**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**PROVIDENCE, SC.** **SUPERIOR COURT**

**[FILED: July 15, 2013]**

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| **STATE OF RHODE ISLAND** | : | |
| | : | **C.A. No. P2-2012-1323A** |
| **v.** | : | |
| **ERIC NEUFVILLE** | : | |

## DECISION

**GIBNEY, P.J.** Before this Court is Eric Neufville's (Neufville) appeal of an April 15, 2013 decision (the Decision) of Administrator/Magistrate McBurney (the Magistrate), denying Neufville's Motion for a More Accurate Copy of the Criminal Information (Motion for Accuracy) and Motion for a Bill of Particulars (collectively, the Motions). On appeal, Neufville argues that the Magistrate's Decision is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, and is arbitrary, capricious, and characterized by an abuse of discretion or clearly unwarranted exercise of discretion. Jurisdiction is pursuant to G.L. 1956 § 8-2-11.1(d).

## I

## Facts and Travel

The State of Rhode Island, by and through its Attorney General (the State), alleges that between November 12, 2009 and February 1, 2010, Neufville engaged in approximately sixty-nine fraudulent transactions wherein he stole money from a BankRI bank account in the name of Wayne Resmini. The State claims that in each case, Neufville accessed, or caused to be accessed, a computer system to steal the money.

According to the State, Neufville stole the money to pay other people's bills in exchange for a cash payment equal to one-half or more of the bill amount paid. BankRI was able to cancel most of the fraudulent transactions and recover the majority of the money stolen from the account, but several transactions were finalized and the money lost.

Based on these facts, Neufville was arrested on June 1, 2011. He was charged by criminal information (the Information) with three violations: (1) felony obtaining money over $1500 by false pretenses, in violation of G.L. 1956 §§ 11-41-4[1] and 11-41-5(a);[2] (2) felony larceny of money over $1500, in violation of G.L. 1956 §§ 11-41-1[3] and 11-41-5(a); and (3) felony access to a computer for fraudulent purposes, in violation of G.L. 1956 §§ 11-52-2[4] and 11-52-5(a).[5]

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[1] Section 11-41-4 provides in pertinent part that "[e]very person who shall obtain from another designedly, by any false pretense or pretenses, any money . . . with intent to cheat or defraud . . . shall be deemed guilty of larceny."

[2] According to § 11-41-5(a):

> "Any person convicted of any offense under §§ 11-41-1 -- 11-41-6 . . . if the value of the property or money stolen, received, embezzled, fraudulently appropriated, converted, or obtained, received, taken, or secreted by false pretenses or otherwise with intent to cheat, defraud, embezzle, or fraudulently convert exceeds one thousand five hundred dollars ($1,500) . . . shall be punished by imprisonment for not more than ten (10) years or by a fine of not more than five thousand dollars ($5,000), or both. If the value of the property of money does not exceed one thousand five hundred dollars ($1,500), the person shall be punished by imprisonment for not more than one year, or by a fine of not more than five hundred dollars ($500), or both. "

[3] Section 11-41-1 provides in pertinent part that: "[e]very person who shall steal money . . . shall be deemed guilty of larceny."

[4] Section 11-52-2 provides that:

> "Whoever directly or indirectly accesses or causes to be accessed any computer, computer system, or computer network for the purpose of: (1) devising or executing any

Neufville filed the instant Motions on April 4, 2013. The Magistrate held a hearing on April 15, 2013 (the Hearing) to consider Neufville's Motions, and denied them. Neufville then appealed the Magistrate's Decision to this Court on May 6, 2013, pursuant to an Order of our Supreme Court dated February 17, 2000.[6]

**II**

**Standard of Review**

Superior Court review of Administrator/Magistrate decisions is governed by § 8-2-39.2(d):

> "A party aggrieved by an order entered by the administrator/magistrate shall be entitled to a review of the order by a justice of the superior court. Unless otherwise provided in the rules of procedure of the court, the review shall be on the record and appellate in nature. The court shall, by rules of procedure, establish procedures for review of orders entered by the administrator/magistrate, and for enforcement of contempt adjudications of the administrator/magistrate."

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> scheme or artifice to defraud; (2) obtaining money, property, or services by means of false or fraudulent pretenses, representations, or promises; or (3) damaging, destroying, altering, deleting, or removing any program or data contained in it in connection with any scheme or artifice to defraud, shall be guilty of a felony and shall be subject to the penalties set forth in § 11-52-5."

[5] Per § 11-52-5(a), "[a]ny person who is convicted of an offense which is classified as a felony under this chapter shall be fined not more than five thousand dollars ($5,000), or imprisoned for not more than five (5) years, or both."

[6] The February 17, 2000 Order of our Supreme Court relied upon by Neufville governs appeals to the Superior Court of decisions of a general magistrate. See Supreme Court Order, February 17, 2000 at ¶ 1 (adopting procedures "for the review of orders entered by the General Magistrate . . ."). The Magistrate, however, is designated as an administrator/magistrate. Thus, the proper avenue to appeal decisions entered by the Magistrate is Administrative Order 94-12. See § 8-2-11.1(d).

(emphasis added). In Administrative Order 94-12, the Presiding Justice of the Superior Court promulgated procedures by which a Superior Court justice may review an administrator/magistrate's decision:

> "The Superior Court justice shall make a de novo determination of those portions to which the appeal is directed and may accept, reject or modify, in whole or in part, the judgment, order or decree of the Master. The justice, however, need not formally conduct a new hearing and may consider the record developed before the Master, making his or her own determination based upon that record whether there is competent evidence upon which the Master's judgment, order or decree rests. The justice may also receive further evidence, recall witnesses or recommit the matter to the Master with instructions."[7]

Administrative Order 94-12(h). Thus, the Superior Court justice conducts a de novo review of the portions of the record appealed. See Paradis v. Heritage Loan & Investment Co., 678 A.2d 440, 445 (R.I. 1996) (recognizing that Administrative Order 94-12 gives a Superior Court justice "broad discretion in his or her review of the master's decision" and finding that "the trial justice's de novo review of the master's decision, based solely on the record, was proper"); see also 66 Am. Jur. 2d References § 44. The record on appeal includes "[t]he original papers and exhibits filed with the clerk of the Superior Court, the transcript of the proceedings, and the docket entries." Administrative Order 94-12(f).

[7] The term "Master" was amended to "Magistrate" by P.L. 1998, ch. 442 § 1.

## III

## Discussion

### A

### The Hearing

At the Hearing, the Magistrate afforded Neufville and the State the opportunity to present oral argument regarding Neufville's Motions. (Hr'g Tr. at 3 ¶¶ 12-15.) Neufville argued with regard to his Motion for Accuracy that although he had employed a private investigator to flesh out the facts of his case, he required an unredacted copy of the Information to "follow the paper trail in this case." Id. at 3 ¶¶ 16-25; 4 ¶¶ 1-4. Specifically, Neufville sought the account numbers of all the bank accounts allegedly involved in his crimes to determine the strength of the charges leveled against him and prepare a defense for trial. Id. at 4 ¶¶ 4-8.

The State argued that it regularly redacts sensitive and confidential information from all charging documents because the documents are public and available for copy in the Superior Court Clerk's Office. Id. at 4 ¶¶ 21-25; 5 ¶¶ 1-5. The State contended that in this case, the bank account numbers sought by Neufville were clearly confidential and their dissemination would create the risk of theft or fraud. Id. at 4 ¶¶ 14-20. Thus, the State argued against disclosure. See id. The Magistrate agreed with the State and denied the Motion for Accuracy. Id. at 5 ¶¶ 6-11.

Respecting his Motion for a Bill of Particulars, Neufville asserted that he was entitled to such a bill because the Information did not properly apprise him of the facts underlying his arrest. Id. at 5 ¶¶ 19-22; 6 ¶¶ 2-9. In particular, Neufville sought specific facts regarding the date, time, and place of his alleged crimes, the exact amount of money

allegedly stolen, and the identity of the computer system he allegedly utilized to obtain said money. Id. at 6 ¶¶ 21-24; 8 ¶¶ 9-13. Without access to these facts, Neufville contended, he would be unduly prejudiced at trial. Id. at 5 ¶¶ 23-35; 6 ¶ 1.

The State did not address Neufville's request for the time and place of his alleged crimes, or the exact amount of money allegedly stolen. Concerning the date of the commission of the crimes, the State argued that the three-month date range listed in the Information was proper because the crimes alleged constituted a continuing series of acts occurring throughout that time period. Id. at 17-21. With regard to the identity of the computer system that Neufville allegedly accessed to steal the money, the State contended that the charging statute, § 11-52-2, only requires a person to utilize some electronic means to commit a monetary crime. Id. at 9 ¶¶ 5-7. Thus, the State maintained, the statute applied whether Neufville physically accessed a computer system or caused another person to access a computer system, and the identity of the particular device used was irrelevant to the charge. Id. at 9 ¶¶ 1-4.

The Magistrate determined that Neufville was not entitled to any of the specific facts he sought. Id. at 9 ¶¶ 20-21. The Magistrate found that the data contained in the Information adequately apprised Neufville of the date, time, and place of his alleged crimes. See id. at 7 ¶¶ 3-25; 8 ¶¶ 1-8. The Magistrate determined, with regard to the exact amount of money allegedly stolen, that the Information was sufficient because to apply to Neufville, the statute required only an allegation that money over $500 was stolen. Id. at 6 ¶ 25; 7 ¶¶ 1-2. Finally, the Magistrate found that because the identification of a particular computer system was not an element of the crime proscribed by § 11-52-2, the Information did not need to contain said identification. Id. at

9 ¶¶ 16-19. Thus, the Magistrate denied Neufville's Motion for a Bill of Particulars. Id. at 9 ¶¶ 20-21.

**B**

**Appeal of the Magistrate's Decision**

On appeal, Neufville argues that the Magistrate erred in denying his Motions. He contends that the content of his Motions, and his arguments during oral argument, raise plainly sufficient grounds to grant his requests. In particular, Neufville asserts that he requires the facts sought because the Information does not contain sufficient detail to properly apprise him of the basis of his pending criminal charges. Neufville maintains that without the missing facts, he will be unable to adequately investigate the State's claims or mount an effective defense at trial. Thus, Neufville contends, the Magistrate's Decision is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, and is arbitrary, capricious, and characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

**III**

**Analysis**

**A**

**The Motion for Accuracy**

Neufville argues that the redacted Information provided by the State is insufficient because it does not contain the account numbers of the bank accounts involved in his alleged crimes. Neufville contends that he is entitled to the account numbers because he cannot otherwise investigate the State's claims and "follow the paper

trail in this case." (Hr'g Tr. at 3 ¶¶ 16-25; 4 ¶¶ 1-8.) Neufville asserts that absent such disclosure, he will be unduly prejudiced at trial.

The Magistrate found that Neufville was not entitled to the account numbers. He agreed with the State that because the Information was a public document readily accessible in the Superior Court Clerk's Office, redaction of the account numbers was necessary to protect such confidential information from theft or fraud. Id. at 4 ¶¶ 14-20. The Magistrate took note of the fact that the State regularly redacted account numbers and other sensitive and personal identifying information from Information packets to ensure the safety of the persons involved. Id. at 4 ¶¶ 21-25; 5 ¶¶ 1-5. Thus, the Magistrate found that the Information was adequate, and denied Neufville's Motion for Accuracy. Id. at 5 ¶¶ 6-11.

The Magistrate's Decision is supported by competent evidence in the record. See State v. Dennis, 29 A.3d 445, 450 (R.I. 2011) (holding that a reviewing court will not disturb the findings of a justice sitting without a jury when "the record indicates that competent evidence supports the [justice's] findings"); School Committee of City of Cranston v. Bergin-Andrews, 984 A.2d 629, 648-49 (R.I. 2009) (finding same).[8] An indictment or criminal information is constitutionally adequate when "first, [it] contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and, second, enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense." Hamling v. U.S., 418 U.S. 87, 117 (1974); see 41 Am. Jur. 2d Indictments and Informations § 93 at 832. "It is generally sufficient

[8] In Rhode Island, "legally competent evidence is marked 'by the presence of 'some' or 'any' evidence supporting the [judge's] findings.'" State, Office of the Secretary of State v. R.I. State Labor Relations Bd., 694 A.2d 24, 28 (R.I. 1997) (citing Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I.1993)).

that an indictment set forth the offense in the words of the statute itself, as long as 'those words of themselves fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished.'" Id. (quoting U.S. v. Carll, 105 U.S. 611, 612 (1882)); see G.L. 1956 § 12-12-1.4 (mandating that "[a]n indictment, information, or complaint shall be a plain, concise, and definite written statement of the offense charged . . . [such document] shall be sufficient if the offense is charged . . . [b]y using the name given to the offense in terms of either the common law or statute . . .").

When a general charge is used in an indictment or information, the charge "must be accompanied with such a statement of the facts and circumstances as will inform the accused of the specific offense [charged] . . . ." Hamling, 418 U.S. at 118; U.S. v. Brandon, 298 F.3d 307, 310 (4th Cir. 2002); see 41 Am. Jur. 2d Indictments and Informations § 93 at 832-33. While no set formula exists to determine whether the provision of facts in a charging document is adequate, it is widely acknowledged that "[o]missions which are fatal are those of essential elements 'of substance,' rather than 'of form only.'" U.S. v. Camp, 541 F.2d 737, 739-40 (quoting Carll, 105 U.S. at 612). "In determining whether an essential element has been omitted[,] a court will not insist that any particular word or phrase appear, and the element may be alleged 'in any form' which substantially states the element." Camp, 541 F.2d at 740 (quoting Hagner v. U.S., 285 U.S. 427, 433 (1932)); see State v. Saluter, 715 A.2d 1250, 1253 (R.I. 1998) (recognizing that "[s]o-called short-form charging is authorized in Rhode Island . . .").

Here, "Count 1" of the Information charges Neufville with the crime of obtaining money over $500 by false pretenses,[9] "Count 2" charges larceny of money over $500,[10] and "Count 3" charges access to a computer for fraudulent purposes.[11] See Information at 1-2. The allegations in all three counts track the language of the cited statutes. Compare id. with §§ 11-41-1, 11-41-4, 11-41-5, 11-52-2. All three counts also contain additional facts which are not essential elements of the cited statutes, including the names of

[9] Specifically, "Count 1" states that:

> "Eric Neufville . . . , of Providence County, on or about divers dates between the 12th day of November, 2009 and the 1st day of February, 2010, in the City of Providence, in the County of Providence, did obtain money, being of a value of over Five Hundred Dollars ($500.00) from BankRI and/or Wayne Resmini, designedly by false pretenses, with intent to cheat or defraud said BankRI and/or Wayne Resmini, in violation of § 11-41-4 and § 11-41-5 of the General Laws of Rhode Island, 1956, as amended (Reenactment of 2002)."

[10] Count 2 states that:

> "Eric Neufville . . . , of Providence County, on or about divers dates between the 12th day of November, 2009 and the 1st day of February, 2010, in the City of Providence, in the County of Providence, did steal from Wayne Resmini, money, of [a] value of over Five Hundred Dollars ($500.00), in violation of § 11-41-1 and § 11-41-5 of the General Laws of Rhode Island, 1956, as amended (Reenactment of 2002)."

[11] Count 3 states that:

> "Eric Neufville . . . , of Providence County, on or about divers dates between the 12th day of November, 2009 and the 1st day of February, 2010, in the City of Providence, in the County of Providence, did access or cause to be accessed a computer system for the purpose of obtaining money from Wayne Resmini, by means of false or fraudulent pretenses, representations, or promises, in violation of § 11-52-2 and § 11-52-5 of the General Laws of Rhode Island, 1956, as amended (Reenactment of 2002)."

Neufville's alleged victims, the location of the alleged crimes, and the range of dates during which the crimes allegedly occurred. See Information at 1-2. The listed date range, in fact, circumscribes the time during which Neufville allegedly committed these crimes and provides against double jeopardy. See State v. DaSilva, 742 A.2d 721, 727 (R.I. 1999); State v. Cassey, 543 A.2d 670, 675-76 (R.I. 1988). Because the Information furnishes such information, it "fairly informs [Neufville] of the charge[s] against which he must defend, and . . . enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense[s]." Hamling, 418 U.S. at 117; see § 12-12-1.4. Thus, disclosure of the bank account numbers is not required. See State v. Sivo, 809 A.2d 481, 485-86 (R.I. 2002); State v. Tweedie, 444 A.2d 855, 857 (R.I. 1982); State v. Burley, 137 N.H. 286, 289-90 (1993) (finding that an indictment which described the defendant's alleged crime in the language of the applicable statute and provided additional facts "was sufficient to put the defendant on notice as to what he had to meet at trial"). This Court, therefore, "accepts" this part of the Magistrate's Decision. Administrative Order 94-12(h).

**B**

**The Motion for a Bill**

Neufville seeks to obtain a bill of particulars with respect to five specific facts underlying his alleged crimes: the place, date, and time during which he allegedly committed the crimes charged; the exact amount of money allegedly stolen; and the identity of the computer system which Neufville allegedly accessed to steal the money. Neufville argues that disclosure of such facts via a bill of particulars is necessary because the Information does not adequately inform him of the basis of the crimes charged. He

contends that absent a bill of particulars, he will not be able to properly investigate the State's case or mount an effective defense at trial.

The Magistrate denied Neufville's Motion for a Bill of Particulars. (Hr'g Tr. at 9 ¶¶ 20-21.) He found that the Information already contained adequate facts concerning the place, time, and date of Neufville's alleged crimes. See id. at 7 ¶¶ 3-25; 8 ¶¶ 1-8. The Magistrate determined that disclosure of the exact amount of money allegedly stolen was unwarranted because the amount of money alleged in the Information sufficiently informed Neufville of the crimes charged. See id. at 6 ¶ 25; 7 ¶¶ 1-2. The Magistrate found that disclosure of the identity of the computer system which Neufville allegedly accessed to steal money was unnecessary because this fact was not a required element of the crime proscribed by § 11-52-2. See id. at 9 ¶¶ 16-19.

This Court finds that the Magistrate's Decision is supported by competent evidence. See Dennis, 29 A.3d at 450; Bergin-Andrews, 984 A.2d at 648-49. In Rhode Island, a criminal defendant charged by general allegations in an indictment, information, or complaint may move to obtain a bill of particulars pursuant to Super. R. Crim. P. 7(f).[12] See State v. Lanigan, 528 A.2d 310, 319 (R.I. 1987); State v. Concannon, 457 A.2d 1350, 1352-53 (R.I. 1983). "[T]he function of a bill of particulars is to apprise a defendant of the evidentiary details establishing the facts of the offense when such facts have not been included in the indictment or information." State v. LaChapelle, 638 A.2d 525, 527 (R.I. 1994); see State v. Waite, 484 A.2d 887, 890 (R.I. 1984) (noting that a bill of particulars allows "a person accused of an offense in general terms [to] effectively obtain detailed information concerning the underlying circumstances presented in support

[12] Rule 7(f) provides in relevant part that "[u]pon motion of a defendant the court shall direct the filing of a bill of particulars."

of the accusation"). When a defendant can obtain the information sought from other sources, however—such as discovery requests pursuant to Super. R. Crim. P. 16[13]—a bill of particulars is unnecessary. See State v. Mollicone, 654 A.2d 311, 325 (R.I. 1995) (finding that the trial court properly rejected the defendant's motion for a bill of particulars because the indictment contained adequate charges and the defendant could use normal discovery sources to flesh out the facts of his case); U.S. v. Parlavecchio, 903 F. Supp. 788, 795-96 (D.N.J. 1995). Thus, the decision to grant or deny a motion for a bill of particulars rests within the sound discretion of the trial justice. See Union Mortgage Co. v. Rocheleau (Two Cases), 51 R.I. 345, 345, 154 A. 658, 660 (R.I. 1931); U.S. v. Poulin, 588 F. Supp. 2d 64, 67 (D. Me. 2008); see also Mollicone, 654 A.2d at 325.

Several of the specific facts sought by Neufville are already listed in the Information. See State v. Jorjorian, 107 A.2d 468, 473-74 (R.I. 1954); Poulin, 588 F. Supp. 2d at 67. In particular, the Information states that Neufville's crimes were allegedly committed "on or about divers dates between the 12th day of November, 2009 and the 1st day of February, 2010, in the City of Providence, in the County of

[13] Rule 16 mandates that:

> "Upon written request by a defendant, the attorney for the State shall permit the defendant to inspect or listen to and copy or photograph [a broad list of items] within the possession, custody, or control of the State, the existence of which is known, or by the exercise of due diligence may become known to the attorney for the State . . . ."

Our Supreme Court has noted that Rule 16 " is one of the most liberal criminal-discovery mechanisms in the United States . . . [and] was designed to be broad in scope so that neither the defense nor the prosecution is surprised at trial." State v. Powers, 526 A.2d 489, 491 (R.I. 1987).

Providence," and involved "money . . . of a value of over Five Hundred Dollars ($500.00) . . . ." Information at 1-2. Because these facts are not essential elements of the crimes charged, their inclusion in the Information provides Neufville with factual context beyond that which is required by constitutional due process. See Jorjorian, 107 A.2d at 473-74; Parlavecchio, 903 F. Supp. at 795-96 (denying the defendant's motion for a bill of particulars, in part, because "the Indictment itself sets forth sufficient factual information to apprise him of the nature of the charges against him"). While the Information does not state the exact times of day at which Neufville allegedly committed his crimes or identify the computer system he allegedly accessed to steal money, the absence of such facts does not prejudice Neufville because neither fact is an essential element of the crimes charged. See Poulin, 588 F. Supp. 2d at 67-69 (finding that a bill of particulars was unnecessary, even though the indictment did not contain certain particular facts regarding the crimes charged, because those facts were not essential elements of those crimes); 41 Am. Jur. 2d Indictments and Informations § 148 at 887-88; see also Jorjorian, 107 A.2d at 473-74. Thus, the Information adequately informs Neufville of the basis for the State's case against him, and there is no need to issue a bill of particulars with regard to these facts. See Jorjorian, 107 A.2d at 473-74; Poulin, 588 F. Supp. 2d at 68-69; U.S. v. Chen, 378 F.3d 151, 162-63 (2nd Cir. 2004).

Moreover, the discovery packet attached to the Information provides Neufville with significant factual detail concerning his alleged crimes. See Mollicone, 654 A.2d at 325; Parlavecchio, 903 F. Supp. at 795-96. The packet, in fact, contains eighteen exhibits furnishing information underlying the charges brought by the State. See Information Face Sheet at 1. For example, the Police Narrative of Detective Robert Creamer (the

Narrative) cogently describes many of the sixty-nine fraudulent transactions in which Neufville allegedly engaged. See Narrative at 2-6. The Narrative provides the names of Neufville's alleged victims, the exact amounts of money allegedly stolen, and the specific dates on which these acts occurred. See id. A BankRI Statement of Loss Sheet (the Loss Sheet) lists each of the sixty-nine fraudulent transactions and contains such relevant facts as the exact date of each transaction and the amount of money stolen, the names of the account holders involved, and whether BankRI was able to void the transaction and recover the money. See Loss Sheet at 4-6. The Information packet also contains numerous checking account balance inquiry sheets for each bank account involved in Neufville's alleged crimes. See Information packet at 13-47. These exhibits, therefore, provide Neufville with the specific facts he seeks to obtain, and a bill of particulars is unnecessary. See Mollicone, 654 A.2d at 325; Parlavecchio, 903 F. Supp. at 795-96; 41 Am. Jur. 2d Indictments and Informations § 148 at 888. Thus, this Court "accepts" this part of the Magistrate's Decision. Administrative Order 94-12(h).

## IV

## Conclusion

Based on a de novo review of the entire record on appeal, this Court finds that there is competent evidence in the record supporting all of the Magistrate's findings concerning Neufville's claims of error. This Court "accepts" all parts of the Magistrate's Decision denying Neufville's Motions. The Decision is affirmed.

Counsel shall prepare an appropriate order for entry.

**RHODE ISLAND SUPERIOR COURT**

***Decision Addendum Sheet***

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| **TITLE OF CASE:** | State of Rhode Island v. Eric Neufville |
| **CASE NO:** | P2-2012-1323A |
| **COURT:** | Providence County Superior Court |
| **DATE DECISION FILED:** | July 15, 2013 |
| **JUSTICE/MAGISTRATE:** | Gibney, P.J. |

**ATTORNEYS:**

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