

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

WORCESTER COUNTY

No. 2012-P-1785

COMMONWEALTH OF MASSACHUSETTS,
Appellee,

v.

BENJAMIN LAGUER,
Defendant-Appellant

ON APPEAL FROM AN ORDER OF THE WORCESTER DIVISION
OF THE SUPERIOR COURT DEPARTMENT

APPENDIX FOR THE COMMONWEALTH

VOLUME 1 OF 2

JOSEPH D. EARLY, JR.
District Attorney for
the Middle District

SANDRA L. HAUTANEN
Assistant District Attorney
for the Middle District
BBO # 225965
Office of the District Attorney
225 Main Street, Room G-301
Worcester, MA 01608
(774) 317-2100

May, 2015

APPENDIX FOR THE COMMONWEALTH
Table of Contents

<u>Document</u>	<u>Page</u>
Volume 1	
Worcester Superior Court Docket Sheet, Indictment No. 83-103391 ¹	1
Indictment Nos. 83-103391,-103392,-103393,-103394 ²	24
<i>Commonwealth v. Laguer</i> , 428 Mass. 585 (2007) (#167).	28
Laguer's Motion for New Trial and Evidentiary Hearing (Docket #168).	46
Laguer's Memorandum in Support of Motion for New Trial (#168)	48
Affidavit of Counsel In Support of Defendant's Motion For A New Trial [unsigned "List of [118] Exhibits," with no attachments] (#168)	83
Defendant's List of Prospective Witnesses (#170).	90
Commonwealth's Opposition to Laguer's NINTH Motion for New Trial and Evidentiary Hearing (#172)	93
Defendant's [Pro Se] Rebuttal to Commonwealth's Opposition [to] Laguer's Ninth Motion for New Trial and Evidentiary Hearing (#173).	98
List of [118] Exhibits In Support Of Defendant's Motion For A New Trial [signed and sworn by Robert E. Terk, with no attachments] (#174)	104
Unsigned letter dated "January 17, 1984" from "JAMES R. LEMIRE" [in Vol. 1, "Five Volumes of exhibits in support of Defendant's Ninth Motion for New Trial (sent to Judge Tucker)" (hereafter "Five Volumes of exhibits"), 7/5/11]	112

¹ The only complete docket entries are for Indictment No. 83-103391 (Robbery).

² The Commonwealth "spell[s] the defendant's name as it appears in the indictment[s]." *Commonwealth v. Bell*, 83 Mass. App. Ct. 82, 82 n.1 (2013).

Leominster Police Department - Incident Report,
dated 6/15/98, by Lt. Michele D. Pellecchia
[in Vol. 1, "Five Volumes of exhibits", 7/5/11] . 112A

"TRANSCRIPT: Annie Demartino talking with Eric
Goldscheider, Fitchburg, MA, Brownie's Tea &
Talk restaurant, February 13, 2007, commencing
2:50 p.m. (19 pages)" [in Vol. 5, "Five Volumes
of exhibits", 7/5/11] 113

"MEMORANDUM, To - File, From - Joshua L. Stayn,
Re - Laguer: 04/17/08 [Annie] Demartino Interview,
Date - April 18, 2008" [in Vol. 5, "Five Volumes
of exhibits", 7/5/11] 132

Defendant's Request for Evidentiary Hearing to
Establish the Following Testimony and Evidence
From These Listed Witnesses (#175) 167

Commonwealth's Renewed Opposition and Motion to
Reconsider Allowance of "Live Testimony" (#176). . 178

Commonwealth's Motion to Dismiss Laguer's Ninth
Motion for New Trial due to "Fraud on the Court,"
with EXHIBITS 1-11 (#177). 187

EXH 1 Unsigned letter dated "January 17, 1984,"
from "JAMES R. LEMIRE" [in Vol. 1, "Five
Volumes of exhibits", 7/5/11] 197

EXH 2 Signed, authentic letter dated "January
17, 1984" from "JAMES R. LEMIRE" [in Vol.
1, "Five Volumes of exhibits", 7/5/11]. . . 199

EXH 3 Commonwealth's supplemental letter to
the Parole Board, dated 5/3/10, with
EXHIBITS 1-3 200

Exh 1 Affidavit of James R. Lemire, dated
04/30/10 202

Exh 2 Trial transcript (pp. TR 605, 615-19)
re: sentencing arguments 205

Exh 3 Motion to Stay Execution of Sentence,
with Affidavit of Benjamin Laguer
in Support of His Contentions (#26). . 212

Supplemental Memorandum in Support of Laguer's
Motion for a New Trial and Evidentiary Hearing
(#178) 414

Volume 2

Commonwealth's Motion to Clarify Representation
and Affidavit of Sandra L. Hautanen, with
EXHIBITS 1-16 (#182) 433

EXH 1 Printout of e-mail from "Ben LaGuer
[benlaguer@gmail.com]" dated 11/14/11,
re: "Ben Laguer Filings" 444

EXH 2 Transcript of non-evidentiary hearing
on Laguer's [Ninth] Motion for New Trial
and for Evidentiary Hearing (#168), held
on 9/9/11, before Tucker, J. 445

EXH 3 Printout of e-mail from "Ben LaGuer .
[benlaguer@gmail.com]" dated 6/20/11,
re: "Ben LaGuer," with one attachment,
"Terk Exhibit Affidavit [sic]" [the
unsigned "List of [118] Exhibits"] 498

EXH 4 Letter to Robert E. Terk, Esq., from
ADA Hautanen, dated 6/21/11, with
attached printout of e-mail from "Ben
LaGuer [benlaguer@gmail.com]" 502

EXH 5 Letter to "Sandra" from "Ben" dated
6/21/11, with copy of envelope 504

EXH 6 Defendant's [Pro Se] Rebuttal to
Commonwealth's Opposition [to] LaGuer's
Ninth Motion for New Trial and
Evidentiary Hearing (#173) 506/98³

EXH 7 Printout of e-mail from "Robert Terk
[robert.terk@yahoo.com]" dated 6/27/11,
cc'd to "dennis.mcmanus@jud.state.ma,"
re: "MOTION FOR NEW TRIAL" 507

³ See full copy of Defendant's [Pro Se] Rebuttal at 98.

EXH 15	SJC docket sheet for <i>Commonwealth vs. Benjamin Laguer</i> , FAR-07222, re: jury bias claims, with <u>signed</u> copy of Commonwealth's Opposition to Application for Further Appellate Review, dated 5/2/94.	537/241 ⁴
EXH 16	Memorandum of Decision on Defendant's Motion for New Trial [on remand] (#71)	541/235 ⁵
	Defendant's Motion for Sanctions Against Commonwealth for Failure to Respond to Defendant's Supplemental Memorandum on or before November 21, 2011 [Affidavit of Defense Counsel omitted] (#181)	542
	Commonwealth's Response to the Supplemental Memorandum in Support of Laguer's Ninth Motion for New Trial, with Exhibits 1-28 (#183)	544
EXH 1	Transcript of non-evidentiary hearing on Laguer's [Ninth] Motion for New Trial and for Evidentiary Hearing (#168) held on 9/9/11, before Tucker, J.	573/445 ⁶
EXH 2	Dept. of Public Safety lab report dated 11/3/83, re: Lab No. C83-636, "Examination of Materials in connection with the Rape in Leominster on July 13, 1983," and handwritten lab notes, by Chemist Mark T. Grant	574
EXH 3	"Emergency Record - Leominster Hospital," victim's medical record, dated 7/13/83, signed by Emergency Room physician "William Siegel" [page 1 only].	584
EXH 4	"Affidavit of Richard Slowe, Esq.," dated 11/18/99, with photos of rape kit.	585

⁴ See full copy of FAR documents at 241.

⁵ See full copy Memorandum of Decision (#71) at 235.

⁶ See full copy of 2011 hearing transcript at 445.

EXH 15	Matthew Bruun, <i>LaGuer DNA a Match: Genetic Tests on Evidence Damning</i> , Worcester Telegram & Gazette, Mar. 23, 2002, at A1	715
EXH 16	Eleven-page letter from "Benjamin LaGuer" to the "Honorable Timothy S. Hillman," faxed on 3/25/02.	716
EXH 17	"Errors in the Ben LaGuer DNA Analysis By Ben LaGuer"	727
	Opinions based on LaGuer's alleged DNA "errors" [in Vol. 2, "Five Volumes of exhibits", 7/5/11]:	
	1) Lawrence Koblinsky, PhD., dated 5/28/04.	740
	2) Dr. Theodore D. Kessis, dated 11/1/05.	742
	3) Daniel L. Hartl, dated 8/21/06	745
	4) Hans Sherrer, dated 9/6/06	746
EXH 18	D. Kim Rossmo, <i>Wrongful Innocence Claims: Roger Coleman and Benjamin Laguer, in Criminal Investigative Failures 253</i> (D. Kim Rossmo, ed., 2009).	753
EXH 19	Motion for Production of Psychiatric Records (#8)	771
EXH 20	Motion for Independent Psychiatric Evaluation of the Victim and Memorandum in Support (#9)	772
EXH 21	Memorandum and Order Re: Defendant's Motion to Examine Medical Records (#10)	777
EXH 22	Summons for six months of victim's mental health records from <u>Herbert Lipton Mental Health Center</u> , with return date of 12/16/83.	779
EXH 23	Memorandum and Order (#12).	780
EXH 24	Trial transcript pages (TR 3-11, 314-15) re: motions and rulings as to testimony about victim's competency	781

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

WORCESTER COUNTY

No. 2012-P-1785

COMMONWEALTH OF MASSACHUSETTS,
Appellee,

v.

BENJAMIN LAGUER,
Defendant-Appellant

ON APPEAL FROM AN ORDER OF THE WORCESTER DIVISION
OF THE SUPERIOR COURT DEPARTMENT

APPENDIX FOR THE COMMONWEALTH

VOLUME 1 OF 2

JOSEPH D. EARLY, JR.
District Attorney for
the Middle District

SANDRA L. HAUTANEN
Assistant District Attorney
for the Middle District
BBO # 225965
Office of the District Attorney
225 Main Street, Room G-301
Worcester, MA 01608
(774) 317-2100

May, 2015

APPENDIX FOR THE COMMONWEALTH
Table of Contents

<u>Document</u>	<u>Page</u>
Volume 1	
Worcester Superior Court Docket Sheet, Indictment No. 83-103391 ¹	1
Indictment Nos. 83-103391, -103392, -103393, -103394 ²	24
<i>Commonwealth v. Laguer</i> , 428 Mass. 585 (2007) (#167).	28
Laguer's Motion for New Trial and Evidentiary Hearing (Docket #168).	46
Laguer's Memorandum in Support of Motion for New Trial (#168)	48
Affidavit of Counsel In Support of Defendant's Motion For A New Trial [unsigned "List of [118] Exhibits," with no attachments] (#168)	83
Defendant's List of Prospective Witnesses (#170).	90
Commonwealth's Opposition to Laguer's NINTH Motion for New Trial and Evidentiary Hearing (#172)	93
Defendant's [Pro Se] Rebuttal to Commonwealth's Opposition [to] Laguer's Ninth Motion for New Trial and Evidentiary Hearing (#173).	98
List of [118] Exhibits In Support Of Defendant's Motion For A New Trial [signed and sworn by Robert E. Terk, with no attachments] (#174)	104
Unsigned letter dated "January 17, 1984" from "JAMES R. LEMIRE" [in Vol. 1, "Five Volumes of exhibits in support of Defendant's Ninth Motion for New Trial (sent to Judge Tucker)" (hereafter "Five Volumes of exhibits"), 7/5/11]	112

¹ The only complete docket entries are for Indictment No. 83-103391 (Robbery).

² The Commonwealth "spell[s] the defendant's name as it appears in the indictment[s]." *Commonwealth v. Bell*, 83 Mass. App. Ct. 82, 82 n.1 (2013).

Leominster Police Department - Incident Report,
 dated 6/15/98, by Lt. Michele D. Pellecchia
 [in Vol. 1, "Five Volumes of exhibits", 7/5/11] . 112A

"TRANSCRIPT: Annie Demartino talking with Eric
 Goldscheider, Fitchburg, MA, Brownie's Tea &
 Talk restaurant, February 13, 2007, commencing
 2:50 p.m. (19 pages)" [in Vol. 5, "Five Volumes
 of exhibits", 7/5/11] 113

"MEMORANDUM, To - File, From - Joshua L. Stayn,
 Re - Laguer: 04/17/08 [Annie] Demartino Interview,
 Date - April 18, 2008" [in Vol. 5, "Five Volumes
 of exhibits", 7/5/11] 132

Defendant's Request for Evidentiary Hearing to
 Establish the Following Testimony and Evidence
 From These Listed Witnesses (#175) 167

Commonwealth's Renewed Opposition and Motion to
 Reconsider Allowance of "Live Testimony" (#176). . 178

Commonwealth's Motion to Dismiss Laguer's Ninth
 Motion for New Trial due to "Fraud on the Court,"
 with EXHIBITS 1-11 (#177). 187

EXH 1 Unsigned letter dated "January 17, 1984,"
 from "JAMES R. LEMIRE" [in Vol. 1, "Five
 Volumes of exhibits", 7/5/11] 197

EXH 2 Signed, authentic letter dated "January
 17, 1984" from "JAMES R. LEMIRE" [in Vol.
 1, "Five Volumes of exhibits", 7/5/11]. . . 198

EXH 3 Commonwealth's supplemental letter to
 the Parole Board, dated 5/3/10, with
 EXHIBITS 1-3 200

Exh 1 Affidavit of James R. Lemire, dated
 04/30/10 202

Exh 2 Trial transcript (pp. TR 605, 615-19)
 re: sentencing arguments 205

Exh 3 Motion to Stay Execution of Sentence,
 with Affidavit of Benjamin Laguer
 in Support of His Contentions (#26). . 212

Supplemental Memorandum in Support of Laguer's
 Motion for a New Trial and Evidentiary Hearing
 (#178) 414

Volume 2

Commonwealth's Motion to Clarify Representation
 and Affidavit of Sandra L. Hautanen, with
 EXHIBITS 1-16 (#182) 433

EXH 1 Printout of e-mail from "Ben LaGuer
 [benlaguer@gmail.com]" dated 11/14/11,
 re: "Ben Laguer Filings" 444

EXH 2 Transcript of non-evidentiary hearing
 on Laguer's [Ninth] Motion for New Trial
 and for Evidentiary Hearing (#168), held
 on 9/9/11, before Tucker, J. 445

EXH 3 Printout of e-mail from "Ben LaGuer .
 [benlaguer@gmail.com]" dated 6/20/11,
 re: "Ben LaGuer," with one attachment,
 "Terk Exhibit Affidavit [sic]" [the
 unsigned "List of [118] Exhibits"] 498

EXH 4 Letter to Robert E. Terk, Esq., from
 ADA Hautanen, dated 6/21/11, with
 attached printout of e-mail from "Ben
 LaGuer [benlaguer@gmail.com]" 502

EXH 5 Letter to "Sandra" from "Ben" dated
 6/21/11, with copy of envelope 504

EXH 6 Defendant's [Pro Se] Rebuttal to
 Commonwealth's Opposition [to] LaGuer's
 Ninth Motion for New Trial and
 Evidentiary Hearing (#173) 506/98³

EXH 7 Printout of e-mail from "Robert Terk
 [robert.terk@yahoo.com]" dated 6/27/11,
 cc'd to "dennis.mcmanus@jud.state.ma,"
 re: "MOTION FOR NEW TRIAL" 507

³ See full copy of Defendant's [Pro Se] Rebuttal at 98.

EXH 15	SJC docket sheet for <i>Commonwealth vs. Benjamin Laguer</i> , FAR-07222, re: jury bias claims, with <u>signed</u> copy of Commonwealth's Opposition to Application for Further Appellate Review, dated 5/2/94.	537/241 ⁴
EXH 16	Memorandum of Decision on Defendant's Motion for New Trial [on remand] (#71)	541/235 ⁵
	Defendant's Motion for Sanctions Against Commonwealth for Failure to Respond to Defendant's Supplemental Memorandum on or before November 21, 2011 [Affidavit of Defense Counsel omitted] (#181)	542
	Commonwealth's Response to the Supplemental Memorandum in Support of Laguer's Ninth Motion for New Trial, with Exhibits 1-28 (#183)	544
EXH 1	Transcript of non-evidentiary hearing on Laguer's [Ninth] Motion for New Trial and for Evidentiary Hearing (#168) held on 9/9/11, before Tucker, J.	573/445 ⁶
EXH 2	Dept. of Public Safety lab report dated 11/3/83, re: Lab No. C83-636, "Examination of Materials in connection with the Rape in Leominster on July 13, 1983," and handwritten lab notes, by Chemist Mark T. Grant	574
EXH 3	"Emergency Record - Leominster Hospital," victim's medical record, dated 7/13/83, signed by Emergency Room physician "William Siegel" [page 1 only].	584
EXH 4	"Affidavit of Richard Slowe, Esq.," dated 11/18/99, with photos of rape kit.	585

⁴ See full copy of FAR documents at 241.

⁵ See full copy Memorandum of Decision (#71) at 235.

⁶ See full copy of 2011 hearing transcript at 445.

EXH 15	Matthew Bruun, <i>LaGuer DNA a Match: Genetic Tests on Evidence Damning</i> , Worcester Telegram & Gazette, Mar. 23, 2002, at A1	715
EXH 16	Eleven-page letter from "Benjamin LaGuer" to the "Honorable Timothy S. Hillman," faxed on 3/25/02.	716
EXH 17	"Errors in the Ben LaGuer DNA Analysis By Ben LaGuer"	727
	Opinions based on LaGuer's alleged DNA "errors" [in Vol. 2, "Five Volumes of exhibits", 7/5/11]:	
	1) Lawrence Koblinsky, PhD., dated 5/28/04.	740
	2) Dr. Theodore D. Kessis, dated 11/1/05.	742
	3) Daniel L. Hartl, dated 8/21/06	745
	4) Hans Sherrer, dated 9/6/06	746
EXH 18	D. Kim Rossmo, <i>Wrongful Innocence Claims: Roger Coleman and Benjamin LaGuer, in Criminal Investigative Failures 253</i> (D. Kim Rossmo, ed., 2009).	753
EXH 19	Motion for Production of Psychiatric Records (#8)	771
EXH 20	Motion for Independent Psychiatric Evaluation of the Victim and Memorandum in Support (#9)	772
EXH 21	Memorandum and Order Re: Defendant's Motion to Examine Medical Records (#10)	777
EXH 22	Summons for six months of victim's mental health records from <u>Herbert Lipton Mental Health Center</u> , with return date of 12/16/83.	779
EXH 23	Memorandum and Order (#12).	780
EXH 24	Trial transcript pages (TR 3-11, 314-15) re: motions and rulings as to testimony about victim's competency	781