

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

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

MOTION BEFORE THE HONORABLE DAVID W. CUNIS

APPEARANCES:

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November 16, 2012

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P R O C E E D I N G S

(Court called to order.)
(10:27 a.m.)

THE CLERK: Okay. Next up, your Honor, 11-CR-2236, Harold Wolfe. Right over here, sir.

THE COURT: Yeah. This is a hearing on the court's motion to basically 25, Rule 25 motion to vacate the felony conviction of vandalism. I think I may have just given you the heads-up on this because as I said, you know, I thought about the case afterwards, and I think that there was sufficient evidence on the required finding motion because the testimony of the two witnesses, the victim and the police officer, was credible.

MS. HOGAN: Uh-huh.

THE COURT: What -- and as I reflected upon it and what was somewhat nagging to me was the fact that we went out and actually looked at the car. There just was no damage. Now, the officer's credibly testified to seeing a dimple in the vehicle which may have been the case and those things can sort of fix themselves, so I don't know. That may have happened, so I was -- on my own motion and I'm just going to have a hearing on it. I know what your position is. You want me to vacate the vandalism.

MR. WOLFE: I'm just going to make a statement about the officer's remarks. Where was the officer?

1 THE COURT: No. It might be in -- it might be in your
2 best interest to say nothing, quite frankly.

3 MR. WOLFE: No. I'm just saying where was the officer
4 when this incident occurred and how can he make any remark about
5 any damage? Where was he?

6 THE COURT: Yeah. See, you're -- this is what -- this is
7 why -- okay. I hear you. I hear you, Mr. Wolfe, but I think
8 it's probably in your best interest. I'm looking at it from a
9 purely legal standpoint. Suffice it to say, sir, that your
10 behavior at the trial and your behavior at the incident that was
11 testified to that led us here was -- I -- despicable. It was --
12 it was -- it was a racially tinged assault upon a woman who was
13 minding her own business.

14 It was -- it was offensive and it was criminal and it was
15 certainly an assault and you certainly narrowed the -- you know,
16 frankly, I probably shouldn't have just given you probation. I
17 probably should have just sent you to jail, but I thought that,
18 you know, the Commonwealth mentioned that mental health
19 counseling might be appropriate. I thought, Well, all right.
20 I'll have some -- some level of compassion upon you seeing that
21 obviously that there's -- you are -- appear to be a somewhat
22 angry and bitter man that maybe we can somehow get you a little
23 bit of help so that you can get some insight into your behavior.

24 But anyway, I want to hear from the Commonwealth on the
25 legal issue that -- that, you know, again, I so much struggled

1 with afterwards.

2 MS. HOGAN: Your Honor, the Commonwealth would be
3 objecting for the record. The Commonwealth does stand by the
4 facts that came before your Honor and the testimony of the
5 officer and the complaining witness. While I do recognize I
6 went on the viewing as well and I completely understood the
7 court's decision not to grant any restitution, again, the
8 Commonwealth would object for the record.

9 However, I can say that it was the Commonwealth's position
10 from day one and the complaining witness's position from day one
11 is that mental health evaluation and follow-up and that's our
12 main concern, so, again, I do think that we have met our burden,
13 but I would defer to the court.

14 THE COURT: Yeah. I'm going to valid -- I'll vacate the
15 felony vandalism count. A not guilty finding will enter on the
16 court's own motion under Rule 25 of the rules of criminal
17 procedure. The conviction for assault, a misdemeanor assault
18 will stand. The sentence on that will stand. You remain on
19 probation. You remain with a 30-day suspended sentence for the
20 next -- almost a year now and I hope you succeed and I hope that
21 somehow through whatever help that you can get through probation
22 will gain some insight into your utterly and horrid behavior
23 that day which carried into this courtroom on the day of trial
24 and what I gather carried through the entire pretrial process in
25 this case from what I gather.

1 And you can sit there and you can smirk all you want, but
2 frankly, sir, if you're going to continue having this attitude
3 about life and about things and about your behavior, then you
4 most assuredly will be going back to jail for 30 days. Most
5 assuredly, so say no more because frankly, sir, don't try my
6 patience any more than you already have.

7 Okay. That's it. Thank you very much. We'll take a very
8 brief recess.

9 (Motion adjourned at 10:32 a.m.)

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

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