

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

HAMPDEN, ss

No. \_\_\_\_\_  
Appeals Court No. 2025-P-0095

COMMONWEALTH OF MASSACHUSETTS  
*Appellee*

v.

ERNEST HUGHEY  
*Appellant*

---

APPLICATION OF APPELLANT-DEFENDANT  
FOR DIRECT APPELLATE REVIEW

---

INNA LANDSMAN

ATTORNEY FOR THE  
APPELLANT-DEFENDANT

BBO 640142  
PO BOX #1342  
Littleton, MA 01460  
Tel.: 617-620-9434  
ILandsman@me.com

MAY 2025

## **REQUEST FOR DIRECT APPELLATE REVIEW**

Pursuant to Rule 11 of the Massachusetts Rules of Appellate Procedure, the Appellant-Defendant, Ernest Hughey, requests that the Supreme Judicial Court grant direct appellate review in this case. Hughey appeals from an order of the Springfield District Court (Maltby, J.) denying his Mass. R. Civ. P. 60(b) motion to vacate a G. L. c. 94C, § 47(b) forfeiture order entered simultaneously with his guilty plea to certain marijuana drug crimes. The convictions were vacated and the charges dismissed by nolle prosequi due to egregious government misconduct by former Amherst laboratory chemist Sonja Farak. Hughey thereafter moved for vacatur of the forfeiture order on the basis that the Commonwealth's egregious misconduct tainted the forfeiture action and that the Commonwealth did not meet its burden of showing probable cause to believe that there was a money-drug nexus at the forfeiture hearing.

Section 47(b) of chapter 94C permits a court, having final jurisdiction over any related criminal proceeding, to order property forfeited. Discovery provided pursuant to Committee for Public Counsel Services v. Attorney General, 480 Mass. 700 (2018) shows that there were over 600,000 drug charges filed in

Massachusetts over an eleven year period<sup>1</sup>, and thus there is potential for § 47(b) proceedings to be instituted in thousands of cases every year<sup>2</sup>. Given the weighty constitutional rights implicated in the government's seizure of a citizen's property, it would be helpful for this Court to provide guidance on the minimal showing required by the Commonwealth to secure forfeiture and also on under what circumstances egregious governmental misconduct tainting a § 47(b) proceeding should require vacatur of the forfeiture order under Mass. R. Civ. P. 60(b)(6).

### **STATEMENT OF PRIOR PROCEEDINGS**

On October 12, 2010, the Springfield District Court issued a criminal complaint (1023CR008230) charging Hughey with: distribution of marijuana, G. L. c. 94C, § 32C(a) (count 1); trespass, G. L. c. 266, § 120 (count 2); possession

---

<sup>1</sup> See Data for Justice Project ACLU Massachusetts, Data shows drug policing in Massachusetts overwhelmingly targeted drug users (October 5, 2022) available at <https://data.aclum.org/2022/10/05/war-on-drugs-targets-users/> citing Data for Justice Project ACLU Massachusetts, EXPLORE THE HISTORY OF DRUG PROSECUTION IN MASSACHUSETTS, available at <https://data.aclum.org/drug-prosecution> (both last visited April 8, 2025).

<sup>2</sup> District Court forfeiture actions pursuant to G.L. c.90, § 47(b) are captioned with the name and docket number of the underlying criminal case, making it difficult to track § 47(b) forfeiture actions. Civil Court Reports relating to forfeiture, that are prepared by the Massachusetts Trial Court Department of Research and Planning, available at <https://www.mass.gov/info-details/civil-court-reports-and-dashboards>, focus on § 47(d) in rem Superior Court forfeiture actions.

with intent to distribute marijuana, G. L. c. 94C, § 32C(a) (count 4), and; two counts of committing a drug violation within a school zone, G. L. c. 94C, § 32J (counts 3 and 5). After the judge denied Hughey’s motion to lower bail on May 17, 2011, the parties agreed to resolve the case by plea that day, and the Commonwealth filed a motion pursuant to G. L. c. 94C, § 47(b) to forfeit \$328 from Hughey. (A.45, 50, 52, 57, 58, 65-66.)<sup>3</sup> Hughey pleaded guilty to the following counts and received the following sentences: count 1: time served, \$328 forfeiture; count 2: guilty filed; and count 4: time served. Counts 3 and 5 were dismissed by nolle prosequi, and the forfeiture motion was allowed and the order signed by Gordon, J. (hereinafter “plea judge” and “forfeiture judge”). (A.39-40, 58, 67.)

In 2016, Hughey moved to vacate his guilty pleas based on the misconduct of the certifying chemist, Sonja Farak. Commonwealth v. Hughey, 100 Mass. App. Ct. 1131 (2022) at 2 and A.68.<sup>4</sup> On April 5, 2016, Boyle, J. allowed the motion with the Commonwealth’s assent. Id. The Commonwealth dismissed by nolle prosequi all counts, and stated that it was doing so because of the “egregious governmental misconduct” at the Amherst drug lab by Sonja Farak as well as the fact that the

---

<sup>3</sup> Reference shall be made to the appendix appended hereto as “A.[page number]”.

<sup>4</sup> The motion to vacate the guilty pleas, which was filed pursuant to Mass. R. Crim. P. 30(b), is not reflected on the docket and its filing is uncontested.

Springfield Police Department lost the alleged marijuana that it claims to have seized. (A.30, 41, 68-69.)<sup>5</sup>

On June 2, 2017, Hughey mailed to the District Court and served a motion to vacate the order for forfeiture pursuant to Mass. R. Civ. P. 60(b). Commonwealth v. Hughey, 95 Mass. App. Ct. 1115 at 2 (2019).<sup>6</sup> On September 26, 2017, Boyle J. (first motion judge) allowed it. (A.42.) The Commonwealth appealed, and on May 30, 2019, the Appeals Court issued an unpublished decision, pursuant to Rule 1:28, by which it vacated the lower court's order, and remanded the matter to the District Court for further proceedings. Id.

---

<sup>5</sup> Another factor may have potentially influenced the Commonwealth's decision. Specifically, in June 2017, Judge Kinder found that two assistant attorney generals "exhibited 'reprehensible' misconduct" in continually withholding and lying about the existence of [Farak's] mental health records that shed light on her drug abuse history while working at the Amherst lab. These records were found upon execution of a search warrant of Farak's car on January 19, 2013. From August through October, 2013, numerous defendants served subpoenas duces tecum on the Commonwealth and filed motions in the Superior Court seeking to inspect the evidence seized from Farak's vehicle. In September and October 2013, an AAG sent a letter and testified that all records had been disclosed, when that was untrue and the mental health records had not been. On October 30, 2014, a defense attorney was finally able review the relevant file and discovered multiple documents that had not been disclosed previously, including Farak's mental health records. Committee for Public Counsel Services v. Attorney General, 480 Mass. 700, 710-720 (2018).

<sup>6</sup> The filing of the motion to vacate the order of forfeiture is not reflected on the on-line docket but it is not contested that it was filed.

On February 11, 2021, Payne, J. (second motion judge) issued findings and an order allowing Hughey's Mass. R. Civ. P. 60(b) motion for vacatur of the forfeiture order. (A.42.) The Commonwealth again appealed, and the Appeals Court issued another unpublished decision pursuant to Rule 23.0, by which it vacated the lower court's allowance, and again remanded the matter to the District Court for further proceedings. Commonwealth v. Hughey, 100 Mass. App. Ct. 1131 (2022). On March 14, 2024, Hughey refreshed his motion to vacate the May 17, 2011 order of forfeiture pursuant to Mass. R. Civ. P. 60(b), the Commonwealth opposed it, Hughey filed a reply, and, following a non-evidentiary hearing Judge Maltby denied Hughey's motion to vacate the order of forfeiture by his September 13, 2024 memorandum of decision. (A.23 & 43<sup>7</sup>.) On October 9, 2024, Hughey filed a notice of appeal. (A.43.) The appeal was entered in the Appeals Court on January 24, 2025, and Hughey filed a blue brief on April 18, 2025.

### **Statement of the Facts**

#### *A. Background to the Plea and Forfeiture Hearing*

By the May 17, 2011 forfeiture/plea hearings date, Hughey had been in custody for seven months. (A.37-39, 57.) Trial dates had come and gone without a

---

<sup>7</sup> The parties' filings are not reflected on the on-line docket.

trial going forward. (A.51-52) Hughey filed a motion to reduce bail based on an investigator determining that the alleged incident was not at a location within the school zone statute; the Commonwealth opposed, and it was denied that day. (A.45-51.) Even the judge stated that the trial delay was not fair to Hughey, and requested that the parties fill out a conference report and schedule the case for trial. (A.52.) The plea/forfeiture hearing took place at the second call that day. (A.52.)

*B. The Forfeiture Hearing.*

The court held the plea and forfeiture hearings simultaneously. Specifically, at the second call, the parties advised the court that they had reached an agreed-upon plea, and the clerk indicated that the Commonwealth had just filed a motion for forfeiture for \$328. (A.52.) The entirety of the G. L. c. 94C, § 47 motion is at A.65-66. It did not include any facts specific to Hughey besides the case caption of his criminal case. This motion was dated May 13, 2011, i.e., four days before the plea/forfeiture date. It did not include any certificate of service.

There were no particularized factual allegations (written, oral, nor otherwise) before the plea/forfeiture judge as to when, where, or under what circumstances the \$328 was seized. Rather, during the colloquy, the prosecutor

indicated that the parties had reached an agreement for guilty time served; he further indicated that he had filed a written paper and Hughey's attorney indicated that it was "agreed" at A.57:

MR. KRETION: Your Honor, Attorney Roberge and I have reached an agreement for guilty time served as to the three counts. The defendant has been held since his arrest on October 8.

THE COURT: Right.

MR. KRETION: Roughly seven months. Given his record we believe this is fair. Also, file a written (indiscernible).

THE COURT: Is it agreed?

MS. ROBERGE: It is agreed, Your Honor.

The facts that Hughey admitted during the colloquy (A.53-55) are reproduced below:



MR. CHRETIEN: Your Honor, this took place on October 6, 2010. In the area of Federal and Worthington, officers were surveilling the area and at one point their attention were drawn to some males located by 931 to 925 Worthington. Included a black male dressed in a dark-colored hooded sweatshirt and jeans, loitering in the alley adjacent to that building. They watched him walk in and out of the alley around to the entrance and then began to converse with numerous passers-by, acting in a manner that was drawing attention to himself. He was later identified as Joseph Hughey, the brother of this defendant.

They observed him as he approached a black male, engaged in a brief conversation before this other male handed Joseph paper currency. After receiving that, Joseph pointed towards a vacant mailboxes and the individual walked over there. While this was happening, Joseph yelled up to a window above the entrance of 925 Worthington. Less than a minute later, a black male dressed in a blue shirt wearing his hair in tight braids stepped from the main entrance holding the door ajar. He was later identified as Ernest Hughey, the defendant before you. He was seen looking both ways up and down the street, then handed onto Joseph Hughey who cupped it in his right hand, walked towards the other black male and handed it to him. After completing that transfer, Ernest went back into the

building, and the other individual walked down Worthington.

Sometime later another female approached. Her name is Susan Brown. He again had a brief conversation with Joseph Hughey. Paper currency was exchanged. Joseph yelled up to the window. A short time later Ernest came down. Again, the door was ajar, he handed something to Joseph before going back into the building. Joseph cupped that item in his hand, walked to Ms. Brown, and handed it to her. After receiving it, Ms. Brown re-entered her vehicle and drove away. Officers did stop Ms. Brown. They found marijuana on her and she admitted to having just purchased the marijuana. Due to heavy rains at that point, all the suspects left the area and the surveillance was terminated.

Two days later they were back in the same area again, and officers observed Ernest and several others loitering in the front of 931 Worthington. They recognized him as one of the individuals they had seen two days prior and began to approach him. As they did, he dropped a glassine bag containing several individual bags of marijuana to the ground. They picked those up and in the officer's opinion, they were packaged for street level sale.

He was placed into custody. He initially struggled with officers, and as that happened one of the other officers recognized that he had been previously trespassed from the property by the management company on September

21, 2010. After confirming that, he was placed into custody with those initial charges, Your Honor. The drug certs did come back for marijuana.

THE COURT: All right. Sir, to the three charges in this case, one is distribution of Class D, trespass and possession with intent to distribute Class D, are those facts true?

THE DEFENDANT: Yes.

There was no further discussion nor any argument relating to forfeiture at the hearing until the judge stated that he was ordering \$328 forfeited on count 1 (A.58):

2 THE COURT: OK. Count 1 will be guilty, time served,  
3 will be a forfeiture of \$328. Count 2, the trespassing  
4 will be guilty, filed, filed with your consent, and Count 4  
5 with the possession with intent to distribute will be  
6 guilty time served, waive any fees.

7 MS. ROBERGE: Thank you.

8 THE COURT: And I'll sign the order for forfeiture.

## ISSUES PRESENTED

(1) Does a civil forfeiture proceeding/order comply with a property owner's due process rights and G. L. c. 94C, § 47 where the judge ordering forfeiture is presented with zero evidence of a nexus between the property being forfeited and illegal drug activity. This issue was raised and properly preserved.

(2) Is vacatur of a G. L. c. 94C, § 47(b) forfeiture order required under Mass. R. Civ. P. 60(b)(6) when the forfeiture case was tainted by the systemic egregious government misconduct of the laboratory chemist Sonja Farak and the demonstrated dishonesty of the Springfield Police Department narcotics bureau? This issue was raised and properly preserved.

## ARGUMENTS

### I. Standard of Review

A rule 60(b) motion is “addressed to the discretion of the judge,” whose ruling “ ‘will not be reversed on appeal save for abuse’ of that discretion.” Owens v. Mukendi, 448 Mass. 66, 72 (2006) (citations omitted). A judge’s discretionary decision constitutes an abuse of discretion where the judge made a clear error of judgment in weighing the factors relevant to the decision, “such that the decision falls outside the range of reasonable alternatives.” L.L. v. Commonwealth, 470

Mass. 169, 185 n. 27 (2014) (citations omitted). Appellate courts scrutinize without deference the propriety of the legal criteria employed by the trial court and the manner in which those criteria were applied to the facts. Iamele v. Asselin, 444 Mass. 734, 741 (2005) (citation & quotation marks omitted). An error of law apparent on the record, such as findings that have no support in the evidence, constitutes an abuse of discretion. Freedman v. Freedman, 49 Mass. App. Ct. 519, 521 (2000) (citation omitted). Courts review de novo any findings of the motion judge that were based entirely on documentary evidence. Commonwealth v. Thomas, 469 Mass. 531, 539 (2014).

**II. Judge Maltby erred and abused his discretion in denying the Mass. R. Civ. P. 60(b) motion to vacate the forfeiture order which violated Hughey's due process rights and G. L. c. 94C, § 47.**

Judge Maltby incorrectly determined that the Commonwealth met its G. L. c. 94C, § 47 burden at the 2011 forfeiture hearing (A.31-32) and erred and abused his discretion in denying Hughey's rule 60(b) motion on this basis. The Commonwealth is not entitled to forfeiture of a citizen's property when it makes no showing of entitlement thereto, as was the case here. See Art. 12 of the MA Declaration of Rights; 14th Amendment to the U.S. Constitution. The Commonwealth's probable cause burden, set forth in G. L. c. 94C, § 47, is sufficient to comply with the property owner's federal and state due process rights.

Commonwealth v. Brown, 426 Mass. 475, 480-481, 484 (1998). Multiple federal circuits have held that the same burden in the analogous federal forfeiture statute, 19 USCS § 1615, complies with the federal due process clause. Id. at 481 n.6 & cases cited. Therefore, the Commonwealth's failure in this case to meet even the minimal probable cause burden set forth in § 47 (as discussed below) rendered the forfeiture proceeding/order in violation of both Hughey's federal and state constitutional rights as well as § 47 itself.

G. L. c. 94C, § 47(d) sets forth the standard for § 47(b) proceedings. Commonwealth v. Goldman, 398 Mass. 201, 204 & n.5 (1986). It requires that the Commonwealth present evidence sufficient to support a finding that it has reliable information in its possession that establishes probable cause of a money-drug nexus, and then the burden of proof shifts to the defendant to prove a drug-free source of the money in light of the totality of the evidence. Commonwealth v. One 2004 Audi Sedan Automobile, 456 Mass. 34, 37-39 (2010); G. L. c. 94C, § 47(d). Put differently, the Commonwealth must show that "the money was probably derived from illegal drug transactions" or "was used or intended to be used to facilitate a violation of the controlled substances laws". Id. at 49-50 (citations omitted).

In this case, there was no information whatsoever before the plea/forfeiture judge as to when, where, how or under what circumstances the \$328 was taken from Hughey. The Commonwealth's § 47(b) motion was pure boilerplate that closely followed the language of § 47(b) without presenting any facts specific to Hughey. See One 2004 Audi Sedan Automobile, 456 Mass. at 43 (if "the Commonwealth were to file a civil forfeiture complaint without particularized allegations, a judge might not be able to conclude that the facts alleged are sufficient to support a reasonable belief that, at trial, the government can show probable cause to believe the property is subject to forfeiture"); United States v. Pole No. 3172, Hopkinton, 852 F.2d 636, 638-639 (1st Cir. 1988) (A forfeiture complaint, the merely described the property, parroted the statute, and stated that the property was forfeitable as proceeds of a drug transaction in effect, "provided no facts whatsoever to support its claim.") Nor is this case like Brown, 426 Mass. at 477-479 (information before the Brown forfeiture judge that the money was seized from the defendant at the time that he was arrested after officers observed him drug-deal). Further, if the Commonwealth can meet its § 47(b) burden simply by seizing money and making no particularized factual showing that it is entitled to keep the seized money, the judiciary's role in forfeiture actions will be that of a mere rubber stamping entity in contravention of Article 30 of the Massachusetts

Declaration of Rights (“In the government of this commonwealth, . . . the executive shall never exercise the legislative . . . powers”).

**III. The Commonwealth’s egregious misconduct requires vacatur of the 2011 forfeiture order under Mass. R. Civ. P. 60(b)(6).**

The third motion judge erred and abused his discretion in determining (at A.30-31) that Farak’s involvement in this case did not require vacatur because said involvement was, according to this judge, “minimal”. While vacatur of the conviction does not mandate vacatur of the forfeiture judgment, “the reasons for invalidating a conviction potentially may warrant relief from the civil judgment of forfeiture.” Commonwealth v. Martinez, 480 Mass. 777, 791-792 (2018).

The Commonwealth’s egregious misconduct in this case tainted Hughey’s and his counsel’s understanding of the strength of the Commonwealth’s criminal and forfeiture cases, because the understanding was based on the received Commonwealth’s discovery of the Farak-prepared drug certificates and police report authored by the Springfield Police Department Sgt. Kent. See A.61-62, 72-77, 70-71 ¶ 3 (“My lawyer told me . . . that I have to forfeit the money because I allegedly had drugs on me when I was arrested. She said that they were going to take [the money] anyway.”) Farak’s egregious misconduct is well documented in Commonwealth v. Cotto, 471 Mass. 97, 108 (2015) (“She was entrusted with



analyzing purported drug samples, signing drug certificates that identified and set forth the precise weight of each sample, and testifying to the results of her analyses . . . Farak cast serious doubt on the integrity of this entire process. Her misconduct could render a defendant's guilty plea involuntary by wholly undermining the evidentiary foundation of the Commonwealth's case.") Additionally, the Springfield Police Department narcotics bureau officers "routinely falsified police reports." Graham v. District Attorney for the Hampden District, 493 Mass. 348, 349 (2024). One officer "implicated" was Steven Kent, id. 357, who wrote the main police report in this case which also related to the \$328 at issue (A.77). This police report was not before the forfeiture judge, but rather was made part of the written record by undersigned post-conviction counsel while litigating the Rule 60(b) motion. Kent's and the narcotic bureau's longstanding egregious misconduct "raised questions about the integrity of the evidence used" by the Hampden DA's office, Graham, supra at 349, at the plea and forfeiture hearings in this case.

Certainly the forfeiture judge's and attorneys' conduct strongly suggest that they believed that Hughey assented to forfeiture - - and such assent would have been based on assessment of the Commonwealth evidence tainted by Farak and the narcotics bureau. First, at A.57 (lines 12-15) Hughey's counsel stated agreement with the written filing, which according to context would have been the forfeiture

motion. Second, Hughey's counsel did not raise multiple valid objections/defenses to forfeiture. These included: (1) the Commonwealth's failure to timely serve the forfeiture motion (A.65-66). See Brown, 426 Mass. at 480 & 484 (vacating forfeiture order because the Commonwealth must but did not give seven days notice in a §47(b) forfeiture proceeding); (2) failure of the Commonwealth to carry its burden as set out Argument II, supra; and (3) argument that there was no money-drug nexus which would have been supported by the paystubs in Hughey's pocket at the time of his arrest, as he avers at A.71 at ¶5. Third, neither Hughey's counsel nor the ADA made any forfeiture-related arguments at the forfeiture hearing. The Court did not even ask Hughey if he wanted to oppose forfeiture before allowing the § 47 motion. Further, the Commonwealth's egregious misconduct exacerbated other highly coercive features of this case See Jed S. Rakoff, *Why Innocent People Plead Guilty*, N.Y. Rev. Books (Nov. 20, 2014)<sup>8</sup> (the combination of charging defendants with violation of statutes bearing mandatory minimum sentences and unaffordable bail place undue pressure on defendants to plead guilty; approximately 10% of factually innocent defendants whose

---

<sup>8</sup> Available at [https://www.nacdl.org/getattachment/8e5437e4-79b2-4535-b26c-9fa266de7de8/why-innocentpeople-plead-guilty-\\_jrakoff\\_ny-review-of-books-2014.pdf](https://www.nacdl.org/getattachment/8e5437e4-79b2-4535-b26c-9fa266de7de8/why-innocentpeople-plead-guilty-_jrakoff_ny-review-of-books-2014.pdf).

exonerations were listed in the National Registry of Exonerations had pleaded guilty despite being factually innocent).

Judge Maltby further abused his discretion by not allowing this motion. The essential function of rule 60(b)(6) is "to preserve the delicate balance between the sanctity of final judgments . . . and the incessant command of the court's conscience that justice be done in the light of all the facts." Freitas v. Freitas, 26 Mass. App. Ct. 196, 198 (1988) (internal quotations and citation omitted). The Fifth and Fourteenth Amendments of the United States Constitution, as well as art. 12 of the Massachusetts Declaration of Rights, prohibit the taking of property without due process of law. [E]quitable principles are applied to return an aggrieved party to the status quo." Demoulas v. Demoulas, 428 Mass. 555, 590 (1998); Yorke v. Taylor, 332 Mass. 368 (1955). Fairness is the touchstone of due process. St. Germaine v. Pendergast, 416 Mass. 698, 704 (1993).

When examining whether Rule 60(b)(6) relief is warranted, a court must consider "whether the moving party has a meritorious claim . . . whether extraordinary circumstances warrant relief . . . and whether the substantial rights of the parties in the matter in controversy will be affected by granting the motion." Mt. Ivy Press, L.P. v. Defonseca 78 Mass. App. Ct. 340, 346 (2010) citing Owens v. Mukendi, 448 Mass. 66, 72 (2006). Rule 60(b)(6) contains the residual clause,

giving the court ample power to vacate a judgment whenever such action is appropriate to accomplish justice. Mt Ivy, supra at 346.

Hughey met the first prong because knowledge of the Commonwealth's egregious misconduct would have provided Hughey with strong defenses to forfeiture and a more accurate understanding of his chances of prevailing. He met the second prong because Farak's "widespread evidence tampering" compromised the integrity of thousands of drug convictions. The governmental misconduct was "egregious, deliberate, and intentional," and resulted in a violation of constitutional rights that gave rise to presumptive prejudice. CPCS v. AG, 480 Mass. at 704-705. And additionally the circumstance of a whole narcotics bureau that "routinely falsified police reports", see Graham, supra at 349, is indeed extraordinary. He met the third prong because it is "equally implausible to suggest that the information" of egregious misconduct, if presented to the plea/forfeiture judge "would not have affected the substantial rights of the parties", See Mt. Ivy, supra at 348 (citation and internal quotations marks omitted). These included Hughey's constitutional rights to not have his money taken by the Commonwealth without due process.

#### **STATEMENT WHY DIRECT APPELLATE REVIEW IS APPROPRIATE**

Forfeiture of a citizen's money implicates fundamental constitutional rights and basic fairness interests. In this case, Hughey's money was ordered forfeited

even though there was zero evidence before the forfeiture judge of any money-drug nexus and the Commonwealth's case against Hughey was tainted by the egregious government malfeasance of Sonja Farak and the documented dishonesty of the Springfield Police Department narcotics bureau. Thus, this case presents two important issues that are believed by the undersigned to be of first impression in this Court, namely (1) does a civil forfeiture proceeding/order, in a situation where the Commonwealth has presented zero evidence of its entitlement to the money its seeks to forfeit, violate the property owner's constitutional rights and G. L. c. 94C, § 47; and (2) whether and under what circumstances does egregious government misconduct that tainted a forfeiture proceeding/order require vacatur of the forfeiture order under Mass. R. Civ. P. 60(b)(6).

Respectfully submitted,

ERNEST HUGHEY

By his attorney

/s/ Inna Landsman

Inna Landsman

PO Box #1342

Littleton, MA 01460

BBO # 640142

617-620-9434

ilandsman@me.com

Dated: May 13, 2025

**APPLICATION FOR DIRECT APPELLATE REVIEW**  
**APPENDIX TABLE OF CONTENTS**

Memorandum of decision ...	A.23
Docket ...	A.34
Plea colloquy / forfeiture hearing transcript ...	A.44
Drug certificates...	A.61
Tender of Plea Or Admission...	A.63
Motion for forfeiture ...	A.65
Forfeiture order ...	A.67
Nolle prosequi ...	A.68
Affidavit ...	A.70
Police report (made part of record post-conviction)...	A.72

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

DISTRICT COURT DEPARTMENT  
SPRINGFIELD DIVISION  
DOCKET NO.: 1023CR008230

---

COMMONWEALTH OF MASSACHUSETTS

v.

ERNEST HUGHEY

DEFENDANT

---

MEMORANDUM OF DECISION

*Introduction:* In 2011 the defendant, Ernest Hughey, plead guilty to Distribution of a Class D substance, G.L. c. 94C, § 32C(a) and Possession with Intent to Distribute a Class D substance pursuant to G.L. c. 94C, § 32C(a). As part of the plea, the Commonwealth filed a motion pursuant to G.L. c. 94C, § 47 (b), to forfeit \$328 that had been seized from the defendant. The defendant did not object to the motion, and the plea judge ordered the \$328 forfeited to the Commonwealth. Thereafter, because of the misconduct of the certifying chemist in the defendant's case, Sonja Farak ("Farak"), the Commonwealth filed a *Nolle Prosequi* after the court allowed the defendant's motion for a new trial. The defendant then filed a motion to vacate the forfeiture order pursuant to Mass.R.Civ.P. 60 (b), 365 Mass. 828 (1974). The motion was allowed on two separate occasions. Each time, Court of Appeals reversed this court's allowance for various reasons and remanded for further proceedings. *See Commonwealth v. Hughey*, 95 Mass.App.Ct. 1115 (2019); *See Commonwealth v. Hughey*, 100 Mass.App.Ct. 1131 (2022). This is the third time this matter has been heard in the District Court. The parties candidly acknowledge likely further appellate practice regardless of this court's decision. For the reasons cited below, the defendant's *Post Second Remand Mass.R.Civ.P. 60(b)(6) Motion* is **DENIED**.

*Findings of Fact:* As to the facts involved with the forfeiture, the court adopts as its factual findings the admission made under oath by the defendant at the plea hearing on May 17, 2011:

1 MR. CHRETIEN: Your Honor, this took place on October  
2 6, 2010. In the area of Federal and Worthington, officers  
3 were surveilling the area and at one point their attention  
4 were drawn to some males located by 931 to 925 Worthington.  
5 Included a black male dressed in a dark-colored hooded  
6 sweatshirt and jeans, loitering in the alley adjacent to  
7 that building. They watched him walk in and out of the  
8 alley around to the entrance and then began to converse  
9 with numerous passers-by, acting in a manner that was  
10 drawing attention to himself. He was later identified as  
11 Joseph Hughey, the brother of this defendant.

12 They observed him as he approached a black male,  
13 engaged in a brief conversation before this other male  
14 handed Joseph paper currency. After receiving that, Joseph  
15 pointed towards a vacant mailboxes and the individual  
16 walked over there. While this was happening, Joseph yelled  
17 up to a window above the entrance of 925 Worthington. Less  
18 than a minute later, a black male dressed in a blue shirt  
19 wearing his hair in tight braids stepped from the main  
20 entrance holding the door ajar. He was later identified as  
21 Ernest Hughey, the defendant before you. He was seen  
22 looking both ways up and down the street, then handed onto  
23 Joseph Hughey who cupped it in his right hand, walked  
24 towards the other black male and handed it to him. After  
25 completing that transfer, Ernest went back into the



1 building, and the other individual walked down Worthington.

2         Sometime later another female approached. Her name is  
3 Susan Brown. He again had a brief conversation with Joseph  
4 Hughey. Paper currency was exchanged. Joseph yelled up to  
5 the window. A short time later Ernest came down. Again,  
6 the door was ajar, he handed something to Joseph before  
7 going back into the building. Joseph cupped that item in  
8 his hand, walked to Ms. Brown, and handed it to her. After  
9 receiving it, Ms. Brown re-entered her vehicle and drove  
10 away. Officers did stop Ms. Brown. They found marijuana  
11 on her and she admitted to having just purchased the  
12 marijuana. Due to heavy rains at that point, all the  
13 suspects left the area and the surveillance was terminated.

14         Two days later they were back in the same area again,  
15 and officers observed Ernest and several others loitering  
16 in the front of 931 Worthington. They recognized him as  
17 one of the individuals they had seen two days prior and  
18 began to approach him. As they did, he dropped a glassine  
19 bag containing several individual bags of marijuana to the  
20 ground. They picked those up and in the officer's opinion,  
21 they were packaged for street level sale.

22         He was placed into custody. He initially struggled  
23 with officers, and as that happened one of the other  
24 officers recognized that he had been previously trespassed  
25 from the property by the management company on September

1 21, 2010. After confirming that, he was placed into  
 2 custody with those initial charges, Your Honor. The drug  
 3 certs did come back for marijuana.  
 4 THE COURT: All right. Sir, to the three charges in  
 5 this case, one is distribution of Class D, trespass and  
 6 possession with intent to distribute Class D, are those  
 7 facts true?  
 8 THE DEFENDANT: Yes.

Regarding the forfeiture of the monies seized during the commission of the crime, there is no indication in the court record that the defendant objected to the Commonwealth's forfeiture motion and subsequent order.

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

TRIAL COURT OF THE COMMONWEALTH  
 DISTRICT COURT - Springfield  
 DOCKET NO. 1023-08230

COMMONWEALTH

v.

ERNEST S HUGHEY

ORDER

Upon motion filed by the Commonwealth of Massachusetts and after a full hearing in the presence of the defendant, it is ORDERED AND DECREED:

1. The personal property described below is forfeitable to the Commonwealth of Massachusetts, pursuant to General Laws Chapter 94C, § 47(b), as amended. The Court specifically finds that this property was either used, or was intended to be used, to cause, commit or facilitate felony violations of Chapter 94C; or the property was used, or intended to be used, by a person in exchange for a controlled substance; or the property constitutes proceeds traceable to an exchange of controlled substances. Hence, the following property shall be, and hereby is, forfeited to the Commonwealth of Massachusetts, namely:

Amount: \$328.00

2. Title to the foregoing property and physical custody thereof, shall immediately vest in the District Attorney of Hampden County, who shall either use or dispose of the property as provided by G.L. c. 94C, 547(d) (2nd. par.) and other pertinent provisions of law.

So Ordered,

Dated: 5/11/11

ADA: Timothy A. Chretien.  
 Police Dept: Springfield Pd  
 Date/Arrest: 10-4380-AR

*R. Galen*  
 District Court Justice

*Robert A. Gordon*  
 FA-21

During the plea hearing the court stated, “[O]k. Count 1 will be guilty, time served, will be a forfeiture of \$328.00. Count 2, the trespassing will be guilty, filed, filed with your consent, and Count 4 with possession with intent to distribute will be guilty time served, wave any fees”. The court finds that the defendant admitted to conduct consistent with the Distribution of a Class D substance, G.L. c. 94C, § 32C(a) and Possession with Intent to Distribute a Class D substance pursuant to G.L. c. 94C, § 32C(a) and that there was no objection to the forfeiture.

*Discussion:* As a threshold matter, the court exercises its discretion and accepts the defendant’s Rule 60(b)(6) motion as timely filed and for the sake of finality will address the merits of the defendant’s motion. *See Owens v. Mukendi*, 448 Mass. 66, 72 (2006) (Rule 60(b)(6) motion must be brought within reasonable time and at the sole discretion of the judge).

#### Civil Forfeiture

The forfeiture of the defendant’s property is authorized by G.L. c. 94C, § 47, “which sets forth two methods by which forfeiture proceedings may be initiated by the Commonwealth: either by petition in the nature of a proceeding *in rem* filed in the Superior Court under § 47 (d), or by motion filed in a related criminal proceeding under § 47 (b)”. *Commonwealth v. Martinez*, 480 Mass. 777, 790 (2018). The motion for forfeiture of the defendant’s money under § 47 (b), as a matter of law, initiated a separate civil proceeding that was adjudicated at the same time as the criminal proceeding. *Martinez*, 480 Mass. at 791.

#### Hearing One

After the first hearing on the defendant’s Motion to Vacate the Forfeiture, the Court of Appeals vacated the first judge’s order allowing the defendant’s rule 60 (b) motion and remanded for further proceedings. The panel noted that the first judge “did not specify the subsection [of rule 60 (b)] he relied upon to allow the motion.” The panel also found it apparent from the hearing transcript that the first judge “may have allowed the rule 60 (b) motion on the premise that the invalidation of the criminal convictions mandated the vacatur of the forfeiture order.” Because the panel could not discern whether the order “was based solely on invalidation of the criminal convictions,” it remanded with the instruction that “the judge hearing the case on remand has discretion to hold whatever proceedings he or she deems necessary to

consider the motion and the parties' arguments in light of *Martinez*." *Hughey*, 100 Mass. App. Ct. 1131; *review denied*, 489 Mass. 1107 (2022).

#### Hearing Two

In February 2021, the second judge issued an order allowing the rule 60 (b) motion on the rationale that "[t]he forfeiture of the \$328.00 was a part of the criminal proceedings and not conducted through civil forfeiture procedures." Based on that premise, the second judge concluded that "the involvement of Ms. Farak, whose action has caused so much havoc for the courts and defendants, requires that any action taken pursuant to the plea ... be vacated." *Id.* The second judge's ruling was vacated on appeal because it appeared as though the second judge committed an error of law because the judge mistakenly decided that the forfeiture order was part of the criminal proceeding. The Court of Appeals then ordered the matter be remanded and the court, "may again exercise discretion to hold whatever proceedings he or she deems necessary to decide the motion" under Rule 60(b). *Id.*

#### Rule 60(b) Generally

For the third time, the defendant is before the court seeking vacatur of the forfeiture order and the return of \$362.00. Rule 60(b) allows for relief in circumstances where "a prior judgment upon which [an order] is based has been reversed or otherwise vacated." *Martinez*, 480 Mass. at 787–88. Under 60(b) "the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. " Mass. R. Civ. P. 60, 365 Mass. 828 (1974).

### Rule 60(b)(6) Standard

Here, the defendant has moved under Rule 60(b)(6) which “contains the residual clause, giving the court ample power to vacate a judgment whenever such action is appropriate to accomplish justice. *Pierre v. Bemuth, Lembeke Co.*, 20 F.R.D. 116 (S.D.N.Y.1956); *See also* Mass. R. Civ. P. 60, 365 Mass. 828 (1974). In presenting a motion under Rule 60(b)(6), the defendant must demonstrate they “have a meritorious claim or defense ... whether extraordinary circumstances warrant relief ... and ‘whether the substantial rights of the parties in the matter in controversy’ will be affected by granting the motion” (citation omitted). *Hugo v. NuVasive, Inc.*, 102 Mass. App. Ct. 1113 (2023); *Owens v. Mukendi*, 448 Mass. 66, 72 (2006). In the absence of exceptional circumstances, however, Rule 60(b)(6) does not generally serve as a mechanism for obtaining the reconsideration of an order or judgment, or for challenging alleged legal errors which could have been corrected on appeal. *Pentucket Manor Chronic Hosp., Inc. v. Rate Setting Comm.*, 394 Mass. 233, 236 (1985). *See also, Bromfield v. Commonwealth*, 400 Mass. 254, 257 (1987); *Charles Choate Memorial Hosp. v. Commissioner of Public Welfare*, 13 Mass.App.Ct. 1080, 1081 (1982).

“A meritorious claim is one that is ‘worthy of judicial investigation because [it raises] a material question of law meriting discussion and decision, or a real controversy as to essential facts arising from conflicting or doubtful evidence.’ *Berube v. McKesson Wine & Spirits Co.*, 7 Mass. App. Ct. 426, 433 (1979), *quoting Russell v. Foley*, 278 Mass. 145, 148 (1932).” Rule 60(b)(6) has an “extremely meagre scope” and “requires compelling or extraordinary circumstances” (citations omitted). *Winthrop Corp. v. Lowenthal*, 29 Mass. App. Ct. 180, 188 (1990). The motion is therefore addressed to the discretion of the judge and “will not be reversed on appeal save for abuse” of discretion (citation omitted). *Parrell v. Keenan*, 389 Mass. 809, 814-815 (1983). *See L.L. v. Commonwealth*, 470 Mass. 169, 185 n.27 (2014) (judge abuses discretion where “decision falls outside the range of reasonable alternatives” [citation omitted]).

### Lost Evidence

The defendant argues that the Rule 60(b)(6) motion should be allowed because the “Springfield Police Department has been unable to locate the evidence upon which the charges were based” as noted on the *Nolle Prosequi* filed six years after the case closed. The court disagrees. It appears from the docket

that the *Nolle Prosequi* was filed upon the allowance of the defendant's motion for a new trial because of the Farak issues. The court reasonably infers the lost evidence acknowledgement on the *Nolle Prosequi* to mean that the Commonwealth could no longer locate the evidence for purposes of testing and further prosecution of the defendant. As stated in G.L. c. 94C, 47b, "[p]roperty subject to forfeiture under subparagraph (1) of subsection (a) [controlled substances. . . dispensed in violation of the statute] shall be destroyed, regardless of the final disposition of such related criminal proceeding, if any, unless the court for good cause shown orders otherwise." Given that the defendant plead to the crimes as charged, and the monies were forfeited under the statute, the Springfield Police Department was authorized to destroy the evidence in 2011. It could not have known of the Farak issues, and it is not responsible for keeping evidence into perpetuity. Therefore, the court does not find that this reason is compelling, extraordinary, or meritorious so that it warrants vacating the civil forfeiture judgement.

#### Farak Issues.

The defendant also argues that the court should allow the defendant's 60(b) motion because of Farak's malfeasance. The court disagrees. The reasons for invalidating a conviction may potentially warrant relief from a civil judgment of forfeiture, but that issue must be separately litigated in the civil forfeiture proceeding through a motion for relief from judgment under Mass.R.Civ.P. 60 (b). *Commonwealth v. Martinez*, 480 Mass. 777, 791-92 (2018). To be sure, Farak's malfeasance has had a chilling effect on the entire criminal justice system and the thousands of cases where she was involved. However, that does not mean the court should broad brush stroke her malfeasance and wrongdoing without examining the extent of her involvement in a civil forfeiture proceeding to determine whether to allow the defendant's motion to vacate a civil judgement.

Generally, Farak's misconduct involved evidence tampering where she, "stole drugs submitted to the lab for testing for her own use, consumed drug 'standards' that are required for testing, and manipulated evidence and the lab's computer system to conceal her actions" and government misconduct involving the deceptive withholding of exculpatory evidence by members of the Attorney General's office, who were

duty-bound to investigate and disclose Farak's wrongdoing." *Comm. for Pub. Counsel Servs. v. Attorney Gen.*, 480 Mass. 700, 701–02 (2018).

Farak's involvement in this matter is minimal and relates to the testing of the narcotics seized only. Her involvement extended no further. She had nothing to do with the police investigation, what they observed, nor the defendant's arrest. She did not testify at a motion to suppress nor a trial. In allowing the forfeiture of the \$362, the court relied on the defendant's admission, under oath, to the facts supporting the charges including that the substance was a Class D substance. At the dual purposed plea/forfeiture hearing, the judge made a finding that "the defendant [had] knowingly, voluntarily waived his right to a trial by jury and he understands the essential elements" and that the facts recited by the prosecutor were "true". The defendant did not dispute the facts, or that the substance at issue was what it purported to be. Meaning that he was in possession with intent to distribute and in fact distributed a Class D substance. While Farak's malfeasance may have warranted the Commonwealth filing a *Nolle Prosequi* effectively dismissing the criminal case and triggering the return of any probationary fees and fines to the defendant, the court finds that it does not invalidate the defendant's forfeiture judgement. *Martinez*, 480 Mass. at 791–92. Therefore, the court does not find that this reason is compelling, extraordinary, or meritorious so that it warrants vacating the civil forfeiture judgement.

#### Probable Cause

Next, the defendant argues that the court should allow the Rule 60(b)(6) motion because there was no evidence of a "money drug nexus" at the forfeiture hearing (plea hearing). The court disagrees. "The probable cause standard in § 47 does not require the Commonwealth to establish a link between the money seized and a particular drug transaction. *See United States v. \$250,000 in U.S. Currency*, 808 F.2d 895, 899–900 (1st Cir.1987). The Commonwealth must show only that **"the money was probably derived from illegal drug transactions** [emphasis added]." *Id.* at 90; *Commonwealth v. Brown*, 426 Mass. 475, 479 (1998). Probable cause for the forfeiture may be shown from the same facts the prosecutor presented as the factual basis for the defendant's guilty plea. *See Martinez*, 480 Mass. at 790; *See also Commonwealth v. Brown*, 426 Mass 475 at 477–478 (1998). "In the forfeiture situation, however, if the Commonwealth

proves probable cause to proceed, in the form of sound reason to believe that the money-drug nexus exists, although the Commonwealth does not have sufficient evidence to prove its case at trial, the Commonwealth acts responsibly by instituting the action and leaving to a claimant the statutory burden of proving entitlement to the property at issue.” *Commonwealth v. Fourteen Thousand Two Hundred Dollars*, 421 Mass. 1, 9 (1995). The court finds that the Commonwealth sustained their burden under the probable cause standard at the plea hearing. Therefore, the court does not find that this reason is compelling, extraordinary, or meritorious so that it warrants vacating the civil forfeiture judgement.

For the reasons cited above, the defendant’s motion is **DENIED**.

#### Additional Analysis

Furthermore, it is worth examining the competing needs to ensure that “justice is done considering all the facts”. *Sahin v. Sahin*, 435 Mass. 396, 399-400 (2001) (Rule 60(b) sets forth comprehensive framework for “balancing the competing needs for finality and flexibility to be certain that justice is done in light of all the facts). The circumstances of this case are somewhat unique because defendant’s motion functions like a motion to dismiss where there appears no opportunity to relitigate the forfeiture. *See* G.L. c. 94C, § 47. In other words, the Commonwealth is prejudiced by the allowance of the motion. In addition, the forfeited funds are categorically unique. The funds were forfeited approximately six years before the defendant filed his first motion by a prior Hampden County District Attorney administration and if ordered returned would be done 13 years after the original forfeiture. Where the defendant has admitted to the crime and forfeiture through a plea and did not contest the forfeiture of monies at the plea hearing, the return of such funds has an impact on the community unlike other types of monies collected by the Commonwealth.

There shall be established within the office of the state treasurer separate special law enforcement trust funds for each district attorney and for the attorney general. All such monies and proceeds received by any prosecuting district attorney or attorney general shall be deposited in such a trust fund and shall then be expended without further appropriation to defray the costs of protracted investigations, *to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or such other law enforcement purposes as the district attorney or attorney general deems appropriate*. The district attorney or attorney general may expend up to ten percent of the monies and proceeds for drug rehabilitation, drug education and other anti-drug or neighborhood crime watch programs which further law enforcement purposes [emphasis added].



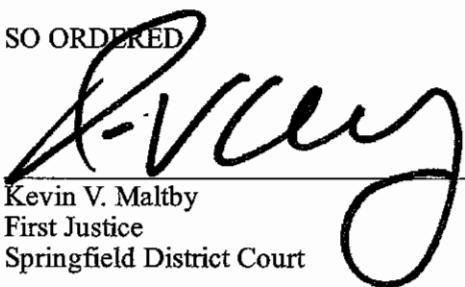
G.L. c. 90, § 47. This year alone, \$62,000 of forfeited funds from the current Hampden County District Attorney were allocated as follows: Boys and Girls Club of Chicopee: \$4,833; New North Citizen's Council: \$8,000; Pioneer Valley Riverfront Club: \$3,216; Springfield Together, Inc.: \$13,000; Western Mass Youth Flag Football Organization: \$10,981; Academic Leadership Association of Greater Springfield: \$9,000; Springfield Ballers: \$8,600; and Big Brothers Big Sisters of Hampden County: \$5,000. See <https://hampdenda.com/local-non-profits-receive-62000-from-district-attorneys-drug-forfeiture-community-support-grant-program/>.

While not dispositive of the court's analysis as set forth above, the prejudice to the Commonwealth in allowing the motion and impact of returning 13-year-old forfeited funds to the defendant is worthy of some consideration under the totality of the circumstances. In balancing competing needs and in consideration that justice is done on all sides, vacating an old forfeiture judgment of this nature does not seem fair or just under these circumstances.

*Conclusion:* The Motion is **DENIED**.

September 13, 2024  
Date Entered

SO ORDERED

  
Kevin V. Maltby  
First Justice  
Springfield District Court

# 1023CR008230 Commonwealth vs. Hughey, Ernest S

- Case Type:
- Criminal
- Case Status:
- Disposed for Statistical Purposes
- File Date
- 10/12/2010
- DCM Track:
- 
- Initiating Action:
- DRUG, DISTRIBUTE CLASS D c94C §32C(a)
- Status Date:
- 10/26/2016
- Case Judge:
- 
- Next Event:
- 

[All Information](#) [Party](#) [Charge](#) [Event](#) [Docket](#) [Disposition](#)

## Party Information

**Hughey, Ernest S**  
- Defendant

### Alias

### Party Attorney

- Attorney
- Landsman, Esq., Inna Shtivelband
- Bar Code
- 640142
- Address
- Inna Landsman, Attorney at Law  
PO Box 1342  
Littleton, MA 01460
- Phone Number
- (617)620-9434
- Attorney
- Roberge, Esq., Deborah E
- Bar Code
- 643634
- Address
- Hampden County District Attorney's Office  
1500 Main St  
Springfield, MA 01115
- Phone Number
- (413)747-1000

[More Party Information](#)

## Party Charge Information

- **Hughey, Ernest S**

- - Defendant

**Charge # 1:****94C/32C/A-1 -** DRUG, DISTRIBUTE CLASS D c94C §32C(a)

- Original Charge
  - 94C/32C/A-1 DRUG, DISTRIBUTE CLASS D c94C §32C(a)
  - Amended Charge
  -

**Charge Disposition**

Disposition Date

Disposition

05/17/2011

Guilty

10/18/2016

Nolle Prosequi

04/05/2018

Vacated &amp; Dismissed with Prejudice (SJC Order)

- **Hughey, Ernest S**

- - Defendant

**Charge # 2:****266/120-1 -** TRESPASS c266 §120

- Original Charge
  - 266/120-1 TRESPASS c266 §120
  - Amended Charge
  -

**Charge Disposition**

Disposition Date

Disposition

05/17/2011

Guilty

10/18/2016

Nolle Prosequi

- **Hughey, Ernest S**

- - Defendant

**Charge # 3:****94C/32J-1 -** DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J

- Original Charge
  - 94C/32J-1 DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J
  - Amended Charge
  -

**Charge Disposition**

Disposition Date

Disposition

05/17/2011

Nolle Prosequi

- **Hughey, Ernest S**

- - Defendant

**Charge # 4:****94C/32C/C-1 -** DRUG, POSSESS TO DISTRIB CLASS D c94C §32C(a)

- Original Charge
  - 94C/32C/C-1 DRUG, POSSESS TO DISTRIB CLASS D c94C §32C(a)
  - Amended Charge
  -

**Charge Disposition**

Disposition Date

Disposition

05/17/2011  
 Guilty  
 10/18/2016  
 Nolle Prosequi  
 04/05/2018  
 Vacated & Dismissed with Prejudice (SJC Order)

- **Hughey, Ernest S**
- - Defendant
- **Charge # 5:**  
**94C/32J-1 -** DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J

- Original Charge
- 94C/32J-1 DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J
- Amended Charge
- 

#### Charge Disposition

Disposition Date  
 Disposition  
 05/17/2011  
 Nolle Prosequi  
 04/05/2018  
 Vacated & Dismissed with Prejudice (SJC Order)

#### Events

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Result</u>
10/12/2010 09:00 AM	Courtroom 1	.	Arraignment	Held
11/12/2010 09:00 AM	Courtroom 2	.	Pretrial Hearing	Held
01/21/2011 09:00 AM	Courtroom 3		Motion Hearing (CR)	Held
01/25/2011 09:00 AM	Courtroom 3		Motion Hearing (CR)	Held
02/16/2011 09:00 AM	Courtroom 3		Jury Trial (CR)	Event Continued
03/04/2011 09:00 AM	Courtroom 3		Motion Hearing (CR)	Held
03/09/2011 09:00 AM	Courtroom 3		Jury Trial (CR)	Brought Forward
03/16/2011 09:00 AM	Courtroom 3		Jury Trial (CR)	Event Continued
04/15/2011 09:00 AM	Courtroom 3		Motion Hearing (CR)	Held
04/20/2011 09:00 AM	Courtroom 3		Motion Hearing (CR)	Held
04/27/2011 09:00 AM	Courtroom 2	.	Pretrial Hearing	Event Continued
05/04/2011 09:00 AM	Courtroom 2	.	Motion Hearing (CR)	
05/05/2011 09:00 AM	Courtroom 3		Jury Trial (CR)	Brought Forward
05/13/2011 09:00 AM	Courtroom 2	.	Motion Hearing (CR)	Event Continued
05/17/2011 09:00 AM	Courtroom 2	.	Pretrial Hearing	Held
05/17/2011 09:00 AM	Courtroom 2	.	Pretrial Hearing	Held
06/10/2011 09:00 AM	Courtroom 2	.	Pretrial Hearing	Brought Forward
07/20/2016 09:00 AM	Courtroom 4		Hearing to Review Status	Held
10/18/2016 09:00 AM	Courtroom 3		Jury Trial in Progress	Held
08/29/2017 09:00 AM	Courtroom 4		Motion Hearing (CR)	Event Continued

09/12/2017 09:00 AM	Triage by Clerk/PO	Hearing to Review Status	Event Continued
09/26/2017 09:00 AM	Triage by Clerk/PO	Hearing to Review Status	Held
09/27/2019 11:00 AM	Triage by Clerk/PO	Hearing to Review Status	Reschedule of Hearing
10/25/2019 09:00 AM	Courtroom 2	Motion Hearing (CR)	Held - under advisement
02/15/2024 09:00 AM	Courtroom 2	Motion Hearing (CR)	Held as scheduled
05/17/2024 09:00 AM	Courtroom 6 (Springfield)	Motion Hearing (CR)	Held - Motion allowed
07/26/2024 09:00 AM	Courtroom 2	Motion Hearing (CR)	

## Docket Information

<u>Docket Date</u>	<i>Docket Text</i>	<i>Image Avail.</i>
10/12/2010	<p>Defendant is ordered committed to Hampden County House of Correction in lieu of having posted bail in the amount ordered: (\$50,000.00 Bond; \$5,000.00 Cash), returnable for 11/12/2010 09:00 AM Pretrial Hearing; mittimus issued.</p> <p>Court location of next event (if not your court):</p> <p>Further Orders:</p>	
11/12/2010	<p>Defendant is ordered committed to Hampden County House of Correction in lieu of having posted bail in the amount ordered: (\$50,000.00 Bond; \$5,000.00 Cash), returnable for 01/21/2011 09:00 AM Motion Hearing; mittimus issued.</p> <p>Court location of next event (if not your court):</p> <p>Further Orders:</p>	
01/21/2011	<p>Defendant is ordered committed to Hampden County House of Correction in lieu of having posted bail in the amount ordered: (\$50,000.00 Bond; \$5,000.00 Cash), returnable for 01/25/2011 09:00 AM Motion Hearing; mittimus issued.</p> <p>Court location of next event (if not your court):</p> <p>Further Orders:</p>	
01/25/2011	<p>Defendant is ordered committed to Hampden County House of Correction in lieu of having posted bail in the amount ordered: (\$50,000.00 Bond; \$5,000.00 Cash), returnable for 02/16/2011 09:00 AM Jury Trial; mittimus issued.</p> <p>Court location of next event (if not your court):</p> <p>Further Orders:</p>	

02/16/2011 Defendant is ordered committed to Hampden County House of Correction in lieu of having posted bail in the amount ordered: (\$10,000.00 Bond; \$1,000.00 Cash), returnable for 03/09/2011 09:00 AM Jury Trial; mittimus issued.

Court location of next event (if not your court):

Further Orders:

+++++BAIL REDUCED+++++

03/09/2011 Defendant is ordered committed to Hampden County House of Correction in lieu of having posted bail in the amount ordered: (\$50,000.00 Bond; \$5,000.00 Cash), returnable for 03/16/2011 09:00 AM Jury Trial; mittimus issued.

Court location of next event (if not your court):

Further Orders:

03/16/2011 Defendant is ordered committed to Hampden County House of Correction in lieu of having posted bail in the amount ordered: (\$50,000.00 Bond; \$5,000.00 Cash), returnable for 05/05/2011 09:00 AM Jury Trial; mittimus issued.

Court location of next event (if not your court):

Further Orders:

04/15/2011 Habeas Corpus for prosecution issued to Hampden County House of Correction returnable for 04/20/2011 09:00 AM Motion Hearing:

Further Orders:

04/20/2011 Defendant is ordered committed to Hampden County House of Correction in lieu of having posted bail in the amount ordered: (\$50,000.00 Bond; \$5,000.00 Cash), returnable for 06/10/2011 09:00 AM Pretrial Hearing; mittimus issued.

Court location of next event (if not your court):

Further Orders:

04/22/2011 Defendant is ordered committed to Hampden County House of Correction in lieu of having posted bail in the amount ordered: (\$50,000.00 Bond; \$5,000.00 Cash), returnable for 05/05/2011 09:00 AM Jury Trial; mittimus issued.

Court location of next event (if not your court):

Further Orders:

04/22/2011 Defendant is ordered committed to Hampden County House of Correction in lieu of having posted bail in the amount ordered: (\$50,000.00 Bond; \$5,000.00 Cash), returnable for 05/05/2011 09:00 AM Jury Trial; mittimus issued.

Court location of next event (if not your court):

Further Orders:

04/22/2011 Habeas Corpus for prosecution issued to Hampden County House of Correction returnable for 04/27/2011 09:00 AM Pretrial Hearing:

Further Orders:

04/27/2011 Defendant is ordered committed to Hampden County House of Correction in lieu of having posted bail in the amount ordered: (\$50,000.00 Bond; \$5,000.00 Cash), returnable for 05/17/2011 09:00 AM Pretrial Hearing; mittimus issued.

Court location of next event (if not your court):

Further Orders:

05/12/2011 Habeas Corpus for prosecution issued to Hampden County House of Correction returnable for 05/13/2011 09:00 AM Motion Hearing:

Further Orders:

05/13/2011 Defendant is ordered committed to Hampden County House of Correction in lieu of having posted bail in the amount ordered: (\$50,000.00 Bond; \$5,000.00 Cash), returnable for 05/17/2011 09:00 AM Pretrial Hearing; mittimus issued.

Court location of next event (if not your court):

Further Orders:

05/18/2011 Charges Disposed:

Charge #1 DRUG, DISTRIBUTE CLASS D c94C §32C(a)

Date: 05/17/2011

Method: Guilty Plea

Code: Guilty

Judge: Gordon, Hon. Robert A

Charge #2 TRESPASS c266 §120

Date: 05/17/2011

Method: Guilty Plea

Code: Guilty

Judge: Gordon, Hon. Robert A

Charge #3 DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J

Date: 05/17/2011

Method: Nolle Prosequi

Code: Nolle Prosequi

Judge: Gordon, Hon. Robert A

Charge #4 DRUG, POSSESS TO DISTRIB CLASS D c94C §32C(a)

Date: 05/17/2011

Method: Guilty Plea

Code: Guilty

Judge: Gordon, Hon. Robert A

Charge #5 DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J

Date: 05/17/2011

Method: Nolle Prosequi

Code: Nolle Prosequi

Judge: Gordon, Hon. Robert A

04/18/2014 Appearance filed

On this date Inna Shtivelband Landsman, Esq. added as Appointed - Indigent Defendant for Defendant Ernest S Hughey  
Appearance filed for the purpose of Case in Chief by Judge Hon. John M Payne, Jr..

05/06/2016 Case was automatically closed and disposed on 05/06/2016 per AODC request. The case had a case-status of "Disposed for Statistical purposes" and case-disposition of "Pending/Undisposed". Also the case met all criteria for auto close/dispose as outlined by the AODC which included 1) No future events. 2) No outstanding warrants. 3) No events scheduled in last 60 days. 4) No money outstanding. 5) All charges were disposed







07/18/2016 Event Scheduled

Event: Status Review (CR)  
Date: 07/20/2016 Time: 09:00 AM  
Result: Held

07/20/2016 Event Resulted



	<p>The following event: Status Review (CR) scheduled for 07/20/2016 09:00 AM has been resulted as follows: Result: Held</p>
10/18/2016	<p>Event Resulted The following event: Jury Trial in Progress scheduled for 10/18/2016 09:00 AM has been resulted as follows: Result: Held</p>
10/26/2016	<p>Charges Disposed: Charge #1 DRUG, DISTRIBUTE CLASS D c94C §32C(a) Date: 10/18/2016 Method: Nolle Prosequi Code: Nolle Prosequi Judge: Boyle, Hon. William J</p> <p>Charge #2 TRESPASS c266 §120 Date: 10/18/2016 Method: Nolle Prosequi Code: Nolle Prosequi Judge: Boyle, Hon. William J</p> <p>Charge #3 DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J Date: 05/17/2011 Method: Nolle Prosequi Code: Nolle Prosequi Judge: Gordon, Hon. Robert A</p> <p>Charge #4 DRUG, POSSESS TO DISTRIB CLASS D c94C §32C(a) Date: 10/18/2016 Method: Nolle Prosequi Code: Nolle Prosequi Judge: Boyle, Hon. William J</p> <p>Charge #5 DRUG VIOLATION NEAR SCHOOL/PARK c94C §32J Date: 05/17/2011 Method: Nolle Prosequi Code: Nolle Prosequi Judge: Gordon, Hon. Robert A</p>
10/26/2016	<p>Event Scheduled Event: Jury Trial in Progress Date: 10/18/2016 Time: 09:00 AM Result: Held</p>
08/11/2017	<p>Event Scheduled Event: Motion Hearing (CR) Date: 08/29/2017 Time: 09:00 AM</p>
08/11/2017	<p>Habeas Corpus for prosecution issued to Hampden County House of Correction returnable for 08/29/2017 09:00 AM Motion Hearing (CR): Further Orders:</p>
08/24/2017	<p>Event Scheduled Event: Motion Hearing (CR) Date: 08/29/2017 Time: 09:00 AM Result: Event Continued</p>
08/29/2017	<p>Event Resulted The following event: Motion Hearing (CR) scheduled for 08/29/2017 09:00 AM has been resulted as follows: Result: Event Continued</p>

08/30/2017	Event Scheduled Event: Status Review (CR) Date: 09/12/2017 Time: 09:00 AM Result: Event Continued	
09/12/2017	Event Resulted The following event: Status Review (CR) scheduled for 09/12/2017 09:00 AM has been resulted as follows: Result: Event Continued	
09/12/2017	Event Scheduled Event: Status Review (CR) Date: 09/26/2017 Time: 09:00 AM Result: Held	
09/12/2017	Habeas Corpus for prosecution issued to Hampden County House of Correction returnable for 09/26/2017 09:00 AM Status Review (CR): Further Orders: BEFORE JUDGE BOYLE	
09/26/2017	Event Resulted The following event: Status Review (CR) scheduled for 09/26/2017 09:00 AM has been resulted as follows: Result: Held	
09/26/2017	Written finding of Justice after motion to hearing received and filed. Revoke order of forfeiture  Judge: Boyle, Hon. William J	 <a href="#">Image</a>
09/26/2017	Notice of Appeal to the Appeals Court filed by the Commonwealth. - Appeal filed on post-disposition allowance by Boyle, J on Motion to return monies previously forfeited to the Commonwealth	 <a href="#">Image</a>
11/01/2017	Docket report of court proceedings to date	 <a href="#">Image</a>
04/05/2018	Docket report of court proceedings to date	 <a href="#">Image</a>
04/05/2018	4/5/2018, The Court's finding(s) or judgment(s) on count(s) 1,4,5 are vacated and these counts are ordered DISMISSED WITH PREJUDICE, per order of the Supreme Judicial Court (Gaziano, J.). Any outstanding warrants arising solely from the above counts are recalled, and any outstanding obligations (e.g., financial or community service) arising solely from the above counts are remitted.	<a href="#">Image</a>
08/06/2019	Rescript opinion received from the ( Appeals-Supreme Judicial)	 <a href="#">Image</a>
09/27/2019	Event Resulted: Hearing to Review Status scheduled on: 09/27/2019 11:00 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Comments: Taken under advisement Hon. John M Payne, Jr., Presiding	<a href="#">Image</a>
09/27/2019	Taken under advisement Hon. John M Payne, Jr.  Judge: Payne, Jr., Hon. John M	
10/25/2019	Event Resulted: Motion Hearing (CR) scheduled on: 10/25/2019 09:00 AM Has been: Held - under advisement Hon. John M Payne, Jr., Presiding	
10/25/2019	Taken under advisement	
02/11/2021	Finding of Judge on matter taken under advisement. The May 17, 2011 plea must be vacated and such forfeiture cannot stand and must be returned to the defendant. Decision emailed to Attorney Landsman and faxed to District Attorney's Office.	 <a href="#">Image</a>

Judge: Payne, Jr., Hon. John M

02/25/2021 Notice of Appeal to the Appeals Court filed by the Commonwealth.

[Image](#)

07/07/2021 Notice of assembly of the record sent to the Appeals Court

05/13/2022 Finding and order received from the Appeals Court.

02/15/2024 Event update:: Motion Hearing (CR) scheduled on:  
 02/15/2024 09:00 AM  
 Has been: Held as scheduled  
 Hon. Kevin Maltby, Presiding

02/15/2024 Defense to file motion by: 03/15/2024  
 Commonwealth to file response by: 04/19/2024

Judge: Maltby, Hon. Kevin

05/17/2024 Commonwealth's motion to Continue and Enlarge Time filed and ALLOWED.

[Image](#)

05/17/2024 Event Resulted: Motion Hearing (CR) scheduled on:  
 05/17/2024 09:00 AM  
 Has been: Held - Motion allowed  
 Hon. Kevin Maltby, Presiding

09/13/2024 Finding of Judge on matter taken under advisement. Post Second Remand Mass.R.Civ.P. 60(b)(6)  
 is DENIED. Parties notified by email.

[Image](#)

Judge: Maltby, Hon. Kevin

10/09/2024 Notice of appeal to the Appeals Court filed by the Defendant

[Image](#)**Case Disposition**DispositionDate

Pending

Disposed

05/06/2016

Pending

APR 6 2016

FA.10

Page 1  
Volume I

Pages: 1-16  
Exhibits: 0

COMMONWEALTH OF MASSACHUSETTS  
HAMPDEN, SS. SPRINGFIELD DISTRICT COURT  
\* \* \* \* \*  
\*  
COMMONWEALTH OF MASSACHUSETTS \*  
\*  
v. \* Docket No. 1023-CR-8230  
\*  
ERNEST HUGHEY \*  
\*  
\* \* \* \* \*

PLEA HEARING  
BEFORE THE HONORABLE ROBERT A. GORDON

APPEARANCES:

For the Commonwealth:  
Office Of The District Attorney of Hampden County  
50 State Street  
Springfield, Massachusetts 01102  
By: Timothy Andrew Chretien, Assistant District Attorney

For the Defendant:  
Law Offices of Deborah E. Roberge  
95 State Street, Suite 326  
Springfield, Massachusetts 01103  
By: Deborah Erin Roberge, Esq.

Springfield, Massachusetts  
May 17, 2011

Cambridge Transcriptions  
Approved Court Transcriber

FA.10

A. 6

A.44

1 (Court called to order.)

2 THE CLERK: This is the matter of Ernest Hughey,  
3 docket 2010 8230. We have a motion to reconsider bail on  
4 this matter, Your Honor.

5 THE COURT: All right. Defendant is present.  
6 Attorney Roberge, I'll hear from you on this. Just give me  
7 a background.

8 MS. ROBERGE: Certainly, Your Honor. Your Honor, this  
9 incident arose October 8, 2010. Mr. Hughey was arrested.  
10 He was charged with (indiscernible) distribution and  
11 possession with intent in a school zone violation. He was  
12 represented by, I believe, Attorney Dexter. I was  
13 appointed fairly recently to the case, Your Honor. In the  
14 course of my work on the case, I had an investigator  
15 measure the school zone.

16 The allegation is that the school zone -- the school  
17 involved is the daycare that's on the campus of Springfield  
18 Technical Community College. I asked the investigator to  
19 do a measurement. He did a measurement that was taken from  
20 the area of 925, 931 Worthington Street, which is where Mr.  
21 Hughey was arrested to the Amory Square Daycare located at  
22 building 14 of the Springfield Technical Community College  
23 Campus. That measurement was 2,230 feet.

24 I have an attached copy of my investigator's report to  
25 the motion. Our position is that due to the fact that

1 school enumerated in the school zone violation is not nor  
2 could it be the campus of Springfield Technical Community  
3 College, but rather the daycare located in building 14 of  
4 that facility that since it's outside of the prohibited  
5 distance that that is a significant change in circumstances  
6 that was present -- that was not addressed, that was not  
7 brought to the Court's attention prior and in light of  
8 that.

9 In light of the fact of Mr. Hughey's -- in light of  
10 the fact that he's been held since October, I'd ask you to  
11 consider reduction in the bail to \$1,000 personal surety.

12 THE COURT: (Indiscernible)?

13 MR. CHRETIEN: Your Honor, I'd like to give Your Honor  
14 more details as to the facts of the case. What's alleged  
15 is on October 6, 2010, in the area of Worthington and  
16 Federal Street in Springfield, officers had a section of  
17 that street under surveillance. They were specifically --  
18 their attention was specifically drawn to the area of 931,  
19 925 Worthington Street. They observed a black male dressed  
20 in dark clothing, hooded sweatshirt and jeans, loitering in  
21 the alley.

22 As they continued to watch, they saw the subject walk  
23 in and out of the alley in the entrance of 925 Worthington  
24 engaging passer-bys and otherwise shouting and generally  
25 trying to draw attention to himself. That individual was

1 later identified as Joseph Hughey, this defendant's  
2 brother.

3 As they continued their surveillance, they watched  
4 Joseph Hughey engage in a conversation with another  
5 individual. This other individual handed him paper  
6 currency. Joseph Hughey took the paper currency, pointed  
7 and indicated towards vacant mailboxes by the alley. The  
8 other individual walked over there and as he was doing  
9 this, Joseph Hughey yelled up to the windows in that  
10 apartment building. As he did that, less than a minute  
11 later, this defendant came out of the main entrance of the  
12 building, stood on the threshold. He was seen looking both  
13 directions, back and forth down the street and then quickly  
14 handing an item to Joseph Hughey. Joseph Hughey then takes  
15 the item and hands it to this other individual, who then  
16 leaves.

17 This is the same scenario is basically repeated a  
18 little later on. This time a woman named Susan Brown  
19 speaks with Joseph Hughey. Again, he shouts up to the  
20 window. A short time later, this defendant comes down  
21 hands an item to Joseph. Joseph had the currency from  
22 Susan Brown. He hands an item back to Susan Brown. The  
23 police stop Susan Brown. They find marijuana on her and  
24 she makes a statement that she just bought some marijuana.

25 At this time, due to heavy rain all the subjects leave

1 the area. The officers are in the same area two days  
2 later. As they're there they recognize this defendant as  
3 one who had been from a couple days earlier. In addition,  
4 one of the officers realizes there was a trespass order  
5 from that building from a management company and he was  
6 placed under arrest at that point.

7 Your Honor, I would disagree that any reduction of  
8 bail is appropriate at this time. As a matter of further  
9 background, the initial was set at \$5,000 cash by Judge  
10 Boyle back in December. Earlier this year we were in front  
11 of Your Honor on February 16, the Commonwealth did not have  
12 a witness and was not ready for trial, and you reduced the  
13 bail to 1,000 in addition to the continuance which was  
14 granted.

15 I would indicate the defendant does not have an  
16 extensive Mass record; however, he does have an out of  
17 state record from Indiana and also Michigan. Although, the  
18 NCIC doesn't include the disposition, the Indiana charges  
19 included criminal conversion, criminal mischief, assault,  
20 assault -- excuse me, that second assault was from  
21 Michigan. Also from Michigan, burglary, dangerous drugs  
22 and weapons offense.

23 Also, Your Honor, given the nature and circumstance of  
24 this case, it was a premeditated and thought out scheme for  
25 distributing the marijuana to individuals in this area.



1 I'd also indicate to Your Honor that the measurements for  
2 school zones are typically done to be the boundary areas of  
3 the property, not where the actual building is. So I would  
4 suggest that a boundary line measurement would be  
5 significantly less. Furthermore, this information isn't  
6 new. The predecessor counsel on the co-defendant sent an  
7 investigator, basically did the same thing back in  
8 February. And I suggest that any sort of reduction should  
9 have taken place at that point.

10 Given all those factors, Your Honor, we do believe  
11 1,000 is more than sufficient for the charges, even  
12 ignoring the school zone, the distribution and the  
13 possession of intent by themselves, 1,000 is more than  
14 sufficient for those charges.

15 THE COURT: Well, you know, it's a little confusing is  
16 that bail is reduced in February, but on the back -- if you  
17 look at the docket sheet, there's a -- it's a little out of  
18 order, but it looks like the back of it, the back of one  
19 sheet, not the line portion, it states that on February 16  
20 of this year I reduced the bail to 1,000 because the  
21 Commonwealth was unable to go to trial at that time, but  
22 then it keeps continuing and it has -- I mean, for example,  
23 April 20 or 28, it states that the bail is 5,000 and 50,000  
24 in surety. It skipped over what I did. It keeps talking  
25 about on April 22, it said the bail is 5,000 cash, 50,000

1 surety. I think what happened is somebody wrote on the  
2 back and I think every time it comes to Court nobody looks  
3 on the back side of the paper. So, (Indiscernible), you  
4 agree the bail \$1,000?

5 MR. CHRETIEN: That was my understanding, Your Honor.

6 THE COURT: Right.

7 MR. CHRETIEN: I was here in front of Your Honor --

8 THE COURT: Yeah. The bail is \$1,000, but the problem  
9 is after that date it keeps showing up on the docket sheet  
10 as 5,000. So we should probably make an amendment as of  
11 today. I'll ask the clerk to do that. The bail is 1,000  
12 cash, 10,000 surety, but that still leaves us with -- so  
13 it's clear. Is there a trial date?

14 MS. ROBERGE: There's not, Your Honor. I was  
15 appointed April 20 on the case, so this is my first -- I  
16 think this is my first pretrial conference so --

17 THE COURT: Well, I'm going to deny -- I'm not going  
18 to lower the bail. I'm going to leave it 1,000, 10,000  
19 surety. But defendant has right of review that's  
20 (indiscernible). I mean, I'm not going to find that  
21 there's any change of circumstance. I mean, a school zone  
22 is a school zone. I'm not going to prejudge it. I think I  
23 agree with Attorney Chretien on the record. But you can  
24 always make that argument. I think that's a change of  
25 circumstance. (Indiscernible) bail review in superior

1 court. But we're going to correct the docket and make sure  
2 it's 1,000.

3 THE CLERK: I did that right now, Your Honor. Yes.  
4 1,000, 10,000.

5 THE COURT: You want to conference it today and  
6 schedule it for jury trial?

7 MS. ROBERGE: If we could have a further call, Your  
8 Honor.

9 THE COURT: All right. So we'll put it on -- you can  
10 fill out the -- we can do it later if you want. Fill it  
11 out, he has the right of review with the Superior Court,  
12 and let's see if we can get him an early trial date. Is  
13 there any discovery that you need?

14 MS. ROBERGE: It doesn't appear there is anything. I  
15 think I have everything.

16 THE COURT: You have the drug cert?

17 MR. CHRETIEN: Yes.

18 MS. ROBERGE: We don't have the actual school zone  
19 measurements or map or anything of that nature.

20 MR. CHRETIEN: We had been set up for trial a number  
21 of times before Attorney Roberge here.

22 THE COURT: Right.

23 MS. ROBERGE: So I'll take a close look at that.

24 THE COURT: Well, why don't you fill out a conference  
25 report and we'll give them a trial date, and this is -- I'm

1 going to put down that this -- let's give an early trial  
2 date. In this case, you'd have priority. It's been held  
3 for all this time and on fairness to the defendant, let's -  
4 - this should take precedent over other cases.

5 MS. ROBERGE: Thank you, Your Honor.

6 MR. CHRETIEN: Thank you.

7 THE COURT: So we'll pass and you can submit a  
8 conference report.

9 THE CLERK: Pass and review.

10 (Other matters discussed.)

11 THE CLERK: Ernest Hughey, docket 2010 8230. We have  
12 an agreed upon plea, Your Honor.

13 THE COURT: All right. You worked something out?

14 MS. ROBERGE: Yes, Your Honor.

15 THE COURT: All right. Good.

16 THE CLERK: Commonwealth has filed a motion for  
17 forfeiture in the amount of \$328 in this matter.

18 THE COURT: All right. Sir, did you sign the back of  
19 this form?

20 DEFENDANT: Yes, sir.

21 THE CLERK: (Indiscernible).

22 THE COURT: Oh, yeah. I want to do that first.  
23 (Defendant sworn.)

24 THE COURT: Now, listen to the facts, sir. Attorney  
25 Chretien.

FA.19

1           MR. CHRETIEN: Your Honor, this took place on October  
2   6, 2010. In the area of Federal and Worthington, officers  
3   were surveilling the area and at one point their attention  
4   were drawn to some males located by 931 to 925 Worthington.  
5   Included a black male dressed in a dark-colored hooded  
6   sweatshirt and jeans, loitering in the alley adjacent to  
7   that building. They watched him walk in and out of the  
8   alley around to the entrance and then began to converse  
9   with numerous passers-by, acting in a manner that was  
10   drawing attention to himself. He was later identified as  
11   Joseph Hughey, the brother of this defendant.

12           They observed him as he approached a black male,  
13   engaged in a brief conversation before this other male  
14   handed Joseph paper currency. After receiving that, Joseph  
15   pointed towards a vacant mailboxes and the individual  
16   walked over there. While this was happening, Joseph yelled  
17   up to a window above the entrance of 925 Worthington. Less  
18   than a minute later, a black male dressed in a blue shirt  
19   wearing his hair in tight braids stepped from the main  
20   entrance holding the door ajar. He was later identified as  
21   Ernest Hughey, the defendant before you. He was seen  
22   looking both ways up and down the street, then handed onto  
23   Joseph Hughey who cupped it in his right hand, walked  
24   towards the other black male and handed it to him. After  
25   completing that transfer, Ernest went back into the

FA.19

A. 15

**A.53**

1 building, and the other individual walked down Worthington.

2         Sometime later another female approached. Her name is  
3 Susan Brown. He again had a brief conversation with Joseph  
4 Hughey. Paper currency was exchanged. Joseph yelled up to  
5 the window. A short time later Ernest came down. Again,  
6 the door was ajar, he handed something to Joseph before  
7 going back into the building. Joseph cupped that item in  
8 his hand, walked to Ms. Brown, and handed it to her. After  
9 receiving it, Ms. Brown re-entered her vehicle and drove  
10 away. Officers did stop Ms. Brown. They found marijuana  
11 on her and she admitted to having just purchased the  
12 marijuana. Due to heavy rains at that point, all the  
13 suspects left the area and the surveillance was terminated.

14         Two days later they were back in the same area again,  
15 and officers observed Ernest and several others loitering  
16 in the front of 931 Worthington. They recognized him as  
17 one of the individuals they had seen two days prior and  
18 began to approach him. As they did, he dropped a glassine  
19 bag containing several individual bags of marijuana to the  
20 ground. They picked those up and in the officer's opinion,  
21 they were packaged for street level sale.

22         He was placed into custody. He initially struggled  
23 with officers, and as that happened one of the other  
24 officers recognized that he had been previously trespassed  
25 from the property by the management company on September

FA.21

1 21, 2010. After confirming that, he was placed into  
2 custody with those initial charges, Your Honor. The drug  
3 certs did come back for marijuana.

4 THE COURT: All right. Sir, to the three charges in  
5 this case, one is distribution of Class D, trespass and  
6 possession with intent to distribute Class D, are those  
7 facts true?

8 THE DEFENDANT: Yes.

9 THE COURT: Now, do you understand that those case  
10 (indiscernible) for trial today, we give you another date.  
11 At that time you could have a jury trial. It would be six  
12 jurors chosen from the county of Hampden. To be convicted,  
13 it's required that all six of the jurors agree together  
14 that the Commonwealth has proven the case against you  
15 beyond a reasonable doubt; do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: If you go to trial you don't have to say  
18 anything, offer any evidence, testify; do you understand  
19 that?

20 THE DEFENDANT: Yes.

21 THE COURT: You could decide talking to your lawyer,  
22 you can ask questions of any Commonwealth witness who  
23 testifies, you can have witnesses testify for your defense,  
24 you can offer evidence; do you understand that?

25 THE DEFENDANT: Yes.

FA.21

A. 17

A.55

FA.22

1 THE COURT: And if you do not testify, the  
2 Commonwealth cannot mention that at the trial to the  
3 jurors. They cannot say anything or make reference in any  
4 way to the fact that you're not testifying; do you  
5 understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: Further, if you're not a citizen of the  
8 United States, the disposition could result in your  
9 deportation, your exclusion from the United States, your  
10 ability to attain naturalization. How old are you?

11 THE DEFENDANT: Twenty-five.

12 THE COURT: How far did you go in school?

13 THE DEFENDANT: High school diploma.

14 THE COURT: Where did you go to high school?

15 THE DEFENDANT: Indiana, South Bend.

16 THE COURT: Where in?

17 THE DEFENDANT: South Bend, Indiana.

18 THE COURT: Oh, OK. Do you take any medication?

19 THE DEFENDANT: No.

20 THE COURT: Do you understand the charges, what the  
21 Commonwealth would have to prove if the case went to trial?

22 THE DEFENDANT: Yes.

23 THE COURT: Ms. Roberge, are you satisfied the  
24 defendant understands his rights, the elements, any  
25 defenses?

FA.22

A. 18

A.56



1 MS. ROBERGE: Yes, Your Honor.

2 THE COURT: Make a finding the defendant has  
3 knowingly, voluntarily waived his right to a trial by jury  
4 and he understands the essential elements. What's the  
5 recommendation of the Commonwealth, Attorney Chretien?

6 MR. KRETION: Your Honor, Attorney Roberge and I have  
7 reached an agreement for guilty time served as to the three  
8 counts. The defendant has been held since his arrest on  
9 October 8.

10 THE COURT: Right.

11 MR. KRETION: Roughly seven months. Given his record,  
12 we believe this is fair. Also, file a written  
13 (indiscernible).

14 THE COURT: Is it agreed?

15 MS. ROBERGE: It is agreed, Your Honor.

16 THE COURT: You know what's going to happen, sir, if  
17 you get arrested again on one of these? Do you have any  
18 idea?

19 THE DEFENDANT: Yes, I'm going to jail.

20 THE COURT: Yes, well, it will be a second offense.

21 THE DEFENDANT: Yes.

22 THE COURT: And you might face the possibility of  
23 state prison as a second offender. You better be careful.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: OK. As long as you're aware of that.

1 MS. ROBERGE: Thank you, Your Honor.

2 THE COURT: OK. Count 1 will be guilty, time served,  
3 will be a forfeiture of \$328. Count 2, the trespassing  
4 will be guilty, filed, filed with your consent, and Count 4  
5 with the possession with intent to distribute will be  
6 guilty time served, waive any fees.

7 MS. ROBERGE: Thank you.

8 THE COURT: And I'll sign the order for forfeiture.

9 MR. KRETION: Thank you, Your Honor.

10 THE CLERK: Is that a month filing for Count 2?

11 THE COURT: Yeah, that's good, a month.

12 (Court adjourned.)  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



The Commonwealth of Massachusetts  
 ADMINISTRATIVE OFFICE OF THE TRIAL COURT  
 Office of Transcription Services (OTS)  
 Two Center Plaza  
 Boston, Massachusetts 02108

**AUDIO ASSESSMENT FORM (AAF)**

*Approved Court Transcriber: Complete one (1) Audio Assessment Form (AAF) for each volume of transcript, attach the original AAF to the next to last page of each volume of transcript, and FAX a copy of the AAF to OTS at 617-878-0762.*

TODAY'S DATE: July 7, 2014 TRANSCRIBER NAME: Cambridge Transcriptions

CASE NAME: Commonwealth v. Hughey DOCKET NO.: 1023-CR-8230

JUDGE: Robert Gordon RECORDING DATE: May 17, 2011

TRANSCRIPT VOLUME: 1 OF 2

-----  
 QUALITY OF AUDIO:

TYPE OF AUDIO:

excellent      ☒ good      fair      poor      ☒ CD      TAPE

**TIME STAMP or INDEX NUMBER**

(check all that apply)

background noise

low audio

low audio at sidebar

simultaneous speech

speaking away from microphone

COMMENTS:

1           We, Cambridge Transcriptions, an Approved Court  
2 Transcriber, do hereby certify that the foregoing is a true  
3 and accurate transcript from the audio recording provided  
4 to us by Inna Landsman, Esq. of the Springfield District  
5 Court proceedings in the above-entitled matter.  
6

7           We, Cambridge Transcriptions, further certify that the  
8 foregoing is in compliance with the Administrative Office  
9 of the Trial Court Directive on Transcript Format.  
10

11           We, Cambridge Transcriptions, further certify that we  
12 neither are counsel for, related to, nor employed by any of  
13 the parties to the action in which this hearing was taken,  
14 and further that we are not financially nor otherwise  
15 interested in the outcome of the action.  
16

17   
18 \_\_\_\_\_

18 Buchanan Ewing

19 12/28/2015  
20 \_\_\_\_\_

20 Date

21  
22 675 Massachusetts Avenue, Cambridge, MA 02139

23 617-547-5690

24 buck@ctran.com  
25



DEVAL L. PATRICK  
Governor

TIMOTHY P. MURRAY  
Lieutenant Governor

JUDYANN BIGBY, M.D., Secretary

JOHN AUERBACH, Commissioner

The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
State Laboratory Institute  
Amherst, MA 01003  
413-545-2601

DATE RECEIVED: 10/20/2010

DATE ANALYZED: 11/24/2010

NO. A10-04054

I hereby certify that the Vegetable Matter

Contained in 1 plastic bag

MARKED: A10-04054

Submitted by Detective Kevin Burnham of the Springfield Police

Has been examined with the following results:

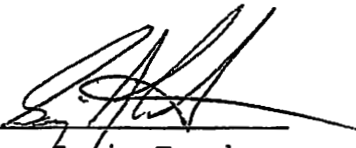
The vegetable matter was found to contain:

Marijuana, as defined in Chapter 94 C, Controlled Substance Act, Section 31, Class D.

Net Weight: Less than an ounce

DEFENDANT: Ernest Hughey, et al

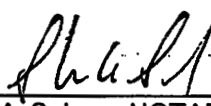
ASSISTANT ANALYST

  
Sonja Farak

On this Tuesday, November 30, 2010, before me, the undersigned notary public, personally appeared the above signed subscriber, having proved to me through Department of Public Health documentation to be the person whose name is signed on this certificate and to be an assistant analyst of the Department of Public Health, and who swore to me that the contents of this document are truthful and accurate to the best of his/her knowledge and belief.



Sharon A. Salem  
Notary Public  
Commonwealth of Massachusetts  
My commission expires on  
September 22, 2017

  
Sharon A. Salem, NOTARY PUBLIC  
My commission expires on September 22, 2017

Chapter 111, Section 13 of the General Laws

This certificate shall be sworn to before a Justice of the Peace or Notary Public, and the jurat shall contain a statement that the subscriber is the analyst or assistant analyst of the department. When properly executed, it shall be prima facie evidence of the composition, quality, and the net weight of the narcotic or other drug, poison, medicine, or chemical analyzed, and the court shall take judicial notice of the signature of the analyst or assistant analyst, and of the fact that he/she is such.



DEVAL L. PATRICK  
Governor

TIMOTHY P. MURRAY  
Lieutenant Governor

JUDYANN BIGBY, M.D., Secretary

JOHN AUERBACH, Commissioner

The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
State Laboratory Institute  
Amherst, MA 01003  
413-545-2601

DATE RECEIVED: 10/20/2010

DATE ANALYZED: 11/24/2010

NO. A10-04055

I hereby certify that the Vegetable Matter  
Contained in 8 plastic packets

MARKED: A10-04055

Submitted by Detective Kevin Burnham of the Springfield Police

Has been examined with the following results:


The vegetable matter was found to contain:

Marijuana, as defined in Chapter 94 C, Controlled Substance Act, Section 31, Class D.

Net Weight: Less than an ounce

DEFENDANT: Ernest Hughey, et al


ASSISTANT ANALYST

  
Sonja Farak

On this Tuesday, November 30, 2010, before me, the undersigned notary public, personally appeared the above signed subscriber, having proved to me through Department of Public Health documentation to be the person whose name is signed on this certificate and to be an assistant analyst of the Department of Public Health, and who swore to me that the contents of this document are truthful and accurate to the best of his/her knowledge and belief.



Sharon A. Salem  
Notary Public  
Commonwealth of Massachusetts  
My commission expires on  
September 22, 2017

  
Sharon A. Salem, NOTARY PUBLIC  
My commission expires on September 22, 2017

Chapter 111, Section 13 of the General Laws

This certificate shall be sworn to before a Justice of the Peace or Notary Public, and the jurat shall contain a statement that the subscriber is the analyst or assistant analyst of the department. When properly executed, it shall be prima facie evidence of the composition, quality, and the net weight of the narcotic or other drug, poison, medicine, or chemical analyzed, and the court shall take judicial notice of the signature of the analyst or assistant analyst, and of the fact that he/she is such.

<b>TENDER OF PLEA OR ADMISSION &amp; WAIVER OF RIGHTS</b>	DOCKET NO. <b>1023 CR 8230</b>	Trial Court of Massachusetts District Court Department
NAME OF DEFENDANT <b>ERNEST HUGHEY</b>		COURT DIVISION <b>Springfield District Court 50 State Street Springfield, MA 01105</b>

## SECTION I CONDITIONAL TENDER OF PLEA OR ADMISSION

Defendant tenders the following: ☒ PLEA OF GUILTY ☐ ADMISSION TO FACTS SUFFICIENT FOR A FINDING OF GUILTY

COUNT NO.	DEFENDANT'S RECOMMENDATION(s) (Include all fees, costs and conditions of probation)	PROSECUTOR'S RECOMMENDATION(s) (Required when Prosecutor disagrees with Defendant's recommendations)	JUDGE'S DISPOSITION WHEN DEFENDANT'S RECOMMENDATION IS REJECTED
1	G time served	G. Time Served Rebort \$35000	
2	G F 6	G. File	
3	NP	N.P.	
4	G time served	G Time Served	
5	NP	N.P.	

IF ANY COUNT IS BEING PLACED ON FILE: It may be removed from the file at any time and sentence imposed (or scheduled for trial if no guilty finding has been made): (1) at the defendant's request, or (2) if a related conviction or sentence is reversed or vacated, or (3) if it is shown by a preponderance of evidence that the defendant committed a new criminal offense, or (4) if it is shown by a preponderance of evidence that:

Optional: The prosecutor may not request that the charge be removed from the file after: \_\_\_\_\_ (date).

DIST. / MUN. CTS. R. CRIM. P. 4(c) REQUIRES COUNSEL TO CONSULT WITH THE PROBATION DEPARTMENT REGARDING PROBATIONARY TERMS.

SIGNATURE OF DEFENSE COUNSEL OR PRO SE DEFENDANT X	DATE 5-17-11	SIGNATURE OF PROSECUTOR X	DATE 5/17/11
---	-----------------	------------------------------	-----------------

THE COURT ☒ ACCEPTS DEFENDANT'S TENDER ☐ REJECTS DEFENDANT'S TENDER

SIGNATURE OF JUDGE X	DATE 5/17/11
-------------------------	-----------------

DEFENDANT'S DECISION WHEN COURT REJECTS DEFENDANT'S RECOMMENDATION

☐ Defendant WITHDRAWS the tendered plea or admission. ☐ Defendant ACCEPTS Judge's disposition set forth above.

SIGNATURE OF DEFENSE COUNSEL X	DATE	SIGNATURE OF DEFENDANT X	DATE
-----------------------------------	------	-----------------------------	------

**SECTION II DEFENDANT'S WAIVER OF RIGHTS (G.L. c. 263, § 1B) & ALIEN RIGHTS NOTICE (G.L. c. 278, § 29D)**

I am not now under the influence of any drug, medication, liquor or other substance that would interfere with my ability to fully understand the constitutional and statutory rights that I am waiving when I plead guilty, or admit to sufficient facts to support a finding of guilty.

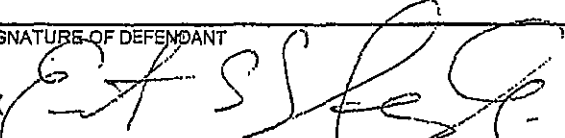
I have decided to plead guilty, or admit to sufficient facts, freely and voluntarily upon the conditions which I have tendered in Section I. My guilty plea or admission is not the result of force or threats, promises or other assurances.

I understand and acknowledge that I am voluntarily giving up the right to be tried by a jury, or by a judge without a jury, on these charges. I understand that the jury would consist of six jurors chosen at random from the community, and that I could participate in selecting those jurors, who would determine unanimously whether I was guilty or not guilty. I understand that by entering my plea of guilty or admission, I will also be giving up my right to confront, cross-examine, and compel the attendance of witnesses; to present evidence in my defense; to remain silent and refuse to testify or provide evidence against myself, all with the assistance of a defense attorney; and to be presumed innocent until proven guilty by the prosecution beyond a reasonable doubt.

I am aware of the nature and elements of the charge(s) to which I am entering my guilty plea or admission. I am also aware of the nature and range of the possible sentence(s); I am aware that sentences can be imposed one after the other. I have been advised if my plea of guilty or admission to the charges could trigger the provisions of the sex offender registration statute, or lifetime community parole supervision, or commitment as a sexually dangerous person under G.L. c. 123A, § 12.

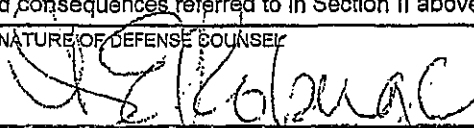
I understand that if I am not a citizen of the United States, the acceptance by this court of my plea of guilty, plea of nolo contendere, or admission to sufficient facts may have consequences of deportation, exclusion from admission to the United States, or denial of naturalization, pursuant to the laws of the United States.

If any charge is being placed on file: I freely and voluntarily consent to the filing of that charge on the conditions listed on the front of this form. I understand that I have a right at any time to have the court remove it from the file and impose sentence (or schedule it for trial if no guilty finding has been made). I understand that the prosecutor may request the court to remove it from the file and impose sentence (or schedule it for trial if no guilty finding has been made) if a related conviction or sentence is reversed or vacated, or if the prosecutor proves by a preponderance of evidence either that I committed a new criminal offense or that any other condition listed on this front of this form has occurred. The prosecutor may do so at any time (or if a time limit is listed on the front of this form, at any time until that date). I understand that if the charge is removed from the file and I am sentenced, it may result in additional punishment in this case.

SIGNATURE OF DEFENDANT 	DATE 5.17.11	I have translated this document for the defendant. SIGNATURE OF INTERPRETER X
---	-----------------	---

**SECTION III DEFENSE COUNSEL'S CERTIFICATE (G.L. c. 218, § 26A)**

As required by G.L. c. 218, § 26A, I certify that as legal counsel to the defendant in this case, I have explained to the defendant the legal rights and consequences referred to in Section II above.

SIGNATURE OF DEFENSE COUNSEL 	BBO NO. 643634	DATE 5.17.11
--	-------------------	-----------------

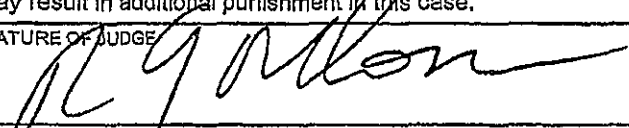
**SECTION IV JUDGE'S CERTIFICATION**

I, the undersigned Judge of the District Court, addressed the defendant directly in open court. I made appropriate inquiry into the education and background of the defendant and am satisfied that the defendant fully understands all of the defendant's rights as set forth in Section II above, and that the defendant is not under the influence of any drug, medication, liquor or other substance that would impair the defendant's ability to fully understand those rights. I find, after a colloquy with the defendant, that the defendant has knowingly, intelligently and voluntarily waived all of the rights as explained during these proceedings and as set forth in this form.

After a hearing, I have found a factual basis for the charge(s) to which the defendant is pleading guilty or admitting and I have found that the facts related by the prosecution and admitted by the defendant would support a conviction on the charge(s) to which the plea or admission is made.

I certify that I have advised the defendant as follows: "If you are not a citizen of the United States, you are hereby advised that the acceptance by this court of your plea of guilty, plea of nolo contendere, or admission to sufficient facts may have consequences of deportation, exclusion from admission to the United States, or denial of naturalization, pursuant to the laws of the United States."

If any charge is being placed on file after a guilty finding: I have informed the defendant that he or she has a right to be sentenced on that charge any time; that (subject to any listed time limit) the prosecutor may request the court to remove it from the file and impose sentence if a related conviction or sentence is reversed or vacated, or if the prosecutor proves by a preponderance of evidence either that the defendant committed a new offense or that any other condition listed on this front of this form has occurred; and that if the charge is removed from the file and sentence imposed it may result in additional punishment in this case.

SIGNATURE OF JUDGE 	DATE 5/17/11
--	-----------------



COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, ss

TRIAL COURT OF THE COMMONWEALTH  
DISTRICT COURT - Springfield  
DOCKET NO. 1023-08230

COMMONWEALTH

V.

ERNEST S HUGHEY

MOTION FOR FORFEITURE

The Commonwealth of Massachusetts, by its attorneys, hereby moves this Court, pursuant to General Laws Chapter 94C, s47 (b) as amended, for an order directing the forfeiture of the property described below. The property subject to forfeiture consists of the following:

Amount: \$328.00

As grounds for this motion, the Commonwealth states:

1. The defendant has been convicted in this action of a felony violation of Chapter 94C of the General Laws. In particular, the defendant stands convicted of a crime involving the unlawful distribution, dispensation, manufacture, or possession with intent to distribute, dispense or manufacture a controlled substance.
2. The property described above was used, or was intended to be used; to cause, commit or facilitate a felony violation of Chapter 94C. Alternatively, the property constitutes either a) money used or intended to be used during or in connection with an exchange of controlled substances; or b) proceeds traceable to an exchange of controlled substances.
3. As a result of the acts or intended acts detailed in paragraph 2 hereof, the property described above shall be forfeited to the Commonwealth.

*attorney*  
5/17/11 P. Gordon

FA.30

FA.30

WHEREFORE, the Commonwealth of Massachusetts respectfully requests a hearing concerning this motion and, after hearing, an order directing the forfeiture of the personal property described above.

THE COMMONWEALTH

By 

Timothy A. Chretien  
Assistant District Attorney

Dated: 5/13/11

FA.30

A. 26

A.66

## COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

TRIAL COURT OF THE COMMONWEALTH  
DISTRICT COURT - Springfield  
DOCKET NO. 1023-08230

COMMONWEALTH

V.

ERNEST S HUGHEY

ORDER

Upon motion filed by the Commonwealth of Massachusetts and after a full hearing in the presence of the defendant, it is **ORDERED AND DECREED**:

1. The personal property described below is forfeitable to the Commonwealth of Massachusetts, pursuant to General Laws Chapter 94C, § 47(b), as amended. The Court specifically finds that this property was either used, or was intended to be used, to cause, commit or facilitate felony violations of Chapter 94C; or the property was used, or intended to be used, by a person in exchange for a controlled substance; or the property constitutes proceeds traceable to an exchange of controlled substances. Hence; the following property shall be, and hereby is, forfeited to the Commonwealth of Massachusetts, namely:

Amount: \$328.00

2. Title to the foregoing property and physical custody thereof, shall immediately vest in the District Attorney of Hampden County, who shall either use or dispose of the property as provided by G.L. c. 94C, 547(d) (2nd. par.) and other pertinent provisions of law.

So Ordered,

Dated: 5/17/11

ADA: Timothy A. Chretien.  
Police Dept: Springfield Pd  
Date/Arrest: 10-4380-AR

*R. Gordon*  
District Court Justice

*Robert A. Gordon*  
FA.31

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

DEPARTMENT OF THE TRIAL COURT  
SPRINGFIELD DISTRICT COURT  
DOCKET NO. 1023CR8230

COMMONWEALTH

v.

ERNEST HUGHEY

NOLLE PROSEQUI

Now comes the Commonwealth in the above-captioned matter and herewith enters a nolle prosequi in the defendant's case. The Commonwealth has assented to the defendant's Mass. R. Crim. P. 30 motion to withdraw his guilty plea and for a new trial. Due to the fact that the Commonwealth recognizes that egregious governmental misconduct at the Amherst drug lab may have affected the defendant's due process rights in this matter, and the fact that the Springfield Police Department has been unable to locate the illegal substances upon which the charges were based, the Commonwealth determines that it is in the best interest of justice that a nolle prosequi be

FA.33

FA.33

entered in the defendant's criminal case in the  
Springfield District Court.

Respectfully submitted,  
THE COMMONWEALTH

By /s/  
Deborah D. Ahlstrom  
Assistant District Attorney  
Hall of Justice  
50 State Street  
Springfield, MA 01103  
(413) 505-5951  
BBO #554884

Date:

FA.33

A. 29

**A.69**

AR/1

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN COUNTY

SPRINGFIELD DISTRICT COURT  
DOCKET NUMBER 1023CR8230

COMMONWEALTH

v.

ERNEST HUGHEY

AFFIDAVIT OF ERNEST HUGHEY

Ernest Hughey deposes and states that the following is true to the best of his knowledge and belief:

1. I am the defendant.
2. I first found out that the Commonwealth wanted to keep my money on the day of the plea. No one told me anything about it beforehand. No one gave or sent me the Motion for Forfeiture relating to it before the plea date.
3. My lawyer told me that forfeiture is part of normal procedure and that I have to forfeit the money because I allegedly had drugs on me when arrested. She said they were going to take it anyway.

Page 1 of 2

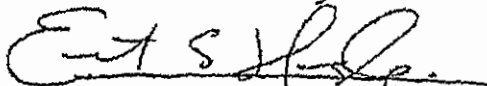
## Affidavit of Ernest Hughes

4. She never said that I could fight the forfeiture motion or appeal the court's decision. I informed her that the money wasn't drug money, that that was money I worked for.

5. At the time I was arrested, I had pay stubs in my pocket showing that I made this money legitimately. Had I known what I know now, I could and would have fought the forfeiture motion.

6. I first asked Attorney Landsman to look into this in March 2017.

Signed under the pains and penalties of perjury on August 19, 2017



Ernest Hughes

Page 2 of 2



FA 3  
Springfield Police Department  
Arrest Report

Page: 1  
10/11/2010

Arrest #: 10-4380-AR

Date/Time Reported: 10/08/2010 @ 0210  
Arrest Date/Time: 10/08/2010 @ 0225  
Booking Date/Time: 10/08/2010 @ 1440  
Involves: Gangs  
OBTN: TSPR201004380  
Additional Cases: 10-4383-AR  
Reporting Officer: Bureau's Street Crime Unit  
Assisting Officer: Officer CLAYTON ROBERSON  
Booking Officer: Sergeant PAUL BROWNE  
Approving Officer: Sergeant STEVEN KENT



Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

#	DEFENDANT(S)	SEX	RACE	AGE	SSN	PHONE
1	HUGHEY, ERNEST S 16 BYRON ST SPRINGFIELD MA	M	B	25	██████████	

Military Active Duty: N  
HEIGHT: 508      WEIGHT: 175      HAIR: BLACK      EYES: BROWN  
BODY: MUSCULAR      COMPLEXION: DARK  
DOB: ██████████      PLACE OF BIRTH: NEW YORK  
STATE ID: ██████████      FBI ID: ██████████  
LICENSE NUMBER: NOT AVAIL.      ETHNICITY: NOT HISPANIC  
LOCAL ID: ██████████

[APPEARANCE]

GENERAL APPEARANCE: ORDERLY

GLASSES WORN: NO

TATTOOS: TAT BACK("HUGHEY"), TAT R SHLD(LIONHEADS & "EARN"), TAT L SHLD(CROSS)  
TAT CHEST(34), TAT BACK(HUGHEY), TAT CHEST(UNKNOWN LETTERING)

[FAMILY/EMPLOYMENT INFORMATION]

MARITAL STATUS: SINGLE

FATHER'S NAME: UNKNOWN, UNKNOWN

MOTHER'S NAME: HUGHEY, PERNELL

OCCUPATION: UNEMPLOYED



FA 4  
Springfield Police Department  
Arrest Report

Page: 2  
10/11/2010

Arrest #: 10-4380-AR

# DEFENDANT(S)	SEX	RACE	AGE	SSN	PHONE
----------------	-----	------	-----	-----	-------

[RIGHTS/BOOKING CHECKS]

PHONE USED: N                      PHONED DATE/TIME: 10/08/2010 @ 1523  
ARRESTEE SECURED: Y    10/08/2010    1523  
ARRESTEE CELL #: M9

FINGERPRINTED: N  
PHOTOGRAPHED: N  
VIDEO: BOOKING  
SUICIDE CHECK: Performed  
PERSONS: State&Federal  
NCIC VEHICLE CHECK: Not Performed  
INJURY OR ILLNESS: N

#	OFFENSE(S)	ATTEMPTED	TYPE
---	------------	-----------	------

LOCATION TYPE: Highway/Road/Alley/Street      Zone: Sector E2 Metro/6Corners  
931 WORTHINGTON ST  
SPRINGFIELD MA

1	<b>DRUG, DISTRIBUTE CLASS D</b> 94C/32C/A                      94C                      32C OCCURRED: 10/06/2010    0210 CRIMINAL ACTIVITY: Distributing/Selling	N	Felony
2	<b>TRESPASS</b> 266/120                      266                      120 OCCURRED: 10/08/2010    1410	N	Misdemeanor
3	<b>DRUG VIOLATION NEAR SCHOOL/PARK</b> 94C/32J                      94C                      32J OCCURRED: 10/08/2010    0210 CRIMINAL ACTIVITY: Distributing/Selling	N	Misdemeanor
4	<b>DRUG, POSSESS TO DISTRIB CLASS D</b> 94C/32C/C                      94C                      32C OCCURRED: 10/06/2010    1945 CRIMINAL ACTIVITY: Distributing/Selling	N	Felony
5	<b>DRUG VIOLATION NEAR SCHOOL/PARK</b> 94C/32J                      94C                      32J OCCURRED: 10/06/2010    1945 CRIMINAL ACTIVITY: Distributing/Selling	N	Felony

#	DRUG(S)	PROPERTY #	STATUS
---	---------	------------	--------

1	<b>MARIJUANA</b>  QUANTITY: 1.000 (Dosage of Units/Items) OWNER: HUGHEY, ERNEST S	VALUE: \$0.00	Seized (Not Previously Stolen) DATE: 10/08/2010
2	<b>MARIJUANA 7 ZIP LOC ONE GLASSINE</b>  QUANTITY: 8.000 (Dosage of Units/Items) OWNER: HUGHEY, ERNEST S	VALUE: \$0.00	Seized (Not Previously Stolen) DATE: 10/08/2010

FA 5  
Springfield Police Department  
Arrest Report

Page: 3  
10/11/2010

Arrest #: 10-4380-AR

#	OTHER PROPERTIES	PROPERTY #	STATUS
1	\$328.00 QUANTITY: 00 SERIAL #: NOT AVAIL DATE: 10/08/2010 OWNER: HUGHEY, ERNEST S	VALUE: \$0.00	Seized (Not Previously Stolen)
2	CELLPHONE QUANTITY: 1 SERIAL #: NOT AVAIL DATE: 10/08/2010 OWNER: HUGHEY, ERNEST S	VALUE: \$0.00	Seized (Not Previously Stolen)

## NARRATIVE FOR SERGEANT STEVEN KENT

Ref: 10-4380-AR

Entered: 10/08/2010 @ 2145 Entry ID: K180  
Modified: 10/08/2010 @ 2156 Modified ID: K180  
Approved: 10/09/2010 @ 0314 Approval ID: K180

Sir,

On 10/08/2010 at approximately 2:10pm Officers M.Mitchell, G.Caputo, J.Laviolette, C.Roberson, D.Edwards, B.Delamarter and Sgt. S.Arpin and I arrested the following in front of 931 Worthington St.;

1. Ernest S. Hughey, of 16 Byron St.,  
DOB [REDACTED] and SSN [REDACTED], for,
  - A. Possession of Marijuana w/Intent to Dist.,
  - B. Violation of a Drug Free School Zone (Armory Square Day Care),
  - C. Distribution of Class D Marijuana on 10/06/2010,
  - D. Violation of A Drug Free School Zone on 10/06/2010 (Armory Square Day Care), and,
  - E. Trespass After Notice.
2. Joseph A. Hughey, [REDACTED]  
DOB [REDACTED] and SSN [REDACTED], for,
  - A. Disorderly Conduct
  - B. Distribution of Class D Marijuana on 10/06/2010,
  - C. Violation of A Drug free School Zone on 10/06/2010 (Armory Square Day Care)

On 10/06/2010 I had placed the area of Federal and Worthington Sts. under surveillance from a location providing me with a clear and unobstructed view of Worthington St. from the intersection of Federal St. Easterly to the intersection of Armory St. This area is a high crime area known throughout the region as a place where controlled substances are purchased and sold.. This immediate area has been the scene of thousands of arrests for the distribution and possession of controlled substances. In addition, this area has become notorious for the prevalence of street gang members and gang related activity including crimes of violence and the aforementioned open air drug distribution.

On that date the Street Crimes Unit initiated this investigation in response to complaints of open air drug distribution, gang related activity and related quality of life issues and pleas for relief from these issues from the residents, business owners and property management companies in the area.

As I conducted this surveillance my attention was drawn to a group of males loitering in front 931-925 Worthington St. These persons included a black male dressed in a dark colored hooded sweatshirt and jeans loitering in the alley adjacent to this building. As I watched, this subject walked into and out of the alley and the entrance to 925 worthington St. engaging some passersby in conversation, shouting at others and generally acting in a manner designed to draw attention to himself. This subject would be identified on 10/08/2010 as Joseph Hughey.

Presently Joseph Hughey was approached by a black male with a shaven head wearing a red coat and eye glasses. This black male engaged Joseph Hughey in a brief conversation before handing him paper currency. After receiving the currency J.Hughey pointed towards a bank of mailboxes that is located near the mouth of the alley, and after this black male had walked towards them, turned and shouted upwards towards the windows above the entrance to 925 Worthington St.

In a period of less than one minute a black male dressed in a blue shirt and wearing his hair in tight braids stepped out of the main entrance and stood on the threshold holding the door ajar. This subject was identified on 10/06/2010 as Ernest Hughey. Ernest Hughey scrutinized Worthington St. in both directions and then quickly handed an item to Joseph Hughey who cupped it in his right hand, walked towards the black male and handed it to him. After completing the transfer E.Hughey immediately withdrew into the building. Immediately after

Ref: 10-4380-AR

Entered: 10/08/2010 @ 2145      Entry ID: K180  
Modified: 10/08/2010 @ 2156      Modified ID: K180  
Approved: 10/09/2010 @ 0314      Approval ID: K180

receiving this item the black male turned and walked directly to 827 Worthington St. and entered the building while J.Hughey continued to loiter in front.

At approximately 7:30pm I observed a white Chevrolet Cavalier sedan pull partially into the alley and stop. The vehicle remained there idling and occupied as a white female exited the rear passenger seat and walked towards the entrance to 925 Worthington St. This female would later be identified as Susan Brown.

Brown was immediately approached by J.Hughey who spoke briefly to her before taking paper currency from her, turning and again shouting up at the windows of 925 Worthington St. Again E. Hughey appeared in the doorway in less than one minutes time, held the door ajar, stared intently up and down Worthington St. and handed an item to J.Hughey before withdrawing back into the building. J.Hughey again cupped the item in his hand as he walked to Brown and handed it to her. After receiving the item Brown reentered the vehicle which immediately backed from the alley and drove West on Worthington St., while J.Hughey returned to loiter on the sidewalk.

I apprised support officers of the situation and directed them to stop the vehicle at their convenience. Officers Mitchell and Caputo stopped the vehicle in the parking lot of 769 Worthington St. and recovered a bag of marijuana from Brown. Brown stated that she had purchased the marijuana from a black male in a dark colored hooded sweatshirt moments earlier. Brown was issued city ordinance violation number 33056 for possession of less than one ounce of marijuana.

I continued to watch J.Hughey and the area of 925-931 Worthington St. until heavy rains caused him and the others to leave the area. The surveillance was terminated at this time.

On 10/08/2010 at approximately 2:10pm members of The Street Crimes Unit were again patrolling the area of Federal and Worthington Sts. At this time Officer Roberson observed Javier Martinez loitering in the area. Martinez has been previously trespassed from the apartment buildings in this area.

As members of The Street Crimes Unit moved into the area to place Martinez into custody I observed E.Hughey and several others loitering in front of 931 Worthington St. At this time I recognized E.Hughey as being one of the subjects who had been distributing marijuana from 925 Worthington St. on 10/06/2010. I immediately approached him and upon realizing that I was coming for him he dropped a glassine bag containing several individual bags of marijuana to the ground. After confirming that these items were in fact marijuana packaged for sale E.Hughey was informed that he was under arrest. I eventually recovered these items and found them to be one large glassine and seven zip loc bags of marijuana. The packaging of this marijuana is consistent with street level distribution.

As Hughey was placed into custody he began to struggle and spit in Officer Roberson's and my direction. While E.Hughey was being led to a cruiser he continued to struggle and spit. At this time Officer Mitchell recognized Hughey as having been trespassed with notice from the area apartments blocks by the property management company 09/21/2010. This was confirmed with the management company.

As officers struggled with E. Hughey a black male, later identified as Joseph Hughey, ran from the alley and attempted to intercede in the arrest. J.Hughey screamed challenges at officers and attempted to incite other spectators to intercede on E.Hughey's behalf. J.Hughey's behavior caused others to flock to the scene of the arrest and at least two previously uninvolved persons became vocally aggressive toward officers on scene. As I moved to assist with controlling this subject I immediately recognized him as the second subject involved in the marijuana sales on 10/06/2010. J.Hughey was placed into custody at this time.

At 130 Pearl St. Officer Roberson recovered \$328.00 and a cellular telephone from the person of E.Hughey. From Joseph Hughey Officer Laviolette recovered \$160.00 and a cellular telephone.

925-931 Worthington St. is within 1000 feet of the Armory Square Day Care located at One Armory Square.

NARRATIVE FOR SERGEANT STEVEN KENT

Ref: 10-4380-AR

Entered: 10/08/2010 @ 2145	Entry ID: K180
Modified: 10/08/2010 @ 2156	Modified ID: K180
Approved: 10/09/2010 @ 0314	Approval ID: K180

Evidence Tag #s, 321206 and 207-J.Hughey,  
321208 and 209-E.Hughey,  
320197-Brown

Respectfully submitted,  
Sgt. Steven M. Kent

**CERTIFICATE OF COMPLIANCE PURSUANT TO RULE 16(K) OF THE  
MASSACHUSETTS RULES OF APPELLATE PROCEDURE**

I, Inna Landsman, hereby certify that the foregoing application for direct appellate review complies with the rules of court that pertain to its filing, including, but not limited to:

Mass. R. A. P. 20 (form and length of briefs, appendices, and other documents);  
and

I further certify that the foregoing application complies with the applicable length limitation in Mass. R. A. P. 20 because it is produced in the proportional font Equity, and the argument contains: 1,857 total words as counted using the word count feature of the software program Pages version 14.2 (for Mac OS).

/s/ Inna Landsman

## **CERTIFICATE OF SERVICE**

I, Inna Landsman, hereby certify that on May 13, 2025, I submitted this Application for Direct Appellate Review for filing using this Court's EFileAndServe Service, and requested service on John A. Wendel, A.D.A. and Katherine E. McMahon, A.D.A.

/s/ Inna Landsman