

SJC-11716

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

WORCESTER COUNTY

NO.2014-P-0010

COMMONWEALTH,
APPELLEE

V.

CRAIG MCGHEE,
DEFENDANT-APPELLANT.

BRIEF FOR THE DEFENDANT
ON APPEAL FROM THE WORCESTER DIVISION
OF THE SUPERIOR COURT DEPARTMENT

ELIZABETH DEMBITZER

ATTORNEY FOR DEFENDANT

340 Union Avenue
Framingham, MA 01702
Phone: (508)820-3320
Fax: (508) 820-3324
Elizabeth@Dembitzerlaw.com
BBO# 660405

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ISSUES PRESENTED

- (1) Whether there was sufficient evidence that Mr. McGhee acted with a purpose to "steal from a bank or depository" when the Commonwealth only presented evidence that the complainants withdrew their own money from an ATM, under duress, and then left the ATM to give Mr. McGhee the money they had validly withdrawn from their bank accounts.
- (2) Whether Mr. McGhee's right to a fair trial was violated by the Judge's failure to conduct a *voir dire* of a juror who was reliably reported to have been sleeping through substantial portions of testimony.

STATEMENT OF THE CASE

This is an appeal from Mr. McGhee's conviction of two counts of confining to commit a felony (G.L. ch. 265, §21).¹

A jury trial was held March 12 through March 16, 2012, in Worcester Superior Court before Judge Richard

¹ The record appendix is cited as "(R.)" and is reproduced post. The transcript of the trial is in five volumes and is cited by page as "(transcript volume: page)."

Tucker (R.29-30). During the Commonwealth's case three complainants testified that the defendant, Mr. McGhee, and another unidentified individual approached them as they were walking to their car in the Kelley Square area of Worcester (Tr. 1:117-119, 183-184;2:27-30). What began as a friendly conversation turned hostile as Mr. McGhee and the unidentified individual took on the authoritative manner and course of questioning of police officers (1:118-120, 183-182; 2:29-30). The complainants were not explicitly threatened, but they were frightened and, when ordered into the car, they complied (Tr.1:121, 167, 184;2:33-34). Mr. McGhee directed the driver to an ATM machine (Tr. 1:124, 135, 150-151). While Mr. McGhee waited across the street, the complainant withdrew money from his account (Tr.1:166, 168). The complainant then walked back across the street and handed the money to Mr. McGhee (Tr.1:168).

While Mr. McGhee and one of the complainants were outside of the car the unidentified individual suggested to the remaining two complainants that Mr. McGhee had a firearm (Tr.1:187;2:10-11, 37).

When Mr. McGhee and the complainant returned to the car, the unidentified man went with a second

complainant to the ATM machine (Tr.1:188-189). The second complainant withdrew money from his account and gave it to the unidentified man who was waiting outside (Tr. 188-189). They returned to the car and Mr. McGhee directed the complainants to the Main Street area of Worcester (Tr. 1:133,190-191; 2:38). Mr. McGhee and the unidentified man then exited the car and left (Tr. 1:133, 157, 190-191; 2:38). The complainants drove back to Fitchburg (Tr.1:159; 2:38).

One of the complainants called the police the next day (Tr. 1:134). All three of the complainants identified Mr. McGhee to the police and in court (Tr. 1:117, 136, 180, 194-195; 2:28, 40-41).

The defense theory was that the three complainants had asked Mr. McGhee to buy marijuana for them (Tr.1:105). He agreed, took their money, but never returned (Tr. 1:105). The defense suggested that the charges were brought in retaliation (Tr.1:105). The Commonwealth charged Mr. McGhee with three counts of aggravated kidnapping (Indictments 1-3) (R.2-7); two counts of armed robbery (Indictments 5

and 6) (R.11-14) and two counts of confining to commit a felony (Indictments 9 and 10) (R. 19-22).²

The jury acquitted Mr. McGhee of the aggravated kidnapping and armed robbery charges (R.45-49). They returned guilty verdicts on the two counts of confining to commit a felony (R.50, 51).

Judge Tucker sentenced Mr. McGhee to three to five years in state prison for the first count and, for the second count, five years of probation on and after his committed sentence (Tr.5:8-9) (R.31). Mr. McGhee's notice of appeal was timely filed on March 23, 2012 (R.1).

STATEMENT OF FACTS

The relevant evidence from the trial was as follows:

1. Testimony of the Complainants

James Fletcher ("Fletcher"); Thomas Brown ("Brown") and John Wentworth ("Wentworth"), all students at Fitchburg State College, testified that, on May 17, 2010, they drove their friend, Alex Moore, to the Kelly Square area of Worcester so that she

² This case originally involved eleven indictments (R.2-24). Indictments four and eight were tried separately and were not appealed (R.9-10;17-18;31). The Commonwealth filed Nolle prosequi on Indictments Seven and Eleven (R.33).

could meet her boyfriend (Tr.1:114-115, 176-177; 2:24-25). After dropping her off, Fletcher, Brown and Wentworth parked and then ate pizza in a nearby pizza shop (Tr.1:115, 178; 2:25). As they were walking back to their car, they passed an older, muscular African-American man, with a salt-and-pepper beard, who asked them for money (Tr.1:116-117, 178-179; 2:26).³ The three men declined and continued to walk towards the car (Tr.1:117, 178). Mr. McGhee approached them from across the parking lot (Tr.117, 180,119). They began to speak with Mr. McGhee (Tr.118, 170). As they spoke, the unidentified man approached and joined the conversation (Tr.1:119; 2:27-28). At first the conversation was friendly (Tr.1:118-120, 2:27-29). At some point the conversation turned more hostile: Mr. McGhee and the unidentified man began to act like police officers, speaking with an authoritative tone, questioning them, accusing them of being in the area for the purpose of buying or selling drugs, and demanding answers to their questions (Tr.1:118-120, 183-184; 2:29-30). When Mr. McGhee and the unidentified man began speaking in this way, Fletcher,

³ This man was never charged or identified and will be referred to as the "unidentified man."

Wentworth and Brown felt frightened (Tr.1:121,167; 2:33-34). Mr. McGhee then told Mr. Fletcher to "get in the effing car."⁴ (Tr.1:121, 184;2:34). Fletcher sat in the driver's seat and Mr. McGhee sat in the front passenger seat (Tr.1:122,123,184). The unidentified man, Brown and Wentworth sat in the back (Tr.1:122-123, 184;2:10). Brown testified that once in the car he offered to go to an ATM machine to give Mr. McGhee and the unidentified man money (Tr. 1:185-186). Fletcher and Wentworth testified that once inside the car Mr. McGhee began directing them to an ATM machine in the downtown area of Worcester (Tr. 1:124;2:35,150-151). Fletcher parked the car approximately fifty feet down a street that was located across the street from an ATM machine (Tr. 1:168-170). Once there, Mr. McGhee asked Fletcher out of the car and Mr. McGhee and Fletcher walked towards the ATM machine (Tr.1:126,128,187). Mr. McGhee told Fletcher that he wanted \$150 (1:128).⁵ Mr. McGhee asked Fletcher for his cell phone and car keys before

⁴ Brown testified that Mr. McGhee had Mr. Fletcher's keys when he told him to get in the car (Tr.1:184). Neither Fletcher nor Wentworth testified to this (tr. 1:148-149; 2:34-35, 48).

⁵ It is unclear from the testimony at what point Mr. McGhee asked for \$150.

Fletcher entered the ATM (1:152). Mr. McGhee waited outside of the ATM, at a distance of about midpoint between the car and then ATM (1:166, 168).

Fletcher withdrew \$140 from his account and walked to meet Mr. McGhee (Tr.1:168)⁶. When he handed Mr. McGhee the money, Mr. McGhee said "that's good enough" (Tr.1:129). Mr. McGhee gave back Fletcher's phone and car keys (Tr.1:154-155). They walked back to the car together (Tr.1:129). Mr. McGhee did not touch Fletcher on the walk to or from the ATM (Tr.1:147-148, 151,152).

While Mr. McGhee and Fletcher were at the ATM, Brown and Wentworth remained in the car with the unidentified man(Tr.1:187;2:36). The unidentified man told them something to the effect of: "Don't do anything silly my partner will shoot you" or "I won't shoot you. My partner will, but I won't" (Tr.1:187, 2:10-11,37).

When Fletcher and Mr. McGhee got back into the car, the unidentified man told Brown to get out of the car and walked him to the ATM (Tr.1:188). The unidentified man waited outside of the ATM while Brown

⁶ Mr. Fletcher's bank statements, depicting this withdrawal, were admitted as exhibit two and are included in the Record Appendix at R.34

withdrew \$20 from his account (Tr. 1:188). When Brown handed him the money, the unidentified man said "Don't play me like that. Get back in there. I want a hundred dollars" (Tr. 1:188). Brown returned to the ATM and took out \$100 (Tr. 189).⁷ He gave the \$100 to the unidentified man and they walked back to the car (Tr. 189).

Mr. McGhee then instructed Fletcher to drive to the Main street area of Worcester and pull over (Tr.1:133,157,190-191;2:38). Fletcher complied and Mr. McGhee and the unidentified man left the car (Tr.1:133,157,190-191;2:38). Fletcher, Brown and Wentworth drove back to Fitchburg State College (Tr.1:159;2:38). Fletcher went to the Worcester police station the next day (Tr. 1:134). Later in June, Fletcher, Brown and Wentworth identified Mr. McGhee from a photo array at the Worcester police station (Tr. 1:136, 194-195; 2:40-41).

At no point during the encounter did Mr. McGhee, who was wearing only a t-shirt and jeans or shorts, indicate that he had a weapon (Tr. 1:162-163; 2:11-12,138,152).

⁷ Mr. Brown's bank statements, depicting these withdrawals, were admitted as exhibit four and are included in the Record Appendix at R.38.

2. Sleeping juror

The first day of trial consisted of opening statements, the direct examinations of Fletcher and Brown, cross-examination of Fletcher and a partial cross-examination of Brown (Tr.1).

Before trial commenced on the second day, Juror 6 reported to the court the following:

[T]hrough most of the morning proceedings I heard a lot of snoring going on; and I looked at the person, and the person wasn't paying attention to the testimony going on. After lunch when we came in, the snoring continued extremely loudly, to the point where it was interrupting my listening. I kind of went like this [indicating] to the person next to me to show the person - 'Look at this person.' And they were sound asleep through most of the afternoon trial.

(Tr. 2:5). The court officer identified the juror at issue as Juror 44 (Tr.2:6). Juror 6 also indicated that another juror had seen Juror 44 sleeping (Tr. 2:7). Juror 6 considered whether the juror was merely closing his eyes while concentrating, but she became convinced that he was actually sleeping when he began to snore and then nodded his head as though waking up from a nap (Tr.2:7). Neither of the attorneys nor the Judge observed the juror asleep (Tr.2:6). Trial counsel initially requested that the Judge inquire of the sleeping juror (Tr. 2:7). The Judge asked Juror 6

if she would be concerned if Juror 44 knew that she had brought his behavior to the attention of the court (Tr. 2:8). The juror indicated she was concerned but felt that this was the ethical thing to do (Tr. 2:8). The Judge did not hold a *voir dire*, noting that he was hesitant to do so because he had not observed the juror (Tr.2:6-7). He stated that he would watch the juror during the upcoming proceedings to determine if was paying attention (Tr. 2:8). Trial counsel asked the defendant if he was "okay" with that solution. He added "we'll keep an eye on him today, and that way we don't run any red flags up that there's an issue." (Tr. 2:9). The defendant responded "I'm good." (Tr. 2:9).

The Commonwealth observed the juror during the second day of trial and reported that he appeared to have been paying attention (Tr. 2:136).

3. Jury Charge and Deliberations

The Commonwealth elected to proceed only on the first section of G.L. ch. 265, §21.⁸ The Judge's instruction on this statute is discussed in more detail at *infra* pp. 12-13.

⁸The Commonwealth's proposed jury instructions are included in the Record Appendix at R.41.

During jury deliberations on the afternoon of the third day of trial, the jury asked several questions. The jury asked whether the two charges of confining to commit a felony referred to the ATM withdrawals of Fletcher and Brown (Tr.3:5) (R.43). The Judge told them, "yes" (Tr. 3:5) (R.43).

The jury also informed the court that they had determined the verdict on three of the charges but were fairly evenly split with the remaining four charges and asked how they should proceed (Tr.3:6; R.44). The Judge instructed them to place the three verdicts that they had agreed upon in a sealed envelope and to continue to deliberate on the remaining charges (Tr. 3:6; R.44).

4. Verdict and Sentencing

On the fourth day of trial the jury returned guilty verdicts on the two counts of confining to commit a felony (Tr. 4:8) (R.50,51) and found Mr. McGhee not guilty on the remaining charges (Tr. 4:7-8) (R.45-49). The Judge sentenced Mr. McGhee to state prison for three to five years for the first count of confining to commit a felony and, for the second count, five years of probation on and after the committed sentence (Tr. 5:8-9) (R.31).

SUMMARY OF THE ARGUMENT

- 1) The Commonwealth presented insufficient evidence that Mr. McGhee acted with a purpose to steal from a building, bank or depository because validly withdrawing money from an ATM machine, even if under duress, is not stealing from that ATM machine. Pp. 12-18.
- 2) The Judge abused his discretion in failing to question a juror regarding his ability to render a verdict on the evidence presented at trial when another juror had reliably reported that that juror had slept through most of the testimony on the first day of trial. Pp. 18-23.

ARGUMENT

I. THE COMMONWEALTH PRESENTED INSUFFICIENT EVIDENCE THAT MR. MCGHEE ACTED WITH AN INTENT TO STEAL FROM A DEPOSITORY

The Judge's instruction on G.L. ch. 265, §21 tracked the language of the statute (Tr.2: 124-125). He instructed that, in order to find Mr. McGhee guilty, the jury was required to find (1) that Mr. McGhee had the specific intent to commit a larceny (2) that Mr. McGhee confined or attempted to confine another, or put the other person in fear and (3) that

Mr. McGhee performed these acts for the purpose of stealing from a depository money or other valuables (Tr. 2:125-126).

Although the statute also makes it an offense for a person to "by intimidation, force or threats compel[] . . . any person to disclose or surrender the means of opening any building, bank, safe, vault or other depository of money," the Commonwealth elected not to proceed on this theory and the Judge did not instruct on it (Tr.2:124-125) (R.41).

Unlike the general larceny statute, which does not require proof of the identity of the owner of the property, see Commonwealth v. Souza, 397 Mass. 236,238 (1986), G.L. ch. 265, §21 requires proof of an intent to steal *from a building, bank, safe, vault or depository*. See Commonwealth v. Crowley, 167 Mass. 434,441-442 (1897) ("It is not an offense . . . to commit an assault and battery with intent to commit a larceny, without more; that is, it must also be done "for the purpose of stealing from a . . . depository").

The plain meaning of the statute requires sufficient evidence that that Mr. McGhee confined or put Brown and Fletcher in fear *for the purpose of*

stealing from the ATM. Id. There was insufficient proof of this element. See Commonwealth v. Latimore, 378 Mass. 671, 677 (1979). The only evidence presented at trial was that property was stolen from Fletcher and Brown after they had withdrawn it from their personal accounts and left the ATM (R.34-40). Mr. McGhee did not ask Fletcher or Brown to break into the ATM machine and take the money. Neither Mr. McGhee nor the unidentified man even entered the ATM or handled an ATM card, and they each waited for either Brown or Fletcher to emerge from the ATM, walk to their locations, and hand them the money (Tr.1:168,189).

Under the plain meaning of the statute, a withdrawal of money from an ATM machine, even if under duress, is not *stealing from the ATM machine*. G.L. ch. 265, §21. An intent to steal from the ATM implies an intent to inflict the loss on the ATM and that the ATM is the owner or in control of the property that is stolen. See G.L. ch. 277, § 39 (defining stealing as "the criminal taking, obtaining or converting of personal property, with intent to defraud or deprive *the owner permanently of the use of it*" (italics added)).

Massachusetts courts have not directly addressed this issue but, in interpreting a federal statute, the Fifth and Seventh Circuits have reached opposite conclusions on a similar issue. United States v. McCarter, 406 F.3d 460, 462-463 (7th Cir. 2005); United States v. Burton, 425 F.3d 1008, 1011-1012 (5th Cir. 2005). 18 U.S.C. §2113(a) punishes individuals who:

by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another, or obtains or attempts to obtain by extortion any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

In McCarter, the defendant, after robbing a woman and finding an ATM card in her purse, stated "I see you have a bank card; we're going for a little ride" and forced the woman into her car to drive to an ATM machine. 406 F.3d at 463. Before reaching the ATM, the woman called for help and the defendant fled. Id. The court upheld the defendant's conviction for attempted bank robbery. Id. It held that "if . . . the robber forces the bank's customer to withdraw the money, the customer becomes the unwilling agent of the robber, and the bank is robbed." Id. In essence, the

court held that the presence of duress renders irrelevant the fact that the property had been transferred to a different owner or that the bank had actually not suffered a loss. Id.

Under the Seventh Circuit's reasoning, if Mr. McGhee had ordered Fletcher to buy him several pairs of pants from a store, and Fletcher went into the store, bought the pants, and gave them to Mr. McGhee, who was waiting outside, Mr. McGhee could be held liable for stealing *from the store*.

In contrast, the Fifth Circuit, in Burton, adhered more closely to the plain meaning of the words in the statute. 425 F.3d at 1011-1012. In that case, during the course of a robbery, the defendant found the victim's ATM card. Id. at 1009. He forced her into her car and drove her to a bank. Id. at 1009. The woman withdrew money from the drive-through ATM machine and gave it to the defendant. Id.

The Fifth Circuit reversed the defendant's conviction for bank robbery. Id. at 1012. It held that at the time the victim gave the defendant the funds, the money neither belonged to the bank nor was it "in the "care, custody, control, management or possession of the bank." Id. at 1010. It found that

the victim had made a "valid-albeit-coerced withdrawal of her own funds, which [the defendant] then stole."

Id.

Mr. McGhee's case is analogous to the case in Burton and this Court should adopt the straightforward reasoning of the Fifth Circuit. Both the plain meaning of the G.L. ch. 265, §21 and the rule of lenity require that the phrase "from the bank" be interpreted to require that, at the time the transfer of property occurred, the bank was actually the owner or in control of the property such that that it suffered the loss. Rules of statutory construction require that words in a statute are given their ordinary and plain meaning and that "any reasonable doubt about the meaning is decided in favor of anyone subjected to a criminal statute." Norman J. Singer, Sutherland Statutory Construction s. 59.03 (5th ed. 1992); see also Youngworth v. Commonwealth, 436 Mass. 608, 611 (2002) ("We are bound by two fundamental principles of statutory construction: (1) criminal statutes are strictly construed against the Commonwealth, and (2) any plausible ambiguity must be resolved in favor of the defendant.")

Finally, unlike the federal statute, G.L. ch. 265, §21 requires a more specific *mens rea*: the defendant must act for the purpose of stealing from the depository. See Commonwealth v. Gunter, 427 Mass. 259, 268-269 (1998), quoting United States v. Bailey, 444 U.S. 394, 403 (1980) (noting that use of the word "purpose" in a statute corresponds with a requirement of specific intent). In the case at bar, there was insufficient evidence that Mr. McGhee intended the property that he took be the bank's property as opposed to the property of Fletcher or Brown. See Commonwealth v. Latimore, 378 Mass. 671, 677 (1979).

Because there was insufficient evidence that Mr. McGhee acted with the purpose to steal from the depository, Mr. McGhee's convictions must be reversed.
Id.

II. MR. MCGHEE IS ENTITLED TO A NEW TRIAL BECAUSE HIS RIGHT TO A FAIR TRIAL GUARANTEED UNDER THE FIFTH AMENDMENT AND ART. 12 OF THE MASSACHUSETTS DECLARATION OF RIGHTS WAS VIOLATED WHEN THE TRIAL COURT FAILED TO CONDUCT A VOIR DIRE OF A JUROR WHO HAD BEEN RELIABLY REPORTED SLEEPING DURING HIS TRIAL.

Mr. McGhee is entitled to a new trial because his right to a fair trial, guaranteed under the Fifth

Amendment of the United States Constitution and Article 12 of the Massachusetts Declaration of Rights, was violated when the trial court failed to conduct a *voir dire* of a juror who had been reliably reported sleeping during the first day of testimony. See Commonwealth v. Dyous, 79 Mass. App. Ct. 508, 513-514 (2011); Commonwealth v. Braun, 74 Mass. App. Ct. 904, 905-906 (2009).

A defendant is entitled to a "sober, conscious jury." Braun, 74 Mass. App. Ct. at 905, quoting Commonwealth v. Rock, 429 Mass. 609, 614 (1999). A juror who sleeps through testimony places a defendant's fundamental right to a fair trial in jeopardy. Id.; see also Commonwealth v. Ray, 467 Mass. 115, 138 (2014); Dyous, 79 Mass. App. Ct. at 513. The trial judge is responsible for assuring that all of the jurors hear the evidence and are capable of rendering a verdict based on all the evidence. Dyous, 79 Mass. App. Ct. at 513; id. If a judge is provided with reliable information that a juror may have been asleep the judge "is required to intervene to protect both the rights of the defendant as well as those of the Commonwealth." Commonwealth v. Lawton, 82 Mass. App. Ct. 528, 543 (2012); see also Dyous, 79 Mass.

App. Ct. at 513 (noting both the defendant's and the public's right to an impartial attentive juror); Braun, 74 Mass. App. Ct. at 905.

The burden is on the defendant to show that the type of intervention that a judge chose to employ was an abuse of discretion. Lawton, 82 Mass. App. Ct at 543. If the record raises a distinct possibility that a juror had been asleep for the significant portion of the trial a judge will be held to have abused his or her discretion for failing to inquire of that juror. Dyous, 79 Mass. App. Ct. at 513; Braun, 74 Mass. App. Ct. at 905-906. If the defendant meets his burden, the error is deemed structural and he need not demonstrate prejudice. Commonwealth v. Dancy, 75 Mass. App. Ct. 175, 182 (2009). This is because the error "so infringes on a defendant's right to the basic components of a fair trial" and thus "can never be considered harmless." Dancy, 75 Mass. App. Ct. at 182 quoting in part Commonwealth v. Villanueva, 47 Mass. App. Ct. 905, 906 (1999).

In the case at bar, Juror 6 alerted the Judge to the fact that Juror 44 had been snoring through "most of the morning proceedings" and through "most of the afternoon trial" (Tr. 2:5). These time periods would

have encompassed the opening statements, the direct and cross examination of Fletcher, the direct examination of Brown and the partial cross-examination of Brown (Tr. 1:96-212). Fletcher and Brown were the two complainants involved with the confining charges, the only charges for which Mr. McGhee was convicted, G.L. ch. 265, §21. See jury question at R.43.

Juror 6 had been sitting directly beside Juror 44 and she reported that another juror had confirmed that her perception of the juror as sleeping was accurate (Tr. 2:6, 7). When asked by the judge, Juror 6 acknowledged that sometimes people close their eyes when they concentrate (Tr. 2:7). She responded that she had watched Juror 44 to determine if that was the case (Tr. 2:7). However, she was convinced that he was actually asleep when he began to snore and nodded his head upon waking up (Tr. 2:7).

The Judge, however, declined to conduct a *voir dire* of Juror 44. He stated that, since he hadn't personally observed the juror sleeping, he was hesitant to conduct a *voir dire* (Tr. 1:6-7).

This was error. See Dyous, 79 Mass. App. Ct. at 513 n.4. The decision to hold a *voir dire* is not dependent on whether a judge had personally observed

the juror sleeping but whether he or she had been provided with a reliable report that a juror had been sleeping. Id.

In Dyous, 79 Mass. App. Ct. at 513, the judge refused to hold a *voir dire* because the judge did not personally "observe him actually sleeping." The court held that this was error. Id. "If there was a question of whether the juror was indeed asleep, that is that the juror's inattention was more than a momentary nodding off, then the trial judge has an obligation to conduct a *voir dire*." Id. The court specifically noted that "[t]he trial judge's statement that she did not personally observe the juror sleeping and that therefore she would take no action was an insufficient basis for resolving the issue." Id. at 513 n. 4. The court ordered a new trial despite the fact that defense counsel did not object to the judge's refusal to hold a *voir dire*. Id. at 512, 514.

In the case at bar, defense counsel did not object to the judge's failure to conduct a *voir dire* but Mr. McGhee nonetheless meets his burden in demonstrating that the judge's failure to hold a *voir dire* was an abuse of discretion and that, therefore, he is entitled to a new trial. See Commonwealth v.

Ray, 467 Mass. 115,139 (2014) (noting trial court obligation to question a juror even over trial counsel's objections); Lawton, 82 Mass.App. Ct. at 543.

In the case at bar the report of the sleeping juror was reliable and it suggested that the juror had been sleeping through most of the testimony of the two complaining witnesses involved in the only two charges for which Mr. McGhee was convicted (Tr. 2:5-9). The reporting juror sat directly beside Juror 44, reported loud snoring, had her perception confirmed by another juror and observed Juror 44 nod his head upon waking up, a movement that typically occurs when a person wakes up from a nap (Tr. 2:5-9).

Under these circumstances the Judge was required to inquire of the juror to determine if had heard the testimony. Dyous, 79 Mass. App. Ct. at 513. The judge's failure to ensure that Juror 44 was capable of rendering a verdict on the evidence presented at trial, violated Mr. McGhee's right to a fair trial and requires that Mr. McGhee be granted a new trial. Id.

CONCLUSION

For the foregoing reasons, this Court should, pursuant to Argument I, reverse Mr. McGhee's convictions and, pursuant to Argument II, vacate Mr. McGhee's convictions and order a new trial.

Respectfully submitted,

CRAIG MCGHEE
By his attorney,



Elizabeth Dembitzer
340 Union Avenue, First Floor
Framingham, MA 01702
Phone: (508) 820-3320
Fax: (508) 820-3324
Elizabeth@DembitzerLaw.com
BBO# 660405

~~April~~^{July} 2014

I certify that this brief complies with the rules of court that pertain to the filing of briefs.

7/24/14



Elizabeth Dembitzer

ADDENDUM

5th Amendment to the United States Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Massachusetts Declaration of Rights Article XII

No subject shall be held to answer for any crimes or offense, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs, that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defence by himself, or his counsel, at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land. And the legislature shall not make any law, that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury.

M.G.L.A. 265 § 21

§ 21. Stealing by confining or putting in fear

Whoever, with intent to commit larceny or any felony, confines, maims, injures or wounds, or attempts or threatens to kill, confine, maim, injure or wound, or puts any person in fear, for the purpose of stealing from a building, bank, safe, vault or other depository of money, bonds or other valuables, or by intimidation, force or threats compels or attempts to compel any person to disclose or surrender the means of opening any building, bank, safe, vault or other depository of money, bonds, or other valuables, shall whether he succeeds or fails in the perpetration of such larceny or felony, be punished by imprisonment in the state prison for life or for any term of years.

18 U.S.C.A. § 2113

(a) Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another, or obtains or attempts to obtain by extortion any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association; or

Whoever enters or attempts to enter any bank, credit union, or any savings and loan association, or any building used in whole or in part as a bank, credit union, or as a savings and loan association, with intent to commit in such bank, credit union, or in such savings and loan association, or building, or part thereof, so used, any felony affecting such bank, credit union, or such savings and loan association and in violation of any statute of the United States, or any larceny--

Shall be fined under this title or imprisoned not more than twenty years, or both.

RECORD APPENDIX

Notice of Appeal	R.1
Indictments	R.2
Docket Entries	R.25
Commonwealth's Motion for Partial Nolle Prosequi	R.33
Fletcher's Bank Statements (Exhibit 2)	R.34
Brown's Bank Statements (Exhibit 4)	R.38
Commonwealth's Proposed Jury Instructions	R.41
Jury Questions	R.43
Jury Verdict Slips	R.45

21

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS

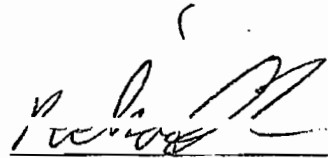
SUPERIOR COURT DEPARTMENT
WORCESTER DIVISION
DOCKET NO. WOCR2010-0867

COMMONWEALTH OF MASSACHUSETTS)
)
V.)
)
CRAIG MCGHEE)

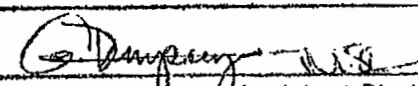
NOTICE OF APPEAL
AS TO COUNTS 9 AND 10

The defendant gives notice, pursuant to Rule 3 of the Massachusetts Rules of Appellate Procedure, of his intent to appeal certain opinions, rulings, directions and judgments of the Court with regards to Indictments 9 and 10 in the above entitled matter.

Date: March 21, 2012


Richard M. Welsh, Jr.
Welsh Law Office
80 Worcester Street
North Grafton, MA 01536
(508) 839-6100
BBO # 552732

20 12 Filed in Court 3/23

Attest 
Assistant Clerk

RI

Commonwealth of Massachusetts

Worcester, To Wit:

At the SUPERIOR COURT, begun and holden at the CITY OF WORCESTER, within and for the County of Worcester, on the First Monday of August in the year of our Lord two thousand and ten.

THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present,

That **Craig McGhee**

on the 17th day of May in the year of our Lord two thousand and ten at Worcester, in the County of Worcester aforesaid, did, without lawful authority and with the intent to extort money or other valuable thing, forcibly or secretly confine or imprison one **Thomas Brown**, within this Commonwealth and against his will.

Against the peace of said Commonwealth, and contrary to the form of the statute in such case made and provided.

A true bill.

[Signature]
Foreperson of the Grand Jury.

[Signature]
Assistant District Attorney.

Superior Court

August, Sitting, 2010

20th day - Returned by the Grand Jury and filed in Court.

[Signature]
Assistant Clerk

127


 CLERK'S LOG

CASE NO. 10-0867-1 B

COMMONWEALTH vs.

Craig Hill

Assistant District Attorney

Attorney for Defendant

DATE	JUDGE	PROCEDURE	CLERK	CRT RPTR
8/26/10	KANE	Arrested AOC 8/20/10; AC → 9/8/10 A	KC/CD	JW
9/8/10	Zimmer	PTC 166,000 + 586,600 work c 10/25/10 w/ contract w/ Unit #150LF Def. warned per c.276. §58 & §82A	KC/CD	J AUS
11/23/10	Zimmer	Held w/o Bail CDC on 10/21/10 c 11/22/10 ch # 1946 in the amt of \$5,100 - add to surety - Balance of bail \$1,500	KC/CD	CP
10/28/10				
11/22/10	JKW	PTC-H Amey 1/5/11 ch # 1970 in the amt of \$1,500 - add to surety ch # 1971 in the amt of \$150 - applies to LCF (only)	KC/CD	CP
12/17/10	Zimmer	PTC-H Bail reinstated at 66,000 + 5 6,600 work c 1/5/11	KC/CD	CP
1/5/11	Agnes	PTC-H M Dinning 2/13/11	KC/CD	JW
2/11/11	Agnes	PTC-H Act 3/11/11	KC/CD	JW
3/3/11		ch # 2088 in the amt of \$6,600 - add to surety (only)		
3/11/11	JKW	PTC-H no work 4/15/11	KC/CD	CP
4/7/11	Zimmer	PTC-H Bail reinstated, Pre-Trial Home after case program M 4/15/11	KC/CD	J AUS
5/24/11	Zimmer	PTC-H Act 6/29/11	KC/CD	CP
6/29/11	Zimmer	PTC-H T 9/26/11 2 day	KC/CD	CP
3/12/12	Tucker	Jury trial cont	ER	JW
3/13	"	Trial cont		
3/15/12	Tucker	Jury verdict NOT GUILTY	DR 00	DR 123

Commonwealth of Massachusetts

Worcester, To Wit:

At the SUPERIOR COURT, begun and holden at the CITY OF
WORCESTER, within and for the County of Worcester, on the First Monday of August in the year of our Lord
two thousand and ten.

THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present,

That **Craig McGhee**

on the 17th day of May in the year of our Lord two thousand and ten at Worcester, in the County of Worcester
aforesaid, did, without lawful authority and with the intent to extort money or other valuable thing, forcibly or
secretly confine or imprison one John Wentworth, within this Commonwealth and against his will.

Against the peace of said Commonwealth, and contrary to the form of the statute in such case made and provided.

A true bill.

Jessie M. Jones
Foreperson of the Grand Jury.

Jan M. R.
Assistant District Attorney.

Superior Court

August, Sitting, *2010*

20th day - Returned by the Grand Jury and filed in Court.

M. M. Hall
Assistant Clerk

Commonwealth of Massachusetts

Worcester, To Wit:

At the SUPERIOR COURT, begun and holden at the CITY OF
WORCESTER, within and for the County of Worcester, on the First Monday of August in the year of our Lord
two thousand and ten.

THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present,

That **Craig McGhee**

on the 18th day of May in the year of our Lord two thousand and ten at Worcester, in the County of Worcester
aforesaid, did assault Stephen MacGinnis with intent to rob him.

Against the peace of said Commonwealth, and contrary to the form of the statute in such case made and provided.

A true bill.

James M. Jones
Foreperson of the Grand Jury.

Jan M. R.
Assistant District Attorney.

Superior Court

August, Sitting, 2010

20th day - Returned by the Grand Jury and filed in Court.

John M. Hall
Assistant Clerk

Commonwealth of Massachusetts

Worcester, To Wit:

At the SUPERIOR COURT, begun and holden at the CITY OF
WORCESTER, within and for the County of Worcester, on the First Monday of August in the year of our Lord
two thousand and ten.

THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present,

That **Craig McGhee**

on the 17th day of May in the year of our Lord two thousand and ten at Worcester, in the County of Worcester
aforesaid, being armed with a dangerous weapon, did assault Thomas Brown with intent to rob him, and thereby
did rob and steal from the person of the said Thomas Brown, money, the property of Thomas Brown.

Against the peace of said Commonwealth, and contrary to the form of the statute in such case made and provided.

A true bill.

[Signature]
Foreperson of the Grand Jury.

[Signature]
Assistant District Attorney.

Superior Court

August, Sitting, 2010

20th day - Returned by the Grand Jury and filed in Court.

[Signature]
Assistant Clerk

R11

Commonwealth of Massachusetts

Worcester, To Wit:

At the SUPERIOR COURT, begun and holden at the CITY OF
WORCESTER, within and for the County of Worcester, on the First Monday of August in the year of our Lord
two thousand and ten.

THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present,

That **Craig McGhee**

on the 17th day of May in the year of our Lord two thousand and ten at Worcester, in the County of Worcester
aforesaid, being armed with a dangerous weapon, did assault James Fletcher with intent to rob him, and thereby
did rob and steal from the person of the said James Fletcher, money, the property of James Fletcher.

Against the peace of said Commonwealth, and contrary to the form of the statute in such case made and provided.

A true bill.

James Mc Jones
Foreperson of the Grand Jury.

Jan M. B.
Assistant District Attorney.

Superior Court

August, Sitting, 2010

20 day - Returned by the Grand Jury and filed in Court.

L M Hall
Assistant Clerk

R13

Commonwealth of Massachusetts

Worcester, To Wit:

At the SUPERIOR COURT, begun and holden at the CITY OF
WORCESTER, within and for the County of Worcester, on the First Monday of August in the year of our Lord
two thousand and ten.

THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present,

That **Craig McGhee**

on the 31st day of July in the year of our Lord two thousand and ten at Worcester, in the County of Worcester aforesaid,
did, by force and violence, or by assault and putting in fear, assault Dane Wolf with intent to rob him, and thereby
did rob and steal from the person or the immediate control of the said Dane Wolf, money, the property of Dane
Wolf.

Against the peace of said Commonwealth, and contrary to the form of the statute in such case made and provided.

A true bill.

Juan M. Lopez
Foreperson of the Grand Jury.

Jan M. D.
Assistant District Attorney.

Superior Court

August, Sitting, *2010*

21 day — Returned by the Grand Jury and filed in Court.

R. M. Hall
Assistant Clerk

(R15)

Commonwealth of Massachusetts

Worcester, To Wit:

At the SUPERIOR COURT, begun and holden at the CITY OF
WORCESTER, within and for the County of Worcester, on the First Monday of August in the year of our Lord
two thousand and ten.

THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present,

That **Craig McGhee**

on the 18th day of May in the year of our Lord two thousand and ten at Worcester, in the County of Worcester
aforesaid, did assault and beat Stephen MacGinnis.

Against the peace of said Commonwealth, and contrary to the form of the statute in such case made and provided.

A true bill.

James H. Jones
Foreperson of the Grand Jury.

Jan M. B.
Assistant District Attorney.

Superior Court

August, Sitting, *2010*

20 day - Returned by the Grand Jury and filed in Court.

J. M. Hall
Assistant Clerk

Commonwealth of Massachusetts

Worcester, To Wit:

At the SUPERIOR COURT, begun and holden at the CITY OF
WORCESTER, within and for the County of Worcester, on the First Monday of August in the year of our Lord
two thousand and ten.

THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present,

That **Craig McGhee**

on the 17th day of May in the year of our Lord two thousand and ten at Worcester, in the County of Worcester
aforesaid, with intent to commit larceny or any felony, did confine, maim, injure or wound, or did attempt to or
threaten to kill, confine, maim, injure or wound, or did put any person in fear, for the purpose of stealing from a
building, bank, safe, vault or other depository of money, bonds or other valuables, or did by intimidation, force or
threats compel or attempt to compel any person to disclose or surrender the means of opening any building, bank,
safe, vault or other depository of money, bonds or other valuables.

Against the peace of said Commonwealth, and contrary to the form of the statute in such case made and provided.

A true bill.

[Signature]
Foreperson of the Grand Jury.

[Signature]
Assistant District Attorney.

Superior Court

August, Sitting, 2010

20th day - Returned by the Grand Jury and filed in Court.

[Signature]
Assistant Clerk

1219

Commonwealth of Massachusetts

Worcester, To Wit:

At the SUPERIOR COURT, begun and holden at the CITY OF
WORCESTER, within and for the County of Worcester, on the First Monday of August in the year of our Lord
two thousand and ten.

THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present,

That **Craig McGhee**

on the 17th day of May in the year of our Lord two thousand and ten at Worcester, in the County of Worcester
aforesaid, with intent to commit larceny or any felony, did confine, maim, injure or wound, or did attempt to or
threaten to kill, confine, maim, injure or wound, or did put any person in fear, for the purpose of stealing from a
building, bank, safe, vault or other depository of money, bonds or other valuables, or did by intimidation, force or
threats compel or attempt to compel any person to disclose or surrender the means of opening any building, bank,
safe, vault or other depository of money, bonds or other valuables.

Against the peace of said Commonwealth, and contrary to the form of the statute in such case made and provided.

A true bill.

[Signature]
Foreperson of the Grand Jury.

[Signature]
Assistant District Attorney.

Superior Court

August, Sitting, 2010

20th day - Returned by the Grand Jury and filed in Court.

[Signature]
Assistant Clerk

1221

10-0867-11

Commonwealth of Massachusetts

Worcester, To Wit:

At the SUPERIOR COURT, begun and holden at the CITY OF
WORCESTER, within and for the County of Worcester, on the First Monday of August in the year of our Lord
two thousand and ten.

THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present,

That **Craig McGhee**

on the 31st day of July in the year of our Lord two thousand and ten at Worcester, in the County of Worcester aforesaid,
did knowingly or intentionally, unlawfully possess a controlled substance, to wit: cocaine.

Against the peace of said Commonwealth, and contrary to the form of the statute in such case made and provided.

A true bill.

Juan M. Lopez
Foreperson of the Grand Jury.

Jan M. B.
Assistant District Attorney.

Superior Court

August, Sitting, 2010

20th day - Returned by the Grand Jury and filed in Court.

L. M. Hall
Assistant Clerk

1223

**Commonwealth of Massachusetts
WORCESTER SUPERIOR COURT
Case Summary
Criminal Docket**

Commonwealth v McGhee, Craig

Details for Docket: WOCR2010-00867

Case Information

Docket Number:	WOCR2010-00867	Caption:	Commonwealth v McGhee, Craig
Entry Date:	08/20/2010	Case Status:	Crim 1 -CtRm 18
Status Date:	01/14/2014	Session:	Disposed: Entered in Appeals Court
Lead Case:	NA	Deadline Status:	Active since
Trial Deadline:	09/08/2010	Jury Trial:	YES

Parties Involved

4 Parties Involved in Docket: WOCR2010-00867

Party Involved:		Role:	Defendant
Last Name:	McGhee	First Name:	Craig
Address:	22 Homestead	Address:	Ave.
City:	Worcester	State:	MA
Zip Code:	01604	Zip Ext:	
Telephone:			

Party Involved:		Role:	Plaintiff
Last Name:	Commonwealth	First Name:	
Address:		Address:	
City:		State:	
Zip Code:		Zip Ext:	
Telephone:			

Party Involved:		Role:	Police agency
Last Name:	Worcester PD	First Name:	
Address:		Address:	
City:		State:	
Zip Code:		Zip Ext:	

Telephone:**Party Involved:**

Last Name: Hyatt
Address: 22 Halmstad Street
City: Worcester
Zip Code:
Telephone:

Role: Surety
First Name: Icemin
Address:
State: MA
Zip Ext:

Attorneys Involved

4 Attorneys Involved for Docket: WOCR2010-00867

Attorney Involved:

Last Name: Welsh Jr
Address: Welch Law Office
City: North Grafton
Zip Code: 01536
Telephone: 508-839-6100
Fascimile: 508-839-7715

Firm Name:

First Name: Richard Matthew
Address: 80 Worcester Street, Suite 5
State: MA
Zip Ext:
Tel Ext:
Representing: McGhee, Craig (Defendant)

Attorney Involved:

Last Name: Dembitzer
Address: Attorney at Law
City: Framingham
Zip Code: 01702
Telephone: 508-820-3320
Fascimile: 508-820-3324

Firm Name:

First Name: Elizabeth
Address: 340 Union Avenue
State: MA
Zip Ext:
Tel Ext:
Representing: McGhee, Craig (Defendant)

Attorney Involved:

Last Name: Dillon
Address: Worcester Trial Court
City: Worcester
Zip Code: 01608
Telephone: 774-317-2162
Fascimile: 508-831-9899

Firm Name:

Firm Name: WORC02
First Name: Brett
Address: 225 Main Street
State: MA
Zip Ext:
Tel Ext:
Representing: Commonwealth, (Plaintiff)

Firm Name: WORC02

**Attorney
Involved:**

Last Name:	Travers	First Name:	Jeffrey T
Address:	Worcester Trial Court	Address:	225 Main Street
City:	Worcester	State:	MA
Zip Code:	01608	Zip Ext:	
Telephone:	508-755-8601	Tel Ext:	
Fascimile:	508-831-9899	Representing:	Commonwealth, (Plaintiff)

Calendar Events

33 Calendar Events for Docket: WOCR2010-00867

No.	Event Date:	Event Time:	Calendar Event:	SES:	Event Status:
1	08/26/2010	09:05	Arraignment	1	Event not held--req of Defendant
2	09/08/2010	09:05	Arraignment	1	Event held as scheduled
3	10/25/2010	09:00	Conference: Pre-Trial	1	Event held as scheduled
4	11/22/2010	09:00	Conference: Status Review	1	Event held as scheduled
5	12/17/2010	09:00	Bail: Setting	1	Event held as scheduled
6	01/05/2011	09:00	Conference: Status Review	1	Event held as scheduled
7	02/03/2011	09:00	Hearing: Non-Evidentiary - Dismiss	1	Event postponed - Atty on trial
8	03/11/2011	09:00	Conference: Status Review	1	Event held as scheduled
9	04/07/2011	09:00	Hearing: Bail	1	Event held as scheduled
10	04/15/2011	09:00	Hearing: Motion	1	Event held as scheduled
11	05/24/2011	09:00	Conference: Status Review	1	Event held as scheduled
12	06/29/2011	09:00	Conference: Status Review	1	Event held as scheduled
13	09/26/2011	08:50	TRIAL: by jury	1	Event rescheduled by court prior to date
14	11/28/2011	08:50	TRIAL: by jury	1	Event not held--req of Defendant
15	02/06/2012	08:50	TRIAL: by jury	1	Event not held--req of Commonwealth
16	03/12/2012	08:50	TRIAL: by jury	1	Event moved to another session
17	03/12/2012	08:50	TRIAL: by jury	2	Trial begins
18	03/13/2012	08:50	TRIAL: by jury	2	Event continues over multiple days
19	03/14/2012	08:50	TRIAL: by jury	2	Event continues over multiple days
20	03/15/2012	08:50	TRIAL: by jury	2	Trial ends
21	03/16/2012	09:00	Hearing: Sentence Imposition	2	Event held as scheduled
22	04/10/2012	09:00	Conference: Trial Assignment	1	Event held as scheduled
23	06/04/2012	08:50	TRIAL: by jury	1	Event not held--joint request
24	07/30/2012	09:00	Conference: Trial Assignment	1	Event held as scheduled
25	09/10/2012	08:50	Conference: Trial Assignment	1	Event not held--joint request
26	10/15/2012	09:00	Conference: Trial Assignment	1	Event moved to another session

27	10/16/2012	09:00	Conference: Status Review	7	Event held as scheduled
28	11/08/2012	09:00	Conference: Trial Assignment	1	Event held as scheduled
29	01/22/2013	08:50	TRIAL: by jury	2	Event moved to another session
30	01/22/2013	09:00	TRIAL: by jury	1	Event moved to another session
31	01/22/2013	09:00	TRIAL: by jury	3	Held in Session Ready for trial
32	01/23/2013	09:00	TRIAL: jury waived	3	
33	01/23/2013	09:00	TRIAL: by jury	3	Event canceled not re-scheduled

Full Docket Entries

147 Docket Entries for Docket: WOCR2010-00867

Entry Date:	Paper No:	Docket Entry:
08/20/2010	1	Indictment returned
08/26/2010		Summons for arraignment issued ret 9/8/10
08/26/2010		defendant bailed at HOC (Justice Peter Agnes)
09/08/2010		Appointment of Counsel Richard Matthew Welsh Jr, pursuant to Rule 53
09/08/2010		Deft arraigned before Court
09/08/2010	2	Assigned to Track "B" see scheduling order
09/08/2010		Tracking deadlines Active since return date
09/08/2010		RE Offense 1:Plea of not guilty
09/08/2010		RE Offense 2:Plea of not guilty
09/08/2010		RE Offense 3:Plea of not guilty
09/08/2010		RE Offense 4:Plea of not guilty
09/08/2010		RE Offense 5:Plea of not guilty
09/08/2010		RE Offense 6:Plea of not guilty
09/08/2010		RE Offense 7:Plea of not guilty
09/08/2010		RE Offense 8:Plea of not guilty
09/08/2010		RE Offense 9:Plea of not guilty
09/08/2010		RE Offense 10:Plea of not guilty
09/08/2010		RE Offense 11:Plea of not guilty
09/08/2010		Bail set: \$66,000.00 with surety or \$6,600.00 cash. No contact with
09/08/2010		victim (Lemire, J)
09/08/2010		Legal counsel fee assessed in the amount of \$150.00 (Lemire, Justice)
09/08/2010		Bail warning read
09/08/2010		Appointment of Counsel Richard Matthew Welsh Jr, pursuant to Rule 53
10/25/2010		Bail revoked by the District Court on 10/21/10 per ADA Dillon
10/28/2010		Bail received: \$1,500.00 cash, BB#7955, Surety: Self Surety, 701 Main
10/28/2010		Street, Worcester, MA
10/28/2010		Bail satisfied: \$5,100.00 cash, BB#7955, Surety: Paula Le, 19 Upland
10/28/2010		Gardens, Worcester, MA - 10/28/10 Ck #1946 in the amount of \$5,100.00
10/28/2010		returned to surety
11/22/2010		Legal counsel fee paid as assessed in the amount of \$150.00 Check#

11/22/2010		1971 Receipt# 70735
12/17/2010		Bail Re-Instated Set: \$66,000.00 with surety or \$6,600.00 cash
12/17/2010		(Lemire, J)
02/08/2011		Notice received on 2/8/2011 that the defendant's bail was revoked by
02/08/2011		the District Court reviewable on 04/7/11. Counsel notified.
02/24/2011		Bail satisfied: \$6,600.00 cash, BB#8037, Surety: Icemine Hyatt, 22
02/24/2011		Halmstad Street, Worcester, MA - 3/3/11 Ck #2082 in the amount of
02/24/2011		\$6,600.00 returned to surety
04/07/2011	3	After hearing Bail reinstated, follow any all after care through the
04/07/2011	3	Hope Program + take all medications as presented, Judge Lemire
04/07/2011	3	ordered no reporting instructions what so ever (Lemire, J)
04/07/2011		Bail satisfied: \$6,600.00 Cash ; BB# 8076; Surety Icemine Hyatt , 22
04/07/2011		Halmstead Street, Worcester, MA 01604 ; 3-16-12 CK# 3049 in the
04/07/2011		amount of \$6,600.00 returned to Surety
04/12/2011	4	MOTION by Deft: For Relief from Prejudicial Joinder
04/12/2011	5	MOTION by Deft: To Dismiss Counts 5 & 6 with affidavit and memorandum
04/12/2011	5	in support
04/12/2011	6	MOTION by Deft: To Dismiss Counts 7 & 11 with affidavit and
04/12/2011	6	memorandum in support of
04/12/2011	5	Commonwealth files opposition to the defendant's motion to dismiss
04/12/2011	5	counts 5 and 6 due to insufficient evidence presented to the grand
04/12/2011	5	jury
04/12/2011	6	Commonwealth files opposition to the defendant's motion to dismiss
04/12/2011	6	counts 7 and 11 due to insufficient evidence presented to the grand
04/12/2011	6	jury
04/25/2011		MOTION (P#5) Denied. See memmo of decision & order (James R. Lemire,
04/25/2011		Justice). Copies mailed
04/25/2011		MOTION (P#6) Denied. See memo decision and order (James R. Lemire,
04/25/2011		Justice). Copies mailed
04/25/2011	7	MEMORANDUM OF DECISION AND ORDER ON DEFENDANT'S MOTION TO DISMISS:
04/25/2011	7	For the reasons stated above, the defendant's motions to dismiss are
04/25/2011	7	DENIED (James R. Lemire, Justice)
09/12/2011	8	MOTION by Deft: to continue event (assented to)
09/12/2011		MOTION (P#8) allowed (James R. Lemire, Justice).
11/16/2011	9	Defendant files MOTION to continue TRIAL: by jury from 11/28/11 to
11/16/2011	9	2/6/12 (ALLOWED) (Lemire, J)
01/30/2012	10	Commonwealth files MOTION to continue TRIAL: by jury to 3/12/2012
01/30/2012	10	-(ALLOWED)(Kenton-Walker, J)
03/12/2012	11	MOTION by Commonwealth: for partial nolle prosequi (counts 7 & 11)
03/12/2012		RE Offense 7:Nolle prosequi
03/12/2012		RE Offense 11:Nolle prosequi
03/12/2012		MOTION (P#4) allowed (Richard T. Tucker, Justice).
03/12/2012	12	Commonwealth's Motion in Limine to introduce bank records (Allowed).
03/12/2012	12	Tucker. J.

03/12/2012	13	Commonwealth's Motion in Limine to admit prior convictions of the
03/12/2012	13	defendant (Allowed), Tucker, J.
03/12/2012	14	Defendant's Motion in Limine to forbid use of the defendant's prior
03/12/2012	14	convictions at trial (Allowed), Tucker, J.
03/12/2012	14	Commonwealth files Witness List
03/13/2012	14	Commonwealth files Proposed Jury Instructions
03/15/2012		RE Offense 9:Guilty verdict
03/15/2012		RE Offense 10:Guilty verdict
03/15/2012		RE Offense 1:Not guilty verdict
03/15/2012		RE Offense 2:Not guilty verdict
03/15/2012		RE Offense 3:Not guilty verdict
03/15/2012	18	Deft files Memorandum of Motion to for Required Finding of not Guilty
03/15/2012	18	(DENIED)(Tucker, J)
03/15/2012		RE Offense 5:Not guilty verdict
03/15/2012		RE Offense 6:Not guilty verdict
03/16/2012		Bail in the amount of \$6,600.00 returned to Surety Icemim M Hyatt
03/16/2012		Check #3049
03/16/2012	15	Habeas corpus for Deft at Cedar Junction MCI (Walpole) for 4/10/12
03/16/2012		Bail: Defendant held without bail (Tucker, Justice)
03/16/2012	16	Notified of right of appeal under Rule 64
03/16/2012	17	ORDER OF PROBATION : DNA sample, no contact + stay away from victims.
03/16/2012	17	no illegal drug or alcohol use, substance abuse, mental health
03/16/2012	17	(Tucker, Justice)
03/16/2012		Defendant sentenced to Offense #9 Three(3) to Five(5) years Cedar
03/16/2012		Junction/ Offense #10 Five(5) years Probation from & after 10-867(9)
03/16/2012		(Janet Kenton-Walker, Justice)
03/16/2012		Sentence credit given as per 279:33A: 192 days
03/21/2012	19	Notice of appeal from sentence to Cedar Junction MCI (Walpole) filed
03/21/2012	19	by Craig McGhee
03/21/2012	23	Letter transmitted to the Appellate Division. All parties notified
03/21/2012	23	3/26/2012
03/23/2012	20	MOTION by Deft: To Appoint Appellate Counsel ass to Counts 9 and 10
03/23/2012	21	NOTICE of APPEAL FILED by Craig McGhee Counts 9 & 10
03/23/2012	22	Attorney, Richard Matthew Welsh Jr's MOTION to withdraw as counsel of
03/23/2012	22	record for Craig McGhee- as to Counts 9 and 10
03/23/2012		MOTION (P#20) allowed (Janet Kenton-Walker, Justice). Copies mailed
03/23/2012		3/28/2012
03/23/2012		MOTION (P#22) allowed (Janet Kenton-Walker, Justice). Copies mailed
03/23/2012		3/28/2012
03/28/2012	23	Court Reporter Witaszek, Jennifer is hereby notified to prepare one
03/28/2012	23	copy of the transcript of the Trial of 03/12/2012
03/28/2012	24	Court Reporter Roseboom, David A. is hereby notified to prepare one
03/28/2012	24	copy of the transcript of the evidence of 03/13,14,15,16/2012
04/10/2012	25	Habeas corpus for Deft at Cedar Junction MCI (Walpole) for 6/4/12

05/09/2012	26	Appointment of Counsel Elizabeth Dembitzer, pursuant to Rule 53
06/12/2012	27	Appearance of Deft's Atty: Elizabeth Dembitzer
07/31/2012	28	Habeas corpus for Deft at Cedar Junction MCI (Walpole) for 9/10/12
08/21/2012		Transcript of testimony received Volume One (1) 3/12/12 Transcript of
08/21/2012		proceedings from Court Reporter Witaszek, Jennifer
10/09/2012		Transcript of testimony received volumes # 3/13/12 thru 3/13/16 Trial
10/09/2012		and Sentence Imposition from Transcript of proceedings from Court
10/09/2012		Reporter Roseboom, David A.
10/10/2012		Transcript(Cds) mailed to DA and Appellate Atty Dembitzer
11/08/2012	29	Habeas corpus for Deft at Bridgewater MCI (Treatment Center) for
11/08/2012	29	1/22/13
01/22/2013		Case held in Session- Ready for trial
01/22/2013		Case held in Session- Ready for trial
01/23/2013	30	Waiver of trial by jury
01/23/2013	30	RE Offense 4:Guilty finding (lesser offense)
01/23/2013	30	RE Offense 8:Guilty finding
01/23/2013		Defendant sentenced to Offense #4 One(1) year House of Correction
01/23/2013		concurrent with any sentence now be serving/ Offense #8 Two(2) years
01/23/2013		House of Correction concurrent with any sentence now serving (Wrenn,
01/23/2013		J)
01/23/2013	31	Jury Waived trial Exhibit List
01/23/2013		Fee: waived. Legal & Victim Witness
06/13/2013	32	Sentence Appeal: Withdrawn by Craig McGhee
01/02/2014	33	Statement of the case on Appeal (Cover Sheet)
01/02/2014	34	Notice of assembly of record; mailed to Appeals Court per Rule 9(d)
01/02/2014		Notice of completion of assembly of record sent to clerk of Appeals
01/02/2014		Court and attorneys for the Commonwealth and defendant.
01/14/2014	35	Notice of Entry of appeal received from the Appeals Court on January
01/14/2014	35	7, 2014 No.2014-P-0010

Charges

11 Charges for Docket: WOCR2010-00867

No.	Charge Description:	Indictment:	Status:
1	KIDNAPPING c265 s26		Not guilty verdict
2	KIDNAPPING c265 s26		Not guilty verdict
3	KIDNAPPING c265 s26		Not guilty verdict
4	ASSAULT TO ROB, UNARMED c265 s20		Guilty finding (lesser offense)
5	ROBBERY, ARMED c265 s17		Not guilty verdict
6	ROBBERY, ARMED c265 s17		Not guilty verdict
7	ROBBERY, UNARMED c265 s19(b)		Nolle prosequi
8	A&B c265 s13A(a)		Guilty finding

9	INTIMIDATE TO STEAL FROM DEPOSITORY c265 s21	Guilty verdict
10	INTIMIDATE TO STEAL FROM DEPOSITORY c265 s21	Guilty verdict
11	DRUG, POSSESS CLASS B c94C s34	Nolle prosequi

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COMMONWEALTH OF MASSACHUSETTS

WORCESTER, S.S.

SUPERIOR COURT DEPARTMENT
DOCKET NO.: 2010-0867

COMMONWEALTH

v.

CRAIG MCGHEE

20 12 Filed in Court 3/12
ALLOWED - Tucker J.
Arrest Catherine Brennan
Assistant C

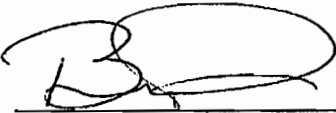
PARTIAL NOLLE PROSEQUI

Now comes the Commonwealth and enters a nolle prosequi with respect to counts seven and eleven of the above-captioned indictment. As reasons therefore, the Commonwealth states that the Commonwealth has insufficient evidence to proceed at this time.

Respectfully Submitted
For the Commonwealth,

JOSEPH D. EARLY, JR.
DISTRICT ATTORNEY

By:


Brett F. Dillon
Assistant District Attorney
Middle District Attorney's Office
225 Main Street, Room G-301
Worcester, Massachusetts 01608



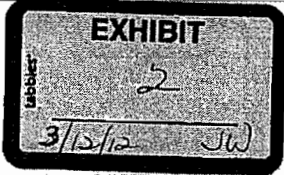
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 Haverhill, MA, 01731
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STATEMENT OF ACCOUNTS

MEMBER NO	ENDING DATE	BRANCH	PAGE	
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Fly Away with \$10K by paying your bills online during our summer sweepstakes. Pay three bills by July 31 to qualify. Get another entry with every bill paid, up to 30 bills. No purchase necessary. See official rules at www.hfcu.org.

JAMES CONNOR FLETCHER
 11 NEHEMIAH ROAD
 SHIRLEY MA 01464



DATE	TRANSACTION DESCRIPTION	AMOUNT	FINANCE CHARGE	BALANCE
SAVINGS - MERPTS 1361 ACCT# 1		05-01-10 THRU 05-31-10		PREVIOUS BALANCE 234.03
JAMES R FLETCHER KASEY A FLETCHER				
MAY01	DEPOSIT 0501 0936 626599 HANSCOM FCU DEVENES MA	55.00		289.03
MAY01	TRANSFER 2 INTERNET SHARE TRANSFER	100.00-		189.03
MAY03	TRANSFER-DRAFT FROM/TO 2	4.38-		184.65
MAY06	TRANSFER-DRAFT FROM/TO 2	0.99-		183.66
MAY11	TRANSFER-DRAFT FROM/TO 2	1.29-		182.37
MAY12	TRANSFER-DRAFT FROM/TO 2	22.00-		160.37
MAY13	DEPOSIT 0513 1229 873467 HANSCOM FCU DEVENES MA	58.00		218.37
MAY14	TRANSFER-DRAFT FROM/TO 2	42.75-		175.62
MAY17	WITHDRAWAL 0517 2026 968556 BANK OF AMERICA WORCESTER MA	142.00-		33.62
MAY18	DEPOSIT 0518 1311 978832 HANSCOM FCU DEVENES MA	100.00		133.62
MAY25	WITHDRAWAL 0525 1933 124875 SOVEREIGN BANK AYER MA	42.00-		91.62
MAY26	TRANSFER-DRAFT FROM/TO 2	3.50-		88.12
MAY26	DEPOSIT 0526 0805 131242 HANSCOM FCU DEVENES MA	115.00		133.12
MAY26	TRANSFER-DRAFT FROM/TO 2	71.56-		66.56
MAY31	DIVIDEND	0.05		66.61
*** ANNUAL PERCENTAGE YIELD EARNED FROM 05-01-10 THRU 05-31-10 WAS 0.42% ***				
MAY31	NEW BALANCE			66.61
		TOTAL FOR THIS PERIOD	TOTAL YEAR-TO-DATE	
TOTAL OVERDRAFT FEES		0.00	0.00	
TOTAL OVERDRAFT FEES WAIVED		0.00	0.00	
TOTAL RETURNED ITEM FEES		0.00	0.00	
TOTAL RETURNED ITEM FEES WAIVED		0.00	0.00	
FREE CHECKING ACCT# 2		05-01-10 THRU 05-31-10		PREVIOUS BALANCE 91.15
MAY01	TRANSFER 1 INTERNET SHARE TRANSFER	100.00		191.15
MAY02	MERCHANT SALES DRAFT 121029778891 NEWBURY COMICS #21 PROVIDENCE RI 04-30-10	8.55-		182.60
MAY02	MERCHANT SALES DRAFT 121663990657 MCDONALD.S F6450 AYER MA 05-01-10	6.46-		176.14
MAY02	WITHDRAWAL POS 0502 1343 654384 A & P SPINNER M WESTFORD MA	1.75-		174.39
MAY02	MERCHANT SALES DRAFT 122088278049 TM *EASY STAR ALL-STAR 212-307-7171 NY 05-02-10	26.50-		147.89
MAY02	MERCHANT SALES DRAFT 122092474685 TM *VICTOR WOOTEN 212-307-7171 NY 05-02-10	30.50-		117.39
MAY02	WITHDRAWAL POS 0502 1824 661006 PIZZA PIZZAZZ TOWNSEND MA	12.32-		105.07
MAY03	TRANSFER-DRAFT FROM/TO 1	4.38		109.45
MAY03	SHARE DRAFT 237 TRACE#00000000000009125753	50.00-		59.45
MAY03	SHARE DRAFT 236 TRACE#00000000000009125755	55.00-		4.45

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MAY02	1.75-	MAY04	4.45-	MAY12	22.00-	MAY26	71.56-
MAY02	26.50-						
TOTAL FEES		0	0.00				
TOTAL WITHDRAWALS AND OTHER DEBITS		13	232.62-				

***** STATEMENT SUMMARY *****

Acct	New Balance	Dividends YTD	Social Security	Tax Name	Loan	New Balance	Finance Charge YTD
1	66.61	0.86	ON FILE	JAMES CONNOR FLETCHER			
2	0.00	0.00	ON FILE	JAMES CONNOR FLETCHER			
TOTAL DIVIDENDS YTD		0.86			TOTAL FINANCE CHARGES YTD		0.00

IMPORTANT ACCOUNT INFORMATION: <http://www.hfcu.org/disclosure>

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STATEMENT OF ACCOUNTS

MEMBER NO	ENDING DATE	BRANCH	PAGE	
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JAMES CONNOR FLETCHER
 11 NEHEMIAH ROAD
 SHIRLEY MA 01464

DATE	TRANSACTION DESCRIPTION	AMOUNT	FINANCE CHARGE	BALANCE
MAY04	MERCHANT SALES DRAFT 123482320747 DUNKIN #302820 Q35 FITCHBURG MA 05-03-10	4.45-		0.00
MAY06	TRANSFER-DRAFT FROM/TO 1 POS 0506 0424 140687 Music DWNLDS 866-216-1072 WA	0.99		0.99
MAY06	MERCHANT SALES DRAFT 126065140687 Music DWNLDS 866-216-1072 WA 05-06-10	0.99-		0.00
MAY11	TRANSFER-DRAFT FROM/TO 1 POS 0511 2230 469676 Music DWNLDS 866-216-1072 WA	1.29		1.29
MAY11	MERCHANT SALES DRAFT 131764469676 Music DWNLDS 866-216-1072 WA 05-11-10	1.29-		0.00
MAY12	TRANSFER-DRAFT FROM/TO 1 0512 1341 857089 SOVEREIGN BANK FITCHBURG MA	22.00		22.00
MAY12	WITHDRAWAL 0512 1341 857089 SOVEREIGN BANK FITCHBURG MA	22.00-		0.00
MAY14	TRANSFER-DRAFT FROM/TO 1 0514 2336 907971 CITIZENS BANK FITCHBURG MA	42.75		42.75
MAY14	WITHDRAWAL 0514 2336 907971 CITIZENS BANK FITCHBURG MA	42.75-		0.00
MAY26	TRANSFER-DRAFT FROM/TO 1 POS 0526 0712 413061 AUBUCHON HARDWARE AYER MA	3.50		3.50
MAY26	MERCHANT SALES DRAFT 145449413061 AUBUCHON HARDWARE AYER MA 05-25-10	3.50-		0.00
MAY26	TRANSFER-DRAFT FROM/TO 1 POS 0526 2053 309548 AMAZON MKTPLACE PMTS AMZN.COM/BILLWA	71.56		71.56
MAY26	MERCHANT SALES DRAFT 145622309548 AMAZON MKTPLACE PMTS AMZN.COM/BILLWA 05-26-10	71.56-		0.00
MAY31	NEW BALANCE			0.00

	TOTAL FOR THIS PERIOD	TOTAL YEAR-TO-DATE
TOTAL OVERDRAFT FEES	0.00	0.00
TOTAL OVERDRAFT FEES WAIVED	0.00	0.00
TOTAL RETURNED ITEM FEES	0.00	0.00
TOTAL RETURNED ITEM FEES WAIVED	0.00	0.00

SD#	DATE	AMOUNT	SD#	DATE	AMOUNT	SD#	DATE	AMOUNT	SD#	DATE	AMOUNT
236	MAY03	55.00	237	MAY03	50.00						

DEPOSITS, DIVIDENDS AND OTHER CREDITS

DATE	AMOUNT	DATE	AMOUNT	DATE	AMOUNT	DATE	AMOUNT
MAY01	100.00						

TR36



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STATEMENT OF ACCOUNTS

MEMBER NO.	ENDING DATE	BRANCH	PAGE	
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JAMES CONNOR FLETCHER
11 NEHEMIAH ROAD
SHIRLEY MA 01464

DATE	TRANSACTION DESCRIPTION	AMOUNT	FINANCE CHARGE	BALANCE
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DEPOSITS, DIVIDENDS AND OTHER CREDITS (CONTINUED)

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1-800-922-9999

Call Citizens' PhoneBank anytime for account information, current rates and answers to your questions.

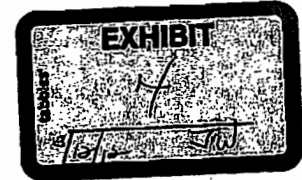
US702 BR257

THOMAS BROWN
42 BARROWS ST
NORTH ATTLEBORO MA 02760-2242

Checking Account Statement

1 OF 3

Beginning May 07, 2010
through June 04, 2010



Checking

SUMMARY

Balance Calculation

Previous Balance	2.64
Checks	.00 -
Withdrawals	571.52 -
Deposits & Additions	572.60 +
Current Balance	3.72 =

THOMAS BROWN
Green Checking
131008-623-8

Previous Balance

2.64

TRANSACTION DETAILS

Withdrawals

ATM/Purchases

Date	Amount	Description
05/10	2.00	Non-Citizens ATM Fee - 000000 160 Pearl St Fitchburg MA
05/10	20.60	1670 Dbt Purchase - 007081 Campus Variety Fitchburg MA
05/10	12.00	1670 ATM Cash - 000000 160 Pearl St Fitchburg MA
05/10	1.05	1670 Dbt Purchase - 240005 Apl iTunes 866-712-77 53 CA
05/12	2.00	Non-Citizens ATM Fee - 000000 160 Pearl St Fitchburg MA
05/12	2.00	Non-Citizens ATM Fee - 000000 160 Pearl St Fitchburg MA
05/12	22.00	1670 ATM Cash - 000000 160 Pearl St Fitchburg MA
05/12	22.00	1670 ATM Cash - 000000 160 Pearl St Fitchburg MA
05/12	6.91	1670 Dbt Purchase - 007081 Campus Variety Fitchburg MA
05/13	20.00	1670 ATM Cash - Mz3350 St 24 Fitchburg, Fitchburg MA
05/13	6.09	1670 POS Debit - 201051 Tedeschi Food Fitchburg MA
05/13	.99	1670 POS Debit - 201051 Tedeschi Food Fitchburg MA
05/14	2.99	1670 Dbt Purchase - 001 Fsc Commuter C2802fitchburg MA
05/17	1.55	1670 Dbt Purchase - 001 Fsc Commuter C2802fitchburg MA
05/18	2.00	Non-Citizens ATM Fee - Imad13
05/18	2.00	Non-Citizens ATM Fee - Imad13
05/18	108.00	1670 Dbt Purchase - Imad13
05/18	22.00	1670 ATM Cash - Imad13
05/18	13.80	1670 Dbt Purchase - 001 Fsc Commuter C2802fitchburg MA
05/19	20.00	1670 ATM Cash - Mz3350 St 24 Fitchburg, Fitchburg MA
05/19	10.30	1670 Dbt Purchase - 007081 Campus Variety Fitchburg MA
05/19	7.58	1670 Dbt Purchase - 001 Fsc Commuter C2802fitchburg MA
05/19	7.57	1670 Dbt Purchase - 001 Fsc Commuter C2802fitchburg MA
05/19	7.43	1670 Dbt Purchase - 002300 Newbury Comics #23leominster MA
05/19	1.19	1670 Dbt Purchase - 007081 Campus Variety Fitchburg MA
05/20	50.63	1670 Dbt Purchase - 1 Denny's #7608 Leominster MA
05/20	7.38	1670 Dbt Purchase - 000000 Uncle Sams Worcester MA
05/20	6.90	1670 Dbt Purchase - 007081 Campus Variety Fitchburg MA
05/20	5.00	1670 Dbt Purchase - 230040 Montuori Citgo Fitchburg MA
05/20	1.50	1670 Dbt Purchase - 007081 Campus Variety Fitchburg MA
05/21	12.99	1670 Dbt Purchase - 1 Mcdonald's F26332 North Attl Eboma
05/24	2.00	Non-Citizens ATM Fee - Lk8093 54 S. Washington Snorth Attl E
05/24	41.50	1670 ATM Cash - Lk8093 54 S. Washington Snorth Attl Eboma
05/25	5.99	1670 POS Debit - 009695 Cns Toys R US North Attl Eboma
05/26	27.61	1670 Dbt Purchase - 002100 Newbury Comics #21 North Attl Eboma
05/26	15.14	1670 Dbt Purchase - 1 Mcdonald's F3542 Plainville MA

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Checking Account Statement

2 OF 3

Beginning May 07, 2010 through June 04, 2010

Checking continued from previous page

ATM/Purchases (continued)

Date	Amount	Description
05/27	.83	Foreign Currency Fee - K79000 Ccbilleu.Com +1888valetta
05/27	29.95	1670 Dbt Purchase - K79000 Ccbilleu.Com +1888valetta
05/28	2.00	Non-Citizens ATM Fee - Lk8093 54 S. Washington Snorth Attl E
05/28	21.50	1670 ATM Cash - Lk8093 54 S. Washington Snorth Attl Eboma
05/28	17.55	1670 POS Debit - 193000 Target T1930 P Plainville MA
05/28	5.00	1670 Dbt Purchase - 001 North Attlebor0000n Attlebor O MA

THOMAS BROWN
Green Checking
131008-623-8

⊖ Total Withdrawals
571.52

	Total For This Period	Total Year-To-Date
Total Overdraft Fees	.00	133.00
Total Insufficient Available Funds (Returned Item) Fees	.00	.00

Deposits & Additions

Date	Amount	Description
05/10	40.00	Deposit
05/11	60.00	Deposit
05/12	20.00	Deposit
05/17	40.00	Deposit
05/18	400.00	Deposit
05/28	10.00	Deposit
06/02	2.60	GreenSense Cash

⊕ Total Deposits & Additions
572.60

⊖ Current Balance
3.72

Daily Balance

Date	Balance	Date	Balance	Date	Balance
05/10	6.99	05/18	298.66	05/25	110.70
05/11	66.99	05/19	244.59	05/26	67.95
05/12	32.08	05/20	173.18	05/27	37.17
05/13	5.00	05/21	160.19	05/28	1.12
05/14	2.01	05/24	115.69	06/02	3.72
05/17	40.46				

NEWS FROM CITIZENS

--As of July 15, 2010, Your Deposit Account Agreement, Section C, Limited Liability, is amended by the addition of the following statement: Likewise, we shall be excused, without liability, from any failure, refusal, or delay in executing any transfer or receipt of funds of any type whatsoever or other customer transaction on your behalf or benefit if such execution or fulfillment would result in the violation by us of any applicable rule, law, regulation, or order, or funds transfer system rule or policy, or a policy of ours or any of our affiliates, whether foreign or domestic.

--Citizens Bank is here for all your borrowing needs. Whether you are consolidating debt, making home improvements or paying off student loans, Citizens Bank has great rates that can help you with a variety of borrowing needs. Take advantage of flexible repayment terms and no closing costs on home equity lines or loans. Or, for those of you who are purchasing a home or refinancing your mortgage, get 1/8% off your rate when you have a Circle Gold Checking account and your payment automatically deducted. See a banker today or call 888-716-4824 and discuss your borrowing options.

--Looking for high yields and easy access to your cash savings? Look no further! Citizens Bank offers savings and money market accounts with great rates and the peace of mind of FDIC insurance. Whether you are just starting out or looking to preserve your liquid cash deposits, we have an account to suit your needs. We also have new products that reward you for saving for college or a new home! For more information, to open an account, or add to your existing balance, visit your local branch today or call 1-888-821-3900. Member FDIC. See a banker for FDIC coverage amounts and transaction limitations.

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Checking Account Statement

3 of 3

Beginning May 07, 2010 through June 04, 2010

Checking continued from previous page

NEWS FROM CITIZENS (continued)

-The Citizens Bank TruFit Student Loan features ZERO fees and a choice of repayment plans, providing eligible students and families with a financing alternative after they've maximized grants, scholarships and federal loan options. Discuss your needs with us today at 1-888-333-0128. citizensbank.com/TruFitStudent.

THOMAS BROWN
Green Checking
131008-623-8

R40

14.2

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, S.S.

SUPERIOR COURT DEPARTMENT

DOCKET NO.: 2010-0867

COMMONWEALTH

v.

CRAIG MCGHEE

COMMONWEALTH'S PROPOSED JURY INSTRUCTIONS

Confining to Commit a Felony (G.L. c. 265, § 21)

In this case the defendant, Craig McGhee, is charged with the crime of confining to commit a felony. Our state legislature specifically defines confining to commit a felony in a statute, G.L. c. 265, § 21, which provides that:

^W~~Who~~ whoever, with intent to commit larceny or any felony, confines, maims, injures or wounds, or attempts or threatens to kill, confine, maim, injure or wound, or puts any person in fear, for the purpose of stealing from a building, bank, safe, vault, or other depository of money, bonds or other valuables, shall whether he succeeds or fails in the perpetration of such larceny, be punished...

In order to establish the defendant's guilt on this charge, the Commonwealth must prove each of the following three elements beyond a reasonable doubt.

First Element: that the defendant intended to commit larceny or any felony;

Second Element: that the defendant confined, maimed, injured, wounded, attempted to kill or threatened to kill, confine, maim, injure or wound, or put any person in fear; and

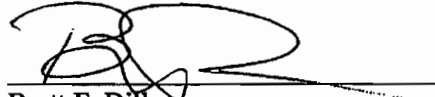
Third Element: that the defendant did so for the purpose of stealing from a building, bank, safe, vault, or other depository of money, bonds or valuables.

1241

Respectfully Submitted
For the Commonwealth,

JOSEPH D. EARLY, JR.
DISTRICT ATTORNEY

By:



Brett F. Dillon
Assistant District Attorney
Middle District Attorney's Office
225 Main Street, Room G-301
Worcester, MA 01608
508-755-8601

Dated: March 13, 2012

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for the two charges
of "confining to Commit a
felony" is the first
charge referring to the
ATM withdrawal of
James Fletcher, and the
second referring to the
ATM withdrawal of
Tom Brown?

First - 10-0867-9

Second - 10-0867-10

Yes.

Richard T. Tucker



We have determined
the verdict on three
charges. If we
are fairly evenly split
on the remaining four,
please advise if possible
what we should do?

How shall we proceed?

Please place the three that you
have agreed upon in this
envelope, seal, and
hold on to it. Continue
celebrating Robert T. Turner



Commonwealth of Massachusetts
County of Worcester
The Superior Court

CRIMINAL DOCKET#: WOCR2010-00867(1)

Commonwealth

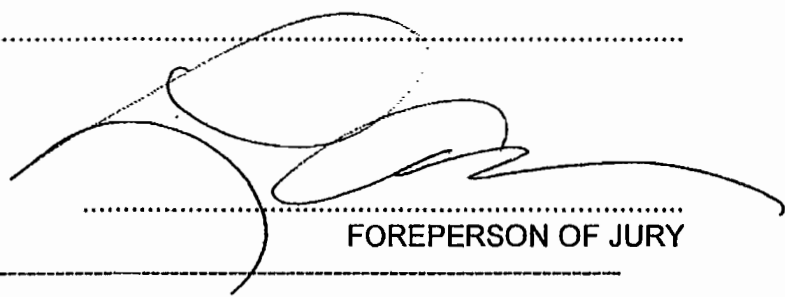
vs.

Craig McGhee

VERDICT SLIP

1. () Not Guilty
2. () Guilty - offense as charged.
05/17/2010 AGGRAVATED KIDNAPPING c265 s26
(Thomas Brown)
3. () Guilty of the Lesser offense: Kidnapping c. 265 s 26

Dated: 3/14/2012

.....

.....
FOREPERSON OF JURY
.....

VERDICT OF THE JURY returned and affirmed this day of March, 2012.

Attest: _____
Assistant Clerk

Associate Justice of the Superior Court

Court Reporter

R45

Commonwealth of Massachusetts
County of Worcester
The Superior Court

CRIMINAL DOCKET#: WOCR2010-00867(2)

Commonwealth

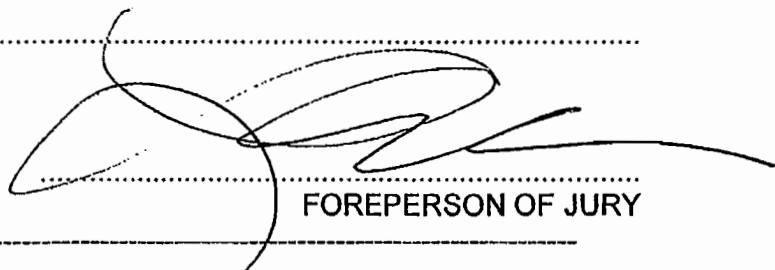
vs.

Craig McGhee

VERDICT SLIP

1. () Not Guilty
2. () Guilty - offense as charged.
05/17/2010 AGGRAVATED KIDNAPPING c265 s26
(John Wentworth)
3. () Guilty of the lesser offense: Kidnapping c. 265 s 26

Dated: 3/14/2012

.....

.....
FOREPERSON OF JURY
.....

VERDICT OF THE JURY returned and affirmed this day of March, 2012.

Attest: _____
Assistant Clerk

Associate Justice of the Superior Court

Court Reporter

R46

Commonwealth of Massachusetts
County of Worcester
The Superior Court

CRIMINAL DOCKET#: WOCR2010-00867(3)

Commonwealth

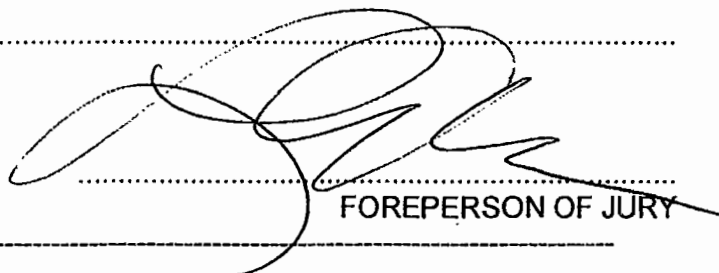
vs.

Craig McGhee

VERDICT SLIP

1. () Not Guilty
2. () Guilty - offense as charged.
05/17/2010 AGGRAVATED KIDNAPPING c265 s26
(James Fletcher)
3. () Guilty of lesser offense-Kidnapping c. 265 s 26

Dated: 3/14/2012


FOREPERSON OF JURY

VERDICT OF THE JURY returned and affirmed this _____ day of March, 2012.

Attest: _____
Assistant Clerk

Associate Justice of the Superior Court

Court Reporter

1247

Commonwealth of Massachusetts
County of Worcester
The Superior Court

CRIMINAL DOCKET#: WOCR2010-00867(5)

Commonwealth

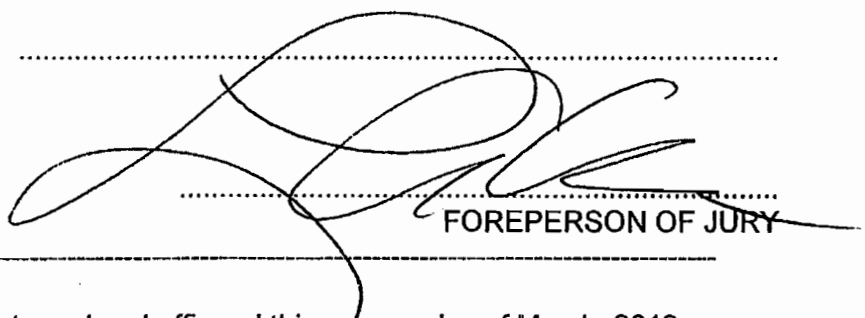
vs.

Craig McGhee

VERDICT SLIP

1. () Not Guilty
2. () Guilty - offense as charged.
05/17/2010 ROBBERY, ARMED c265 s17
3. () Guilty - lesser included offense as follows:
05/17/2010 ROBBERY, UNARMED c265 s19(b)

Dated: 3/15/2012

.....

.....
FOREPERSON OF JURY

VERDICT OF THE JURY returned and affirmed this _____ day of March, 2012.

Attest: _____
Assistant Clerk

Associate Justice of the Superior Court

Court Reporter

1248

Commonwealth of Massachusetts
County of Worcester
The Superior Court

CRIMINAL DOCKET#: WOCR2010-00867(6)

Commonwealth

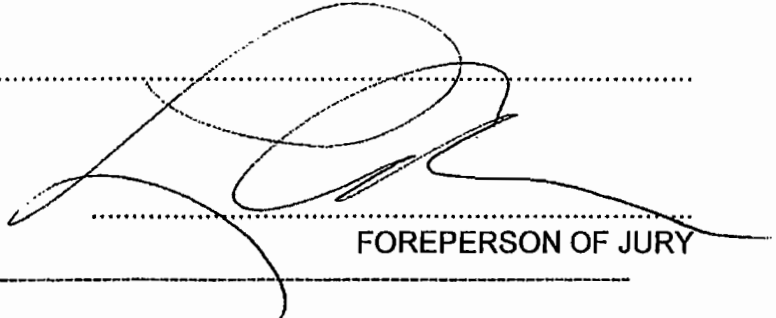
vs.

Craig McGhee

VERDICT SLIP

1. () Not Guilty
2. () Guilty - offense as charged.
05/17/2010 ROBBERY, ARMED c265 s17
3. () Guilty - lesser included offense as follows:
05/17/2010 ROBBERY, UNARMED c265 s19(b)

Dated: 3/15/2012
for


FOREPERSON OF JURY

VERDICT OF THE JURY returned and affirmed this _____ day of March, 2012.

Attest: _____
Assistant Clerk

Associate Justice of the Superior Court

Court Reporter

249

Commonwealth of Massachusetts
County of Worcester
The Superior Court

CRIMINAL DOCKET#: WOCR2010-00867(9)

Commonwealth

vs.

Craig McGhee

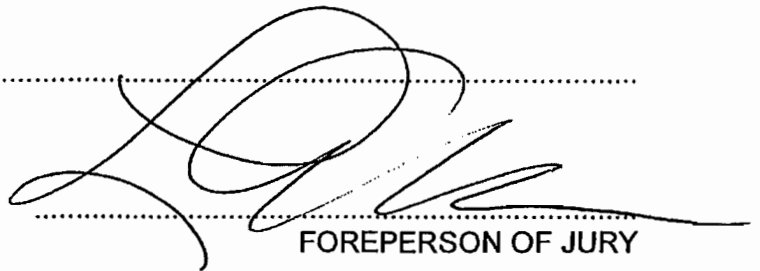
VERDICT SLIP

1. () Not Guilty

2. (✓) Guilty - offense as charged.

05/17/2010 CONFINING TO COMMIT A FELONY C265 s21

Dated: 3/15/2012


FOREPERSON OF JURY

VERDICT OF THE JURY returned and affirmed this day of March, 2012.

Attest: _____
Assistant Clerk

Associate Justice of the Superior Court

Court Reporter

RSO

Commonwealth of Massachusetts
County of Worcester
The Superior Court

CRIMINAL DOCKET#: WOCR2010-00867(10)

Commonwealth

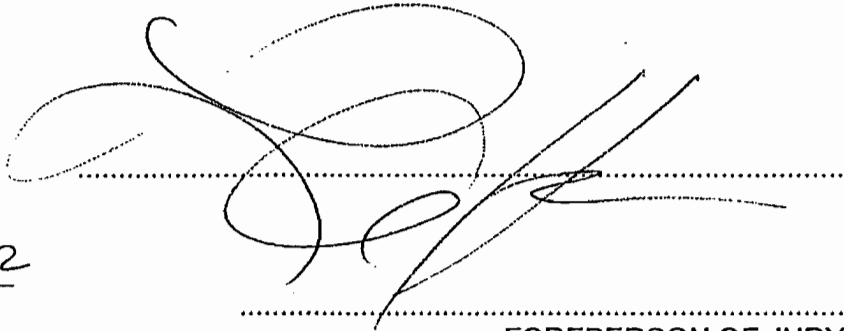
vs.

Craig McGhee

VERDICT SLIP

1. () Not Guilty
2. (✓) Guilty - offense as charged.
05/17/2010 CONFINING TO COMMIT A FELONY C265 s21

Dated: 3/14/2012



FOREPERSON OF JURY

VERDICT OF THE JURY returned and affirmed this day of March, 2012.

Attest: _____
Assistant Clerk

Associate Justice of the Superior Court

Court Reporter

1251