

S.J.C. No. DAR-____
App. Ct. No. 21-P-245

Commonwealth of Massachusetts

Supreme Judicial Court

HAKEEM MUSHWAALAKBAR,
Petitioner-Appellant,

vs.

COMMONWEALTH,
Respondent-Appellee.

ON APPEAL FROM AN ORDER OF A
SINGLE JUSTICE OF THE APPEALS COURT

APPLICATION FOR DIRECT APPELLATE REVIEW

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REQUEST FOR DIRECT APPELLATE REVIEW

General Laws c.276, §58A, permits the pretrial detention without bail of persons accused of certain crimes upon a preliminary finding of “dangerousness.” Detention on a District Court complaint is presumptively capped at 120 days, but may be extended by certain events that reasonably delay the trial. Last June, this Court held that the moratorium it has imposed on jury trials due to the COVID-19 pandemic was such an event, and that the statute therefore authorizes presumptively innocent people to be held without trial indefinitely, until this Court determines that it is safe for jury trials to resume. *Commonwealth v. Lougee*, 485 Mass. 70, 79 (2020). This Court also held that such indefinite detention did not offend the due process provisions of the State and Federal Constitutions, at least as of that time. Key to this holding was the Court’s “hope to recommence jury trials in the fall of [2020] if we can do so safely in light of the pandemic.” *Id.* at 84. That hope, of course, did not pan out.

Nine months have passed since this Court recognized that “[i]f we were to continue all jury trials for a far greater period of time” than the three additional months then contemplated, “we would certainly need to address the due process implications of such an extension.” *Id.* The petitioner in this case has now been held without bail on two District Court complaints for seventeen months, of which a full year is attributable solely to the pandemic. He has repeatedly pressed a claim that his right to due process is being violated by his indefinite imprisonment without trial. A single justice of the Appeals Court refused to address that claim, concluding that “it will be for [this] Court to say when, and if, we reach [the] point”

where the length of pretrial detention implicates a presumptively innocent person's right to due process. Pursuant to Mass. R.A.P. II, the petitioner now requests that this Court grant direct appellate review of his appeal of the single justice's order and "address the due process implications" of his lengthy imprisonment without trial.

FACTUAL AND PROCEDURAL HISTORY

In October of 2019, petitioner Hakeem Mushwaalakbar was charged with domestic assault and related offenses in two separate District Court cases in different counties. Prosecutors in both counties filed motions for pretrial detention pursuant to G.L. c.276, §58A. Although both District Court judges concluded that Mr. Mushwaalakbar was dangerous and ordered him detained, a judge of the Suffolk County Superior Court determined that he could safely be released on conditions. Unfortunately, one of the conditions she set was a bail that he could not afford to post. In light of his inability to post bail on the Suffolk County case, Mr. Mushwaalakbar did not appeal the dangerousness finding in Essex County, deciding instead to seek speedy trials on both matters. His trials were accordingly scheduled for March and April of 2020—prior to the expiration of the 120 day limit on pretrial detention imposed by §58A.

His hope for a speedy trial was dashed, however, by the onset of the COVID-19 pandemic. As a result of this Court's orders regarding court operations during the pandemic, his scheduled trial dates were cancelled and his pretrial detention was extended indefinitely. He has filed repeated motions for release as his imprisonment without trial has stretched on, and has been repeatedly rebuffed. His pretrial detention has now spanned seventeen months—more than

four times the presumptive limit under §58A, and likely approaching the total length of committed time he would serve if convicted on all of his pending charges. Indeed, the Commonwealth has offered to resolve the Suffolk County case through a plea deal that would allow him to be released from custody immediately (at least as to that case). Nevertheless, the trial judges and a single justice of the Appeals Court have concluded that his indefinite detention must continue at least until May (the earliest date he may receive a trial under the Commonwealth's jury trial plan), and likely even longer. Mr. Mushwaalakbar now appeals from the single justice's conclusion that such extended incarceration without trial of a presumptively innocent person is consonant with due process.

The Lynn complaint.

On October 1, 2019, complaint #1913-CR-2935 issued in Lynn District Court, charging Mr. Mushwaalakbar with assault and battery on a family or household member (subsequent offense), G.L. c.265, §13M(b), and strangulation, G.L. c.265, §15D. The application for the complaint alleges that on September 30, 2019, police were dispatched to 7 Essex Street in Lynn, where they found Mr. Mushwaalakbar's then-girlfriend, Skyla Lavigne, being evaluated by members of the Lynn Fire Department. Ms. Lavigne was on the phone, and was crying. Officers overheard her tell someone that "he just beat me up." She then told the officers that Mr. Mushwaalakbar "beat the shit out of me," and claimed he had punched her repeatedly in the head and had choked her several times before leaving the building. A warrant issued for Mr. Mushwaalakbar's arrest, but he was not apprehended at that time.

The Chelsea complaint.

A few weeks later, in the early morning hours of October 23, 2019, police responded to the scene of a single-car accident on Route 16 in Chelsea. The occupants of the crashed car were Ms. Lavigne and Mr. Mushwaalakbar. Ms. Lavigne, who had been driving, told police that earlier in the evening she and Mr. Mushwaalakbar had been at a friend's house in Revere and had gotten into an argument. She claimed that the argument had escalated into a physical altercation, during which Mr. Mushwaalakbar bit her on her arm and began to strangle her with two hands before leaving. She said she had chased after Mr. Mushwaalakbar in her car and convinced him to get into the car with her, but that the argument had carried over into the car, culminating in Mr. Mushwaalakbar grabbing the steering wheel and causing the car to crash into a concrete barrier.

Ms. Lavigne was not injured in the crash. Mr. Mushwaalakbar was injured and was taken via ambulance to Massachusetts General Hospital. During an interview at the hospital, Mr. Mushwaalakbar denied Ms. Lavigne's allegations and told police that she was the aggressor in their altercations and was the one who had caused the crash. Upon his discharge from the hospital at around 4:30 A.M., Mr. Mushwaalakbar was placed under arrest. Later that day he was arraigned in Chelsea District Court on complaint #1914-CR-2414, charging assault on a family or household member (subsequent offense), G.L. c.265, §13M(b); assault with intent to murder, G.L. c.265, §15;^{*} assault by means of a dangerous weapon, G.L. c.265, §15B(b);

^{*} This charge was dismissed at the request of the Commonwealth on December 3, 2019.

and strangulation, G.L. c.265, §15D. He pleaded not guilty and, on the Commonwealth's motion, was ordered held without bail pending a dangerousness hearing. See G.L. c.276, §58A(4).

The dangerousness hearings.

A dangerousness hearing was held in Chelsea District Court on November 7, 2019, and Judge Matthew J. Machera ordered Mr. Mushwaalakbar held without bail. In concluding that no conditions of release could suffice to protect the victim or the public, Judge Machera noted Mr. Mushwaalakbar's prior domestic violence convictions and the pendency of the Lynn complaint, as well as three previous restraining orders that had been entered against him.

On December 5, 2019, Mr. Mushwaalakbar's petition for review of the pretrial detention order was entered in Suffolk Superior Court (#1984-BP-659). Judge Beverly J. Cannone vacated the District Court detention order, concluding that Mr. Mushwaalakbar could safely be released on conditions that included GPS monitoring (with an order to stay away from Ms. Lavigne) and a curfew from 10 P.M. to 6 A.M. In determining that release on conditions was appropriate, Judge Cannone found it significant that although Mr. Mushwaalakbar had previously been the subject of restraining orders, he never had been alleged to have violated any of those orders. She also noted that the Commonwealth did not intend to indict the case. Judge Cannone ordered a \$10,000 cash bail, which Mr. Mushwaalakbar was not able to post. A motion to reconsider the imposition of unaffordable bail was filed and denied on December 9, 2019.

On December 11, 2019, Mr. Mushwaalakbar was transported to Lynn District Court for arraignment on the Lynn complaint, and

pleaded not guilty. The Commonwealth filed a second §58A petition in Lynn, which was heard on December 16. On December 20, 2019, Judge Matthew J. Nestor also issued an order detaining Mr. Mushwaalakbar without bail.

Motions for release.

In light of his inability to post bail on the Chelsea case, Mr. Mushwaalakbar did not appeal the pretrial detention order in Lynn, deciding instead to seek speedy trials on both matters. Jury trials were scheduled for March 30, 2020, in Chelsea, and April 14, 2020, in Lynn, but those trial dates were cancelled due to the pandemic. Following this Court's decision in *CPCS v. Chief Justice of the Trial Court*, 484 Mass. 431 (2020), Mr. Mushwaalakbar filed motions for release in both courts. The motions noted Mr. Mushwaalakbar's asthma diagnosis, and proffered a release plan that included GPS monitoring and house arrest at Mr. Mushwaalakbar's grandmother's house in Everett. They were denied by Judge Machera in Chelsea on April 15, and by Judge Robert A. Brennan in Lynn on April 24. On April 30, Mr. Mushwaalakbar filed an emergency petition for release in the Supreme Judicial Court for Suffolk County pursuant to G.L. c.211, §3. The petition was denied without hearing on May 1. *Mushwaalakbar v. Commonwealth*, No. SJ-2020-293 (May 1, 2020) (Cypher, J.).

Mr. Mushwaalakbar filed motions for reconsideration of his pretrial detention following this Court's clarification in *Lougee*, 485 Mass. at 80–82, that such motions were cognizable. Those motions were summarily denied in Chelsea on June 26, 2020 (Machera, J.), and in Lynn on July 16, 2020 (Nestor, J.). He again renewed his request for release in the fall, citing a recent injury for which he could

not receive proper medical treatment in custody, as well as the continued failure of jury trials to resume. *Cf. Lougee*, 485 Mass. at 84 (holding extended pretrial detention consonant with due process in light of expectation that trials would resume in the fall). Those motions were summarily denied in Chelsea on October 14 (Machera, J.), and in Lynn on December 8 (Nestor, J.). An additional motion to reconsider the amount of cash bail was also denied in Suffolk Superior Court (Cannone, J.) on December 8. On December 23, 2020, Mr. Mushwaalakbar filed a new petition in the county court, which a single justice (Kafker, J.) referred to the Appeals Court. *See Mushwaalakbar v. Commonwealth*, No. SJ-2020-755 (Dec. 29, 2020).

The matter was entered in the Appeals Court on December 29, 2020, as No. 20-J-567. On January 4, 2021, a single justice of that court (Hanlon, J.) requested responses from the Commonwealth. The Commonwealth's response on the Chelsea case noted that Mr. Mushwaalakbar "faces limited exposure to substantial incarceration because he has not been indicted," and acknowledged that "the Commonwealth has previously recommended a sentence of two and one half years committed, nine months to be served, and the balance suspended with probation conditions." In light of these factors, the Commonwealth agreed that "the length of the defendant's pretrial detention in relation to the likely sentence that would be imposed if he is convicted of the charged crimes suggests that the defendant's bail should be reduced to ... an amount he can post." On the Lynn case, however, the Commonwealth continued to oppose any relief from the order of pretrial detention.

After a month without any action, the single justice issued an order on February 22 directing the parties to file “a status report on or before 2/24/21 that details the current state of defendant’s bail/custody in the parallel Lynn and Chelsea court cases.” The reports, indicating that the case’s status remained unchanged, were filed on February 24. Mr. Mushwaalakbar filed an additional status report on March 10 to apprise the single justice that Chelsea District Court is not participating in “Phase 2” of the resumption of jury trials. On March 15, 2021, Justice Hanlon issued a memorandum and order denying Mr. Mushwaalakbar’s petition. A timely notice of appeal was filed on March 19, 2021.

ISSUE PRESENTED

Whether due process permits the continued indefinite imprisonment of a presumptively innocent person who has already been held awaiting trial on two District Court complaints for seventeen months, including more than a year of detention attributable solely to this Court’s pandemic-related standing orders. This question was squarely presented in Mr. Mushwaalakbar’s petition for extraordinary relief, but the Appeals Court single justice declined to address it, concluding that it can only be resolved by this Court.

ARGUMENT

Mr. Mushwaalakbar’s right to due process is being violated by his indefinite imprisonment—now well in excess of a year—based on nothing more than a showing of probable cause and a preliminary finding of dangerousness.

“In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *Brangan v. Commonwealth*, 477 Mass. 691, 705 (2017), quoting *Aime v. Commonwealth*,

414 Mass. 667, 677 (1993). “In upholding pretrial detention under §58A in the face of a due process challenge, [this Court has] emphasized that the detention is only ‘limited’ and ‘temporary,’ *Mendonza v. Commonwealth*, 423 Mass. 771, 783, 790 (1996), and ... observed that this ‘justification for pretrial detention erodes the longer a defendant has been held,’ *Brangan*, 477 Mass. at 710.” *Lougee*, 485 Mass. at 83.

In *Lougee*, this Court rejected a due process challenge to its extension of §58A’s time limits due to the pandemic. *Id.* at 83–84. But the Court acknowledged that “due process imposes limitations on the length of time a person may be held awaiting trial.” *Id.* at 83. See *Abbott A. v. Commonwealth*, 458 Mass. 24, 40–41 (2010) (due process forbids preventive detention that is “unreasonable in duration”). At the time this Court declared in *Lougee* that “we have yet to approach the length of delay that would trigger a due process analysis,” *id.* at 84, it had ordered all jury trials to be delayed for six months. See *id.* at 73 (describing orders of general continuance beginning on March 13, 2020, and extending “to a date no earlier than September 8, 2020”). And this Court recognized that if it “were to continue all jury trials for a far greater period of time, ... we would certainly need to address the due process implications of such an extension.” *Id.* at 84.

The suspension of Mr. Mushwaalakbar’s right to a speedy and public trial by jury has now lasted more than twice as long as the continuance deemed permissible in *Lougee*. Under this Court’s current standing order, and based on the Trial Court’s plan for resumption of jury trials, he cannot be tried any earlier than May 1, 2021—more than a year after the cancelled March and April 2020 trial dates. See generally *Matter of COVID-19 (Coronavirus) Pandemic*, No.

OE-144, Fifth Updated Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (Coronavirus) Pandemic (Feb. 24, 2021) (ordering “Phase 2 of the resumption of jury trials” to commence on March 1 with an expectation that it will last two months, and that “except as to those cases scheduled for a jury trial during Phase 2, it continues to be necessary and appropriate to hereby order that no other jury trials be conducted”). And given the backlog of cases in the District Courts and the difficulties that undoubtedly will be encountered empaneling juries in the first few months of our attempted return to normalcy, it would seem more realistic to anticipate a trial date in the late summer or fall.

This Court did not clarify in *Lougee* what “length of delay ... would trigger a due process analysis.” 485 Mass. at 84. But guidance may be drawn from the closely related context of the constitutional speedy trial right, which is partially calculated to prevent “oppressive pretrial incarceration, anxiety and concern of the accused.” *Commonwealth v. Wallace*, 472 Mass. 56, 70 (2015), quoting *Doggett v. United States*, 505 U.S. 647, 652 (1992). In the speedy trial context, “courts have generally found postaccusation delay ‘presumptively prejudicial,’” triggering an analysis of the speedy trial right, “at least as it approaches one year.” *Doggett*, 505 U.S. at 652 n.1.

The delay in Mr. Mushwaalakbar’s trial due solely to this Court’s pandemic-related orders has thus now eclipsed that deemed “presumptively prejudicial” in the speedy trial context. And his total pretrial detention has substantially outpaced the length of detention this Court considered potentially violative of due process in *Abbott A. v. Commonwealth*. See 458 Mass. at 25, 41 (remanding in September

2010 for hearing to determine constitutionality of pretrial detention which had begun on July 27, 2009). The time has come for this Court to “address the due process implications” of this drastic curtailment of a presumptively innocent man’s liberty. *Lougee*, 485 Mass. at 84.

CONCLUSION

The question presented in this appeal “concern[s] the Constitution[s] of the Commonwealth [and] of the United States,” and is “of such public interest that justice requires a final determination by the full Supreme Judicial Court.” Mass. R.A.P. II(a). Moreover, as the single justice’s order demonstrates, Mr. Mushwaalakbar will be unable to obtain a meaningful ruling on this important constitutional question absent review by this Court; other lower court judges surely will agree with Justice Hanlon that the matter is settled by *Lougee* until this Court says otherwise. Mr. Mushwaalakbar therefore requests that this Court allow direct appellate review and hold that due process forbids his continued detention without bail.

Respectfully submitted,

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By his attorney,

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March 23, 2021

1913CR002935 Commonwealth vs. Mushwaalakbar, Hakeem

- Case Type:
- Criminal
- Case Status:
- Suspended Covid 19 extended
- File Date
- 10/01/2019
- DCM Track:
-
- Initiating Action:
- A&B ON FAMILY/HOUSEHOLD MEMBER SUBSEQUENT c265 §13M(b)
- Status Date:
- 12/11/2019
- Case Judge:
-
- Next Event:
- 06/01/2021

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

Docket Information

Docket Date	<i>Docket Text</i>	<i>Image Avail.</i>
10/01/2019	Complaint issued with arrest warrant.	
10/01/2019	Warrant Issued: Straight Warrant issued on 10/01/2019 for Mushwaalakbar, Hakeem	
11/14/2019	Habeas Corpus for prosecution issued to Suffolk House of Correction (South Bay) returnable for 12/11/2019 09:00 AM Default Removal Hearing: Further Orders: Judge: Nestor, Hon. Matthew J	
11/22/2019	Habeas Corpus for prosecution issued to Suffolk County Jail returnable for 12/11/2019 09:00 AM Default Removal Hearing: Further Orders: Judge: Nestor, Hon. Matthew J	
12/11/2019	Warrant recalled: Straight Warrant cancelled on 12/11/2019 for Mushwaalakbar, Hakeem	
12/11/2019	Event Resulted: Default Removal Hearing scheduled on: 12/11/2019 09:00 AM Has been: Held Hon. Richard A Mori, Presiding	
12/11/2019	Event Resulted: Arraignment scheduled on: 12/11/2019 09:00 AM Has been: Held-Arraignment/58A Danger Request Hon. Richard A Mori, Presiding	
12/11/2019	Defendant arraigned before Court, advised of right to counsel. Judge: Mori, Hon. Richard A	
12/11/2019	Commonwealth files written motion based on dangerousness for order of pre-trial detention or release with conditions under C276§58A. Judge: Mori, Hon. Richard A	Image
12/11/2019	Commonwealth's motion to continue dangerousness hearing for 3 business days is ALLOWED. Judge: Mori, Hon. Richard A	
12/11/2019	Defendant ordered detained pending completion of dangerous hearing Judge: Mori, Hon. Richard A	

Docket Date	Docket Text	Image Avail.
12/11/2019	Plea of Not Guilty entered on all charges. Judge: Mori, Hon. Richard A	
12/11/2019	Bail revocation warning (276/58) given to the defendant Judge: Mori, Hon. Richard A	
12/11/2019	Defendant is ordered committed without bail because FINAL HEARING ON DANGEROUSNESS PENDING (278 S.58) to Essex County House of Correction returnable for 12/16/2019 09:00 AM Detention Hearing (276 s58A); mittimus issued. Court location of next event (if not this court): Further Orders: Judge: Nestor, Hon. Matthew J	
12/11/2019	Appearance filed for the purpose of Case in Chief by Judge Hon. Richard A Mori.	
12/16/2019	Defendant is ordered committed without bail because DEFENDANT HELD ON DANGEROUSNESS (276 s. 58A) to Essex County House of Correction returnable for 01/16/2020 10:00 AM Pretrial Hearing; mittimus issued. Court location of next event (if not this court): Further Orders: PLEASE DO NOT TRANSPORT VIDEO CONFERENCE 120TH DAY 4/13/20 Judge: Nestor, Hon. Matthew J	
12/16/2019	Event Resulted: Detention Hearing (276 s58A) scheduled on: 12/16/2019 09:00 AM Has been: Held - 58A-Dang Hring held Hon. Matthew J Nestor, Presiding	
12/20/2019	Defendant ordered detained prior to trial for a period not to exceed 120 days pursuant to G.L. C.276 §58A. Judge: Nestor, Hon. Matthew J	
01/16/2020	Event Resulted: Pretrial Hearing scheduled on: 01/16/2020 10:00 AM Has been: Held-PT Hon. Matthew J Nestor, Presiding	
01/16/2020	Pretrial conference report filed. Judge: Nestor, Hon. Matthew J	Image
01/16/2020	Defendant is ordered committed without bail because DEFENDANT HELD ON DANGEROUSNESS (276 s. 58A) to Suffolk County Jail returnable for 02/13/2020 10:00 AM Discovery Compliance & Jury Election; mittimus issued. Court location of next event (if not this court): Further Orders: NO BODY MIT 120TH DAY 4/13/20 PLEASE DO NOT TRANSPORT VIDEO CONFERENCE *DEFENDANT WAS ON VIDEO TODAY 1/16	
02/13/2020	Event Resulted: Discovery Compliance & Jury Election scheduled on: 02/13/2020 10:00 AM Has been: Held Hon. Matthew J Nestor, Presiding	
02/13/2020	Defendant is ordered committed without bail because DEFENDANT HELD ON DANGEROUSNESS (276 s. 58A) to Essex County House of Correction returnable for 04/14/2020 09:00 AM Jury Trial (CR); mittimus issued. Court location of next event (if not this court): Further Orders: 120th day 04/13/20 Judge: Nestor, Hon. Matthew J	

<u>Docket Date</u>	<u>Docket Text</u>	<u>Image Avail.</u>
04/14/2020	Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Jury Trial (CR) scheduled on: 04/14/2020 09:00 AM Has been: Rescheduled-Covid-19 emergency Hon. Richard A Mori, Presiding	
04/14/2020	Defendant is ordered committed without bail because DEFENDANT HELD ON DANGEROUSNESS (276 s. 58A) to Suffolk County Jail returnable for 05/19/2020 10:00 AM Hearing to Review Status; mittimus issued. Court location of next event (if not this court): Further Orders: NO BODY MITT VIDEO CONFERENCE - PLEASE DO NOT TRANSPORT	
04/24/2020	Event Resulted: Motion Hearing (CR) scheduled on: 04/24/2020 10:00 AM Has been: Held - Motion denied For the following reason: COVID Emergency-Hearing held by telephone Hon. Robert A Brennan, Presiding	
04/24/2020	Motion for emergency release due to Covid19 concerns DENIED.	
04/24/2020	Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Hearing to Review Status scheduled on: 05/19/2020 10:00 AM Has been: Rescheduled-Covid-19 emergency Hon. Robert A Brennan, Presiding	
04/24/2020	Reasons for ordering bail or continued detention filed. Court denies defendant's release as Commonwealth sufficiently established that such release would result in unreasonable danger to the community or that defendant's release presented a high risk of flight. Notice sent to parties and holding facility. Judge: Brennan, Hon. Robert A	Image
04/27/2020	Defendant is ordered committed without bail because DEFENDANT HELD ON DANGEROUSNESS (276 s. 58A) to Essex County House of Correction returnable for 06/04/2020 10:00 AM Hearing to Review Status; mittimus issued. Court location of next event (if not this court): Lynn District Court Further Orders: NO BODY MITT PLEASE DO NOT TRANSPORT VIDEO CONFERENCE SJC DENIED Judge: Nestor, Hon. Matthew J	
05/01/2020	Commonwealth's motion for for Judgement on petition pursuant to g.l. 211/S3 filed and DENIED.	Image
06/04/2020	Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Hearing to Review Status scheduled on: 06/04/2020 10:00 AM Has been: Rescheduled-Covid-19 emergency Hon. Jean M Curran, Presiding	
06/04/2020	Defendant is ordered committed without bail because DEFENDANT HELD ON DANGEROUSNESS (276 s. 58A) to Essex County House of Correction returnable for 07/08/2020 10:00 AM Hearing to Review Status; mittimus issued. Court location of next event (if not this court): Further Orders: ***** NO BODY MITT ***** PLEASE DO NOT TRANSPORT - VIDEO CONFERENCE SCHEDULED THANK YOU!!! Judge: Curran, Hon. Jean M	
07/07/2020	Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Hearing to Review Status scheduled on: 07/08/2020 10:00 AM Has been: Rescheduled-Covid-19 emergency Hon. Matthew J Nestor, Presiding	

<u>Docket Date</u>	<i>Docket Text</i>	<i>Image Avail.</i>
07/07/2020	<p>Defendant is ordered committed without bail because DEFENDANT HELD ON DANGEROUSNESS (276 s. 58A) to Suffolk House of Correction (South Bay) returnable for 07/14/2020 10:00 AM Motion Hearing (CR); mittimus issued.</p> <p>Court location of next event (if not this court): Further Orders: NO BODY MITT PLEASE DO NOT TRANSPORT - VIDEO CONFERENCE SCHEDULED</p> <p>Judge: Nestor, Hon. Matthew J</p>	
07/08/2020	<p>Defendant's motion for reconsideration pursuant to Commonwealth v. Lougee and affidavit in support of motion filed with the following, if any, supporting documents:</p> <p>Attorney: DeLong, Esq., Robert M</p>	Image
07/14/2020	<p>Event Resulted: Motion Hearing (CR) scheduled on: 07/14/2020 10:00 AM Has been: Held - Motion denied Hon. Matthew J Nestor, Presiding</p>	
07/16/2020	<p>Defendant's motion to reconsider bail filed and DENIED.</p>	Image
07/16/2020	<p>Defendant is ordered committed without bail because DEFENDANT HELD ON DANGEROUSNESS (276 s. 58A) to Suffolk County Jail returnable for 08/11/2020 09:00 AM Discovery Compliance & Jury Election; mittimus issued.</p> <p>Court location of next event (if not this court): Further Orders: PLEASE DO NOT TRANSPORT TO BE HEARD VIA TELECONFERENCE</p> <p>Judge: Nestor, Hon. Matthew J</p>	
08/11/2020	<p>Event Resulted: Discovery Compliance & Jury Election scheduled on: 08/11/2020 09:00 AM Has been: Held Hon. Matthew J Nestor, Presiding</p>	
08/11/2020	<p>Defendant is ordered committed without bail because DEFENDANT HELD ON DANGEROUSNESS (276 s. 58A) to Essex County House of Correction returnable for 09/17/2020 12:00 PM Bench Trial (CR); mittimus issued.</p> <p>Court location of next event (if not this court): Further Orders: NO BODY MITT PLEASE DO NOT TRANSPORT VIDEO CONFERENCE AT 1200PM</p> <p>Judge: Nestor, Hon. Matthew J</p>	
09/17/2020	<p>Event Resulted: Bench Trial (CR) scheduled on: 09/17/2020 12:00 PM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Jean M Curran, Presiding</p>	
09/17/2020	<p>Defendant is ordered committed without bail because DEFENDANT HELD ON DANGEROUSNESS (276 s. 58A) to Essex County House of Correction returnable for 01/19/2021 09:00 AM Jury Trial (CR); mittimus issued.</p> <p>Court location of next event (if not this court): Further Orders: NO BODY MITT DEFENDANT TO BE TRANSPORTED ON 01/19/21.</p> <p>Judge: Curran, Hon. Jean M</p>	
11/03/2020	<p>Defendant's motion for renewed motion and memorandum of law to reconsider denial of motion for non presumptive release filed with the following, if any, supporting documents: affidavit in support of motion</p>	Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>Image Avail.</u>
11/09/2020	Event Resulted: Jury Trial (CR) scheduled on: 01/19/2021 09:00 AM Has been: Event Cancelled For the following reason: Brought forward Hon. Matthew J Nestor, Presiding	
11/09/2020	Defendant is ordered committed without bail because DEFENDANT HELD ON DANGEROUSNESS (276 s. 58A) to Suffolk County Jail returnable for 01/19/2021 10:30 AM Jury Trial (CR); mittimus issued. Court location of next event (if not this court): Lynn District Court Further Orders: NO BODY MITT PLEASE DO NOT TRANSPORT - VIDEO CONFERENCE @ 10:30 A.M.	
12/08/2020	Event Resulted: Motion Hearing (CR) scheduled on: 12/08/2020 10:30 AM Has been: Held - Motion denied Hon. Matthew J Nestor, Presiding	
12/08/2020	Defendant's motion for updated affidavit of counsel filed and DENIED.	Image
12/29/2020	Misc Entry: APPEALS COURT RE: No. 2020-J-0567 Lower Court No. 1984BP00659, 1914CR002414, 1913CR002935 NOTICE OF DOCKET ENTRY 12/29/20 Superintendence c. 211, s. 3 transfer from the Supreme Judicial Court. Judge: Nestor, Hon. Matthew J	Image
12/29/2020	Misc Entry: SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY NO. SJ-2020-0755 Suffolk Superior Court No. 1984BP000659 Chelsea District Court No. 1914CR002414 Lynn District Court No. 1913CR002935 ORDER OF TRANSFER TO THE APPEALS COURT (Kafker, J.) Judge: Nestor, Hon. Matthew J	Image
01/05/2021	Misc Entry: APPEALS COURT RE: Lower Ct. No.: 1984BP00659, 1914CR002414, 1913CR002935 NOTICE OF DOCKET ENTRY On January 4, 2021, the following entry was made on the above referenced cases. Order: A response is requested from the Commonwealth in both the Lynn District Court case and the Suffolk Superior Court case on or before 1/8/20. (Hanlon, J.) Judge: Nestor, Hon. Matthew J	Image
01/19/2021	Event Resulted: Jury Trial (CR) scheduled on: 01/19/2021 10:30 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Susan H McNeil, Presiding	

<u>Docket Date</u>	<i>Docket Text</i>	<i>Image Avail.</i>
01/19/2021	<p>Defendant is ordered committed without bail because DEFENDANT HELD ON DANGEROUSNESS (276 s. 58A) to Essex County House of Correction returnable for 06/01/2021 09:00 AM Jury Trial (CR); mittimus issued.</p> <p>Court location of next event (if not this court): Further Orders: NO BODY MITT PLEASE TRANSPORT DEFENDANT ON ABOVE DATE THANK YOU!</p> <p>Judge: McNeil, Hon. Susan H</p>	
03/15/2021	<p>Misc Entry:</p> <p>APPEAL COURT 2020-J-567</p> <p>MEMORANDUM AND ORDER</p> <p>"After careful review, including all of the documents submitted by the petitioner and the Commonwealth, I conclude that neither the Suffolk Superior Court bail order nor the Lynn District Court dangerousness determination detaining the defendant until his trial constitutes an error of law or abuse of discretion."</p> <p>Hanlon, J.</p> <p>Judge: Nestor, Hon. Matthew J</p>	<i>Image</i>

We are currently investigating intermittent issues retrieving images. Thank you for your patience as we attempt to address the issue.

1914CR002414 Commonwealth vs. Mushwaalakbar, Hakeem

- Case Type:
- Criminal
- Case Status:
- Suspended Covid 19 extended
- File Date
- 10/23/2019
- DCM Track:
-
- Initiating Action:
- ASSAULT ON FAMILY/HOUSEHOLD MEMBER SUBSEQUENTc265 §13M(b)
- Status Date:
- 04/01/2020
- Case Judge:
-
- Next Event:
- 05/04/2021

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

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<i>Image Avail.</i>
10/23/2019	Complaint issued upon new arrest.	
10/23/2019	Event Resulted: Arraignment scheduled on: 10/23/2019 08:30 AM Has been: Held - Bail or Conditions of Release ordered Hon. William F Martin, Presiding	
10/23/2019	Defendant arraigned before Court, advised of right to counsel. Judge: Martin, Hon. William F	
10/23/2019	Reasons for ordering bail. Judge: Martin, Hon. William F	
10/23/2019	Bail revocation warning (276/58) given to the defendant Judge: Martin, Hon. William F	
10/23/2019	Defendant is ordered committed without bail because DEFENDANT HELD ON DANGEROUSNESS (276 s. 58A) to Suffolk County Jail returnable for 10/24/2019 08:30 AM Detention Hearing (276 s58A); mittimus issued. Court location of next event (if not this court): Further Orders:	
10/23/2019	Appearance filed On this date Silvia Y Guzman, Esq. added as Appointed - Indigent Defendant for Defendant Hakeem Mushwaalakbar Appearance filed for the purpose of Bail Only by Judge Hon. William F Martin.	
10/24/2019	Event Resulted: Detention Hearing (276 s58A) scheduled on: 10/24/2019 08:30 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. William F Martin, Presiding	
10/24/2019	Appearance filed On this date Jessica Catherine Gallagher, Esq. added as Appointed - Indigent Defendant for Defendant Hakeem Mushwaalakbar Appearance filed for the purpose of Case in Chief by Judge Hon. William F Martin.	
10/24/2019	Defendant is ordered committed without bail because DEFENDANT HELD ON DANGEROUSNESS (276 s. 58A) to Suffolk County Jail returnable for 10/31/2019 08:30 AM Detention Hearing (276 s58A); mittimus issued.	

<u>Docket Date</u>	<i>Docket Text</i>	<i>Image Avail.</i>
	<p>Court location of next event (if not this court): Further Orders:</p> <p>Judge: Martin, Hon. William F</p>	
10/24/2019	Commonwealth's motion for Order of Pretrial Detention filed and ALLOWED.	Image
10/31/2019	<p>Event Resulted: Detention Hearing (276 s58A) scheduled on: 10/31/2019 08:30 AM</p> <p>Has been: Reschedule of Hearing For the following reason: Both Parties Request Hon. Matthew J Machera, Presiding</p>	
10/31/2019	<p>Defendant is ordered committed without bail because FINAL HEARING ON DANGEROUSNESS PENDING (278 S.58) to Suffolk County Jail returnable for 11/07/2019 08:30 AM Detention Hearing (276 s58A); mittimus issued.</p> <p>Court location of next event (if not this court): Further Orders:</p> <p>Judge: Machera, Hon. Matthew J</p>	
11/07/2019	<p>Order and reasons for pretrial detention on finding of dangerousness (C276/58A)</p> <p>Judge: Machera, Hon. Matthew J</p>	Image
11/07/2019	<p>Event Resulted: Detention Hearing (276 s58A) scheduled on: 11/07/2019 08:30 AM</p> <p>Has been: Held - 58A-Dang Hring held Hon. Matthew J Machera, Presiding</p>	
11/07/2019	<p>Defendant is ordered committed without bail because DEFENDANT HELD ON DANGEROUSNESS (276 s. 58A) to Suffolk County Jail returnable for 11/26/2019 08:30 AM Probable Cause Hearing; mittimus issued.</p> <p>Court location of next event (if not this court): Further Orders:</p> <p>Judge: Machera, Hon. Matthew J</p>	
11/08/2019	<p>Appeal of Dangerousness finding filed.</p> <p>Attorney: Gallagher, Esq., Jessica Catherine</p>	
11/15/2019	Papers assembled and sent to Superior Court	
11/26/2019	<p>Event Resulted: Probable Cause Hearing scheduled on: 11/26/2019 08:30 AM</p> <p>Has been: Reschedule of Hearing For the following reason: Both Parties Request Hon. William Fitzpatrick, Presiding</p>	
11/26/2019	<p>Defendant is ordered committed without bail because DEFENDANT HELD ON DANGEROUSNESS (276 s. 58A) to Suffolk County Jail returnable for 12/03/2019 08:30 AM Probable Cause Hearing; mittimus issued.</p> <p>Court location of next event (if not this court): Further Orders:</p>	
12/03/2019	<p>Event Resulted: Probable Cause Hearing scheduled on: 12/03/2019 08:30 AM</p> <p>Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. William Fitzpatrick, Presiding</p>	
12/03/2019	<p>Charges Disposed:: Charge # 2 ASSAULT TO MURDER c265 §15 On: 12/03/2019 Judge: Hon. William Fitzpatrick Dismissed - Request of Commonwealth</p>	
12/03/2019	<p>Defendant is ordered committed without bail because DEFENDANT'S BAIL HAS BEEN REVOKED (276 s. 58) to Suffolk County Jail returnable for 12/30/2019 10:00 AM Probable Cause Hearing; mittimus issued.</p> <p>Court location of next event (if not this court): Further Orders:</p> <p>Judge: Fitzpatrick, Hon. William</p>	

<u>Docket Date</u>	<i>Docket Text</i>	<i>Image Avail.</i>
12/05/2019	Petition for review of bail filed Originating Court: Chelsea District Court Receiving Court: Suffolk County Criminal Case Number: 1984BP00659 ;	
12/10/2019	Finding of the Superior Court on Bail Review Petition under G.L. c.276, §58.	Image
12/18/2019	Event Resulted: Motion Hearing (CR) scheduled on: 12/18/2019 08:30 AM Has been: Held - Motion allowed Hon. Matthew J Machera, Presiding	
12/18/2019	Defendant's motion for Return of Defendant's Property filed and ALLOWED.	Image
12/30/2019	Event Resulted: Probable Cause Hearing scheduled on: 12/30/2019 10:00 AM Has been: Not Held Hon. Matthew J Machera, Presiding	
12/30/2019	Defendant's motion for return of property filed and ALLOWED. Attorney: Gallagher, Esq., Jessica Catherine	Image
12/30/2019	Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$100,000.00 Bond; \$10,000.00 Cash), returnable for 01/24/2020 11:00 AM Discovery Compliance & Jury Election; mittimus issued. Court location of next event (if not your court): Further Orders: Judge: Machera, Hon. Matthew J	
01/24/2020	Event Resulted: Discovery Compliance & Jury Election scheduled on: 01/24/2020 11:00 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Jane Prince, Presiding	
01/24/2020	Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$100,000.00 Bond; \$10,000.00 Cash), returnable for 02/19/2020 11:00 AM Discovery Compliance & Jury Election; mittimus issued. Court location of next event (if not your court): Further Orders: ***GPS IN PLACE BEFORE RELEASE*** Judge: Prince, Hon. Jane	
01/24/2020	Pretrial conference report filed. Judge: Prince, Hon. Jane	Image
02/19/2020	Event Resulted: Discovery Compliance & Jury Election scheduled on: 02/19/2020 11:00 AM Has been: Held Hon. Matthew J Machera, Presiding	
02/19/2020	Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$100,000.00 Bond; \$10,000.00 Cash), returnable for 03/30/2020 08:30 AM Jury Trial (CR); mittimus issued. Court location of next event (if not your court): Further Orders: Judge: Machera, Hon. Matthew J	
03/25/2020	Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Jury Trial (CR) scheduled on: 03/30/2020 08:30 AM Has been: Rescheduled-Covid-19 emergency Hon. Dunbar D Livingston, Presiding	

<u>Docket Date</u>	<i>Docket Text</i>	<i>Image Avail.</i>
03/26/2020	<p>Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$100,000.00 Bond; \$10,000.00 Cash), returnable for 06/18/2020 08:30 AM Hearing to Review Status; mittimus issued.</p> <p>Court location of next event (if not your court): Further Orders: by video</p> <p>Judge: Machera, Hon. Matthew J</p>	
03/26/2020	<p>Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$100,000.00 Bond; \$10,000.00 Cash), returnable for 06/18/2020 08:30 AM Hearing to Review Status; mittimus issued.</p> <p>Court location of next event (if not your court): Further Orders: by video</p>	
04/15/2020	<p>Event Resulted: Motion Hearing (CR) scheduled on: 04/15/2020 08:30 AM Has been: Held - Motion denied Hon. Matthew J Machera, Presiding</p>	
04/15/2020	Defendant's motion for NON-PRESUMPTIVE RELEASE filed and DENIED.	
04/15/2020	<p>Event Resulted: Hearing to Review Status scheduled on: 06/18/2020 08:30 AM Has been: Event Cancelled For the following reason: Brought forward Hon. Matthew J Machera, Presiding</p>	
04/15/2020	<p>Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$100,000.00 Bond; \$10,000.00 Cash), returnable for 05/15/2020 08:30 AM Hearing to Review Status; mittimus issued.</p> <p>Court location of next event (if not your court): Chelsea District Court Further Orders: GPS monitor prior to release</p> <p>Judge: Machera, Hon. Matthew J</p>	
05/04/2020	<p>Rescript opinion received from the (Appeals-Supreme Judicial) Chelsea District Court DEFENDANT'S PETITION PURSUANT TO GL 2 211,3 DENIED WITHOUT A HEARING BY CYPHER, J SJC</p> <p>Judge: Machera, Hon. Matthew J</p>	
05/04/2020	<p>Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Hearing to Review Status scheduled on: 05/15/2020 08:30 AM Has been: Rescheduled-Covid-19 emergency Hon. Matthew J Machera, Presiding</p>	
05/04/2020	<p>Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$100,000.00 Bond; \$10,000.00 Cash), returnable for 06/18/2020 08:30 AM Hearing to Review Status; mittimus issued.</p> <p>Court location of next event (if not your court): Chelsea District Court Further Orders: GPS MONITOR PRIOR TO RELEASE</p> <p>Judge: Machera, Hon. Matthew J</p>	
06/17/2020	<p>Event Resulted: Hearing to Review Status scheduled on: 06/18/2020 08:30 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Matthew J Machera, Presiding</p>	
06/17/2020	<p>Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$100,000.00 Bond; \$10,000.00 Cash), returnable for 06/19/2020 08:30 AM Motion Hearing (CR); mittimus issued.</p> <p>Court location of next event (if not your court):</p>	

<u>Docket Date</u>	<u>Docket Text</u>	<u>Image Avail.</u>
	Further Orders: GPS MONITOR PRIOR TO RELEASE Judge: Machera, Hon. Matthew J	
06/19/2020	Event Resulted: Motion Hearing (CR) scheduled on: 06/19/2020 08:30 AM Has been: Event Cancelled For the following reason: Both Parties Request Hon. Matthew J Machera, Presiding	
06/19/2020	Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$100,000.00 Bond; \$10,000.00 Cash), returnable for 06/26/2020 08:30 AM Motion Hearing (CR); mittimus issued. Court location of next event (if not your court): Chelsea District Court Further Orders: GPS MONITOR PRIOR TO RELEASE	
06/26/2020	Event Resulted: Motion Hearing (CR) scheduled on: 06/26/2020 08:30 AM Has been: Not Held Hon. Matthew J Machera, Presiding	
06/26/2020	Motion for bail reduction in response to Covid 19 pandemic DENIED. Judge: Machera, Hon. Matthew J	
06/26/2020	Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$100,000.00 Bond; \$10,000.00 Cash), returnable for 07/31/2020 08:30 AM Hearing to Review Status; mittimus issued. Court location of next event (if not your court): Further Orders: Judge: Machera, Hon. Matthew J	
07/31/2020	Event Resulted: Hearing to Review Status scheduled on: 07/31/2020 08:30 AM Has been: Reschedule of Hearing For the following reason: Defendant's request without objection Hon. William Fitzpatrick, Presiding	
08/03/2020	Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$100,000.00 Bond; \$10,000.00 Cash), returnable for 08/12/2020 11:00 AM Hearing to Review Status; mittimus issued. Court location of next event (if not your court): Further Orders: Judge: Machera, Hon. Matthew J	
08/11/2020	Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Hearing to Review Status scheduled on: 08/12/2020 11:00 AM Has been: Rescheduled-Covid-19 emergency Hon. Matthew J Machera, Presiding	
08/11/2020	Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$100,000.00 Bond; \$10,000.00 Cash), returnable for 08/24/2020 08:30 AM Hearing to Review Status; mittimus issued. Court location of next event (if not your court): Further Orders: ***DO NOT TRANSPORT...HELD BY ZOOM GPS IN PLACE BEFORE RELEASE Judge: Machera, Hon. Matthew J	
08/24/2020	Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Hearing to Review Status scheduled on: 08/24/2020 08:30 AM Has been: Rescheduled-Covid-19 emergency Hon. Jane Prince, Presiding	

Docket Date	<i>Docket Text</i>	<i>Image Avail.</i>
08/24/2020	<p>Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$100,000.00 Bond; \$10,000.00 Cash), returnable for 10/01/2020 11:00 AM Hearing to Review Status; mittimus issued.</p> <p>Court location of next event (if not your court): Further Orders: ***DO NOT TRANSPORT...HELD BY ZOOM</p> <p>Judge: Prince, Hon. Jane</p>	
10/01/2020	<p>Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Hearing to Review Status scheduled on: 10/01/2020 11:00 AM Has been: Rescheduled-Covid-19 emergency Hon. Matthew J Machera, Presiding</p>	
10/01/2020	<p>Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$100,000.00 Bond; \$10,000.00 Cash), returnable for 10/14/2020 11:00 AM Motion Hearing (CR); mittimus issued.</p> <p>Court location of next event (if not your court): Further Orders: ***DO NOT TRANSPORT, HELD BY ZOOM ID # 161 009 8509 PW 933127</p> <p>Judge: Machera, Hon. Matthew J</p>	
10/14/2020	<p>Event Resulted: Motion Hearing (CR) scheduled on: 10/14/2020 11:00 AM Has been: Held - Motion denied Hon. Matthew J Machera, Presiding</p>	
10/14/2020	<p>Motion to reconsider prior ruling DENIED. of release. w/o prejudice</p>	Image
10/14/2020	<p>Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$100,000.00 Bond; \$10,000.00 Cash), returnable for 12/03/2020 11:00 AM Hearing to Review Status; mittimus issued.</p> <p>Court location of next event (if not your court): Further Orders: TO BE HEARD IN ZOOM SESSION ID:1610098509 PC:933127</p> <p>Judge: Machera, Hon. Matthew J</p>	
12/01/2020	<p>Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Hearing to Review Status scheduled on: 12/03/2020 11:00 AM Has been: Rescheduled-Covid-19 emergency Hon. Matthew J Machera, Presiding</p>	
12/01/2020	<p>Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$100,000.00 Bond; \$10,000.00 Cash), returnable for 01/11/2021 11:00 AM Hearing to Review Status; mittimus issued.</p> <p>Court location of next event (if not your court): Further Orders: zoom session do not transport id# 161 009 8509 password 933127</p> <p>Judge: Machera, Hon. Matthew J</p>	
01/11/2021	<p>Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Hearing to Review Status scheduled on: 01/11/2021 11:00 AM Has been: Rescheduled-Covid-19 emergency Hon. Jane Prince, Presiding</p>	

<u>Docket Date</u>	<i>Docket Text</i>	<i>Image Avail.</i>
01/11/2021	<p>Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$100,000.00 Bond; \$10,000.00 Cash), returnable for 02/11/2021 11:00 AM Hearing to Review Status; mittimus issued.</p> <p>Court location of next event (if not your court): Further Orders: zoom session do not transport id#161 009 8509 password 933127</p> <p>Judge: Prince, Hon. Jane</p>	
02/05/2021	<p>Event Resulted: Hearing to Review Status scheduled on: 02/11/2021 11:00 AM Has been: Reschedule of Hearing For the following reason: Brought forward Hon. Jane Prince, Presiding</p>	
02/05/2021	<p>Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$100,000.00 Bond; \$10,000.00 Cash), returnable for 02/10/2021 11:00 AM Hearing to Review Status; mittimus issued.</p> <p>Court location of next event (if not your court): Further Orders: TO BE HELD BY ZOOM. REPLACE 2/11/21 MITT ID: 1610098509 PC: 933127</p> <p>Judge: Prince, Hon. Jane</p>	
02/10/2021	<p>Event Resulted: Hearing to Review Status scheduled on: 02/10/2021 11:00 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Cathleen E. Campbell, Presiding</p>	
02/10/2021	<p>Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$100,000.00 Bond; \$10,000.00 Cash), returnable for 03/15/2021 11:00 AM Hearing to Review Status; mittimus issued.</p> <p>Court location of next event (if not your court): Further Orders: DO NOT TRANSPORT ZOOM CONFERENCE MEETING ID 161 009 8509 PW 933127</p> <p>Judge: Campbell, Hon. Cathleen E.</p>	
03/15/2021	<p>Event Resulted: Hearing to Review Status scheduled on: 03/15/2021 11:00 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Matthew J Machera, Presiding</p>	
03/15/2021	<p>Defendant is ordered committed to Suffolk County Jail in lieu of having posted bail in the amount ordered: (\$100,000.00 Bond; \$10,000.00 Cash), returnable for 05/04/2021 11:00 AM Hearing to Review Status; mittimus issued.</p> <p>Court location of next event (if not your court): Further Orders: ***** NEXT COURT EVENT TO BE HELD IN ZOOM SESSION *****</p> <p>Meeting Number: 1610098509 Pass: 933127</p> <p>Judge: Machera, Hon. Matthew J</p>	

We are currently investigating intermittent issues retrieving images. Thank you for your patience as we attempt to address the issue.

1984BP00659 In the Matter of: Mushwaalakbar, Hakeem

- Case Type:
- Bail Petition
- Case Status:
- Open
- File Date
- 12/05/2019
- DCM Track:
-
- Initiating Action:
- Bail Petition
- Status Date:
- 12/05/2019
- Case Judge:
- Cannone, Hon. Beverly J
- Next Event:
-

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

Docket Information

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
12/05/2019	Petition for review of Bail filed. Originating Court: Chelsea District Court Case Number: 1914CR002414 Receiving Court: Suffolk County Criminal ;	1	
12/05/2019	Scheduled: Judge: Cannone, Hon. Beverly J Event: 58A Dangerousness Hearing Date: 12/05/2019 Time: 09:30 AM Result: Decision rendered		
12/05/2019	Decision rendered on matter taken under advisement: 58A Dangerousness Hearing scheduled on: 12/05/2019 09:30 AM Has been: Decision rendered Hon. Beverly J Cannone, Presiding Staff: Carol Mullen-Maguire, Assistant Clerk Magistrate James Pardi, Assistant Clerk Magistrate		
12/05/2019	Bail warnings read		
12/05/2019	Bail petition ALLOWED after hearing. Bail set at \$100,000.00 Surety Bond and \$10,000.00 Cash. COB: 1. GPS Prior to Release 2. Exclusion Zone 3. Curfew from 10:00 PM - 6:00 AM	2	Image
12/05/2019	List of exhibits (Filed) Judge: Cannone, Hon. Beverly J	3	Image
12/05/2019	Findings and Order on Motion for Detention pursuant to G.L. c. 276 § 58A. Judge: Cannone, Hon. Beverly J	4	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
12/05/2019	Docket Note: Defendant brought into court. Hearing Re: 58A Dangerousness held. - After hearing, Court REVOKES all prior orders of bail B. Cannone, J - J. Pardi, ACM - B. LeBlanc, ADA - J. Gallagher, Atty - FTR/Court Monitor: C. O'Niell (12:48 PM)		
12/09/2019	Defendant 's Motion and Memorandum of Law To Reconsider Imposition of Cash Bail Amount as a Condition of Release, filed and Denied, Cannone, J. Copy give in hand to Atty J. Gallagher and mailed to ADA LeBlanc	5	Image
11/05/2020	Defendant 's Motion and Memorandum of Law to Reconsider Cash Bail Amount as a Condition of Release Based on SJC-12926-Non-Presumptive Release with Affidavit. Filed (Notice sent to Cannone,J with copy of motion and docket sheets).	6	Image
11/23/2020	Endorsement on Defendant 's Motion and Memorandum of Law to Reconsider Cash Bail Amount as a Condition of Release Based on SJC-12926-Non-Presumptive Release, (#6.0): Other action taken "Commonwealth to respond to this motion within fourteen days" Copy to J. Gallagher, Attorney and K. Hogan, ADA (Chelsea, MA), L.Lamattina, ADA		Image
11/23/2020	The following form was generated: A Clerk's Notice was generated and sent to: Petitioner, Attorney: Jessica Catherine Gallagher, Esq. Committee for Public Counsel Services 44 Bromfield St, Boston, MA 02108 Kelly Hogan, ADA Chelsea MA L.Lamattina, ADA J. Gallagher, Attorney		
12/03/2020	General correspondence regarding Affidavit of Counsel Regarding COVID-19 Outbreak at Nashua Street Jail, with email correspondence (Affidavit emailed to Cannon, J. on 12/03/2020).	7	Image
12/08/2020	Endorsement on Motion and Memorandum of law to reconsider cash bail amount as a condition of release based on SJC-12926- Non-Presumptive release., (#6.0): The Defendant is not entitled to a reconsideration of bail before this court. For purposes of appellate review if I were to reconsider bail the petition would be denied. I find that after reviewing the pleadings, the bail that was set \$10,000 with conditions, is appropriate. Cannone, J. Judge: Cannone, Hon. Beverly J		
12/09/2020	The following form was generated: A Clerk's Notice was generated and sent to: Petitioner, Attorney: Silvia Y Guzman, Esq. Law Office of Silvia Y. Guzman 93 Chelsea St, Boston, MA 02128 Petitioner, Attorney: Jessica Catherine Gallagher, Esq. Committee for Public Counsel Services 44 Bromfield St, Boston, MA 02108		
12/11/2020	Defendant 's Submission of Affidavit of counsel in response to the Commonwealth's opposition filed (Motion with notice and docket sheets emailed to Cannone, J.)	8	Image
12/30/2020	General correspondence regarding - Notice of Docket Entry received from the SJC: ORDER: as on file. (Kafker, J.)	9	Image

We are currently investigating intermittent issues retrieving images. Thank you for your patience as we attempt to address the issue.

APPEALS COURT

Single Justice
Case DocketCOMMONWEALTH vs. HAKEEM MUSHWAALAKBAR
THIS CASE CONTAINS IMPOUNDED MATERIAL OR PID
2020-J-0567

CASE HEADER

Case Status	Disposed: Case Closed
Status Date	03/15/2021
Nature	Transferred c 211, s 3
Entry Date	12/29/2020
Pet Role Below	Defendant
Single Justice	Hanlon, J.
Brief Status	
Brief Due	
Case Type	Criminal
Lower Ct Number	
Lower Court	Suffolk Superior Court
Lower Court Judge	Beverly J. Cannone, J.

INVOLVED PARTY

Commonwealth
Plaintiff/RespondentHakeem Mushwaalakbar
Defendant/Petitioner

ATTORNEY APPEARANCE

[Cailin M. Campbell, Assistant District Attorney](#)
[Catherine L. Semel, Esquire](#)
[Marina Moriarty, Assistant District Attorney](#)
[Benjamin Shorey, Assistant District Attorney](#)
[Jessica Gallagher, Esquire](#)
[Christina Rose Kenney, Esquire](#)
[Patrick Levin, Esquire](#)

DOCKET ENTRIES

Entry Date	Paper	Entry Text
12/29/2020		Superintendence c. 211, s. 3 transfer from the Supreme Judicial Court.
12/29/2020	#1	Emergency Petition for Relief Pursuant to G. L. c. 211, § 3, with Attachments 1-12, filed for Hakeem Mushwaalakbar by Atty. Jessica Gallagher.
12/29/2020		Attachment 5: Medical Records are IMPOUNDED pursuant to Mass. G.L. c. 111, sec. 70E(b): Medical Records.
12/29/2020		Attachment 12: CORI / MA Criminal History (BOP) is IMPOUNDED pursuant to Mass. Gen. Law. c. 276, § 100.
12/29/2020	#2	Certificate of Service for Paper #'s 1-3, filed for Hakeem Mushwaalakbar by Atty. Jessica Gallagher.
12/29/2020	#3	Copy of Docket report , received from Suffolk Superior Court.
12/29/2020	#4	Copy of Docket report, received from Chelsea District, SU.
12/29/2020	#5	Copy of Docket report , received from Lynn District, ES.
12/29/2020	#6	Copy of Order of transfer, received from SJC (Kafker, J.)
01/04/2021	#7	Order: A response is requested from the Commonwealth in both the Lynn District Court case and the Suffolk Superior Court case on or before 1/8/2020. (Hanlon, J.). Notice
01/05/2021	#8	Motion to enlarge filed for Commonwealth by Attorney Marina Moriarty.
01/06/2021	#9	Order RE #8: Allowed to 1/15/2021. (Hanlon, J.). Notice
01/08/2021	#10	Response to Paper #1 filed for Commonwealth by Attorney Benjamin Shorey.
01/11/2021		RE#10: A response from the defendant is requested and due on or before 01/15/2021. (Hanlon, J.). *Notice.
01/14/2021	#11	Response filed for Hakeem Mushwaalakbar by Attorney Jessica Catherine Gallagher.

01/14/2021	#12	Notice of appearance filed for Commonwealth by Attorney Benjamin Shorey.
01/15/2021	#13	Response to paper #1 filed for Commonwealth by Attorney Marina Moriarty.
02/22/2021		ORDER: Each party is requested to file a status report on or before 2/24/21 that details the current state of defendant's bail/custody in the parallel Lynn and Chelsea court cases. (Hanlon, J.) *Notice
02/23/2021	#14	Status report filed for Hakeem Mushwaalakbar by Attorney Christina Rose Kenney.
02/24/2021	#15	Status report filed for Commonwealth by Attorney Marina Moriarty.
02/24/2021	#16	Status report filed for Commonwealth by Attorney Benjamin Shorey.
03/10/2021	#17	Status report filed for Hakeem Mushwaalakbar by Attorney Jessica Catherine Gallagher.

03/15/2021 #18

MEMORANDUM AND ORDER: This matter came before the Court on the defendant/petitioner, Hakeem Mushwaalakbar's, petition, pursuant to G. L. c. 211, § 3, which the Supreme Judicial Court referred to the Single Justice of the Appeals Court, in accordance with the Supreme Judicial Court's June 3, 2020 "Standing Order regarding Transfer of Certain Single Justice Matters during the COVID-19 Pandemic." At issue are orders from the Lynn District Court detaining the defendant pursuant to G. L. c. 276, § 58A and from the Suffolk Superior Court holding the defendant on \$10,000 cash bail. The defendant requests that the orders be vacated and that he be released from custody. He states that, if released, he can live with his grandmother in Everett and he will agree to be confined to her home. After careful review, I see no abuse of discretion or other error of law in either the bail or the detention order, and I therefore deny all of the relief the defendant requests.

Background. The Commonwealth alleges that, on two separate occasions, the defendant assaulted and strangled his ex-girlfriend, the alleged victim. The first incident occurred on September 30, 2019. Police officers were dispatched to 7 Essex Street in Lynn where they found firefighters evaluating the victim, who was crying; they heard her say to someone "he just beat me up." She then told the officers that the defendant "beat the shit out of [her]," punched her repeatedly in the head, and "choked" her before leaving the building. She was transported for medical attention and a warrant issued for the defendant's arrest.

The second incident occurred on the evening and early morning hours of October 23-24, 2019. That evening, the defendant and victim were at a friend's house in Revere. While they were there, there was a confrontation and the defendant bit the victim on her arm and strangled her. He then left the house and the victim followed him in her car, eventually convincing him to get into the car with her. While the victim was driving with the defendant, he allegedly grabbed the steering wheel from her, causing her to crash into a concrete barrier. The victim was not injured in the crash, but the defendant was. He was taken to the hospital and discharged a few hours later.

The defendant has medical conditions that he claims put him at an increased risk of contracting COVID-19 while he is detained. First, he has asthma. Second, he broke his knee cap while playing basketball on July 20, 2020 and now contends that he cannot receive the surgery and physical therapy he needs while he is at the Nashua Street Jail.

I note that the defendant's CARI (Court Activity Record Information) sheet shows a two page record with one conviction and two continuances without a finding (CWOs) for assault and battery on a household member. There are also three restraining orders pursuant to G. L. c. 209A, with two different plaintiffs, one of whom is the victim in this case.

Procedural History. On October 24, 2019, in the Chelsea District Court, the defendant was charged with Assault and Battery on a Family or Household Member, subsequent offense, in violation of G. L. c. 265, § 13M(b); Assault with Intent to Murder, in violation of G. L. c. 265, § 15(1); Assault with a Dangerous Weapon, in violation of G. L. c. 265, § 15; and Strangulation or Suffocation, in violation of G. L. c. 265, § 15D(b). The Commonwealth moved for a dangerousness hearing pursuant to G. L. c. 276, § 58A and the defendant was held without bail pending the hearing. On November 7, 2019, a judge of the Chelsea District Court (Machera, J.) found that the defendant posed a danger and detained him. The judge's findings referred to the defendant's open warrant for strangulation in Lynn. The following day, the defendant appealed the finding of dangerousness to the Suffolk Superior Court pursuant to G. L. c. 276, § 58A(7). On December 5, 2019, a judge in that court (Cannone, J.) agreed that the defendant was dangerous, but found that he could be released safely on conditions that included an order to stay away from the alleged victim, with a curfew from 10 P.M. to 6 A.M., a GPS monitor, and a \$10,000 cash bail. The defendant has not been able to post the \$10,000 bail.

On December 11, 2019, in the Lynn District Court, the defendant was charged with Assault and Battery on a Family Member, subsequent offense, in violation of G. L. c. 265, § 13M(b), and Strangulation, in violation of G. L. c. 265, § 15D(b). On December 16, 2019, the judge (Nestor, J.) found the defendant to be dangerous under G. L. c. 276, § 58A and held him without bail. Since the defendant could not post the \$10,000 bail in Suffolk County, he did not appeal the dangerousness finding, intending instead, he represents, to seek a speedy trial in both matters.

In April 2020, the defendant requested a release due to medical issues in both cases, but his requests were denied. He filed a petition concerning those denials in the Supreme Judicial Court for Suffolk County pursuant to G. L. c. 211, § 3 and that petition was also denied. On November 3, 2020, the defendant filed a "Renewed Motion for Release" pursuant to Committee for Pub. Counsel Servs. v. Chief Justice of the Trial Courts, 484 Mass. 431 (2020) (CPCS), in the Lynn District Court. That motion was denied (Nestor, J.) without a hearing on December 8, 2020. On November 5, 2020, the defendant filed a "Motion and Memorandum of Law to Reconsider Cash Bail Amount as a Condition of Release" pursuant to CPCS in the Suffolk Superior Court; he requested that his bail be reduced to \$2,000. On December 8, 2020, the Superior Court judge (Cannone, J.) denied the defendant's motion without a hearing, stating, "The Defendant is not entitled to a reconsideration of bail before this court. For purposes of appellate review if I were to reconsider bail the petition would be denied." These two denials are now the subject of the present matter.

Discussion. The single justice normally reviews a request for reconsideration of bail for abuse of discretion or clear error of law. *Comness v. Commonwealth*, 369 Mass. 368, 374 (1975).

Chelsea (Suffolk) Matter. The defendant is still being held in the Nashua Street Jail on the \$10,000 cash bail order from the Suffolk Superior Court. In his motion filed in that court, the defendant cites as a changed circumstance his ability to post \$2,000 cash bail. According to the Commonwealth's reply filed in this court for that case, the Commonwealth agrees that the Defendant's bail should be reduced to \$2,000 based on "the defendant's extended detention, the likely sentence [he] faces if convicted, and the ongoing COVID-19 pandemic." Further, the Commonwealth indicates it has offered to resolve the case through a plea deal with a sentence of two and one half years committed, nine months to be served, and the balance to be suspended with (unspecified) probation conditions. As the defendant has been in custody since October 2019, he would be eligible for immediate release under this plea offer.

Lynn Matter. As a threshold matter, the Commonwealth argues that the defendant is not entitled to single justice review of his dangerousness finding in the Lynn District Court because he did not first seek Superior Court review pursuant to G. L. c. 276, § 58A(7). However, the Commonwealth is mistaken. The Supreme Judicial Court Order OE-144 Regarding Transfer of Certain Single Justice Matters During the COVID-19 Pandemic (effective June 8, 2020) paragraph 3, specifically provides,

"Any person aggrieved by the denial of a District Court, Boston Municipal Court, or Juvenile Court judge to admit him or her to bail on personal recognizance without surety, pursuant to G. L. c. 276, § 58, will continue to be free to exercise his or her statutory right to petition the Superior Court for review of the order, in accordance with G. L. c. 276, § 58, seventh and eighth pars., but will not be required to do so before seeking review of the District Court, Boston Municipal Court, or Juvenile Court order in this court. Until further order of this court, the single justices of this court, and the single justices of the Appeals Court on cases transferred to them, will review such orders of the District Court, Boston Municipal Court, and Juvenile Court even when a defendant does not first seek review in the Superior Court." (emphasis supplied)

The defendant argues that it was an abuse of discretion to find that the defendant's release, even with his proposed conditions in place, would result in an unreasonable danger to the victim. The judge considered the nature of the alleged crimes, the victim's photographed injuries, the defendant's prior convictions for domestic violence, and the three restraining orders against him. Despite the defendant's contention, the fact that the Suffolk Superior Court found that the defendant could safely be released on bail[2] while the Lynn District Court found him dangerous does not necessarily evince an abuse of discretion. To the contrary, that two separate judges arrived at different conclusions after independently reviewing the relevant factors arguably demonstrates that both options were reasonable. In any event, I see no abuse of discretion.

The defendant next argues that the motion judge failed to consider that the defendant's asthma increases his risk of contracting COVID-19 while detained. While the judge (Nestor, J.) denied the defendant's November 3, 2020 "Renewed Motion for Release" without a hearing or decision, the court did consider the defendant's asthma in denying his April 2020 "motion for emergency release due to COVID19 concerns" noting that "D asthma (exercise induced) outweighed by danger to V." This is the only indication in the record before me regarding the severity of the defendant's asthma.

I also have reviewed the Special Master's Report issued pursuant to CPCS, supra at p. 435, for the week ending March 11, 2021. Specifically, at the Nashua Street Jail, there are no active COVID-19 case among the inmates and only one among the correctional officers or other staff members. However, I also have in mind the teaching of *Commonwealth v. Nash*, 486 Mass. 394, 409 (2020) that, "[e]veryone in a prison setting is at increased risk due to the difficulty in maintaining physical distance from others and in spending time outdoors, practices which have met with some success in civilian environments. Recognizing the constitutional limitations on our authority, we must take such steps as are open to us to reduce the number of incarcerated individuals, and to protect those who remain incarcerated from the dangers of COVID-19, while at the same time protecting the safety of the public, the families of those who are released, and the individuals themselves."

Nonetheless, in the case before me, after careful review, I am persuaded that the security considerations, that is, "the potential danger to [another] person or to the community and the likelihood of further criminal acts during the pendency of the [case]" *Id.* at 405, outweigh the Nash court's general admonition to reduce the numbers of incarcerated individuals during this pandemic.

Finally, the defendant argues that his right to due process has been violated by his indefinite pretrial detention.[3] In *Commonwealth v. Lougee*, 485 Mass. 70, 77-78 (2020), the court explained that it had issued emergency orders regarding the COVID-19 pandemic to continue all pending trials. Subsequently, the court issued Standing Order OE-144, effective March 1, 2021, where the court ordered that "except as to those cases scheduled for a jury trial during Phase 2, it continues to be necessary and appropriate to hereby order that no other jury trials be conducted in Massachusetts state courts at this time." Since the defendant did not have a jury trial scheduled during Phase 2, it cannot be said when he will be brought to trial. However, at least as of the time that the court issued its opinion in *Lougee*, the Supreme Judicial Court noted that, "we have yet to approach the length of delay [in multiple cases involving delay due to COVID-19] that would trigger a due process analysis." *Id.* at 84. In my view, it will be for the Supreme Judicial Court to say when, and if, we reach that point during the present COVID-19 pandemic emergency. Accordingly, at least at this time, I conclude that the defendant's continued detention, which began on October 24, 2019 does not run afoul of statutory or due

process limitations.

After careful review, including all of the documents submitted by the petitioner and the Commonwealth, I conclude that neither the Suffolk Superior Court bail order nor the Lynn District Court dangerousness determination detaining the defendant until his trial constitutes an error of law or abuse of discretion. So ordered. (Hanlon, J.). Notice/attest/Cannone, J.

Footenotes:

[1] This count was dismissed at the Commonwealth's request on December 3, 2019.

[2] Further, the judge in the Suffolk Superior Court (Cannone, J.) did find the defendant to be dangerous but concluded that he could be released safely on certain conditions.

[3] However, he "does not contend that his constitutional right to a speedy trial has been violated."

03/19/2021 #19 Notice of appeal filed for Hakeem Mushwaalakbar by Attorney Jessica Catherine Gallagher.

03/19/2021 Copy of paper #19 to counsel.

03/19/2021 #20 Notice of Assembly of the Record to counsel.

As of 03/19/2021 1:15pm

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

2020-J-567

COMMONWEALTH

vs.

HAKEEM MUSHWAALAKBAR

MEMORANDUM AND ORDER

This matter came before the Court on the defendant/petitioner, Hakeem Mushwaalakbar's, petition, pursuant to G. L. c. 211, § 3, which the Supreme Judicial Court referred to the Single Justice of the Appeals Court, in accordance with the Supreme Judicial Court's June 3, 2020 "Standing Order regarding Transfer of Certain Single Justice Matters during the COVID-19 Pandemic." At issue are orders from the Lynn District Court detaining the defendant pursuant to G. L. c. 276, § 58A and from the Suffolk Superior Court holding the defendant on \$10,000 cash bail. The defendant requests that the orders be vacated and that he be released from custody. He states that, if released, he can live with his grandmother in Everett and he will agree to be confined to her home. After careful review, I see no abuse of discretion or other error of law in either the bail or the detention order, and I therefore deny all of the relief the defendant requests.

Background. The Commonwealth alleges that, on two separate occasions, the defendant assaulted and strangled his ex-girlfriend, the alleged victim. The first incident occurred on September 30, 2019. Police officers were dispatched to 7 Essex Street in Lynn where they found firefighters evaluating the victim, who was crying; they heard her say to someone "he just beat me up." She then told the officers that the defendant "beat the shit out of [her]," punched her repeatedly in the head, and "choked" her before leaving the building. She was transported for medical attention and a warrant issued for the defendant's arrest.

The second incident occurred on the evening and early morning hours of October 23-24, 2019. That evening, the defendant and victim were at a friend's house in Revere. While they were there, there was a confrontation and the defendant bit the victim on her arm and strangled her. He then left the house and the victim followed him in her car, eventually convincing him to get into the car with her. While the victim was driving with the defendant, he allegedly grabbed the steering wheel from her, causing her to crash into a concrete barrier. The victim was not injured in the crash, but the defendant was. He was taken to the hospital and discharged a few hours later.

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detained. First, he has asthma. Second, he broke his knee cap while playing basketball on July 20, 2020 and now contends that he cannot receive the surgery and physical therapy he needs while he is at the Nashua Street Jail.

I note that the defendant's CARI (Court Activity Record Information) sheet shows a two page record with one conviction and two continuances without a finding (CWOs) for assault and battery on a household member. There are also three restraining orders pursuant to G. L. c. 209A, with two different plaintiffs, one of whom is the victim in this case.

Procedural History. On October 24, 2019, in the Chelsea District Court, the defendant was charged with Assault and Battery on a Family or Household Member, subsequent offense, in violation of G. L. c. 265, § 13M(b); Assault with Intent to Murder, in violation of G. L. c. 265, § 15¹; Assault with a Dangerous Weapon, in violation of G. L. c. 265, § 15; and Strangulation or Suffocation, in violation of G. L. c. 265, § 15D(b). The Commonwealth moved for a dangerousness hearing pursuant to G. L. c. 276, § 58A and the defendant was held without bail pending the hearing. On November 7, 2019, a judge of the Chelsea District Court (Machera, J.) found that the defendant posed a danger and detained him. The judge's findings

¹ This count was dismissed at the Commonwealth's request on December 3, 2019.

referred to the defendant's open warrant for strangulation in Lynn. The following day, the defendant appealed the finding of dangerousness to the Suffolk Superior Court pursuant to G. L. c. 276, § 58A(7). On December 5, 2019, a judge in that court (Cannone, J.) agreed that the defendant was dangerous, but found that he could be released safely on conditions that included an order to stay away from the alleged victim, with a curfew from 10 P.M. to 6 A.M., a GPS monitor, and a \$10,000 cash bail. The defendant has not been able to post the \$10,000 bail.

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the Defendant's bail should be reduced to \$2,000 based on "the defendant's extended detention, the likely sentence [he] faces if convicted, and the ongoing COVID-19 pandemic." Further, the Commonwealth indicates it has offered to resolve the case through a plea deal with a sentence of two and one half years committed, nine months to be served, and the balance to be suspended with (unspecified) probation conditions. As the defendant has been in custody since October 2019, he would be eligible for immediate release under this plea offer.

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"Any person aggrieved by the denial of a District Court, Boston Municipal Court, or Juvenile Court judge to admit him or her to bail on personal recognizance without surety, pursuant to G. L. c. 276, § 58, will continue to be free to exercise his or her statutory right to petition the Superior Court for review of the order, in accordance with G. L. c. 276, § 58, seventh and eighth pars., but will not be required to do so before seeking review of the District Court, Boston Municipal Court, or Juvenile Court order in this court. Until further order of this court, the single justices of this court, and the single justices of the Appeals Court on cases transferred to them, will review

such orders of the District Court, Boston Municipal Court, and Juvenile Court even when a defendant does not first seek review in the Superior Court." (emphasis supplied)

The defendant argues that it was an abuse of discretion to find that the defendant's release, even with his proposed conditions in place, would result in an unreasonable danger to the victim. The judge considered the nature of the alleged crimes, the victim's photographed injuries, the defendant's prior convictions for domestic violence, and the three restraining orders against him. Despite the defendant's contention, the fact that the Suffolk Superior Court found that the defendant could safely be released on bail² while the Lynn District Court found him dangerous does not necessarily evince an abuse of discretion. To the contrary, that two separate judges arrived at different conclusions after independently reviewing the relevant factors arguably demonstrates that both options were reasonable. In any event, I see no abuse of discretion.

The defendant next argues that the motion judge failed to consider that the defendant's asthma increases his risk of contracting COVID-19 while detained. While the judge (Nestor, J.) denied the defendant's November 3, 2020 "Renewed Motion for

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Release" without a hearing or decision, the court did consider the defendant's asthma in denying his April 2020 "motion for emergency release due to COVID19 concerns" noting that "D asthma (exercise induced) outweighed by danger to V." This is the only indication in the record before me regarding the severity of the defendant's asthma.

I also have reviewed the Special Master's Report issued pursuant to CPCS, supra at p. 435, for the week ending March 11, 2021. Specifically, at the Nashua Street Jail, there are no active COVID-19 case among the inmates and only one among the correctional officers or other staff members. However, I also have in mind the teaching of Commonwealth v. Nash, 486 Mass. 394, 409 (2020) that, "[e]veryone in a prison setting is at increased risk due to the difficulty in maintaining physical distance from others and in spending time outdoors, practices which have met with some success in civilian environments. Recognizing the constitutional limitations on our authority, we must take such steps as are open to us to reduce the number of incarcerated individuals, and to protect those who remain incarcerated from the dangers of COVID-19, while at the same time protecting the safety of the public, the families of those who are released, and the individuals themselves."

Nonetheless, in the case before me, after careful review, I am persuaded that the security considerations, that is, "the

potential danger to [another] person or to the community and the likelihood of further criminal acts during the pendency of the [case]" Id. at 405, outweigh the Nash court's general admonition to reduce the numbers of incarcerated individuals during this pandemic.

Finally, the defendant argues that his right to due process has been violated by his indefinite pretrial detention.³ In Commonwealth v. Lougee, 485 Mass. 70, 77-78 (2020), the court explained that it had issued emergency orders regarding the COVID-19 pandemic to continue all pending trials. Subsequently, the court issued Standing Order OE-144, effective March 1, 2021, where the court ordered that "except as to those cases scheduled for a jury trial during Phase 2, it continues to be necessary and appropriate to hereby order that no other jury trials be conducted in Massachusetts state courts at this time." Since the defendant did not have a jury trial scheduled during Phase 2, it cannot be said when he will be brought to trial. However, at least as of the time that the court issued its opinion in Lougee, the Supreme Judicial Court noted that, "we have yet to approach the length of delay [in multiple cases involving delay due to COVID-19] that would trigger a due process analysis." Id. at 84. In my view, it will be for the Supreme Judicial

³ However, he "does not contend that his constitutional right to a speedy trial has been violated."

Court to say when, and if, we reach that point during the present COVID-19 pandemic emergency. Accordingly, at least at this time, I conclude that the defendant's continued detention, which began on October 24, 2019 does not run afoul of statutory or due process limitations.

After careful review, including all of the documents submitted by the petitioner and the Commonwealth, I conclude that neither the Suffolk Superior Court bail order nor the Lynn District Court dangerousness determination detaining the defendant until his trial constitutes an error of law or abuse of discretion.

So ordered.

By the Court (Hanlon, J.),



Assistant Clerk

Entered: March 15, 2021

Certificate of Compliance

I hereby certify that this application complies with rules 11 and 20 of the Massachusetts Rules of Appellate Procedure. The application is set in 14-point Athelas and the argument section contains 717 words, as determined through use of the “Word Count” feature in Microsoft Word 2010.

/s/ Patrick Levin

Patrick Levin

Certificate of Service

I hereby certify that I have today served Hakeem Mush-waalakbar’s Application for Direct Appellate Review on the Commonwealth by directing copies through the electronic filing service provider to:

Benjamin Shorey
Suffolk County DA’s Office
One Bulfinch Place
Boston, MA 02114
(617) 619-4126
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/s/ Patrick Levin

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March 23, 2021