES:

For the Commonwealth:  
Middlesex County District Attorney's Office  
15 Commonwealth Avenue  
Woburn, Massachusetts 01801  
By: Unidentified

For the Defendant Wolfe:  
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Framingham, Massachusetts  
November 14, 2012

**DMC REPORTING AGENCY**  
**19 OLIVER STREET**  
**FRAMINGHAM, MA 01702**  
**(508) 879-9045**

1 (Court in session.)  
2 (3:17 p.m.)

3 THE CLERK: Commonwealth versus Harold Wolfe.

4 ASSISTANT DISTRICT ATTORNEY: Commonwealth.

5 THE CLERK: 1149-CR-2238 -- 2336. I'm sorry.

6 THE COURT: Just to update the parties on why I asked this  
7 case to be brought in. This was a bench trial on October 5th.  
8 It was before me. He was charged with vandalism and assault.  
9 He was found guilty on both. On further reflection looking at  
10 my options under Rule 25, it's my intention to vacate the  
11 conviction for the felony of vandalism and enter a finding of  
12 not guilty.

13 I want to say that as after further reflection on the  
14 evidence, I do find that the evidence, the testimony of the  
15 police officer and of the victim, the testimony was credible as  
16 to each witness. I believe the victim when she said that her  
17 vehicle was kicked. I believe the officer when he said that he  
18 saw a dimple in the vehicle. But upon further reflection after  
19 actually seeing the vehicle out in the parking lot, it did not  
20 appear to have any damage on it at all. It may have been that  
21 there was a dimple that corrected itself which can happen.

22 That did cast, I thought, and further reflection some  
23 doubt on the vandalism even though I found the testimony of the  
24 witnesses credible. So I'm going to under Rule 25B vacate the  
25 conviction for the vandalism, a not guilty finding will enter.

1           The conviction for assault will stand. The sentence for  
2 assault will stand, 30 -- 60 days, 30 to serve, balance  
3 suspended for a year and all conditions will stand.

4           ASSISTANT DISTRICT ATTORNEY: Given the lack of notice to  
5 the Commonwealth, the A.D.A. that handled the case is not  
6 available today and, likewise, the Commonwealth feels that they  
7 have a duty to inform the victim of this. I would ask that you  
8 reserve judgement on this until Friday. I believe your Honor is  
9 scheduled to be here on Friday --

10          THE COURT: I'm here Friday, yeah.

11          ASSISTANT DISTRICT ATTORNEY: -- and that A.D.A. Hogan is  
12 available on Friday and --

13          THE COURT: She's aware of this. She's aware of this.

14          ASSISTANT DISTRICT ATTORNEY: Judge, we are objecting.

15          THE COURT: Yeah. I know you're objecting, but I heard  
16 the evidence and, you know, I thought about it afterwards.  
17 Although I found the -- as I said, I found the testimony  
18 credible. There was -- there was some doubt that, I think,  
19 strays through my mind after looking at the vehicle, so --

20          THE CLERK: So same sentence in terms of probation, your  
21 Honor, am I right, but they'll all be on Count II?

22          THE COURT: All on Count II, right.

23          THE CLERK: Count I at this point in time, the vandalism  
24 conviction vacated, not guilty. Count II, guilty, same  
25 sentence, same probation.

1 THE COURT: Yeah. We'll put that on -- in fairness, we'll  
2 put that over until -- for further hearing on Friday, so if the  
3 Commonwealth wants to -- Ms. Hogan wants to come in and object,  
4 she can be heard on that.

5 THE CLERK: Do you want to continue it, Judge, to --

6 THE COURT: Yeah. We'll continue that.

7 THE CLERK: So that will remain what I just announced.

8 THE COURT: That's -- that's -- that is -- that is --  
9 essentially deem that as the court's own motion and we'll have a  
10 hearing on that on Friday.

11 THE CLERK: Mr. Wolfe, you'll be here on Friday?

12 MR. WOLFE: I could. What time?

13 THE COURT: I'm here Friday. Nine o'clock. Yeah.

14 THE CLERK: We'll continue to 11/16/12 for review?

15 THE COURT: Yeah.

16 THE CLERK: Review at 9 a.m. for Judge Cunis.

17 THE COURT: Deem that the motion.

18 ASSISTANT DISTRICT ATTORNEY: Thank you, Judge.

19 THE COURT: And we'll let the prosecutor be heard.

20 UNIDENTIFIED MALE: Thank you, Judge.

21 THE CLERK: You do have that in the block too, so --

22 THE COURT: Yes.

23 THE CLERK: Okay. So noted.

24 UNIDENTIFIED MALE: Thank you, your Honor.

25 THE COURT: Okay.

1 THE CLERK: Okay, Mr. Wolfe. Thank you.

2 (Motion adjourned at 3:20 p.m.)

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MIDDLESEX, SS. DISTRICT COURT  
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COMMONWEALTH OF MASSACHUSETTS, )  
Plaintiff, )  
vs. )  
HAROLD WOLFE, )  
Defendant. )

AFFIDAVIT OF TRANSCRIBER

I, Linda Dunlop, an approved court transcriber, do hereby certify that the foregoing is a true and accurate transcript from the audio recording provided to me by Harold Wolfe of the proceedings in the above-entitled matter.

I, Linda Dunlop, further certify that I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.

DATED:

Linda Dunlop, CSR

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<b>0</b>	<b>afterwards</b> [1] - 3:16 <b>AGENCY</b> [2] - 1:22, 6:22 <b>announced</b> [1] - 4:7 <b>appear</b> [1] - 2:20 <b>APPEARANCES</b> [1] - 1:11 <b>approved</b> [1] - 6:9 <b>assault</b> [3] - 2:8, 3:1, 3:2 <b>ASSISTANT</b> [5] - 2:4, 3:4, 3:11, 3:14, 4:18 <b>ATTORNEY</b> [5] - 2:4, 3:4, 3:11, 3:14, 4:18 <b>Attorney's</b> [1] - 1:13 <b>audio</b> [1] - 6:11 <b>available</b> [2] - 3:6, 3:12 <b>Avenue</b> [2] - 1:13, 1:17 <b>aware</b> [2] - 3:13	4:19, 4:22, 4:25, 6:1 <b>Court</b> [1] - 2:1 <b>court's</b> [1] - 4:9 <b>credible</b> [3] - 2:15, 2:24, 3:18 <b>CSR</b> [1] - 6:20 <b>CUNIS</b> [1] - 1:10 <b>Cunis</b> [1] - 4:16	2:25, 3:24	<b>motion</b> [2] - 4:9, 4:17 <b>Motion</b> [1] - 5:2 <b>MR</b> [1] - 4:12
<b>1</b>	<b>11/16/12</b> [1] - 4:14 <b>1149-CR-2236</b> [2] - 1:3, 6:2 <b>1149-CR-2238</b> [1] - 2:5 <b>14</b> [1] - 1:20 <b>15</b> [1] - 1:13 <b>19</b> [2] - 1:22, 6:23	<b>D</b>	<b>H</b>	<b>N</b>
<b>2</b>	<b>2012</b> [1] - 1:20 <b>2336</b> [1] - 2:5 <b>25</b> [1] - 2:10 <b>25B</b> [1] - 2:24	<b>damage</b> [1] - 2:20 <b>DATED</b> [1] - 6:19 <b>DAVID</b> [1] - 1:10 <b>days</b> [1] - 3:2 <b>deem</b> [2] - 4:9, 4:17 <b>Defendant</b> [3] - 1:8, 1:16, 6:6 <b>Delmar</b> [1] - 1:17 <b>dimple</b> [2] - 2:18, 2:21 <b>DISTRICT</b> [7] - 1:3, 2:4, 3:4, 3:11, 3:14, 4:18, 6:1 <b>District</b> [1] - 1:13 <b>DMC</b> [2] - 1:22, 6:22 <b>DMC.REPORTING@VERIZON.NET</b> [1] - 6:24 <b>doubt</b> [2] - 2:23, 3:18 <b>Dunlop</b> [3] - 6:9, 6:13, 6:20 <b>duty</b> [1] - 3:7	<b>handled</b> [1] - 3:5 <b>HAROLD</b> [2] - 1:7, 6:5 <b>Harold</b> [3] - 1:16, 2:3, 6:11 <b>heard</b> [3] - 3:15, 4:4, 4:19 <b>hearing</b> [3] - 4:2, 4:10, 6:15 <b>hereby</b> [1] - 6:9 <b>Hogan</b> [2] - 3:11, 4:3 <b>Honor</b> [3] - 3:8, 3:21, 4:24 <b>HONORABLE</b> [1] - 1:10	<b>nine</b> [1] - 4:13 <b>NO</b> [2] - 1:3, 6:2 <b>noted</b> [1] - 4:23 <b>notice</b> [1] - 3:4 <b>November</b> [1] - 1:20
<b>3</b>	<b>balance</b> [1] - 3:2 <b>BEFORE</b> [1] - 1:10 <b>bench</b> [1] - 2:7 <b>block</b> [1] - 4:21 <b>brought</b> [1] - 2:7	<b>E</b>	<b>I</b>	<b>O</b>
<b>5</b>	<b>case</b> [2] - 2:7, 3:5 <b>cast</b> [1] - 2:22 <b>certify</b> [2] - 6:10, 6:13 <b>charged</b> [1] - 2:8 <b>CLERK</b> [12] - 2:3, 2:5, 3:20, 3:23, 4:5, 4:7, 4:11, 4:14, 4:16, 4:21, 4:23, 5:1 <b>COMMONWEALTH</b> [4] - 1:2, 1:5, 6:1, 6:3 <b>Commonwealth</b> [7] - 1:12, 1:13, 2:3, 2:4, 3:5, 3:6, 4:3 <b>conditions</b> [1] - 3:3 <b>continue</b> [3] - 4:5, 4:6, 4:14 <b>conviction</b> [4] - 2:11, 2:25, 3:1, 3:24 <b>corrected</b> [1] - 2:21 <b>counsel</b> [1] - 6:14 <b>Count</b> [2] - 3:21, 3:22 <b>count</b> [2] - 3:23, 3:24 <b>County</b> [1] - 1:13 <b>court</b> [1] - 6:9 <b>COURT</b> [16] - 1:3, 2:6, 3:10, 3:13, 3:15, 3:22, 4:1, 4:6, 4:8, 4:13, 4:15, 4:17,	<b>employed</b> [1] - 6:14 <b>enter</b> [2] - 2:11, 2:25 <b>entitled</b> [1] - 6:12 <b>essentially</b> [1] - 4:9 <b>evidence</b> [3] - 2:14, 3:16	<b>II</b> [3] - 3:21, 3:22, 3:24 <b>inform</b> [1] - 3:7 <b>intention</b> [1] - 2:10 <b>interested</b> [1] - 6:16 <b>itself</b> [1] - 2:21	<b>o'clock</b> [1] - 4:13 <b>object</b> [1] - 4:3 <b>objecting</b> [2] - 3:14, 3:15 <b>October</b> [1] - 2:7 <b>OF</b> [5] - 1:2, 1:5, 6:1, 6:3, 6:8 <b>Office</b> [1] - 1:13 <b>officer</b> [2] - 2:15, 2:17 <b>OLIVER</b> [2] - 1:22, 6:23 <b>options</b> [1] - 2:10 <b>otherwise</b> [1] - 6:16 <b>outcome</b> [1] - 6:16 <b>own</b> [1] - 4:9
<b>6</b>	<b>6</b> [1] - 1:1 <b>60</b> [1] - 3:2 <b>65</b> [1] - 1:17	<b>F</b>	<b>J</b>	<b>P</b>
<b>8</b>	<b>879-9045</b> [1] - 1:23	<b>fairness</b> [1] - 4:1 <b>felony</b> [1] - 2:11 <b>financially</b> [1] - 6:16 <b>foregoing</b> [1] - 6:10 <b>Framingham</b> [2] - 1:17, 1:19 <b>FRAMINGHAM</b> [2] - 1:23, 6:23 <b>Friday</b> [8] - 3:8, 3:9, 3:10, 3:12, 4:2, 4:10, 4:11, 4:13	<b>judge</b> [1] - 3:14 <b>Judge</b> [4] - 4:5, 4:16, 4:18, 4:20 <b>judgement</b> [1] - 3:8	<b>p.m</b> [2] - 2:1, 5:2 <b>PAGES</b> [1] - 1:1 <b>parking</b> [1] - 2:19 <b>parties</b> [2] - 2:6, 6:14 <b>Plaintiff</b> [2] - 1:5, 6:3 <b>point</b> [1] - 3:23 <b>police</b> [1] - 2:15 <b>pro</b> [1] - 1:16 <b>probation</b> [2] - 3:20, 3:25 <b>proceedings</b> [1] - 6:12 <b>prosecutor</b> [1] - 4:19 <b>provided</b> [1] - 6:11 <b>put</b> [2] - 4:1, 4:2
<b>9</b>	<b>9</b> [1] - 4:16	<b>G</b>	<b>K</b>	<b>R</b>
<b>A</b>	<b>A.D.A</b> [2] - 3:5, 3:11 <b>a.m</b> [1] - 4:16 <b>above-entitled</b> [1] - 6:12 <b>accurate</b> [1] - 6:10 <b>action</b> [2] - 6:15, 6:16 <b>adjourned</b> [1] - 5:2 <b>AFFIDAVIT</b> [1] - 6:8	<b>given</b> [1] - 3:4 <b>guilty</b> [5] - 2:9, 2:12,	<b>kicked</b> [1] - 2:17	<b>recording</b> [1] - 6:11 <b>reflection</b> [4] - 2:9, 2:13, 2:18, 2:22 <b>related</b> [1] - 6:14 <b>remain</b> [1] - 4:7 <b>REPORTING</b> [2] - 1:22, 6:22 <b>reserve</b> [1] - 3:8 <b>review</b> [2] - 4:14, 4:16 <b>Rule</b> [2] - 2:10, 2:24

<b>S</b>	<b>VOLUME</b> [1] - 1:1 <b>vs</b> [2] - 1:6, 6:4
<b>saw</b> [1] - 2:18 <b>scheduled</b> [1] - 3:9 <b>se</b> [1] - 1:16 <b>seeing</b> [1] - 2:19 <b>sentence</b> [3] - 3:1, 3:20, 3:25 <b>serve</b> [1] - 3:2 <b>session</b> [1] - 2:1 <b>sorry</b> [1] - 2:5 <b>SS</b> [2] - 1:3, 6:1 <b>stand</b> [3] - 3:1, 3:2, 3:3 <b>strays</b> [1] - 3:19 <b>STREET</b> [2] - 1:22, 6:23 <b>suspended</b> [1] - 3:3	<b>W</b>
	<b>wants</b> [2] - 4:3 <b>witness</b> [1] - 2:16 <b>witnesses</b> [1] - 2:24 <b>Woburn</b> [1] - 1:14 <b>WOLFE</b> [3] - 1:7, 4:12, 6:5 <b>Wolfe</b> [6] - 1:16, 1:16, 2:3, 4:11, 5:1, 6:11
<b>T</b>	<b>Y</b>
<b>terms</b> [1] - 3:20 <b>testimony</b> [4] - 2:14, 2:15, 2:23, 3:17 <b>THE</b> [27] - 1:10, 2:3, 2:5, 2:6, 3:10, 3:13, 3:15, 3:20, 3:22, 3:23, 4:1, 4:5, 4:6, 4:7, 4:8, 4:11, 4:13, 4:14, 4:15, 4:16, 4:17, 4:19, 4:21, 4:22, 4:23, 4:25, 5:1 <b>today</b> [1] - 3:6 <b>TRANSCRIBER</b> [1] - 6:8 <b>transcriber</b> [1] - 6:9 <b>transcript</b> [1] - 6:10 <b>trial</b> [1] - 2:7 <b>true</b> [1] - 6:10	<b>year</b> [1] - 3:3
<b>U</b>	
<b>under</b> [2] - 2:10, 2:24 <b>Unidentified</b> [1] - 1:14 <b>UNIDENTIFIED</b> [2] - 4:20, 4:24 <b>update</b> [1] - 2:6	
<b>V</b>	
<b>vacate</b> [2] - 2:10, 2:24 <b>vacated</b> [1] - 3:24 <b>vandalism</b> [5] - 2:8, 2:11, 2:23, 2:25, 3:23 <b>vehicle</b> [4] - 2:17, 2:18, 2:19, 3:19 <b>versus</b> [1] - 2:3 <b>victim</b> [3] - 2:15, 2:16, 3:7	