
COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

A.C. No. 2024-P-0530
No. FAR-_____

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff-Appellee,

v.

JILL E. McGRATH,

Defendant-Appellant.

On Appeal from Judgments of the Westborough District Court

Application for Further Appellate Review

July 25, 2025

Bradley Baranowski (BBO# 706943)
Counsel of Record
The Law Office of Bradley Baranowski
P.O. Box 1521
Arlington, MA 02474
(440) 645-9044
bbaranowski6@gmail.com

Counsel for Defendant-Appellant

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REQUEST FOR LEAVE TO OBTAIN FURTHER APPELLATE REVIEW

Jill E. McGrath requests leave under G.L. c. 211A, § 11, and Mass. R. A. P. 27.1 to obtain further appellate review (“FAR”) of the Appeals Court’s unpublished decision affirming her conviction for breaking and entering a building during the daytime with the intent to commit a misdemeanor, in violation of G.L. c. 266, § 16A.

INTRODUCTION

This application for FAR turns on the due process implications of when the Commonwealth raises new theories on appeal. Following a bench trial, Ms. McGrath was convicted of breaking and entering a building with the intent of committing a misdemeanor, in violation of G.L. c. 266, § 16A. Ms. McGrath appealed, arguing that the evidence failed to prove that she had intended to commit larceny at the time of the entry. And the Appeals Court agreed.

Nevertheless, the Appeals Court affirmed the conviction. Why? Because the Commonwealth raised a new theory of intent on appeal: that Ms. McGrath had intended to commit a criminal trespass. Although Ms. McGrath argued that affirming on this basis would violate due process guarantees, the Appeals Court disagreed. It concluded that because “the Commonwealth did not present a single theory or name a specific crime”

as the intended one, the Commonwealth was free to raise a new one on appeal. Add. at A.31.

That conclusion is mistaken. First, the Commonwealth clearly litigated the case on the theory that the intended crime was larceny, not criminal trespass. Second, and more fundamentally, the Appeals Court essentially held that because the Commonwealth explicitly named no theory of intent at trial, the Court could affirm based on any theory of intent on appeal. But that does not *solve* the due-process problem. That *is* the due-process problem.

Under the Appeals Court's rule, the Commonwealth should never articulate a theory before the trial court. By remaining mum, the Commonwealth would be free to ask an appellate court to affirm based on new factual theories and under a favorable standard of review. Meanwhile, the defendant would be denied the opportunity to develop their defenses before the factfinder. That possibility violates this Court's, the Supreme Court's, and the Appeals Court's case law, to say nothing of basic notions of fairness and judicial economy. To the extent that this Court has precedents that suggest otherwise, this case presents a perfect opportunity to dispel any confusion.

STATEMENT OF PRIOR PROCEEDINGS

This is Ms. McGrath's application for FAR of a conviction arising from complaints in two cases: docket numbers 2267CR001325 and 2267CR001354. In October 2022, the Commonwealth charged Ms. McGrath with three counts in those complaints: (1) one count of breaking and entering a building during the day with the intent to commit a felony, in violation of G.L. c. 266, § 18; (2) one count of larceny over \$1200, in violation of G.L. c. 266, § 30(1); and (3) one count of assault and battery with a dangerous weapon on a person 60 years of older, in violation of G.L. c. 265, § 15A(a). She pled not guilty to all three charges.

After Ms. McGrath waived her right to a jury trial, a bench trial followed on September 21, 2023, before the Honorable Timothy M. Bibaud. The judge found Ms. McGrath guilty of the following lesser-included offenses: (1) one count of breaking and entering a building during the daytime with the intent to commit a misdemeanor, in violation of G.L. c. 266, § 16A; (2) one count of larceny under \$1200, in violation of G.L. c. 266, § 30(1); and (3) one count of assault and battery, in violation of G.L. c. 265, § 13A(a). Ms. McGrath was subsequently sentenced to probation until November 1, 2024, with the stipulation that she have no

further contact with Mrs. LaPlante.

Ms. McGrath timely appealed the conviction for breaking and entering a building during the daytime with the intent of committing a misdemeanor. A panel of the Appeals Court (Henry, Shin, & Brennan, JJ.) heard oral argument in May 2025. The Court subsequently issued an unpublished decision affirming the conviction on July 15, 2025. Although the Appeals Court agreed with Ms. McGrath that the evidence was insufficient to support the conviction based on the theory that she had intended to commit larceny, it affirmed the conviction based on a theory that the Commonwealth raised for the first time on appeal: that Ms. McGrath had intended to commit criminal trespass.

This application followed. No one is seeking reconsideration or modification in the Appeals Court under Mass. R. A. P. 27.

STATEMENT OF FACTS RELEVANT TO THE APPEAL

The Appeals Court's factual recitations are correct, but materially incomplete. *See* Mass. R. A. P. 27.1(b)(3). The following facts complete the picture:

- The criminal complaint's statement of facts filed in docket number 2267CR001325 alleged that Ms. McGrath first entered Mrs. LaPlante's home, and "then committed Larceny over \$1200." *Add.* at A.35.
- The Commonwealth subsequently focused its case at trial on showing that Ms. McGrath intended to commit larceny, ending on this note in its closing. *Id.* at A.78. No one mentioned criminal trespass during the trial. *See id.* at A.37-A.91.
- Ms. McGrath's uncontradicted testimony at trial was that Mr. LaPlante had given her permission to come to the property to collect her belongings before he died. *Id.* at A.63-A.64.

POINTS ON WHICH FURTHER APPELLATE REVIEW IS SOUGHT

- I. Whether affirming a conviction based solely on a newly raised theory of intent violates due process.
- II. Whether *Commonwealth v. Lee*, 460 Mass. 64 (2011), or *Rogan v. Commonwealth*, 415 Mass. 376 (1993), governs when a newly raised theory may be used to affirm a conviction.
- III. Whether the Appeals Court erred in holding that the evidence was sufficient to show that Ms. McGrath intended to commit a criminal trespass at the time of the alleged breaking and entering.

REASONS WHY FURTHER APPELLATE REVIEW IS SOUGHT

I. The Appeals Court erred by affirming Ms. McGrath's conviction based on the Commonwealth's newly raised theory of intent.

Despite agreeing with Ms. McGrath that the evidence did not demonstrate that she intended to steal Mrs. LaPlante's dog upon entering the latter's house, the Appeals Court accepted the Commonwealth's newly raised theory of intent: that Ms. McGrath intended to commit criminal trespass. That was wrong.

At trial, the Commonwealth proceeded on the theory that the intended felony was larceny.¹ Indeed, criminal trespass was never mentioned. The Appeals Court's decision thus ran afoul of due process and this Court, the Supreme Court, and even the Appeals Court's precedents. The Court should grant this FAR application, reject the Commonwealth's attempt to raise a new theory of intent, and reverse Ms. McGrath's conviction.

¹ Because the Commonwealth failed to prove that Mrs. LaPlante's dog was worth greater than \$1200 as required for felony larceny, it settled on the lesser-included offense of misdemeanor larceny in its closing. See Add. at A.25, A.78.

A. Due process prevents the Commonwealth from raising new theories of intent for the first time on appeal.

The rule that parties must base their appeals on the theories they raised at trial maximizes judicial economy by ensuring theories are presented in a timely manner. *Commonwealth v. Speare-Alphas*, 430 Mass. 8, 22 (1999) (Greaney, J., concurring). It prevents litigants from sandbagging the trial judge and the opposing side. *Commonwealth v. Bettencourt*, 447 Mass. 631, 634 (2006). And, most importantly, when the rule is applied against the Commonwealth, it protects the defendant's due process rights.

Where the burden falls at trial versus where it falls on appeal is key to protecting these rights. At trial, the Commonwealth must prove every element beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364 (1970). On appeal, however, the burden shifts against defendants who mount sufficiency-of-the-evidence challenges. At this point, the Court must view the evidence in the light most favorable to the Commonwealth and determine whether it could persuade “any rational trier of fact” to convict. *Commonwealth v. Latimore*, 378 Mass. 671, 677 (1979) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

That shift prevents the Commonwealth from raising new theories on appeal. As one commentator has noted in the context of an analogous jurisdiction, “[t]he ‘light most favorable’ appellate standard would make any new Commonwealth theory of guilt appear even more incriminating than it would have looked at trial because the facts are interpreted in a way disadvantageous to the defendant.” Aaron C. Garrett, Note, *New Theories of Guilt on Appeal in Virginia Criminal Cases*, 50 WM. & MARY L. REV. 2177, 2209 (2009). Additionally, the question on appeal “is not whether a defendant is guilty beyond a reasonable doubt, but whether ‘any rational trier of fact’ could have found the defendant guilty beyond a reasonable doubt.” *Id.*

Combined, these differences give the Commonwealth “incredible advantages on appeal, which could be used in combination with new theories of guilt to bolster what might have been a questionable theory of guilt at trial.” Garrett, *supra*, at 2209. When such a theory is used to affirm an otherwise reversible conviction, “the defendant is denied ‘an opportunity to confront, in a fact-finding forum,’ the theory of guilt which he or she is convicted”—a quintessential due process violation.

Commonwealth v. Pfeiffer, 492 Mass. 440, 451 (2023) (quoting *Cola v. Reardon*, 787 F.2d 681, 701 (1st Cir.), cert. denied, 479 U.S. 930 (1986)).

In short, limiting the Commonwealth to arguing on appeal the theories it advanced at trial ensures that factual arguments are made to the right body and under the right standard. That in turn safeguards the defendant's due process rights.

B. This principle is firmly entrenched in the precedents of this Court, the Supreme Court, and the Appeals Court.

Just last year, this Court reaffirmed that it would not assess whether evidence supported newly raised theories from the Commonwealth. *Commonwealth v. Bellard*, 494 Mass. 446, 449 n.5 (2024). *Bellard* was not an outlier. This Court has repeatedly refused to entertain theories that the Commonwealth raised for the first time on appeal. *See, e.g., Commonwealth v. Lee*, 460 Mass. 64, 67 n. 3 (2011); *Commonwealth v. Claudio*, 418 Mass. 103, 117-118 n.12 (1994), *overruled in part by Commonwealth v. Britt*, 465 Mass. 87 (2013).

Consider *Lee*. There, the defendant was charged with breaking and entering with the intent to commit a felony. *Lee*, 460 Mass. at 64. At the bench trial that followed, the Commonwealth argued that the intended

felony was assault and battery by means of a dangerous weapon. *Id.* at 67 n.3. The defendant was convicted and then appealed, arguing that the evidence was insufficient to support this theory of intent. *Id.* at 64-65. Sensing that the defendant was correct (he was), the Commonwealth raised new theories of intent to support the conviction. *Id.* at 67 n.3. But this Court rebuffed these attempts because “[a]rguments on appeal must be based on the theories on which the Commonwealth presented the case at trial.” *Id.*

That such statements often occur in footnotes is unsurprising. After all, their underlying rationale is uncontroversial. As the Supreme Court has explained, “[a]ppellate courts are not permitted to affirm convictions on any theory they please simply because the facts necessary to support the theory were presented to the jury.” *McCormick v. United States*, 500 U.S. 257, 270 n.8 (1991). Doing otherwise would deny defendants the opportunity to contest factual theories before the factfinder, thus violating due process. *Dunn v. United States*, 442 U.S. 100, 107 (1979).

Consequently, the Supreme Court has long refused to entertain new theories that prosecutors have raised on appeal. *See, e.g., Ciminelli v. United States*, 598 U.S. 306, 316-317 (2023); *McCormick*, 500 U.S. at 270;

Chiarella v. United States, 445 U.S. 222, 236-237 (1980); *Rewis v. United States*, 401 U.S. 808, 814 (1971). So too, in fact, has the Appeals Court. See, e.g., *Commonwealth v. Rutledge*, 86 Mass. App. Ct. 904, 906 (2014) (refusing to consider a theory that the Commonwealth raised “for the first time on appeal”); *Commonwealth v. Griffin*, 79 Mass. App. Ct. 124, 131 (2011) (Wolohojian, J., concurring) (same).

Simply put, it is blackletter law that a “lawyer cannot try a case on one theory and then, having lost on that theory, argue before an appellate court about alleged issues which might have been, but were not, raised at trial.” *Commonwealth v. Olson*, 24 Mass. App. Ct. 539, 544 (1987). When, as here, the Commonwealth’s sole theory from trial is a loser on appeal, this principle protects the defendant’s due process rights.

C. By affirming Ms. McGrath’s conviction based on the Commonwealth’s newly raised theory of intent, the Appeals Court misapplied these cases and violated due process.

The Appeals Court violated that principle in two ways. First, the Commonwealth’s position at trial was that the intended crime for the breaking-and-entering conviction was larceny. The Appeals Court should have resolved the case based solely on this theory, which it concluded there was insufficient evidence to support. Add. at A.28. Second, even if

the record could be read to conclude that the Commonwealth posited no theory of intent at trial, the rule that the Appeal Court used to resolve this issue violates due process.

First, as the record shows, the Commonwealth proceeded at trial on the theory that the intended crime was larceny, not criminal trespass. To start, the Commonwealth charged Ms. McGrath with breaking and entering a building with the intent of committing a *felony* in violation of G.L. c. 266, § 18. Add. at A.33-34. Criminal trespass, however, is a *misdemeanor*. See G.L. c. 266, § 120 (limiting punishment to “a fine of not more than one hundred dollars or . . . imprisonment for not more than thirty days or both such fine and imprisonment”). Unsurprisingly, there is no mention of criminal trespass in the transcript.

Instead, trial proceeded with the Commonwealth clearly arguing that the intended crime was larceny. That is apparent from the criminal complaint’s statement of facts, which alleged that Ms. McGrath first entered Mrs. LaPlante’s home, and “then committed Larceny over \$1200.” Add. at A.35. It is also apparent from the Commonwealth’s closing statement, which focused on the theft of Mrs. LaPlante’s dog. *Id.* at A.78. Finally, the trial itself was replete with testimony about the dog,

including where it was when Ms. McGrath entered the house. *See, e.g., id.* at A.47-A50, A.54-56.

New theories should be considered only when “the outcome of the case is not changed by [the appellate court’s] consideration of them.” *Bettencourt*, 447 Mass. at 633. With larceny as the sole theory of intent advanced below, the Appeals Court’s conclusion that there was insufficient evidence to support it should have ended the case. That it did not is reason enough to grant FAR.

Second, even if the Appeals Court was correct that the Commonwealth presented *no* theory of intent at trial, that should not give the Commonwealth license to raise *any* theory of intent on appeal. Under such a rule, the Commonwealth should remain quiet about its theory at trial to secure the greatest leeway on appeal. Meanwhile, the defendant would be left to defend against new theories under the light-most-favorable-to-the-Commonwealth standard. As discussed above, that possibility violates due process. This Court should take it off the table.

II. To the extent that this Court's cases conflict with one another on that point, then FAR is the proper vehicle for resolving this conflict.

There is also a broader reason to grant FAR here. During oral argument, members of the panel indicated that the *Lee* line of cases could be in tension with another line of cases centering on *Rogan v. Commonwealth*, 415 Mass. 376 (1993).² See also *Commonwealth v. Hobbs*, 385 Mass. 863, 869-870 (1982). Indeed, the Justices' concerns were sufficient to warrant their asking the Commonwealth to provide a letter on the issue. Add. at A.92.

This Court should clarify the relation between *Lee* and *Rogan*. In an appeal concerning a conviction for breaking and entering with the intent to commit a felony, *Lee* made clear that the Commonwealth is limited to the theories of intent from trial. 460 Mass. at 67 n. 3. *Rogan*, on the other hand, held that a factfinder "could find the intent to commit an unspecified misdemeanor," suggesting that the Commonwealth need not pick any theory at trial. 415 Mass. at 379. This led the Appeals Court to adopt its rule.

² See, e.g., minutes 17:54-23:33, 29:45-30:55, and 33:30-34:30 of oral argument, https://www.youtube.com/watch?v=JV5Um_hRLnM.

This case provides the Court with an ideal opportunity to clarify the relation between *Lee* and *Rogan*. The Appeals Court agreed with Ms. McGrath that the evidence was insufficient to support the Commonwealth's larceny theory of intent and affirmed based solely on the Commonwealth's newly raised criminal-trespass theory. Therefore, the appeal turns wholly on whether *Lee* or *Rogan* controlled. The Court should grant FAR, choose *Lee*, and resolve the confusion.

III. Even if the Commonwealth can raise a new theory on appeal, the Appeals Court was wrong about this one's merits.

Finally, the Appeals Court erred on the merits. The intent to commit the predicate crime under G. L. c. 266 § 16A must be present at the time of the breaking and entering. *Commonwealth v. Poff*, 56 Mass. App. Ct. 201, 203 (2002). But if Ms. McGrath formed the intent to commit criminal trespass, then it was not until *after* she entered the home. As her uncontradicted testimony at trial detailed, the late Mr. LaPlante had given her permission to visit the property to recover her belongings. Add. at A.63-A.64. And the Appeals Court's reliance on what Mrs. LaPlante said *after* Ms. McGrath entered the home suffers from the same timing issues that led the Court to conclude that larceny could not form the

predicate offense. *Id.* at A.29. Thus, even if the criminal-trespass theory can be considered on appeal, it fails on its own terms.

CONCLUSION

For the reasons set forth above, Ms. McGrath respectfully requests that this Court grant her application for FAR.

July 25, 2025

Respectfully submitted,

JILL E. MCGRATH

By her attorney,

/s/ Bradley Baranowski

Bradley Baranowski (BBO# 706943)

The Law Office of Bradley Baranowski

P.O. Box 1521

Arlington, MA 02474

(440) 645-9044

bbaranowski6@gmail.com

Counsel for Defendant-Appellant

MASS. R. A. P. 16 COMPLIANCE CERTIFICATION

I, Bradley Baranowski, certify that this Application for Further Appellate Review complies with the rules of court that pertain to the filing of such papers, including, but not limited to, Mass. R. A. P. 20 (form and length of briefs, appendices, and other documents); Mass. R. A. P. 21 (redaction); and Mass. R. A. P. 27.1 (further appellate review).

I also certify that this Application for Further Appellate Review has been produced using 14-point Century Schoolbook, a proportionally spaced font. And I certify that the statement of reasons why further appellate review is appropriate that is required under Mass. R. A. P. 27.1(b)(5) contains 1,997 words (including headings, footnotes, and quotations), which I calculated using the Word Count feature of Microsoft Word for Office 365.

/s/ *Bradley Baranowski*
Bradley Baranowski (BBO# 706943)

CERTIFICATE OF SERVICE

I, Bradley Baranowski, certify that on July 25, 2025, I caused a copy of this Brief to be filed through the efileMA system, which will electronically send true copies to the following counsel of record for the Commonwealth who are registered participants:

Ellyn Lazar
OFFICE OF THE DISTRICT ATTORNEY—
WORCESTER
225 Main Street, G-301
Worcester, MA 01608
ellyn.lazar@mass.gov

/s/ *Bradley Baranowski*
Bradley Baranowski (BBO# 706943)

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NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

24-P-530

COMMONWEALTH

vs.

JILL E. MCGRATH.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

Following a jury-waived trial, the defendant, Jill E. McGrath, was convicted of breaking and entering with intent to commit a misdemeanor, in violation of G. L. c. 266, § 16A.¹ The misdemeanor was not identified. We affirm.

Background. Because the defendant challenges the sufficiency of the evidence, we summarize the facts in the light most favorable to the Commonwealth. See Commonwealth v. Latimore, 378 Mass. 671, 676-677 (1979). On October 19, 2022, the victim was alone in her home when she heard loud knocking at the door. When the victim looked out an upstairs window, she saw the defendant at the door. The defendant had previously

¹ The defendant was also convicted of larceny under \$1,200, in violation of G. L. c. 266, § 30 (1), and assault and battery, in violation of G. L. c. 265, § 13A (a). The defendant does not challenge these convictions.

lived in the home with the victim and her husband but had been evicted in March 2022 after the defendant allegedly assaulted the victim.

The victim testified that she ignored the knocking until her dog "went totally insane." She then looked downstairs and saw the defendant entering her home. The defendant entered the locked home using keys taken from the victim's car. Upon seeing the defendant, the victim said to her, "What are you doing in my house? You don't belong in my house. Get out of here now." The defendant told the victim she needed to "get some stuff" and proceeded into the home. The defendant then collected coats belonging to her that she had not taken when she moved out.

As the defendant left the home with the coats, the victim saw her dog run outside. The victim ran outside looking for her dog and saw it in the passenger's seat of the defendant's car. When the victim reached into the car to grab her dog, the defendant closed the window and drove off with the dog, injuring the victim's hand in the process. The next day, animal control returned the dog after finding it down the street from the victim's home with its collar removed. The Commonwealth failed to offer evidence that the value of the dog was greater than \$1,200.

Discussion. Though the defendant did not move for a required finding of not guilty at trial, "[w]e consider the

legal sufficiency of the evidence even if a defendant fails to [do so] because 'findings based on legally insufficient evidence are inherently serious enough to create a substantial risk of a miscarriage of justice.'" Commonwealth v. Grandison, 433 Mass. 135, 140 n.8 (2001), quoting Commonwealth v. McGovern, 397 Mass. 863, 867 (1986). We evaluate the sufficiency of the evidence to determine "whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt" (citation omitted). Latimore, 378 Mass. at 677.

The defendant contends that there was insufficient evidence to prove that she had the intent to commit a misdemeanor when she broke and entered the home.² See Commonwealth v. Poff, 56 Mass. App. Ct. 201, 203 (2002) (intent to commit predicate offense must be present at time of breaking and entering). In doing so, the defendant mistakenly assumes that larceny (the charge for stealing the victim's dog) is the only possible predicate offense for the breaking and entering conviction. See

² A defendant commits breaking and entering with intent to commit a misdemeanor "if he or she '[1] breaks and [2] enters [3] a building [or other covered structure] [4] with intent to commit a misdemeanor.'" Parreira v. Commonwealth, 462 Mass. 667, 672 (2012), quoting G. L. c. 266, § 16A. The defendant challenges the sufficiency of the evidence only as to the intent element.

Rogan v. Commonwealth, 415 Mass. 376, 379 (1993) (intent for breaking and entering conviction can be "intent to commit an unspecified misdemeanor"). Although we agree there was not sufficient evidence to show the defendant's intent to commit larceny at the time she broke into and entered the victim's home, there was sufficient evidence to show that she intended to commit criminal trespass.

1. Larceny. At trial, the victim testified, "You know, [the defendant] threatened my husband that she would take the dog once, when my husband was still alive." The defendant contends that this testimony -- the "sole piece of evidence" of her intent to steal the victim's dog when she broke and entered the home -- was inadmissible hearsay and as such, there was insufficient evidence as to her intent to steal the victim's dog.

"We review a judge's evidentiary rulings for an abuse of discretion." Commonwealth v. Andre, 484 Mass. 403, 414 (2020). The defendant did not object to this testimony and there is no basis in the record to support her argument on appeal that the victim did not hear the threat herself but rather heard it from her husband afterwards. The trial judge could have interpreted the testimony the first way, i.e., that the victim heard the defendant's threat, in which case the defendant's statement was not hearsay and thus properly admitted against her.

Commonwealth v. Lester, 70 Mass. App. Ct. 55, 61 (2007). As such, we discern no abuse of discretion in the trial judge's admission of this testimony.³

However, even considering the testimony in our analysis, we conclude that the evidence presented was insufficient to prove beyond a reasonable doubt that the defendant intended to commit larceny at the time of her breaking and entering the house. The victim testified that her dog "ran down the stairs and outside the door," and again repeated, "I saw the dog ran outside. Actually, [the defendant] was at -- going out the door with the coats, and the dog was following her." The evidence did not establish that the defendant's intent when she entered the home was to steal the dog as nothing indicated that the defendant encouraged the dog to leave. See Latimore, 378 Mass. at 677-678 ("[I]t is not enough for the appellate court to find that there was some record evidence, however slight, to support each essential element of the offense; it must find that there was

³ The defendant contends, for the first time on appeal, that trial counsel was ineffective for failing to recognize the victim's testimony about the alleged threat as inadmissible hearsay and failing to object. Whether the testimony was inadmissible hearsay cannot be determined on this record, however. And, in any event, given our ultimate conclusion pertaining to larceny as the underlying offense for the breaking and entering with intent to commit a misdemeanor, the defendant was not prejudiced.

enough evidence that could have satisfied a rational trier of fact of each such element beyond a reasonable doubt").

2. Criminal trespass. In contrast, the evidence was sufficient to show that the defendant intended to commit a criminal trespass when she broke and entered the victim's home. The particular misdemeanor is not "an element of the crime charged" and breaking and entering with intent to commit a misdemeanor can "involve an intent to commit a criminal trespass." Rogan, 415 Mass. at 379. A defendant commits a criminal trespass by "without right enter[ing] or remain[ing] in . . . the dwelling house . . . of another . . . after having been forbidden so to do by the person who has lawful control of said premises." G. L. c. 266, § 120.

"[T]he intent to commit a felony at the time of entry may be inferred from the commission of a felony once inside." Poff, 56 Mass. App. Ct. at 203. We see no reason why the same cannot be said of the intent to commit a misdemeanor. It can reasonably be inferred from the fact that the defendant had been removed from the home, returned without permission to find a locked door, and entered anyway that she intended to trespass at the time of the breaking and entering. Moreover, even when confronted and told to leave, the defendant continued to enter the victim's home to collect her belongings.

The fact that the Commonwealth charged the defendant with breaking and entering with the intent to commit a felony does not alter this outcome. Absent a request for a bill of particulars, the Commonwealth is not required to specify the intended crime, whether the charge is breaking and entering with intent to commit a felony or a misdemeanor. See Rogan, 415 Mass. at 379. See also Commonwealth v. Hobbs, 385 Mass. 863, 869-870 (1982) (upholding conviction of breaking and entering with intent to commit a felony where indictment specified larceny and judge "informed the jury that a felony could be rape, robbery or homicide, as well as larceny"); Commonwealth v. Scott, 71 Mass. App. Ct. 596, 603 n.8 (2008) ("[T]he judge, in his charge, instructed the jury that the Commonwealth must prove that the defendant 'broke in with the intent to commit a misdemeanor.' In doing so, the judge did not define the elements of any particular misdemeanor, and was not required to do so").

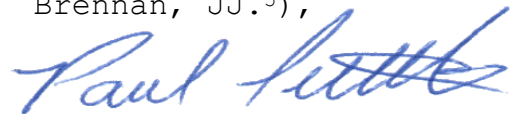
The defendant argues that it offends basic tenets of due process for the Commonwealth to argue on appeal that criminal trespass was the intended crime, where she was charged with breaking and entering with intent to commit a felony and trespass is not a felony.⁴ See Commonwealth v. Lee, 460 Mass.

⁴ General Laws c. 266, § 120, states that the punishment for criminal trespass is "a fine of not more than one hundred dollars or by imprisonment for not more than thirty days or both such fine and imprisonment."

64, 67 n.3 (2011) ("Arguments on appeal must be based on the theories on which the Commonwealth presented the case at trial"). However, at trial, the Commonwealth did not present a single theory or name a specific crime it contended that the defendant had the intent to commit at the time of the breaking and entering. Furthermore, the Commonwealth presented evidence pertaining to both larceny and criminal trespass at trial. Because breaking and entering with intent to commit a misdemeanor is a lesser included offense of breaking and entering with intent to commit a felony, see id. at 65, the judge could have properly instructed himself accordingly, leading to his ultimate determination that the defendant was guilty of breaking and entering with intent to commit a misdemeanor. See Commonwealth v. Hollister, 75 Mass. App. Ct. 729, 734 (2009) ("We can presume that [the judge] instructed himself, in accordance with the Massachusetts case law").

Judgments affirmed.

By the Court (Henry, Shin &
Brennan, JJ.⁵),

A handwritten signature in blue ink, appearing to read "Paul Little".

Clerk

Entered: July 15, 2025.

⁵ The panelists are listed in order of seniority.

Commonwealth of Massachusetts

Appeals Court for the Commonwealth

At Boston

In the case no. 24-P-530

COMMONWEALTH

vs.

JILL E. MCGRATH.

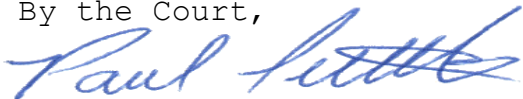
Pending in the Westborough District

Court for the County of Worcester


Ordered, that the following entry be made on the docket:

Judgments affirmed.

By the Court,

 , Clerk

Date July 15, 2025.

CRIMINAL COMPLAINT ORIGINAL		DOCKET NUMBER 2267CR001325	NO. OF COUNTS 2	Trial Court of Massachusetts District Court Department	
DEFENDANT NAME & ADDRESS Jill E McGrath 48 Jay St North Attleboro, MA 02760				COURT NAME & ADDRESS Westborough District Court 186 Oak Street Westborough, MA 01581 (508)366-8266	
DEFENDANT DOB 01/24/1968	COMPLAINT ISSUED 10/20/2022	DATE OF OFFENSE 10/19/2022	ARREST DATE		
OFFENSE CITY / TOWN Westborough		OFFENSE ADDRESS 175 Flanders Rd , Westborough Ma 01581		NEXT EVENT DATE & TIME <i>Warrant</i>	
POLICE DEPARTMENT Westboro PD		POLICE INCIDENT NUMBER 22-262-WA		NEXT SCHEDULED EVENT	
OBTN	PCF NUMBER 5182473	DEFENDANT XREF ID 21549842		ROOM / SESSION	
The undersigned complainant, on behalf of the Commonwealth, on oath complains that on the date(s) indicated below the defendant committed the offense(s) listed below and on any attached pages.					


COUNT	CODE	DESCRIPTION
1	266/18/B	B&E BUILDING DAYTIME FOR FELONY c266 §18
On 10/19/2022 did in the day time break and enter a building, the property of Suzanne LaPlante, with intent to commit a felony, in violation of G.L. c.266, §18.		
PENALTY: state prison not more than 10 years; or jail not more than 2 years and not more than \$500. District Court has final jurisdiction under G.L. c.218, §26.		
2	266/30/A	LARCENY- OVER <i>Under</i> <i>Commanded 9/1/23</i> \$1200 c266 §30(1)
On 10/19/2022 did steal the property of <01>, such property having a value of more than \$1200, in violation of G.L. c.266, §30(1).		
PENALTY: state prison not more than 5 years; or jail not more than 2 years and not more than \$25,000		

SIGNATURE OF COMPLAINANT <i>X</i> <i>[Signature]</i>	SWORN TO BEFORE CLERK-MAGISTRATE/ASST. CLERK/DEP. ASST. CLERK <i>X</i> <i>[Signature]</i>	DATE <i>10-20-22</i>
NAME OF COMPLAINANT <i>Shun Tenders</i>	A TRUE COPY ATTEST <i>X</i>	DATE

Notice to Defendant: 42 U.S.C. § 3796gg-4(e) requires this notice: If you are convicted of a misdemeanor crime of domestic violence you may be prohibited permanently from purchasing and/or possessing a firearm and/or ammunition pursuant to 18 U.S.C. § 922 (g) (9) and other applicable related Federal, State, or local laws.

2267CR1325

APPLICATION FOR CRIMINAL COMPLAINT		APPLICATION NO. (COURT USE ONLY) 2267AC1689		PAGE 1 of 1		Trial Court of Massachusetts District Court Department	
I, the undersigned complainant, request that a criminal complaint issue against the accused charging the offense(s) listed below. If the accused HAS NOT BEEN ARRESTED and the charges involve: <input type="checkbox"/> ONLY MISDEMEANOR(S), I request a hearing <input type="checkbox"/> WITHOUT NOTICE because of an imminent threat of <input type="checkbox"/> BODILY INJURY <input type="checkbox"/> COMMISSION OF A CRIME <input type="checkbox"/> FLIGHT <input type="checkbox"/> WITH NOTICE to accused. <input type="checkbox"/> ONE OR MORE FELONIES, I request a hearing <input type="checkbox"/> WITHOUT NOTICE <input type="checkbox"/> WITH NOTICE to accused. <input checked="" type="checkbox"/> WARRANT is requested because prosecutor represents that accused may not appear unless arrested.						WESTBOROUGH DISTRICT COURT 186 OAK ST WESTBOROUGH, MA. 01581	
						ARREST STATUS OF ACCUSED <input type="checkbox"/> HAS <input checked="" type="checkbox"/> HAS NOT been arrested	
INFORMATION ABOUT ACCUSED							
NAME (FIRST MI LAST) AND ADDRESS <div style="text-align: center;">JILL MCGRATH 48 JAY ST NORTH ATTLEBORO, MA 02760</div>				BIRTH DATE 01/24/1968		SOCIAL SECURITY NUMBER [REDACTED]	
				PCF NO. 5182473		MARITAL STATUS SINGLE	
				DRIVERS LICENSE NO. [REDACTED]		STATE MA	
				GENDER F		HEIGHT 508	WEIGHT 180
HAIR BLN	RACE W	COMPLEXION MED	SCARS/MARKS/TATTOOS	INTERPRETER NEEDED (language)	BIRTH STATE OR COUNTRY NORTH ATTLEBOROUGH, MA		DAY PHONE 310-302-7529
EMPLOYER/SCHOOL			MOTHER'S MAIDEN NAME (FIRST MI LAST) SANDRA [REDACTED]		FATHER'S NAME (FIRST MI LAST) RICHARD [REDACTED]		
CASE INFORMATION							
COMPLAINANT NAME (FIRST MI LAST) CALEB POLSENO				COMPLAINANT TYPE <input checked="" type="checkbox"/> POLICE <input type="checkbox"/> CITIZEN <input type="checkbox"/> OTHER		PD WEU	
ADDRESS Westboro Police Department 45 W MAIN ST Westborough, MA. 01581				PLACE OF OFFENSE WESTBOROUGH, MA			
				INCIDENT REPORT NO. 22-262-WA		OBTN	
				CITATION NO(S).			
OFFENSE CODE 266/18/B		DESCRIPTION B&E BUILDING DAYTIME FOR FELONY				OFFENSE DATE 10/19/2022	
1 VARIABLES (e.g. victim name, controlled substance, type and value of property, other variable information; see Complaint Language Manual) VICTIM(S): SUZANNE R LAPLANTE;							
OFFENSE CODE 266/30/A-1		DESCRIPTION LARCENY OVER \$1200				OFFENSE DATE 10/19/2022	
2 VARIABLES							
OFFENSE CODE		DESCRIPTION				OFFENSE DATE	
3 VARIABLES							
REMARKS SID#				COMPLAINANT'S SIGNATURE X [Signature]		DATE FILED 10/19/22	
COURT USE ONLY		A HEARING UPON THIS COMPLAINT APPLICATION } WILL BE HELD AT THE ABOVE COURT ADDRESS ON		DATE OF HEARING		TIME OF HEARING	
				AT		COURT USE ONLY	
DATE		PROCESSING OF NON-ARREST APPLICATION (COURT USE ONLY)					CLERK/JUDGE
		NOTICE SENT OF CLERK'S HEARING SCHEDULED ON:					
		NOTICE SENT OF JUDGE'S HEARING SCHEDULED ON:					
		HEARING CONTINUED TO:					
10-20-22		APPLICATION DECIDED WITHOUT NOTICE TO ACCUSED BECAUSE: <input checked="" type="checkbox"/> IMMINENT THREAT OF <input type="checkbox"/> BODILY INJURY <input checked="" type="checkbox"/> CRIME <input checked="" type="checkbox"/> FLIGHT BY ACCUSED <input type="checkbox"/> FELONY CHARGED AND POLICE DO NOT REQUEST NOTICE <input type="checkbox"/> FELONY CHARGED BY CIVILIAN; NO NOTICE AT CLERK'S DISCRETION					
DATE		COMPLAINT TO ISSUE				COMPLAINT DENIED	
		<input checked="" type="checkbox"/> PROBABLE CAUSE FOUND FOR ABOVE OFFENSE(S) NO(S). 1. 2. 3. BASED ON <input checked="" type="checkbox"/> FACTS SET FORTH IN ATTACHED STATEMENT(S) <input type="checkbox"/> TESTIMONY RECORDED: TAPE NO. _____ <input type="checkbox"/> STATE NO. _____ END NO. _____ <input checked="" type="checkbox"/> WARRANT <input type="checkbox"/> SUMMONS TO ISSUE ARRAIGNMENT DATE:				<input type="checkbox"/> NO PROBABLE CAUSE FOUND <input type="checkbox"/> REQUEST OF COMPLAINANT <input type="checkbox"/> FAILURE TO PROSECUTE <input type="checkbox"/> AGREEMENT OF BOTH PARTIES <input type="checkbox"/> OTHER: COMMENT: E Filed	
10-20-22							

STATEMENT OF FACTS IN SUPPORT OF APPLICATION FOR CRIMINAL COMPLAINT	APPLICATION NO. (court use only)	PAGE 1 OF 2	Trial Court of Massachusetts District Court Department
The undersigned alleges the following as a <input type="checkbox"/> full or <input type="checkbox"/> partial statement of the factual basis for the offense(s) for which a criminal complaint is sought.		COURT DIVISION WESTBOROUGH DISTRICT COURT 186 OAK ST WESTBOROUGH, MA. 01581	
<p>On Wednesday, October 19, 2022 Jill Mcgrath did commit B&E building daytime for felony by making unwanted entry into the residence located at 175 Flanders Road. Ms. Mcgrath is known by the owner of the home because she resided there at one time. Ms. Mcgrath was outside the home knocking at multiple doors before making entry into the residence. The home owner, Ms. Laplante was home at the time and stated she did not know how Ms. Mcgrath made entry into the home. There was no signs of forced entry.</p> <p>Ms. Mcgrath then committed Larceny over \$1200 by taking control of Ms. Laplantes dog and placing it in her vehicle before leaving the area. Ms. Laplante was gifted the dog at the end of last year by Ms. Mcgrath and has been taking care of it daily since and paying for its veterinarian care.</p> <p>I am requesting that a warrant be issued for Ms. Mcgrath due to the fact that I have nto been able to make contact with her and cannot confirm where she is currently living.</p> <p>Jill Mcgrath 01-24-1968</p> <p>1) C266 s18 - B&E BUILDING DAYTIME FOR FELONY</p>			
(Use additional sheets if necessary)			
PRINTED NAME Caleb Polanco	SIGNATURE X 	I AM A: <input checked="" type="checkbox"/> LAW ENFORCEMENT OFFICER <input type="checkbox"/> CIVILIAN COMPLAINANT OR WITNESS	DATE SIGNED 10/19/22
ADDITIONAL FACTS FOUND BY CLERK-MAGISTRATE / ASST. CLERK / JUDGE BASED ON ORAL TESTIMONY			
REMARKS	SIGNATURE OF CLERK-MAGISTRATE / ASST. CLERK / JUDGE X	DATE SIGNED	

STATEMENT OF FACTS IN SUPPORT OF APPLICATION FOR CRIMINAL COMPLAINT		APPLICATION NO. (court use only)	PAGE 2 OF 2	Trial Court of Massachusetts District Court Department
The undersigned alleges the following as a <input type="checkbox"/> full or <input type="checkbox"/> partial statement of the factual basis for the offense(s) for which a criminal complaint is sought.			COURT DIVISION WESTBOROUGH DISTRICT COURT 186 OAK ST WESTBOROUGH, MA. 01581	
2) C266 s30- LARCENY OVER \$1200 PCF# 5182473				
(Use additional sheets if necessary)				
PRINTED NAME Caleb Pabco	SIGNATURE X <i>[Signature]</i>	I AM A: <input checked="" type="checkbox"/> LAW ENFORCEMENT OFFICER <input type="checkbox"/> CIVILIAN COMPLAINANT OR WITNESS	DATE SIGNED 10/19/22	
ADDITIONAL FACTS FOUND BY CLERK-MAGISTRATE / ASST. CLERK / JUDGE BASED ON ORAL TESTIMONY				
REMARKS	SIGNATURE OF CLERK-MAGISTRATE / ASST. CLERK / JUDGE X	DATE SIGNED		

VOLUME: I
PAGES: 1-46
EXHIBITS: 2

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

DISTRICT COURT DEPARTMENT
OF THE TRIAL COURT

* * * * *
COMMONWEALTH
V.
JILL E. MCGRATH
* * * * *

Docket No. 2267CR001325

2267CR 1354

TRANSCRIPT OF BENCH TRIAL
BEFORE THE HONORABLE TIMOTHY M. BIBAUD

APPEARANCES:

For the Commonwealth:

MICHAEL LUZZO, A.D.A.
Worcester County District Attorney's Office
225 Main Street, Room G301
Worcester, MA 01608

For the Defendant:

MATTHEW S. JODREY, ESQ.
Jodrey Law, P.C.
PO Box 84
Holden, MA 01520

Westborough, Massachusetts
Courtroom 1
September 21, 2023

Proceedings recorded by Court Personnel
Transcript prepared by Michelle Costantino, CET, ACT

I N D E X

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
Suzanne LaPlante				
By Mr. Luzzo:	5		--	
By Mr. Jodrey:		15		--
Caleb Polseno				
By Mr. Luzzo:	21		--	
By Mr. Jodrey:		25		--
Jill E. McGrath				
By Mr. Jodrey:	26		--	
By Mr. Luzzo:		34		--
			Page	
Argument on behalf of the Defendant			38	
Argument on behalf of the Commonwealth			40	
Decision of the Court			43	

EXHIBITS:

Video marked as Commonwealth's Exhibit 1	15
Video marked as Commonwealth's Exhibit 2	23

P R O C E E D I N G S

(Proceedings commenced at 11:22 a.m.)

(Defendant present)

THE CLERK: Jill McGrath.

THE COURT: Commonwealth?

MR. LUZZO: Your Honor, the matter is scheduled for a bench trial.

THE COURT: Okay.

MR. LUZZO: My understanding that it's going to go.

MR. JODREY: Yes.

THE COURT: All right. Let's get everybody sworn in. Which one are we going on first?

MR. LUZZO: Your Honor, they're both the same --

THE COURT: Okay.

MR. LUZZO: -- incident. Just different charges.

THE COURT: All right. We'll get everybody sworn in and we'll proceed.

THE CLERK: All those that are going to testify, please stand and raise your right hand.

(Parties sworn)

THE CLERK: Thank you.

THE COURT: You can sit with your client [sic], ma'am.

MR. LUZZO: As a preliminary matter, Your Honor, I have two items: one, I wish to play a portion of the 911. And then the second one, Your Honor, I just wish to play a

1 portion of the body cam. I think a total of six minutes
2 between the both.

3 THE COURT: All right. Attorney Jodrey?

4 MR. JODREY: No objection, Your Honor.

5 THE COURT: All right. So we did the colloquy back on
6 9/11. Why didn't it go on 9/11?

7 MR. LUZZO: Judge DeCapua had a conflict.

8 THE COURT: Okay. All right. She's gone through the
9 colloquy, waiver of a jury trial. We are ready to proceed.

10 MR. LUZZO: Thank you. If I could waive opening,
11 Your Honor, and call my first witness?

12 THE COURT: Certainly.

13 MR. LUZZO: Suzanne LaPlante.

14 (Pause)

15 MR. LUZZO: Your Honor, is it possible she could maybe
16 sit here?

17 THE COURT: She sure could.

18 MR. LUZZO: Or next to me.

19 (Pause)

20 THE COURT: Okay. Can you hear okay, ma'am?

21 THE WITNESS: Now I can.

22 THE COURT: Okay. I'm just going to have you keep your
23 voice up because everything has to be recorded. Okay?

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: And we need for Mr. Jodrey to be able to

1 hear it as well.

2 (Pause)

3 MR. LUZZO: All right. If I may?

4 THE COURT: You may.

5 SUZANNE LAPLANTE, PREVIOUSLY SWORN

6 DIRECT EXAMINATION

7 BY MR. LUZZO:

8 Q Ma'am, nice and loud, tell us your name and spell your
9 last name.

10 A Suzanne LaPlante, L-A-P-L-A-N-T-E.

11 Q And how did you know the defendant, Ms. McGrath?

12 A From a long time ago, when my son was in high school.
13 They had befriended each other.

14 Q Okay.

15 A And then later on, reconnected when -- somehow. I
16 don't know if it was Facebook or whatever.

17 Q Okay.

18 A But --

19 Q Let me just stop you right there. This is about an
20 incident that happened on October 19th of last year, 2022.

21 A That is correct.

22 Q And where were you living at the time?

23 A 175 Flanders Road.

24 Q Is that in the town of Westborough?

25 A Yes, it is.

1 Q Who did you live there with at the time?

2 A At the time, I was living there with my son and my
3 husband.

4 Q And your husband had passed --

5 A My husband passed away October 13th of last year.

6 Q I'm sorry to hear that.

7 A Yes.

8 Q But at the time, was he there in the house when this
9 happened?

10 A No. This happened six days after my husband died.

11 Q Okay. And what was the living arrangement that was
12 going on with Ms. McGrath and your home?

13 A Well, we offered her our home because she needed some
14 place to go. She had to leave her apartment where she was
15 in Vermont, and we offered her to come live with us. And we
16 weren't going to charge her any rent. I mean, she was just
17 a friend that we were trying to help.

18 Q Okay. And how -- when did that stop?

19 A I believe it was in September. Yeah.

20 Q Was it about a month before --

21 A Approximately. Yeah.

22 Q Okay. And at some point, did you not let her live
23 there?

24 A Oh, yes. Actually, at the beginning -- I forget
25 exactly what month it was, but she came home one night --

1 and this was, I believe, in '21 -- enraged and yelling and
2 woke us up in the house. And I, you know, I looked up the
3 stairs where she was at the top of the stairs where the
4 bathroom is. And I asked her, why is -- are you yelling?
5 What is wrong?

6 And she just was belligerent. She was frustrated. I
7 don't know what else. She turned around, went into the
8 bathroom, came out with a rack that I dry my clothes on and
9 threw it down the stairs at me.

10 Q Okay.

11 A And you know, that was the very first time she was
12 arrested and taken out of my house and I refused to have her
13 come back.

14 Q Okay. So, ever since that incident, she wasn't welcome
15 to come back?

16 A Never.

17 Q How much time had passed between that incident and the
18 one we're here for today?

19 A I believe it was in March.

20 Q Okay. But I thought you said in September she --

21 A Well, she --

22 Q If you could clarify please.

23 A Yeah. Yeah, because she had brought her dog with the
24 two puppies and they were born in September.

25 Q Okay.

1 A Now that I remember, yes.

2 Q So at what point did you essentially throw her out or
3 not allow her to come back?

4 A It was that March after.

5 Q Okay.

6 A Okay?

7 Q Okay. So she started living with you --

8 A So she started -- yeah.

9 Q -- guys in what year?

10 A She started in '21.

11 Q '21. Okay. That makes sense. I thought it was '22.

12 A No. '21.

13 Q Okay. And what did you do in order to prevent her or
14 stop her from living in that house?

15 A I called the police and filed a report. They arrested
16 her.

17 Q Did you do a restraining order?

18 A I tried to. They refused me at the time.

19 Q Okay.

20 A They said I didn't have enough.

21 Q Okay. So she was not living there when this happened?

22 A No, no, no.

23 Q Okay. So --

24 A She was never welcome back in my house after the first
25 time she was arrested.

1 Q So I'm going to just take you now to that October 19th
2 of 2022. When this happened, what time of day was it?

3 A It was mid-morning, I believe. And I heard knocking at
4 my door. I locked my doors after the first time that she
5 was taken out of my house because I didn't want anybody
6 coming in. I always locked my doors and I usually never
7 would lock my doors. This is a habit I totally became, you
8 know --

9 Q So you --

10 A -- doing this all the time.

11 Q So you heard knocking? Is that right?

12 A But I heard -- I heard knocking on --

13 Q Let me just stop you right there. You heard knocking?

14 A Yes, it was --

15 Q Where were you when you heard the knocking?

16 A I was upstairs in my bedroom. I could look down and
17 see the door.

18 Q Was the knocking loud or was it quiet?

19 A It was loud. She was trying to get me -- my attention
20 and I was alone at the house. Nobody was there with me.
21 And I saw it was her and I just didn't answer the door. I
22 left --

23 Q How did you see that it was Ms. McGrath?

24 A I looked out my window, upstairs bedroom window, and I
25 saw her at the door.

1 Q And it's the same Ms. McGrath that's here today?

2 A Yes. Yes, it is.

3 Q Correct? And --

4 A So I ignored that.

5 Q So you ignored it. How long did you ignore that for?

6 A Well, for another ten minutes and I heard knocking at
7 the other side of the house on the other door.

8 Q All right. And did you call the police at any point?

9 A Not -- not until my dog went totally insane, and I
10 opened my bedroom door and looked out down the stairs of my
11 house and I saw her entering my house.

12 Q Okay. What entrance did she come in?

13 A She came in by the side entrance.

14 Q And was that locked?

15 A No. I mean, yes, I always keep them locked. They were
16 both locked.

17 Q Well, how did she get in if it was locked?

18 A She took the keys out of my car and used that to enter
19 my house. I never found those keys. I had to have them
20 replaced. They cost me almost \$350.

21 Q All right. So she entered your home. What did you do
22 when you --

23 A I said, "What are you doing in my house? You don't
24 belong in my house. Get out of here now."

25 And she just continued into the house. "I have to get

1 some stuff." And she went into the room that she knew she
2 had coats in there that she had not taken when she was given
3 the opportunity to take everything out of the house and --

4 Q Let me just stop you there. You said that there was an
5 opportunity for her to get her belongings.

6 A Yeah. That --

7 Q When was that?

8 A After the first arrest, when I refused to have her come
9 back in the house, that was the only way. She had to have
10 police come with her to remove whatever was hers.

11 Q And did she go that day and remove some stuff?

12 A It wasn't that day exactly. It was, you know, a few
13 days after.

14 Q But at that point, did she take some stuff out?

15 A Oh, yeah.

16 Q But she left some stuff there. Is that what you're
17 telling us?

18 A Well, that's it. It was winter coats that were hers
19 and her daughter's.

20 Q Okay.

21 A And she was leaving that room and going back out the
22 same way. I was still on the stairway, and my dog ran down
23 the stairs and outside the door.

24 Q Okay. You had a dog, correct?

25 A Lily. My --

1 Q And when you say you were alone, you were actually with
2 the dog, right?

3 A I was with my dog, yes.

4 Q Okay. And the dog was obviously unrestrained as it was
5 in the house.

6 A That's correct.

7 Q And tell us what you saw the dog do.

8 A Oh, I saw the dog ran outside. Actually, Jill was
9 at -- going out the door with the coats, and the dog was
10 following her. The dog knew her because the mother of my
11 dog belonged to her. And when she came to live with us at
12 the beginning, way at the beginning, she brought her dog and
13 her two little puppies that were not 10 days old. And I
14 had -- I was watching them because she had to -- she said,
15 would you mind watching the dogs because I have to go to
16 California and to Hawaii. And I said, no, that's no
17 problem. I mean, at that point, we --

18 Q How did you come into possession of the dog in
19 question?

20 A She gifted me Lily.

21 Q Okay. Did you --

22 A She knew how much --

23 Q -- pay anything for it?

24 A No. She gifted me Lily. And I --

25 Q Tell us how that went.

1 A It was wonderful. It was totally accepted by me, my --
2 I was so happy, and it made me happy. And I know she knew
3 to make me happy.

4 Q But I'm asking you, what did she say or do when she --

5 A She goes, "I want you to have this dog, Sue, for all
6 that you've been helping me with."

7 Q And you kept that dog, right?

8 A I kept the dog, yes.

9 Q Okay. Did she ever ask for that dog back?

10 A You know, she threatened my husband that she would take
11 the dog once, when my husband was still alive.

12 Q So let me just fast forward. What happened next?

13 A I ran out the door after my -- after my puppy, and I
14 couldn't see her. And I ran to the car that Jill was
15 getting into. And I said, "Where's Lily? I can't find
16 Lily." And I looked in her car. And there was Lily in the
17 front seat, in the passenger's seat with her mother, with
18 Zelda. Zelda was there.

19 Q Zelda's the other -- the dog?

20 A The dog's mother. And I reached in to get -- I said,
21 "Give me my dog." And I reached in, and I grabbed her
22 collar. And as I was holding my dog and trying to pull her
23 out, she accelerated her window up and then took off. And I
24 had to pull my hand out, and I hurt my hand. I broke a bone
25 in my hand. I just can't believe she did that.

1 Q And did you get the dog back?

2 A Yes.

3 Q Tell us about that.

4 A I was on my way home from the police station with my
5 daughter when I got a phone call that the animal control
6 officer had recovered her. They had found her wandering on
7 Flanders Road further down. Her collar had been removed,
8 but the only way she had been identified was because I had
9 her chipped. And I would not have gotten her back,
10 probably, if that had not been the case.

11 MR. LUZZO: Your Honor, if I may, I just wanted to play
12 a clip.

13 THE COURT: You may.

14 MR. LUZZO: All right.

15 (Video played)

16 BY MR. LUZZO:

17 Q Ma'am, do you recognize the voice on that 911 call?

18 A Yes, I do.

19 Q And whose voice is that?

20 A Mine.

21 Q Is that a fair and accurate representation of what you
22 said to the police that day?

23 A That's correct.

24 MR. LUZZO: Your Honor, I would move to introduce as
25 Commonwealth's exhibit.

1 THE COURT: Attorney Jodrey?

2 MR. LUZZO: I will inform the Court it's the first two
3 minutes and 42 seconds.

4 THE COURT: Comm. Number 1.

5 (Video marked as Commonwealth's Exhibit 1)

6 MR. LUZZO: Thank you. I have no further questions.
7 He's going to have some questions for you.

8 THE COURT: Okay. Attorney Jodrey, you may inquire.

9 MR. JODREY: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. JODREY:

12 Q Just to clarify, Ms. McGrath -- I'm sorry.

13 Ms. LaPlante. Ms. McGrath moved in in September of 2021?

14 A Yes.

15 Q Okay. And she lived with you from September '21 to
16 March '22?

17 A Yes, that's correct.

18 Q Now, before the incident where she was no longer
19 welcome in your home, how was your relationship? Would you
20 describe it as good?

21 A It was excellent. We spent a lot of time together.

22 Q Now, you stated she was knocking loudly on the door.

23 A Excuse me?

24 Q You stated Ms. McGrath was knocking loudly, in a very
25 loud manner, at the door.

1 A Yes, I'm deaf, so I had to hear it.

2 Q It would be reasonable that she was knocking loudly
3 knowing of your hearing problem?

4 A I don't think she realized I had that much of a hearing
5 problem, no.

6 Q She had been living with you for many months?

7 A Yeah.

8 Q Okay.

9 A We were always very close together talking. It didn't
10 occur to her that I was deaf.

11 Q Now, you say you believe she entered your home by using
12 keys?

13 A Yes.

14 Q Where were those keys stored?

15 A They were in my truck outside, which I don't lock, and
16 I always left them there. She's been in the truck with me.

17 Q Okay.

18 A She knew they were there and --

19 Q When was the last time you saw the keys?

20 A That day.

21 Q That day. Do you know about what time?

22 A Right at -- I would say later on in the afternoon, when
23 I went to get in my truck, they were gone, and I knew then.
24 But that's --

25 Q When was the last time you saw them?

1 A That day. No, the night before.

2 Q The night before. So from the night before until you
3 saw the keys missing --

4 A Yes.

5 Q -- you don't know where they were?

6 A Yeah, okay. Yeah.

7 Q And was the truck unlocked?

8 A Of course, yes.

9 Q So anyone could have accessed the truck and take those
10 keys --

11 A I know, but my doors were locked, and that's the only
12 way she could get in my house.

13 Q But the truck was unlocked and --

14 A I understand what you're trying to say, but that's not
15 the case.

16 Q But the truck was unlocked, and the keys were in the
17 truck?

18 A Yes, sir.

19 Q And the last time you saw them was the night before?

20 A Okay.

21 Q And the keys were never recovered?

22 A Never. And they weren't only the keys to the truck,
23 they were to the house.

24 Q I understand.

25 A The keys to the shed in the back, which she took off

1 the shelf in the kitchen. We didn't find out about this
2 until a day later.

3 Q Okay. Now would you say that the dog was a gift?

4 A Yes, it was.

5 Q From Ms. McGrath?

6 A Yes, it was.

7 Q And as a gift, there was no cost to you?

8 A There was no cost to me.

9 Q You didn't buy the dog?

10 A No.

11 Q Okay. And is the dog Lily?

12 A Yes.

13 Q Was she trained off leash? If she's off her leash in
14 the yard, would she come to you when you call or is she --

15 A No, because I don't leave her loose.

16 Q Okay. So when she got out of the house that day --

17 A Yes, it's because Jill --

18 Q -- calling her would not make her come back?

19 A No, that's because Jill opened the door, and she took
20 off after Jill. She knows --

21 Q I'm saying --

22 A She knew Jill.

23 Q If Lily's outside the house, and you were to call her
24 name and say "come," she doesn't immediately come?

25 A Not at that point, no, but she does now. I mean, she

1 was young.

2 Q But she didn't then?

3 A She didn't then.

4 Q Okay. And you said the dog was found on Flanders Road?

5 A The woman that reported her to the, you know, animal
6 control officer said she found Lily wandering back and forth
7 on Flanders Road, I believe in the vicinity of, like, 200
8 when --

9 Q Your report states 165 Flanders Road.

10 A Wherever.

11 Q In the area of 165 --

12 A Yes, on the road.

13 Q Right. And you live at 175?

14 A I live at 175.

15 Q Which is presumably a very close parcel of land --

16 A Yes. Right. But this was the next day. So she would
17 have traveled a lot farther, I'm sure.

18 Q I don't know dogs that --

19 A It's common sense.

20 Q But she was recovered one house down from you, from
21 your residence --

22 A Right, without her collar on.

23 Q Okay.

24 A And the only reason I got her back is because she was
25 chipped, and I paid to have it done.

1 Q Yes. That's correct. Now, on the day Ms. McGrath was
2 at your house, she was removing property from the garage?

3 A No. If she did, I didn't know about it.

4 Q Okay.

5 A If that's what she told you, then there's things that I
6 didn't know she took. And if they were hers, fine. I don't
7 care about that.

8 Q All right. Now, you say that Lily was in her car?

9 A Her -- yes, Lily was in her car.

10 Q Did you see Lily get out of the vehicle before she
11 drove away?

12 A No. I had my hand in her car window with my hand
13 around my dog's collar when she put her automatic window up
14 and accelerated her car, and I pulled my hand out. I
15 injured my hand. I broke bone in my hand.

16 Q Lily was in the front passenger's seat you said --

17 A Yes, she was.

18 Q -- when that occurred? Okay. Now, the injury to your
19 wrist.

20 A Yes.

21 Q Did you report that to the officers on scene when they
22 responded?

23 A No, because I was so upset, it was the next day that I
24 realized that when I pulled my hand out -- as a matter of
25 fact, I went and they did x-rays. The scaphoid bone was --

1 Q Okay. Now, when you had x-rays done, did you provide
2 that to the police or the district attorney to document your
3 injury?

4 A I have it. I have it whenever they ask me for it.
5 I've told them over and over again that I have it.

6 Q But was it provided to them prior to today?

7 MR. LUZZO: Objection.

8 THE COURT: Sustained.

9 MR. JODREY: No further questions, Your Honor.

10 THE COURT: Okay. Very good.

11 MR. LUZZO: I have no further questions for her. Just
12 one quick witness after this.

13 THE COURT: Thank you, Mrs. LaPlante.

14 THE WITNESS: Thank you.

15 (Witness excused)

16 THE COURT: Good morning, sir.

17 MR. POLSENO: Good morning, Your Honor.

18 CALEB POLSENO, PREVIOUSLY SWORN

19 DIRECT EXAMINATION

20 BY MR. LUZZO:

21 Q Sir, would you tell us your name nice and loud?

22 A My name is Caleb Polseno. I'm a patrol officer with
23 the Westborough Police Department.

24 Q And how long have you been a police officer for the
25 Town of Westborough?

1 A Eleven years.

2 Q I'm going to take you now to October 19th of last year,
3 2022. You were on duty, correct?

4 A Yes.

5 Q And were you in a full police uniform like you were
6 today?

7 A Yes.

8 Q And did you have a fully functioning body cam when
9 you --

10 A I did, yes.

11 Q And at some point you were dispatched to the area in
12 question, correct?

13 A Yes.

14 Q Do you remember what the address was?

15 A 175 Flanders Road.

16 Q And when you arrived, could you tell us what you saw?

17 A When I arrived, it was known to me as Mrs. LaPlante was
18 in the yard. She was visibly upset, physically shaking, and
19 she was trying to explain what had just occurred.

20 Q Did she give you an account of what happened?

21 A Yes.

22 MR. LUZZO: And, sir, if I just may have one moment.

23 (Pause)

24 BY MR. LUZZO:

25 Q Sir, at this time I'm just going to ask you if you can

1 look at the screen.

2 (Video played)

3 BY MR. LUZZO:

4 Q Sir, do you recognize that video?

5 A Yes.

6 Q Is that a fair and accurate representation of the
7 conversations with the alleged victim on the bottom screen?

8 A Yes.

9 MR. LUZZO: Your Honor, I would like to introduce this
10 as Commonwealth's Number 2. And I would ask the Court to
11 note at this time that it will be until one minute and 20
12 seconds.

13 THE COURT: Okay. Commonwealth's Number 2.

14 (Video marked as Commonwealth's Exhibit 2)

15 BY MR. LUZZO:

16 Q So, sir, after getting that report, did you make
17 contact with the accused at this address?

18 A Not that day. I tried --

19 Q Could you tell us about that?

20 A I tried contacting her by phone with no answer. Our
21 dispatch at some point called her and she answered the
22 phone, and she told the dispatcher that she was heading to
23 Vermont.

24 I tried the next morning. I believe I was working a
25 day shift the next day. I tried several times to call her.

1 At one point, she did answer. I explained to her that I was
2 going to be charging her with B&E into the home and larceny
3 for the dog as well as B&E.

4 And she stated she didn't know what I was talking
5 about, about the dog. I said, we need the dog to come back.
6 She stated she had no idea about the dog. She just denied
7 everything. That was at approximately 11:30 that morning.

8 Q And was there a discovery regarding the dog later that
9 day?

10 A There was. Approximately 2:30 that same day, the
11 animal control officer reached out to me and stated that a
12 small dog was found on Flanders Road by a good Samaritan
13 that was just passing by.

14 I responded to 175 with the animal control officer and
15 met Ms. LaPlante's son, Joseph LaPlante, and we returned the
16 dog. He confirmed that it was their dog. We returned it to
17 him at that time.

18 Q Did the dog have a collar on?

19 A I do not recall.

20 Q And how many hours after that phone call with
21 Ms. McGrath was this dog sighted?

22 A As far as I remember, I believe it was approximately
23 2:30 in the afternoon.

24 Q Thank you.

25 MR. LUZZO: Nothing further.

1 MR. JODREY: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. JODREY:

4 Q When you spoke with Ms. LaPlante, Officer, did she
5 state she was injured?

6 A The next day she did. Yes.

7 Q But on scene when you first arrived --

8 A No.

9 Q -- during your initial interaction, did she claim any
10 injury?

11 A No.

12 Q Did you inquire about any injuries, offer EMS?

13 A I don't recall at the time. She was very visibly upset
14 and shaken, but I do not recall her at that time stating
15 that she was injured.

16 Q Did you offer EMS for her physical condition of being
17 upset? Did you offer EMS in any regard?

18 A I do not recall.

19 Q The report doesn't mention it. That's why I ask.

20 And you said the dog was located and you returned it
21 approximately 2:30, 2:45, on October 20th, the following
22 day.

23 A Correct.

24 Q And that dog was identified by microchip by the animal
25 control officer?

1 A Yes.

2 Q Thank you, Officer.

3 MR. JODREY: No further questions, Your Honor.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: Thank you, sir. Appreciate it.

6 (Witness excused)

7 MR. LUZZO: Thank you. Your Honor, at this time I
8 would rest.

9 THE COURT: Commonwealth rests.

10 Mr. Jodrey.

11 MR. JODREY: Thank you, Your Honor. I'd like to call
12 Ms. McGrath to the stand.

13 THE COURT: Certainly. And Ms. McGrath, you've been
14 sworn in. Okay.

15 JILL E. MCGRATH, PREVIOUSLY SWORN

16 DIRECT EXAMINATION

17 BY MR. JODREY:

18 Q Ms. McGrath, it's been stated that you've lived with
19 the LaPlantes from around September of '21 until March of
20 '22. Is that correct?

21 A Yes.

22 Q During that time, you had a relationship with
23 Ms. LaPlante?

24 A Yes, and Mr. LaPlante.

25 Q Right, with the LaPlantes.

1 A All of them, yeah.

2 Q And you've provided care to Mr. LaPlante?

3 A I didn't -- it was the plan that he -- that I would try
4 to become his caregiver, but he already had one in place.
5 So he couldn't remove that person right away. But I did
6 help as much as I could around the house with cooking and
7 cleaning and laundry.

8 Q And that required interacting with the LaPlantes on a
9 daily basis?

10 A Yes.

11 Q Now, after the March incident, you were no longer
12 welcome at the home. You left. You moved back to Vermont.

13 A Well, technically when I was in court, the judge said
14 that I was -- that I lived there and I was allowed to go
15 back. However. I was too afraid. I was pretty much
16 homeless with --

17 Q Okay. During the time of this incident, you were
18 staying in Vermont. That's where you when you left the
19 LaPlante --

20 A Yeah. Yes.

21 Q Now, when you went back on the 19th of October, it was
22 a Wednesday, why did you go back that day?

23 A I -- well, first of all, I was here in Westborough for
24 court. So I had permission from Mr. LaPlante either that
25 week or the week before, either on a Wednesday or Thursday

1 after three o'clock to go to the house and get the things in
2 the garage, and then he would be there to supervise if I
3 wanted to come in and get the stuff inside.

4 So when I got there, I knocked on both doors because I
5 was going there as we agreed. And nobody answered. So I
6 started removing my -- what I could find of mine in the
7 garage.

8 Q Okay. Now, you said Mr. LaPlante had given you
9 permission to go on a Wednesday or Thursday.

10 A Mm-hmm.

11 Q That week or the following week.

12 A The week prior?

13 Q The week prior or the week --

14 A Yeah. I said most likely it would be on the day of
15 court because I'm coming from Vermont.

16 Q Were you aware of Mr. LaPlante's passing six days prior
17 to your --

18 A No, I did not know.

19 Q So you thought he would have been there to help you and
20 assist in the manner that he had stated.

21 A Yes.

22 Q Did you go into the LaPlantes' home that day?

23 A No.

24 Q Did you take the keys out of their truck?

25 A No.

1 Q Okay. When you -- where did you first see Ms. LaPlante
2 that day?

3 A When I was putting stuff in my car, I had my back hatch
4 open, and they kind of have like a horseshoe driveway,
5 trying to make room and stuff. And Lily came out, and Zelda
6 saw her, so they jumped -- Zelda jumped out of my car, and
7 they started playing and running around. They jumped in the
8 car and out of the car. And I haven't seen the puppy that I
9 gifted her in a long time, so that was nice because I
10 bottle-fed that dog from birth, because the mother refused
11 it.

12 So just then the stuff fell out, because they were
13 playing in the car. So I was picking stuff back up, and she
14 came outside, near my car, and said, what are you doing
15 here?

16 Q The conversation that we heard.

17 A Yeah, and you don't belong, whatever it was, yeah.
18 Yes.

19 Q All right. Now, the jackets that she said you took
20 from the house, where did you retrieve those jackets from?

21 A Jackets, I'm not sure about. Clothing from the garage,
22 and a few other things. It's been over a year and a half I
23 was not able to get my personal belongings, and many, many
24 things that were private and personal have been lost, not
25 given back to me. I was not allowed to go there.

1 Q Okay.

2 A Even had to get a court order that --

3 Q Now, with that court order, had you tried to get
4 property from them?

5 A I had rented a very large truck. I had a friend
6 helping me. And I had a court order, and Mr. LaPlante, at
7 that time, parked in front of the fence and would not allow
8 me to go in, and the police would not move him.

9 Q Mr. LaPlante, senior or junior?

10 A Senior. Would not move him or let me go in, even
11 though we had the court order. They tried to reason with
12 him, and he would not let me go in and get my belongings.

13 Q So that day, with the police, abiding by the court
14 order to get your property, you were not allowed to, by the
15 LaPlantes?

16 A Correct.

17 Q Okay. Now, speaking about Lily, you gifted her to
18 Ms. LaPlante around Christmas of '21?

19 A Yeah.

20 Q And she was a puppy of your dog, Zelda?

21 A Mm-hmm.

22 Q Now, there was no money exchanged. It was a gift.

23 A Yeah. Joey, the son, had asked me to give it to her,
24 because he thought it would be good for her. It would cheer
25 her up and maybe get her to walk and exercise and make her

1 happy and --

2 Q Now, is Lily a purebred Shih Tzu, or do we know the
3 father of the dog?

4 A The father is actually Zelda's father. It was kind of
5 an accident how it happened.

6 Q Okay.

7 A So I didn't even know she was pregnant at the time.
8 The vet that I took Zelda to said she had some blockage.
9 And then, next thing you know.

10 Q When you acquired Zelda, what did she cost?

11 A \$850.

12 Q And in your experience with dogs, is that a proper
13 value for a Shih Tzu of that nature?

14 A Zelda's a purebred, and that's a very reasonable price.
15 It was another caregiver, so we had that in common. So they
16 gave me a nice rate for her, but they often cost more.

17 Q Now, where were the dogs? You stated that the dogs
18 were in the back hatch area of your vehicle?

19 A They were -- they jumped in. They jumped out. The
20 clothes fell. The stuff fell. I was trying to pick it up.
21 They were running around.

22 Q At any point, were either or both of the dogs in the
23 front passenger's seat, to your recollection?

24 A No.

25 Q They only remained in the back --

1 A In the back --

2 Q -- hatch area while you were loading and unloading --

3 A Mm-hmm.

4 Q -- your items?

5 A Yes.

6 Q Where was Lily, if you can recall, when you closed the
7 hatch?

8 A Not in my car.

9 Q Not in your vehicle. So, as you left --

10 A Yeah, my front seat --

11 Q -- Lily was not in your vehicle.

12 A No. My front seat was filled with stuff. I had just
13 put my stuff in, and then put stuff in the back, and yeah.
14 I mean --

15 Q Where was Zelda, your dog --

16 A In the back.

17 Q -- as you were leaving?

18 A In the back hatch, crying.

19 Q In the back hatch area --

20 A Yeah.

21 Q -- sitting with your property?

22 A Crying and trying to get out to see her -- you know, to
23 see her pup.

24 Q Now, Ms. LaPlante claims she was reaching in your
25 vehicle as you drove away. Did that happen?

1 A No.

2 Q She was not reaching in your vehicle?

3 A She came over to my car, yeah, and said, "Where's my
4 dog?" But, I mean, I was already starting to drive, so I
5 didn't put the window up on her arm or any -- yeah, not at
6 all. I was already sort of moving.

7 Q She came over, demanding to know where her dog was.

8 A Mm-hmm.

9 Q And that's why you replied what dog? I don't --

10 A Yeah, like --

11 Q And she wasn't -- as far as you knew, she wasn't in
12 your car. She had exited before you closed the hatch.

13 A She was not in my car.

14 Q So, as you left --

15 A I had to actually get my dog in my car.

16 Q So, as you -- after you left, Lily was never in your
17 vehicle?

18 A No.

19 Q You don't know what -- where she was, or what happened
20 to her after you left?

21 A She ran off.

22 Q Okay.

23 A I've seen her run off plenty of times when I lived
24 there, so --

25 Q Okay. Thank you, Ms. McGrath.

1 MR. JODREY: No further questions, Your Honor.

2 THE COURT: Okay.

3 MR. LUZZO: Thank you.

4 CROSS-EXAMINATION

5 BY MR. LUZZO:

6 Q So, after you were arrested for the first incident, you
7 said that you were no longer welcome at that home, correct?

8 A I -- maybe they didn't want me, but the judge said that
9 I lived there.

10 Q So that's what you said on direct, that --

11 A Yeah.

12 Q -- you believed that you were no longer welcome, but a
13 judge said you could, right?

14 A Yeah, he said --

15 Q Is that what you're saying?

16 A -- that's your house, all your stuff. You've been
17 there for this many months. You're allowed to go there.

18 Q What judge was that?

19 A Whichever one was on that date.

20 Q Okay. And do you have that court order?

21 A What do you mean a court order?

22 Q Do you have any proof today that the judge said that?
23 Yes or no?

24 A I'm sure it's in writing. I didn't --

25 Q Do you have it today, yes or no?

1 A What do you need in writing? I'm confused.

2 Q I'm asking you, do you have any proof that a judge told
3 you, in writing, that you were allowed to go to that house
4 and live there? Today.

5 A I would like you guys to check your dockets then. It
6 is.

7 Q So the answer's no, you don't have it, right?

8 A I don't personally have it, and he did not hand it to
9 me or give it to me.

10 Q So, ma'am, you're accused of breaking and entering in
11 someone's home that you believe that you have access to,
12 correct?

13 A No.

14 Q No. So you don't believe you have access to it?

15 A On March, I did, but at the time --

16 Q We're not talking about March. We're talking about the
17 day in question, which was October.

18 A Oh, I'm sorry. I had permission from Mr. LaPlante to
19 get my belongings.

20 Q Okay. And he is no longer with us, correct?

21 A I believe he has passed, yes.

22 Q Okay. And you told us, in your direct testimony, that
23 you were afraid and you wanted him there to supervise,
24 correct?

25 A Mm-hmm. Yes.

1 Q Okay. And obviously, when you knocked on whatever
2 door, he was not there, correct?

3 A Correct.

4 Q Nonetheless, even though you stated you're so afraid,
5 you proceeded to take the items without him being there,
6 correct?

7 A I was afraid of his son.

8 Q Yes or no?

9 A I'd like to make it clear, I was not --

10 Q Yes or no?

11 A -- afraid of Mr. LaPlante.

12 Q Did you take the items even though he wasn't there?

13 A From the garage, yes, I did.

14 Q From the garage. So, even though you're afraid and you
15 wanted him there, you still took those items?

16 A I'd like to make it clear why I was afraid.

17 Q Ma'am, that's not the question. Yes or no, you still
18 took those items?

19 A From the garage, yes. He gave me permission to get my
20 belongings.

21 Q Nonetheless, you stated that earlier, you had
22 opportunities to take these items at other times, right?

23 A I did not.

24 Q Okay. And you stated on your direct testimony, you
25 gifted that woman the dog, correct?

1 A Correct. Yes.

2 Q And you understand that this dog was microchipped and
3 paid for by this young lady, Ms. LaPlante?

4 A She didn't pay for her dog.

5 Q Okay. So the officer called you and said the dog was
6 missing, correct?

7 A Yes.

8 Q And what did you say to him?

9 A He said, I need you to come in, we need to talk to you.
10 And I said, I'm sorry, but I'm already on the way back to
11 Vermont.

12 Q Okay. And you understand the dog was found a couple
13 hours after the fact, correct?

14 A No, I didn't know the dog was found a couple hours
15 after.

16 Q All right. Where was the dog?

17 A I have no idea where the dog was.

18 Q Okay. And you heard the 911 tape that was played
19 earlier today, correct?

20 A It was a little bit hard to understand, but yes.

21 Q Did you hear Ms. LaPlante say "Get out of my house"?

22 A No, I didn't hear that.

23 Q That wasn't on there?

24 A Like I said, I didn't -- I didn't. If that was on
25 there, I'm sorry. With the dog barking, I couldn't hear it.

1 Q And it's your testimony you never entered that home?

2 A I did not enter the home. I mean, the property, yes,
3 but not the home.

4 MR. LUZZO: Okay. Nothing further.

5 MR. JODREY: Nothing, Your Honor.

6 THE COURT: Thank you, ma'am.

7 (Witness excused)

8 THE COURT: Any further testimony on behalf of the
9 defendant?

10 MR. JODREY: No, Your Honor. Defense rests.

11 THE COURT: Okay. I'll hear you, Mr. Jodrey.

12 MR. JODREY: Thank you, Your Honor.

13 ARGUMENT ON BEHALF OF THE DEFENDANT

14 MR. JODREY: As you've heard today, Ms. LaPlante [sic]
15 believes she had permission to enter that property, to
16 retrieve her belongings from Mr. LaPlante, Sr. She was
17 unaware of his passing six days prior to the events of
18 October 19th.

19 She went there fully under the guise that she was
20 allowed to be there, that she had access to the property,
21 and she was being afforded an opportunity to finally get her
22 property after vacating the residence in March that year
23 prior.

24 You heard from Ms. LaPlante that she does not know when
25 the keys left the truck. The last time she saw the keys

1 that she suspects were taken by Ms. McGrath was the night
2 prior, and she didn't know they were missing until after the
3 incident had occurred. The keys were never recovered.
4 Ms. McGrath didn't take the keys. She never entered the
5 house. She only went and got the items out of the garage
6 that she had been told by Mr. LaPlante, Sr. that she was
7 welcome to come and get.

8 To find beyond a reasonable doubt that she committed
9 breaking and entering, the facts just don't support that,
10 Your Honor. The facts also don't support the larceny of the
11 dog.

12 Her testimony, the dog was in and out of the vehicle
13 multiple times. The dog had left her vehicle before she
14 drove away. When asked about the dog by Ms. LaPlante or the
15 police subsequently, she had no knowledge of what they were
16 talking about. She didn't know where the dog was.

17 The dog was found practically next door, from 175 to
18 165 Flanders Road. The dog never left the immediate area.
19 It ran out of the yard. You heard from Ms. LaPlante's
20 testimony that the dog was not trained for recall off leash.
21 So when the dog ran out of the yard, it came home -- it
22 didn't come home when they called because it wasn't trained
23 to do so. The dog was in the local area the entire time.

24 Ms. McGrath left. She was in Vermont. She didn't stop
25 until she got to her residence in Vermont after leaving the

1 LaPlantes' home. The dog was local. It was just
2 unaccounted for and unfound. The facts don't support a
3 finding of larceny over for the dog, Your Honor.

4 And finally, with regards to Ms. LaPlante's injury and
5 the charge of assault with a dangerous weapon, to wit: car,
6 the facts don't support that either, Your Honor. No medical
7 records have been turned over. There's nothing to suggest
8 that this injury occurred other than her testimony here
9 today, which is not supported or corroborated by any medical
10 evidence of any sort.

11 She did not make any statements to the police on scene
12 that she believed to be injured or that she was injured.
13 The police on scene are trained first responders. The
14 officer's testimony today, he did not believe she was
15 injured. He saw no reason to inquire if she needed EMS or
16 notify EMS. And for those reasons, we ask the Court find
17 Ms. McGrath not guilty.

18 THE COURT: Thank you.

19 Commonwealth.

20 MR. LUZZO: Thank you, Your Honor.

21 ARGUMENT ON BEHALF OF THE COMMONWEALTH

22 MR. LUZZO: Again, the Commonwealth wants to be clear.
23 Again, the burden is upon the Commonwealth and that burden
24 never shifts at any point. But again, Your Honor, if
25 somebody's going to raise an affirmative defense that they

1 had permission to be there, I would suggest, Your Honor,
2 there's absolutely no evidence provided by counsel or the
3 defendant that she had permission to be there. She makes
4 these assertions that some judge that she doesn't know gave
5 her permission to live there. But again, we have no
6 documents, no -- nothing about that.

7 Regardless, Your Honor, we do have the complaining
8 witness, Ms. LaPlante. She told you very plainly that this
9 lady was not welcome there. There was an incident where she
10 was arrested. Again, we're only using that to show not the
11 truth of the matter asserted, but to show that she did not
12 have permission to be there and should not have been there.

13 This is an incident where you hear -- I would suggest,
14 Your Honor, it's about the quality of the evidence. You
15 heard the 911 tape as it's unfolding. And it's very clear.
16 She says, "What are you doing in my house?" She tells the
17 person. She's standing here in the kitchen. Not in the
18 barn. Not somewhere else, but she's right here. This is as
19 it's unfolding.

20 And you saw the body cam by the officer. This young --
21 this lady was shaken. She was upset. She was crying. I
22 would suggest, Your Honor, she didn't have time or the
23 wherewithal to fabricate something like this because it was
24 so fresh and it was very emotional.

25 There's an awful history, obviously, between these

1 parties. And the fact that this young lady would go there
2 and just start taking things, I would suggest is completely
3 reckless. She said she's waiting for Mr. LaPlante, who
4 unfortunately has passed on, to give her permission and she
5 wanted him there to supervise. Yet when she got there, if
6 you believe her story, she had no problem going in and
7 taking whatever she wanted.

8 And I would suggest, Your Honor, that given the fact
9 that she did not have permission to be there, she didn't
10 have a key of her own to be there, that there was sufficient
11 notice that this was not her property anymore.

12 And again, she plainly admitted on the record that this
13 dog was gifted to her, the value of which, Your Honor,
14 again, can be up for debate, but I would ask the Court to
15 consider a lesser-included offense of larceny under.

16 And as soon as the police officer called her,
17 miraculously, the dog shows up, Your Honor. And the dog
18 showed up without a collar. And I would suggest if you
19 believe her story that the dog all of a sudden just ran out,
20 why would it lose a collar? That doesn't make any sense.
21 If somebody had found it, they would have called. But I
22 would suggest, Your Honor, this is a situation where she let
23 that dog go.

24 Respectfully, I would suggest we've met our burden.
25 You should find her guilty of all charges.

1 THE COURT: Thank you. Ms. McGrath, can you stand,
2 please?

3 DECISION OF THE COURT

4 THE COURT: I do credit the testimony of Mrs. LaPlante.
5 I think the Commonwealth has met its burden. Relative to
6 Complaint 22-1354, assault and battery with a dangerous
7 weapon, that's going to be a guilty finding just as much as
8 presents assault and battery.

9 Relative to complaint 22-1325, I'm going to find the
10 Commonwealth has met its burden on Count 1, B&E daytime with
11 intent to commit a misdemeanor, and Count 2, larceny under
12 \$1,200. So all three charges will be convictions to the
13 misdemeanor.

14 MR. LUZZO: Thank you.

15 THE COURT: Can I see her record, please?

16 (Pause)

17 THE COURT: Okay, Attorney Jodrey, I'll hear from you.

18 MR. JODREY: Thank you, Your Honor. Ms. LaPlante [sic]
19 does not have a substantial criminal history. We would be
20 asking to -- Ms. McGrath does not have a substantial
21 criminal history. We would be asking the Commonwealth to
22 consider continued without a finding with a year of
23 probation on these matters, to run concurrently for all
24 three.

25 THE COURT: Commonwealth.

1 MR. LUZZO: Your Honor, again, after trial, I would ask
2 for the guilty findings. They are misdemeanors. I think
3 that's more than fair. I did speak with Ms. LaPlante, if
4 she wanted to give a statement. She declined at this time.

5 I think, again, her sentiment, I think, before this was
6 pretty important. She's tired. She wants to move on. She
7 wants to be left alone. I understand, you know, she feels
8 very strongly about this case, but --

9 THE COURT: What I'm going to do is -- to the
10 misdemeanors, be guilty and probation till 11/1 of '24,
11 which is concurrent with her other probation, with the
12 stipulation that she have no contact with Mrs. LaPlante.

13 Thank you, everyone.

14 MR. LUZZO: Thank you.

15 MR. JODREY: Thank you, Your Honor.

16 (Proceedings concluded at 12:13 p.m.)
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COMMONWEALTH OF MASSACHUSETTS

Office of

District Attorney Joseph D. Early, Jr.

Worcester County
(Middle District)
(508)-755-8601



Worcester County Courthouse
225 Main St. G301 Worcester, MA 01608
www.worcesterda.com

May 9, 2025

The Honorable Vickie L. Henry
Associate Justice
Massachusetts Appeals Court
John Adams Courthouse
1 Pemberton Square
Suite 1200
Boston, MA 02108-1705

Re: *Commonwealth v. Jill McGrath*, No. 2024-P-0530

Dear Justice Henry:

During the May 6, 2025 oral argument of the above-referenced case before you, Justice Shin and Justice Brennan, the Court asked several questions regarding the Commonwealth's argument that the evidence supported a finding that at the time the defendant broke and entered the victim's home, the defendant intended to commit larceny, and/or that she intended to commit a criminal trespass. You granted the Commonwealth leave to further address these questions in a post-argument letter.

As stated at argument and in the Commonwealth's brief, the law makes clear that the Commonwealth was not required to allege, nor the judge to announce, a particular felony or misdemeanor that the defendant intended to commit at the time she broke and entered the victim's home. This is true whether the crime alleged includes an intent to commit a felony or a misdemeanor, and whether the case is tried to a judge or a jury. *See Commonwealth v. Scott*, 71 Mass. App. Ct. 596, 603 n.8 (2008) ("the judge, in his charge, instructed the jury that the Commonwealth must prove that the defendant 'broke in with the intent to commit a misdemeanor.' *In doing so, the judge did not define the elements of any particular misdemeanor, and was not required to do so.*" (emphasis added)) (citing *Rogan v. Commonwealth*, 415 Mass. 376, 379 (1993), for the proposition that the "judge did not err in denying defendant's request that Commonwealth specify underlying misdemeanor 'because the particular misdemeanor would not become an element of the crime charged, and indeed, the jury could find the intent to commit an unspecified misdemeanor'"); *Commonwealth v. Willard*, 53 Mass. App. Ct. 650, 656-57 (2002) (burglary indictment need not specify intended felony, "as the identity of the felony is not an element of the crime and the jury can find an intent to commit an unspecified felony.").

See also Criminal Model Jury Instructions for use in the District Court, Instruction No. 8.100 (stating that, “[i]f no specific felony was charged, or the evidence suggests a different felony,” judge should charge: “The Commonwealth is not required to prove that the defendant intended any particular felony, but it must prove that the defendant intended to commit *some* felony.” (emphasis in original)).

The Commonwealth acknowledges that if the trial prosecutor puts forth a particular theory at trial with regard to which felony or misdemeanor the defendant allegedly had the intent to commit when she broke and entered the victim’s home, then the Commonwealth may not allege on appeal alternative intended crimes on which to sustain the conviction, *see Commonwealth v. Lee*, 460 Mass. 64, 67 n.3 (2011), but the Commonwealth maintains that the prosecutor did not put forth a certain theory at trial. As asserted by the Commonwealth at oral argument of this matter, the prosecutor, in his very brief closing argument at the defendant’s bench trial, did not name the crime he contended that the defendant had the intent to commit at the time of the breaking and entering. To the extent that the prosecutor mentioned the crime of larceny, that argument was made in the context of asking the judge to convict the defendant of larceny, one of the other crimes charged. Tr.42.

With regard to Justice Henry’s question at oral argument regarding the fact that the complaint purportedly alleged that larceny was the crime the defendant intended to commit when she broke and entered, the Commonwealth disputes that the complaint made such an allegation. Although the complaint uses the word “larceny,” that is in conjunction with a separate larceny charge brought against the defendant. R.17-20. Indeed, in the statement of facts, the officer states that the defendant “did commit B&E building daytime for felony by making unwanted entry into the [victim’s] residence....” R.19. He then states, in a separate paragraph, that “Ms. McGrath *then committed* Larceny over \$1200 by taking control of [the victim’s] dog and placing it in her vehicle before leaving the area.” R.19 (emphasis added). Nowhere in the complaint or statement of facts does the officer allege that the defendant intended to commit larceny (or any other specified crime) at the time of entry. R.17-20.

The Commonwealth further notes that, even if a certain intended crime is alleged in a complaint or an indictment for breaking and entering, a judge is permitted to charge the jury on other intended crimes that are supported by the evidence. *See Commonwealth v. Randolph*, 415 Mass. 364, 367 (1993) (rejecting defendant’s claim that where indictment charged armed assault in a dwelling with intent to commit a felony, to wit: murder, it was error to instruct jury that they could convict defendant if they found that he had an intent to commit either murder or assault and battery by means of a dangerous weapon; “[w]hile it is a truism of the law that a crime must be proved as charged . . . , the allegation of the specific felony, ‘to wit, murder,’ was mere surplusage and unnecessary to describe the crime.”) (citation omitted); *Commonwealth v. Hobbs*, 385 Mass. 863, 869 (1982) (where indictment alleged that defendant had broken and entered with intent “to commit a felony, to wit: larceny,” judge could properly charge jury that the intended felony could be rape, robbery, homicide or larceny; “the allegation in the indictment of the particular felony intended (larceny) was harmless surplusage. It was not necessary to describe the crime of burglary; intent to commit any of the felonies described by the judge would constitute a state of mind sufficient to support conviction.” (parentheses in original)); *Commonwealth v. Costello*, 392 Mass. 393, 402-04 (1984) (affirming defendant’s convictions

where indictment alleged that defendant had committed armed assault in a dwelling “with intent to commit a felony, to wit: robbery,” and judge instructed jury that intended felony could be robbery or murder; ““when the particular terms of the indictment from which the evidence or instructions depart [are] merely “surplusage” — unnecessary to describe the crime — and [do] not mislead the defendant, confuse the jury, or raise the danger of retrial after acquittal,’ such a departure is harmless.”) (*quoting Hobbs*, 385 Mass. at 870).

That being the case, the judge could have instructed himself similarly in this matter, even if the complaint had alleged a particular intended crime (which the Commonwealth disputes). *See Commonwealth v. Hollister*, 75 Mass. App. Ct. 729, 734 (2009) (“We can presume that [the judge] instructed himself, in accordance with the Massachusetts case law.”), *rev. denied*, 457 Mass. 1106 (2010).

For these reasons, and those set forth in the Commonwealth’s brief, the Commonwealth asks the Court to affirm the defendant’s conviction of breaking and entering with the intent to commit a misdemeanor.

Sincerely,

/s/ Ellyn H. Lazar

Ellyn H. Lazar

Assistant District Attorney
for the Middle District

cc: Brad Baranowski, Esquire