



LEGAL UPDATE

ADW IS AN ELIGIBLE OFFENSE UNDER § 58A

Cruz v. Commonwealth, Mass.App.Ct. (August 12, 2024).

RELEVANT FACTS

The defendant was charged with various offenses, including multiple counts of assault with a dangerous weapon (ADW). The Commonwealth moved to have the defendant detained pretrial under MGL c 276 § 58A. The defendant appealed arguing that ADW is not an eligible offense under the statute.

DISCUSSION

MGL c 276 § 58A allows the Commonwealth to request that a defendant be held pretrial without bail, or released on conditions, because they pose a danger to a particular person or to the community at large. Not all crimes are eligible for § 58A detention. The statute contains a list of eligible crimes as well as language known as the “force clause.” This clause states that a motion under § 58A can be filed when the defendant is charged with a “felony offense that has as an element of the offense the use, attempted use or threatened use of physical force against the person of another.”

ADW is not on the list of offenses under § 58A, so the court had to determine whether ADW falls within the force clause. When making this determination, the court does not consider the facts of the case. The court will only look at the elements of the offense to determine whether the crime falls within the force clause.

The plain language of the force clause requires that offenses be committed intentionally. Any crime that can be proved on a reckless or wanton theory are excluded from the clause.

For specific guidance on the application of this case or any law, please consult your supervisor or your department’s legal advisor.

An assault can be proved under an attempted battery theory, or an immediately threatened battery theory. Both theories of assault require the defendant to act intentionally toward another person. For this reason, the intentional requirement of the force clause is satisfied by an assault.

In addition to the act being intentional, the force clause requires the crime to involve “physical force” which the court has interpreted to mean “violent or substantial force capable of causing pain or injury.” An ADW is an assault committed with either a per se dangerous weapon or one that is dangerous as used. Because either form of ADW must be accomplished by a “weapon that is either designed to, or used in a manner that is capable of, producing serious bodily harm or death,” it meets the “physical force” requirement of § 58A.

“Because proof of ADW always includes as an element the intentional conduct with the requisite potential risk of harm directed at another to constitute an ‘attempted use or threatened use of physical force,’ we thus conclude that ADW is a predicate offense under MGL c 276 § 58A (1).”