



Legal Update

Predicate Offenses for Dangerousness Hearings ***MGL c 276 §58A***

MGL c 276 §58A allows the Commonwealth to request at arraignment that a defendant be detained without bail because the defendant, if released, would pose a danger to another person or the community. The statute authorizes such a motion when the defendant is charged with a felony that has as an element of the offense the use, attempted use or threatened use of physical force or if the defendant is charged with certain crimes listed in the statute.

The court has recently decided two cases regarding the crimes for which the Commonwealth may file a motion for detention pursuant to this statute.

Vega v. Commonwealth (Supreme Judicial Court decision July 11, 2022)

This case involves two defendants who were charged with unlawful possession of a firearm in violation of MGL c 269 §10(a). The Commonwealth filed a motion pursuant to MGL c 276 §58A and requested that each of the defendants be held without bail.

MGL c 269 §10(a) is included in the list of offenses in §58A for which the Commonwealth may seek pretrial detention of a defendant. The defendants argued on appeal that the inclusion of §10(a) as a predicate offense violated their substantive due process rights.

The court found that, in order to satisfy substantive due process, a predicate offense must present a “menace of dangerousness.” The court concluded that unlicensed possession of a firearm is a dangerous menace. For this reason, it is not a violation of substantive due process rights to include MGL c 269 §10(a) in the list of offenses for which the Commonwealth may seek pretrial detention.

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

The court also made clear that not every individual charged with violating §10(a) should be held under the statute. While the charge itself allows the Commonwealth to request detention, detention is not automatic. Before the court can order detention, the court will hold a hearing during which the Commonwealth must present clear and convincing evidence of two things:

1. that the defendant is dangerous; and
2. that there are no conditions of release that would reasonably assure the safety of society.

“For all these reasons, we conclude that unlicensed firearm possession as described in G.L. c. 269, § 10(a), presents a menace of dangerousness and that its inclusion as a predicate offense is narrowly tailored to the Commonwealth’s legitimate and compelling interest in preventing extremely serious crime by arrestees.”

Commonwealth v. Escobar (Supreme Judicial Court decision August 12, 2022)

In this case the defendant was charged with various offenses after he ingested whiskey and prescription drugs, drove his vehicle, and collided with 12 motor vehicles and a pedestrian who suffered serious injuries and died. The Commonwealth requested that the defendant be detained pretrial pursuant to MGL c 276 §58A arguing that two of the charges, manslaughter and assault and battery by means of a dangerous weapon causing serious bodily injury, are eligible offenses under §58A.

It is undisputed that manslaughter and assault and battery by means of a dangerous weapon causing serious bodily injury are not on the list of eligible offenses enumerated in MGL c 276 §58A. The Commonwealth argued that these charges are covered by the “force clause” which allows the Commonwealth to request detention when a defendant is charged with “a felony offense that has as an element of the offense the use, attempted use or threatened use of physical force against the person of another.”

When looking at the force clause, the court takes a categorical approach which means the court will look at the elements of the offense and not the facts and circumstances of an individual case when determining whether a crime is a predicate offense.

The court determined that crimes that can be proven by reckless or wanton conduct do not fall within the force clause of MGL c 276 §58A.

“An offense is a predicate offense under the categorical approach if, and only if, the elements of the offense always fall within the ambit of the force clause.”

Because manslaughter and assault and battery by means of a dangerous weapon causing serious bodily injury can both be proven by reckless or wanton conduct, they do not qualify as a predicate offense. For this reason, the defendant could not be held under MGL c 276 §58A for these offenses.

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