SJC-13839

KELSEY FITZSIMMONS vs. COMMONWEALTH.

December 22, 2025.

Pretrial Detention. Assault by Means of a Dangerous Weapon. Supreme Judicial Court, Superintendence of inferior courts.

The petitioner, Kelsey Fitzsimmons, appeals from the judgment of a single justice of this court denying her petition for extraordinary relief pursuant to G. L. c. 211, § 3. We affirm.

Background. Fitzsimmons stands indicted in the Superior Court in Essex County on one count of assault by means of a dangerous weapon, in violation of G. L. c. 265, § 15B (b), in connection with an incident in which the Commonwealth alleges that on June 30, 2025, Fitzsimmons, who is a North Andover police officer, was served by police with an abuse prevention order, and after deceiving officers about the location of firearms in her home, she drew a firearm, pointed it at one of the officers, and pulled the trigger. When the firearm did not discharge, Fitzsimmons allegedly attempted to "rack[] a round of ammunition," during which time the officer twice yelled, "Kelsey, don't do it," or other words effectively instructing Fitzsimmons to drop the firearm. The officer then shot Fitzsimmons in the chest.

Fitzsimmons was originally charged in the District Court with one count of armed assault with intent to murder, in violation of G. L. c. 265, § 18 (b), and two counts of assault by means of a dangerous weapon, in violation of G. L. c. 265, § 15B (b). Upon a motion of the Commonwealth, she was held on dangerousness grounds pursuant to G. L. c. 276, § 58A. On a

petition for review, a Superior Court judge likewise found Fitzsimmons dangerous and ordered her detained.

On August 25, 2025, Fitzsimmons was indicted in the Superior Court. The grand jury declined to indict her on a charge of armed assault with intent to murder, and instead, Fitzsimmons was indicted on a single charge of assault by means of a dangerous weapon, in violation of G. L. c. 265, § 15B (b). A conviction of that charge carries a State prison sentence of not more than five years. See G. L. c. 265, § 15B (b).

As it had in the District Court, the Commonwealth moved for detention on the basis of dangerousness pursuant to G. L. c. 276, § 58A. In support of its request, the Commonwealth submitted a number of documents, including a police report detailing the June 30 shooting incident, as described supra, as well as an affidavit and witness statements concerning the incident and the alleged events leading up to it. In one such statement, Fitzsimmons's former fiancé alleged that at a party on June 28, 2025, Fitzsimmons became intoxicated and violent, striking him multiple times and making suicidal statements and threatening statements concerning the couple's young child, all of which prompted the former fiancé to seek an abuse prevention order. He also allegedly warned police that when they served the abuse prevention order on Fitzsimmons, she "would attempt to kill the baby, any officers involved, and then herself." Another witness statement indicated that Fitzsimmons had "struggled with mental health issues, aggression, and alcohol abuse." The Commonwealth also submitted the affidavit of Fitzsimmons's former fiancé in support of the abuse prevention order, which echoed the above-described representations and further represented that Fitzsimmons had been "sectioned"[1] in the recent past. Finally, the Commonwealth submitted an out-of-State criminal history record indicating that Fitzsimmons had been convicted in 2019 of a misdemeanor offense described in the document as "intoxicated and disruptive."

In contesting the Commonwealth's motion, Fitzsimmons relied on a letter from a doctor affiliated with the hospital where she had received treatment after the June 30 incident. The letter indicated that while she was initially held pursuant to G. L. c. 123, § 12, she no longer met the criteria for involuntary hospitalization and was appropriate for outpatient care. See

[1] The record indicates that this statement referred to an involuntary hospitalization for mental health treatment. See G. L. c. 123, § 12.

G. L. c. 123, § 12 (authorizing restraint and hospitalization of person for limited period where "failure to hospitalize such person would create a likelihood of serious harm by reason of mental illness"). Additionally, Fitzsimmons relied on the report of an expert psychologist, who concluded that Fitzsimmons posed no credible risk of harm to herself or others and that the risk of harm from reuniting her with her child was all but nonexistent.

After a hearing on August 28, the hearing judge determined Fitzsimmons to be dangerous, concluding that her release on personal recognizance would not reasonably assure her appearance at future court dates or would endanger the safety of another person or the community. Nevertheless, pursuant to G. L. c. 276, § 58A (2), the hearing judge found that Fitzsimmons could be released subject to conditions reasonably assuring community safety, including, as relevant here, the following: (1) Fitzsimmons was to remain in the custody of her mother and stepfather, residing at their home; (2) Fitzsimmons was to remain on "24/7" house arrest except for medical, court, or attorney visits, providing forty-eight hours' notice to the Department of Probation in advance of any such visit; (3) Fitzsimmons's location was to be monitored by a global positioning system (GPS) device, and she was not to be released until GPS monitoring was in place; (4) Fitzsimmons was to abstain from alcohol and be subject to breath testing by Secure Continuous Remote Alcohol Monitor (SCRAM); and (5) Fitzsimmons was to follow a treatment plan, as provided by two specifically named doctors. The hearing judge concluded that these were the least restrictive conditions necessary to assure Fitzsimmons's appearance and protect others. G. L. c. 276, § 58A (2), (4). No cash bail was imposed.

For reasons not relevant here, the order was stayed until September 8, when Fitzsimmons was released subject to the above conditions. At a hearing held that day, Fitzsimmons filed a document styled as a "medical notice," containing representations from counsel about Fitzsimmons's health issues, including that she had trouble breathing as a result of her injuries. At the conclusion of that hearing, Fitzsimmons requested permission to remove the required GPS device for a surgery the following day but failed to submit any evidence establishing that she could not wear the device during surgery. The request was denied.

On September 10, Fitzsimmons filed a motion entitled "Defendant's Emergency Motion for Immediate Relief from SCRAM

Order," in which she represented that due to her injuries, it was "physically impossible" to comply with the SCRAM requirement, as performing the SCRAM tests caused her severe pain and dizziness. The motion attached affidavits to this effect from Fitzsimmons and her mother. It also attached an e-mail message from a probation officer, noting that when taking the practice SCRAM tests, Fitzsimmons appeared to be in pain and struggled to complete them.

A hearing was held the next day in front of the same judge to address Fitzsimmons's motion. See G. L. c. 276, § 58A (4), second par.[2] While Fitzsimmons's counsel described the request as "a simple adjustment of terms," the hearing judge disagreed, observing that "[o]ne of the reasons to ensure the safety of the community was for her to be alcohol free." The hearing judge expressed reservations at being asked to amend her order with "no medical evidence" to support the request. Moreover, the hearing judge said that the probation officer's e-mail message was "not evidence" because it was "hearsay" and, in any event, that she gave it "zero weight." Nevertheless, the court took testimony from the probation officer who authored the message, and without objection from the Commonwealth, he testified to the substance of the message, stating that when Fitzsimmons performed practice SCRAM tests, he observed her to be in pain. Fitzsimmons's counsel offered the message a second time, at which point the Commonwealth objected on the ground that the probation officer had already testified to its substance, and the hearing judge excluded it. Fitzsimmons's counsel also purported to rely on the previously submitted "medical notice" to establish that Fitzsimmons had difficulty breathing as a result of her injuries.

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[2] General Laws c. 276, § 58A (4), second par., provides, in relevant part:

> "The hearing [under this subsection] may be reopened by the judge, at any time before trial, or upon a motion of the commonwealth or the person detained if the judge finds that: (i) information exists that was not known at the time of the hearing or that there has been a change in circumstances and (ii) that such information or change in circumstances has a material bearing on the issue of whether there are conditions of release that will reasonably assure the safety of any other person or the community."

Fitzsimmons's counsel argued that it would amount to torture and cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution to insist that Fitzsimmons remain subject to SCRAM testing. He contended that alternatives for alcohol testing existed, and he suggested the appropriateness of urine testing, but he also acknowledged that it "might step on the Court's other order for house arrest" because Fitzsimmons "would have to go to a facility" for that testing. Although he asked the court to consider "any other alternatives," Fitzsimmons's counsel did not identify any others apart from the urine testing.

After a recess, the hearing judge concluded that the SCRAM testing condition "was necessary to ensure the safety of the community," and based on a review of the materials relied on by Fitzsimmons, including the testimony of the probation officer and counsel's representations, the hearing judge concluded that Fitzsimmons could no longer comply with that requirement. Consequently, the hearing judge vacated her prior order releasing Fitzsimmons pursuant to G. L. c. 276, § 58A (2), and ordered Fitzsimmons held without bail on dangerousness grounds pursuant to G. L. c. 276, § 58A (3). The hearing judge issued a written decision that same day in which she noted that Fitzsimmons's counsel "failed to present any specific viable alternatives."

Fitzsimmons moved for reconsideration, asking the hearing judge to reimpose the prior conditions of release with urine testing in place of SCRAM testing. This time, Fitzsimmons referred to a specific program whereby she purported that she could receive random urine testing at a location ten minutes from where she was residing. Her motion attached an e-mail message from the same probation officer, sent to Fitzsimmons's counsel on September 10, stating that "the only alternative to SCRAM testing is testing with" this vendor. The message noted that through this vendor's program, on a day when testing was required, Fitzsimmons would receive same-day notice that she needed to test, and she "would have to travel to one of the [vendor's] sites to submit to a test." Days after filing her motion for reconsideration, Fitzsimmons filed a supplemental exhibit, a letter from a doctor at the hospital where she had been admitted for treatment of her gunshot-related injuries. In the letter, the doctor wrote that Fitzsimmons's injuries, which included a gunshot wound to the chest and rib fractures, "can cause pain that may persist for several months" and "can also cause chronic pain that can be exacerbated by movement, such as deep breathing."

On September 16, the hearing judge denied the motion, declining to reopen the hearing pursuant to G. L. c. 276, § 58A (4), or otherwise reconsider her ruling. In her written decision, the hearing judge observed that the information submitted in support of the motion was known to Fitzsimmons at the time of the September 11 hearing, pointing to the fact that the attached e-mail message from the probation officer describing the urine testing program at issue was sent to Fitzsimmons's counsel the day before the September 11 hearing. Moreover, the hearing judge observed that, as the message described, the request to employ this particular urine testing program, which was the "only alternative," would require Fitzsimmons to travel to one of the vendor's sites for all tests, and the same-day notice provided through this program would preclude the forty-eight hours' notice to probation required for the limited exceptions to Fitzsimmons's home confinement. The written order stressed that the requested alternative would undermine "the importance of minimizing the number of times Fitzsimmons was allowed to leave the residence."

On October 2, 2025, Fitzsimmons petitioned a single justice of this court for extraordinary relief pursuant to G. L. c. 211, § 3. In her petition, as she had done below, Fitzsimmons contested the Commonwealth's version of events but admitted that she took out a firearm during the June 30 encounter with police and that she "raised [it] to the side of her head in a half-hearted attempt to inflict self-harm." The petition criticized as intemperate the behavior of the hearing judge at the September 11 hearing, and it asked for relief from the order detaining Fitzsimmons. Specifically, it asked that the order be vacated and that the single justice address bail de novo and release Fitzsimmons on personal recognizance with only the condition of a stay away order, issued not on dangerousness grounds pursuant to § 58A but instead pursuant to G. L. c. 276, §§ 57 and 87. The petition also requested that the hearing judge be recused from further proceedings in the Superior Court.

In support of the requested relief, Fitzsimmons argued to the single justice that the hearing judge erred in declining to employ an "available, common alternative method of alcohol testing," which was a less restrictive alternative to incarceration. The single justice denied the petition without a hearing, concluding that the hearing judge did not err or abuse her discretion. Fitzsimmons now appeals, raising the same arguments that she presented to the single justice and asserting

that the single justice was required to conduct a de novo review of the order returning Fitzsimmons to custody.

Discussion. "We review a single justice's denial of a petition under G. L. c. 211, § 3, for clear error of law or abuse of discretion," and "[w]e must also consider the propriety of the Superior Court judge's underlying bail order," including an order holding a defendant without bail pursuant to G. L. c. 276, § 58A (citation omitted). Campbell v. Commonwealth, 494 Mass. 750, 752-753 (2024). We begin by noting that the charge against Fitzsimmons, assault by means of a dangerous weapon, in violation of G. L. c. 265, § 15 (b), is a predicate offense for detention pursuant to G. L. c. 276, § 58A (1). See Cruz v. Commonwealth, 104 Mass. App. Ct. 549, 550 (2024).

Where the Commonwealth has properly moved pursuant to § 58A for pretrial detention on dangerousness grounds, a hearing judge may order pretrial detention only where he or she "finds by clear and convincing evidence that no conditions of release will reasonably assure the safety of any other person or the community." G. L. c. 276, § 58A (3). On the other hand, where a hearing judge determines that conditions of release "will reasonably assure the appearance of the person as required and the safety of any other person and the community," he or she "shall order" pretrial release subject to "the least restrictive further condition, or combination of conditions," that will do so. G. L. c. 276, § 58A (2).

Fitzsimmons contends that the hearing judge found pursuant to § 58A (2) that the community's safety reasonably could be assured through the imposition of certain conditions of release, and that, when presented with Fitzsimmons's request for urine testing in place of SCRAM testing, the hearing judge was required to make that substitution because it was a less restrictive alternative to incarceration that nevertheless reasonably would assure the safety of the community.

We conclude that the hearing judge did not abuse her discretion in denying the request and detaining Fitzsimmons. After the August 28 dangerousness hearing, the hearing judge appropriately imposed the conditions restricting Fitzsimmons's release, including the SCRAM requirement. The evidence presented at that hearing, described supra, justified those conditions. Although Fitzsimmons argues that alcohol did not play a role in the June 30 incident, the material submitted by the Commonwealth at the August 28 hearing indicated that she "struggled with . . . aggression . . . and alcohol abuse," that

she had been convicted of an offense apparently arising from intoxicated and disruptive behavior, and that she was recently alleged to have become violent when drinking alcohol. The hearing judge properly considered these materials when imposing conditions necessary to protect the safety of the community, conditions that included abstinence from alcohol monitored by SCRAM testing. Moreover, the hearing judge appropriately concluded that Fitzsimmons could no longer comply with the previously imposed condition of SCRAM testing. Fitzsimmons does not contest this finding and indeed has relied on her representations that compliance with SCRAM testing was effectively impossible for her due to her injuries. In sum, the hearing judge did not err or abuse her discretion in concluding that where Fitzsimmons could not comply with the least restrictive conditions necessary to ensure the safety of the community, Fitzsimmons should be detained pretrial for dangerousness. See G. L. c. 276, § 58A (2)-(3).[3]

We further conclude that the hearing judge did not abuse her discretion in denying Fitzsimmons's motion for reconsideration on the ground that the alternative to which Fitzsimmons pointed, that is, urine testing,[4] would not

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[3] Fitzsimmons also asserted error in the conduct of the September 11 hearing. She contested the exclusion from evidence of the e-mail message in which the probation officer described observing Fitzsimmons in pain during practice SCRAM tests, but the probation officer testified on this point without objection from the Commonwealth, and the hearing judge ultimately credited that testimony. The message was therefore cumulative of the testimony, and the hearing judge did not err in excluding it. See Abbott A. v. Commonwealth, 458 Mass. 24, 34 (2010) ("the best source of information" is "testimony of . . . persons who have personal knowledge" [citation omitted]). In addition, Fitzsimmons contested the hearing judge's finding in her September 11 order that Fitzsimmons did not submit medical evidence. Fitzsimmons asserts that the "medical notice," described supra, was medical evidence. But this document contained only representations from Fitzsimmons's attorneys, and in any event, the hearing judge concluded consistent with these representations that Fitzsimmons was unable to comply with SCRAM testing. In sum, Fitzsimmons represented that she could not comply with the requirement, and the hearing judge so found.

[4] Before the single justice, Fitzsimmons represented that there were "numerous alternative alcohol monitoring options available" but specified only two others apart from urine

reasonably have assured the safety of the community because it would have interfered with the condition of home confinement. Indeed, Fitzsimmons's counsel had acknowledged at the September 11 hearing that urine testing "might step on the Court's other order for house arrest," and Fitzsimmons's motion for reconsideration specified that the urine testing program she requested would require her to travel ten minutes from her house for any test. In denying Fitzsimmons's motion for reconsideration, the hearing judge properly concluded that community safety required "minimizing the number of times Fitzsimmons is excused from house arrest."

Fitzsimmons also argued that the hearing judge violated Title II of the Americans with Disabilities Act (Title II) in denying her request for alternative testing, which she classifies as a request for a reasonable accommodation. See 42 U.S.C. § 12132. But G. L. c. 276, § 58A (2), already requires the imposition of Fitzsimmons's requested relief, i.e., conditional release, wherever it can "reasonably" assure the defendant's appearance and the safety of the public. Fitzsimmons provides no citation for the proposition that where, as here, the hearing judge acted within her discretion in concluding that the requested alternative would not reasonably protect the public safety, Title II would nevertheless require its imposition. See Adjartey v. Central Div. of the Hous. Court Dep't, 481 Mass. 830, 849 (2019) (Americans with Disabilities Act "does not require the Judiciary to take any action that would fundamentally alter the nature of its . . . activities" [citation omitted]).

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testing: "transdermal SCRAM bracelets," which Fitzsimmons acknowledged are "not currently available in Massachusetts," and "in-person probation check-ins." Fitzsimmons did not propose these alternatives during the September 11 hearing, and her motion for reconsideration was based specifically on a request for urine testing through the program described supra. Moreover, Fitzsimmons did not provide the single justice with further detail regarding the latter of these two purported alternatives. In any event, Fitzsimmons's representations in this respect run counter to the e-mail message she submitted to the hearing judge and the single justice describing urine testing through the particular vendor at issue as the only available alternative. The single justice therefore did not abuse her discretion in denying relief on the basis of these purported alternatives because the record did not establish that they reasonably could assure the safety of the community.

In addition, Fitzsimmons asserted that her return to custody pursuant to the September 11 order was governed by G. L. c. 276, § 58B, rather than G. L. c. 276, § 58A. The single justice correctly rejected this argument, observing that the hearing judge was authorized by § 58A (4) to reconsider her order imposing the conditions of the release, which is what Fitzsimmons's motion had asked her to do, and indeed, the hearing judge's order holding Fitzsimmons without bail expressly stated that it was issued "pursuant to G. L. c. 276, § 58A."[5]

Conclusion. For all the foregoing reasons, we conclude that the single justice did not err or abuse her discretion in denying the requested relief pursuant to G. L. c. 211, § 3. Neither did the single justice err or abuse her discretion in declining to review the detention order de novo. See Vasquez v. Commonwealth, 481 Mass. 747, 751 n.4 (2019), citing Commesso v. Commonwealth, 369 Mass. 368, 373 (1975).[6]

Judgment affirmed.

The case was submitted on briefs.

Timothy J. Bradl & Martha Coakley for the petitioner.

Marina Moriarty, Assistant District Attorney, for the Commonwealth.

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[5] As noted supra, Fitzsimmons has also requested that the hearing judge be removed from her case, but Fitzsimmons did not move for the judge's recusal in the Superior Court, and she did not sufficiently develop a recusal argument with citations to legal authority before the single justice or before this court. See Commonwealth v. Mitchell, 496 Mass. 66, 79-80 (2025) (describing applicable standards pursuant to art. 29 of Massachusetts Declaration of Rights).

[6] We note, as the single justice also noted, that nothing prevents Fitzsimmons from requesting in the Superior Court that the matter of her pretrial detention for dangerousness be reopened if and when she can show that "information exists that was not known at the time of the hearing or that there has been a change in circumstances," and that "such information or change in circumstances has a material bearing on the issue of whether there are conditions of release that will reasonably assure the safety of any other person or the community." G. L. c. 276, § 58A (4), second par.