

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

BRISTOL, ss.

SJC-12949

2020 SITTING

COMMONWEALTH

v.

CAMERON LOUGEE

ON APPEAL FROM A JUDGMENT OF
THE BRISTOL SUPERIOR COURT

COMMONWEALTH'S RECORD APPENDIX

Respectfully submitted,
Thomas M. Quinn, III
District Attorney

Shoshana E. Stern
Assistant District Attorney
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COMMONWEALTH'S RECORD APPENDIX

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1973CR00216 Commonwealth vs. Lougee, Cameron Edward

Case Type
Indictment
Case Status
Open
File Date
07/18/2019
DCM Track:
C - Most Complex
Initiating Action:
RAPE OF CHILD WITH FORCE c285 §22A
Status Date:
09/05/2019
Case Judge:
Next Event:
05/15/2020

All Information	Party	Charge	Event	Tickler	Docket	Disposition
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Party Information

Bristol County District Attorney
- Prosecutor

Alias

Party Attorney
Attorney
Thompson, Esq., Jennifer L.
Bar Code
658529
Address
Bristol County District Attorney's Office
218 South Main St
Fall River, MA 02721
Phone Number
(508)961-1865

[More Party Information](#)

Lougee, Cameron Edward
- Defendant

Alias

Party Attorney
Attorney
Werner, Esq., Joshua David
Bar Code
522990
Address
Law Office of Joshua D. Werner
43 Belmont St
South Easton, MA 02375
Phone Number
(508)238-4383

[More Party Information](#)

Party Charge Information

- Lougee, Cameron Edward
- - Defendant
- Charge # 1 :
265/22A/A-1 - Felony RAPE OF CHILD WITH FORCE c265 §22A
-
- Original Charge
- 265/22A/A-1 RAPE OF CHILD WITH FORCE c265 §22A (Felony)
- Indicted Charge
-
- Amended Charge
-
- Lougee, Cameron Edward
- - Defendant
- Charge # 2 :
265/23A/B-1 - Felony RAPE OF CHILD, AGGRAVATED, TEN YEAR AGE DIFFERENCE c265 §23A
-
- Original Charge
- 265/23A/B-1 RAPE OF CHILD, AGGRAVATED, TEN YEAR AGE DIFFERENCE c265 §23A (Felony)
- Indicted Charge
-
- Amended Charge
-
- Lougee, Cameron Edward
- - Defendant
- Charge # 3 :
265/13B/A-5 - Felony INDECENT A&B ON CHILD UNDER 14 c265 §13B
-
- Original Charge
- 265/13B/A-5 INDECENT A&B ON CHILD UNDER 14 c265 §13B (Felony)
- Indicted Charge
-
- Amended Charge
-

Events

Date	Session	Location	Type	Event Judge	Result
08/16/2019 09:00 AM	Criminal 2 (Fall River)	Courtroom 7	Arraignment	Green, Hon. Karen	Rescheduled
08/18/2019 09:00 AM	Criminal 2 (Fall River)	Courtroom 7	58A Dangerousness Hearing	Green, Hon. Karen	Rescheduled
09/05/2019 11:00 AM	Criminal 1 (Fall River)	Courtroom 8	Arraignment	Donatelle, Hon. Sharon	Held as Scheduled
09/05/2019 11:00 AM	Criminal 1 (Fall River)	Courtroom 8	58A Dangerousness Hearing	Donatelle, Hon. Sharon	Rescheduled
09/08/2019 02:00 PM	Criminal 1 (Fall River)	Courtroom 8	58A Dangerousness Hearing	McGuire, Jr., Hon. Thomas F	Rescheduled
09/09/2019 02:00 PM	Criminal 3 (Fall River)	Courtroom 6	58A Dangerousness Hearing	McGuire, Jr., Hon. Thomas F	Held - Under advisement
10/25/2019 11:00 AM	Criminal 1 (Fall River)	Courtroom 8	Pre-Trial Conference	McGuire, Jr., Hon. Thomas F	Held as Scheduled
01/09/2020 11:00 AM	Criminal 1 (Fall River)	Courtroom 8	Pre-Trial Hearing		Held as Scheduled
03/06/2020 09:00 AM	Criminal 4 (Fall River)	Courtroom 9	Final Pre-Trial Conference	Pasquale, Hon. Gregg J	Rescheduled
03/23/2020 09:00 AM	Criminal 4 (Fall River)	Courtroom 9	Jury Trial	Pasquale, Hon. Gregg J	Rescheduled

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
04/24/2020 09:00 AM	Criminal 4 (Fall River)	Courtroom 9	Final Pre-Trial Conference	Leighton, Hon. Joseph	Rescheduled-Covid-19 emergency
05/06/2020 02:00 PM	Criminal 1 (Fall River)	Courtroom 8	58A Dangerousness Hearing		Held - Under advisement
05/11/2020 09:00 AM	Criminal 4 (Fall River)	Courtroom 9	Jury Trial	Davis, Hon. Brian A	Canceled
05/15/2020 02:00 PM	Criminal 1 (Fall River)	Courtroom 8	Bail Hearing		
06/12/2020 09:00 AM	Criminal 4 (Fall River)	Courtroom 9	Final Pre-Trial Conference	Davis, Hon. Brian A	

Ticklers

<u>Tickler</u>	<u>Start Date</u>	<u>Due Date</u>	<u>Days Due</u>	<u>Completed Date</u>
Under Advisement	09/09/2019	10/09/2019	30	09/16/2019
Under Advisement	09/09/2019	10/09/2019	30	09/16/2019
Pre-Trial Hearing	09/05/2019	03/03/2020	180	
Final Pre-Trial Conference	02/06/2020	01/15/2021	344	
Case Disposition	09/05/2019	08/28/2020	358	
Under Advisement	05/06/2020	06/05/2020	30	05/06/2020

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>
07/18/2019	Indictment(s) returned	1
07/18/2019	Attorney appearance On this date 07/18/2019 Thompson, Esq., Jennifer L added for Bristol County District Attorney	
07/22/2019	Attorney appearance On this date Joshua David Werner, Esq. added for Defendant Cameron Edward Lougee	
07/22/2019	Scheduled: Judge: Green, Hon. Karen Event: 58A Dangerousness Hearing Date: 08/16/2019 Time: 09:00 AM Result: Rescheduled	
08/07/2019	Event Result: Arraignment scheduled on: 08/16/2019 09:00 AM Has been: Rescheduled For the following reason: Request of Defendant Comments: per email dated 8/2 Valerie A Brodeur, Presiding Staff. Mark A Ferreira, Assistant Clerk Magistrate Digital Recording Device Bris CR 2, Court Reporter	
08/07/2019	Event Result: 58A Dangerousness Hearing scheduled on: 08/16/2019 09:00 AM Has been: Rescheduled For the following reason: Request of Defendant Valerie A Brodeur, Presiding Staff. Mark A Ferreira, Assistant Clerk Magistrate Digital Recording Device Bris CR 2, Court Reporter	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref No.</u>
08/07/2019	Scheduled: Judge: Donatelle, Hon. Sharon Event: 58A Dangerousness Hearing Date: 09/05/2019 Time: 11:00 AM Result: Rescheduled	
09/05/2019	Event Result: Arraignment scheduled on: 09/05/2019 11:00 AM Has been: Held as Scheduled Erin Tierney, Assistant Clerk Magistrate Appeared: Prosecutor ADA Silvia Rudman standing in for ADA Jennifer L Thompson Defendant Cameron Edward Lougee Joshua David Werner, Esq., Staff: Erin J Tierney, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter	
09/05/2019	Defendant waives reading of indictment Judge: Tierney, Erin	
09/05/2019	Defendant arraigned before Court. Judge: Tierney, Erin	
09/05/2019	Plea of not guilty entered on all charges Judge: Tierney, Erin	
09/05/2019	Motion for 58A dangerousness hearing filed	2
09/05/2019	List of exhibits for dangerousness hearing	3
09/05/2019	ORDER: By agreement of counsel, the defendant shall have no direct or in direct contact with the alleged victim.	
09/05/2019	The defendant/petitioner is committed without bail for the following reason: Pending dangerousness hearing. Defendant held without bail without prejudice by agreement of counsel.	4
09/05/2019	Event Result: 58A Dangerousness Hearing scheduled on: 09/05/2019 11:00 AM Has been: Rescheduled For the following reason: Joint request of parties Staff: Erin J Tierney, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter	
09/05/2019	Scheduled: Judge: Donatelle, Hon. Sharon Event: 58A Dangerousness Hearing Date: 09/09/2019 Time: 02:00 PM Result: Held - Under advisement	
09/09/2019	Matter taken under advisement: 58A Dangerousness Hearing scheduled on: 09/09/2019 02:00 PM Has been: Held - Under advisement Hon. Thomas F McGuire, Jr., Presiding Staff: Joseph T Vincent, Assistant Clerk Magistrate Digital Recording Device Bris CR 3, Court Reporter 09/09/2019 02:00 PM	
09/09/2019	Defendant's Motion for funds for DNA Expert.	4 1
09/09/2019	Endorsement on Motion for funds. (#4.1): ALLOWED Judge: McGuire, Jr., Hon. Thomas F	
09/16/2019	Findings and Order on Motion for Detention pursuant to G.L. c. 27B § 58A. Copies to counsel and A.D.A. Faxed to Bristol County House of Correction. Judge: McGuire, Jr., Hon. Thomas F	5

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>
09/16/2019	The defendant/petitioner is committed without bail for the following reason: Held due to dangerousness C 276 § 58A. Faxed to Bristol County House of Correction. Judge: McGuire, Jr., Hon. Thomas F	6
09/16/2019	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Joshua David Werner, Esq. Attorney: Jennifer L Thompson, Esq.	
09/20/2019	Medical Records received from Morton Hospital.	7
10/17/2019	Defendant's Motion for Expenses and Affidavit	8
10/25/2019	Event Result: Pre-Trial Conference scheduled on: 10/25/2019 11:00 AM Has been: Held as Scheduled Hon. Thomas F McGuire, Jr., Presiding Appeared: Prosecutor Jennifer L Thompson, Esq. Defendant Joshua David Werner, Esq. Staff: Joseph T Vincent, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter 10/25/2019 11:00 AM	
10/25/2019	Endorsement on Motion for Expenses, (#8.0) ALLOWED Judge: McGuire, Jr., Hon. Thomas F	
10/25/2019	Bristol County District Attorney files certificate of compliance.	9
10/25/2019	Protective Order issued for defense counsel access to presumptively privileged records. Judge: McGuire, Jr., Hon. Thomas F	10
10/25/2019	Protective Order issued for prosecuting attorney access to presumptively privileged records. Judge: McGuire, Jr., Hon. Thomas F	11
10/28/2019	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Joshua David Werner, Esq.	
01/09/2020	Event Result: Pre-Trial Hearing scheduled on: 01/09/2020 11:00 AM Has been: Held as Scheduled Hon. Raffi N Yessayan, Presiding Appeared: Prosecutor Jennifer L Thompson, Esq., Defendant Joshua David Werner, Esq. Staff: Erin J Tierney, Assistant Clerk Magistrate Joseph T Vincent, Assistant Clerk Magistrate Digital Recording Device Bris CR 1, Court Reporter	
01/09/2020	Document: Notice to Appear in Courtroom 9 at 9:00 a.m. on 3/23/20 for Final Pre-Trial Conference. Sent to Josh Werner, Esq. and Jennifer Thompson, A.D.A. Sent On: 01/10/2020 09:33:29	
01/09/2020	Docket Note: Notice to Appear in Courtroom 9 at 9:00 a.m. on 3/23/20 for trial.	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>
	Sent to Josh Werner, Esq. and Jennifer Thompson, A.D.A. Sent On: 01/10/2020 09:33:29	
02/06/2020	Case assigned to: DCM Track C - Most Complex was added on 02/06/2020	
02/12/2020	Defendant's Motion for funds for DNA Expert and Affidavit of Joshua Werner.	12
02/13/2020	Endorsement on Motion for Funds for DNA Expert. (#12.0): ALLOWED Judge: Yessayan, Hon. Raffi N	
02/14/2020	The following form was generated: A Clerk's Notice regarding Paper #12 was generated and sent to: Attorney: Joshua David Werner, Esq.	
02/25/2020	Commonwealth's Notice of Expert Testimony	13
03/06/2020	Event Result: Final Pre-Trial Conference scheduled on: 03/06/2020 09:00 AM Has been: Rescheduled For the following reason: Request of Defendant Comments: Commonwealth objects, time ordered excluded under Rule 36/58A Hon. Gregg J Pasquale, Presiding Staff Anthony J Manieri, Assistant Clerk Magistrate Digital Recording Device, Court Monitor 03/06/2020 09:00 AM	
03/06/2020	Event Result: Jury Trial scheduled on: 03/23/2020 09:00 AM Has been: Rescheduled For the following reason: Request of Defendant Comments: d/c makes oral motion to continue as DNA expert unavailable, ALLOWED over Commonwealth's objection. Time ordered excluded under Rule 36/58A. Hon. Gregg J Pasquale, Presiding Staff Anthony J Manieri, Assistant Clerk Magistrate Digital Recording Device, Court Monitor 03/23/2020 09:00 AM	
03/06/2020	Commonwealth's Motion to Copy Medical Records Summoned to the Clerk's Office.	14
03/06/2020	Endorsement on Motion to Copy Medical Records, (#14.0): ALLOWED Judge: Pasquale, Hon. Gregg J	
03/09/2020	The following form was generated: A Clerk's Notice regarding P. #14 was generated and sent to: Attorney: Joshua David Werner, Esq. Attorney: Jennifer L Thompson, Esq.	
03/31/2020	Defendant's Motion for Immediate Release From Custody Based on Changed Circumstances - COVID-19	15
04/06/2020	MEMORANDUM & ORDER: ON MOTION FOR IMMEDIATE RELEASE FROM CUSTODY BASED UPON CHANGED CIRCUMSTANCES COVID-19... The defendant's motion for immediate release due to the COVID-19 is DENIED. Judge: Dupuis, Hon. Renee P	16
04/06/2020	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Joshua David Werner, Esq. Attorney: Jennifer L Thompson, Esq.	
04/06/2020	Endorsement on Motion for Immediate Release From Custody COVID-19, (#15.0): DENIED See Memorandum of Decision issued this date. Judge: Dupuis, Hon. Renee P	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>
04/24/2020	Court orders rescheduling due to State of Emergency surrounding the Covid-19 virus.: Final Pre-Trial Conference scheduled on: 04/24/2020 09:00 AM Has been: Rescheduled-Covid-19 emergency Anthony J Manieri, Presiding Staff: Digital Recording Device, Court Monitor	
04/27/2020	Event Result: Jury Trial scheduled on: 05/11/2020 09:00 AM Has been: Canceled For the following reason: By Court due to Covid-19 Anthony J Manieri, Presiding Staff: Digital Recording Device, Court Monitor	
05/04/2020	Defendant's Motion to Release the Defendant from 58a Hold and Remit to Bail with Affidavit of Joshua Werner	17
05/04/2020	Scheduled: Event: 58A Dangerousness Hearing Date: 05/06/2020 Time: 02:00 PM Result: Held - Under advisement	
05/04/2020	Opposition to Defendant's Motion to Release the Defendant from 58A Hold and Remit to Bail filed by Bristol County District Attorney	18
05/06/2020	Matter taken under advisement. 58A Dangerousness Hearing scheduled on: 05/06/2020 02:00 PM Has been: Held - Under advisement Comments: Held via video conference Hon. Brian A Davis, Presiding Appeared: Prosecutor Jennifer L Thompson, Esq., Defendant Cameron Edward Lougee Joshua David Werner, Esq., Staff: Digital Recording Device Bris CR 1, Court Reporter 05/06/2020 02:00 PM	
05/06/2020	Endorsement on Motion to Release the Defendant from 58A Hold and Remit to Bail, (#17.0): ALLOWED After a hearing by video (Defendant) and telephone (counsel) this motion is ALLOWED. Under ordinary circumstance, Defendant's 180 day detention under G.L. c. 276, sec. 58A would end on May 15, 2020. The Court does not read the SJC's updated of Finding Order, effecting May 4, 2020 as tolling or extending the end date for Defendant's detention. It is not a "deadline". For purposes of #12 of the Standing Order, nor is it a "Speedy Trial Computation" for purposes of #9 of the Standing Order. Accordingly, Defendant is entitled to a bail hearing, which will take place by teleconference on May 15, 2020, at 2:00 P.M. Judge: Davis, Hon. Brian A	
05/07/2020	The following form was generated: A Clerk's Notice (P. #17) was generated and sent to: Attorney: Joshua David Werner, Esq. Attorney: Jennifer L Thompson, Esq.	

Case Disposition

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Active	09/05/2019	

SUPREME JUDICIAL COURT
for Suffolk County
Case Docket

COMMONWEALTH v. CAMERON LOUGEE
SJ-2020-0347

CASE HEADER

Case Status	Reserved and Reported to the Full Court	Status Date	05/14/2020
Nature	Superintendence c 211 s 3	Entry Date	05/08/2020
Sub-Nature	COVID-19 Related	Single Justice	Cypher, J.
TC Ruling		TC Ruling Date	
SJ Ruling		TC Number	
Pet Role Below		Full Ct Number	
Lower Court		Lower Ct Judge	Brian A. Davis, J.

INVOLVED PARTY

Commonwealth
Plaintiff/Petitioner

Cameron Lougee
Defendant/Respondent

Clerk - SJC for the Commonwealth
Clerk for Commonwealth

ATTORNEY APPEARANCE

Shoshana Stern, Assistant District Attorney

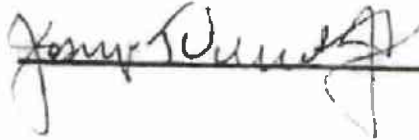
Joshua D. Werner, Esquire

DOCKET ENTRIES

Entry Date	Paper	Entry Text
05/08/2020		Case entered.
05/08/2020	#1	Commonwealth's Petition Pursuant to G. L. c. 211, § 3 with attachments and Certificate of Service filed by ADA Shoshana Stern.
05/08/2020		Under advisement. (Cypher, J.).
05/11/2020	#2	Defendant's Response To The Commonwealth's Emergency Petition Pursuant to G. L. c. 211, § 3 with Certificate of Service filed by Atty. Joshua Werner.
05/14/2020	#3	<p>Reservation and Report: "This matter came before the Court, Cypher, J., on a petition for relief under G. L. c. 211, § 3, filed by the Commonwealth, which seeks relief from an order of a Superior Court judge, dated May 6, 2020, allowing Cameron Lougee's motion for release from his detention pursuant to G. L. c. 276, § 58A, and scheduling a bail hearing for May 15, 2020.[1] The judge ruled that this court's standing order of May 4, 2020 does not toll or extend the defendant's detention period under § 58A. In its petition, the Commonwealth argues that this was an error of law and that delays occasioned by our standing order are to be excluded from the § 58A detention period. Lougee has filed an opposition.</p> <p>Upon consideration of the parties' submissions, it is hereby ORDERED that:</p> <ol style="list-style-type: none"> 1. The Commonwealth's request for relief from the judge's order of May 6, 2020 is denied to the extent that the bail hearing shall go forward as scheduled on May 15, 2020; and 2. The Commonwealth's petition is hereby reserved and reported to the full court for determination. The record comprises the following: <ol style="list-style-type: none"> a. All the papers filed in No. SJ-20-347, Commonwealth <u>vs.</u> Cameron Lougee; b. This reservation and report; and c. The docket sheet in No. SJ-20-347. <p>The parties shall prepare and file a statement of agreed facts in the full court.</p> <p>The clerk of the county court shall assemble the record and transmit it to the full court forthwith. Oral argument shall take place in June 2020, or at such time as the full court may direct. The parties shall confer with the clerk as to a briefing schedule. This case shall be considered along with No. SJ-20-348, Commonwealth <u>vs.</u> Shamus Horton, which I reserved and reported today."</p> <p>[1] The defendant was indicted for forcible rape of a child and other offenses. In September 2019, after a dangerous hearing pursuant to G. L. c. 276, § 58A, the defendant was detained without bail for a period not to exceed 180 days.</p>
05/14/2020	#4	Notice of assembly of the record.
05/14/2020	#5	EMAIL Notice to Counsel/Parties and Lower Court Re: P.'s 3 & 4 filed.

BRISTOL, SS. On this Eighteenth day of July
in the year Two Thousand and Nineteen this indictment was returned and
presented to said Superior Court by the Grand Jury and ordered to be filed and filed.

Attest:



Clerk/Magistrate

TA-DI

No. 19736 R 002.14-1...

INDICTMENT

Commonwealth

vs.

Cameron Lougee

Rape of Child Use of Force 265/22A
Sep. C. July Sitting 2019

Commonwealth of Massachusetts

BRISTOL, SS.

At the SUPERIOR COURT holden at Fall River within and for the County of Bristol, for the transaction of criminal business on the First Monday of July, 2019,

THE JURORS for the said Commonwealth on their oath present, That

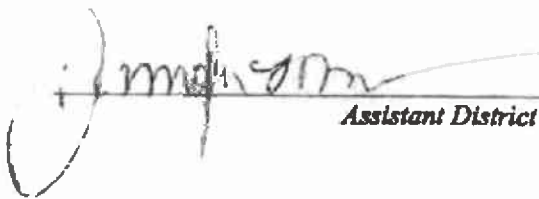
Cameron Lougee,

on or about February 21, 2019, at Taunton, in the County of Bristol aforesaid,

did have sexual intercourse or unnatural sexual intercourse with a child under sixteen years of age, and did compel said child to submit by force and against their will, or did compel said child to submit by threat of bodily injury.

(G.L. Chap. 265, Sec. 22A)

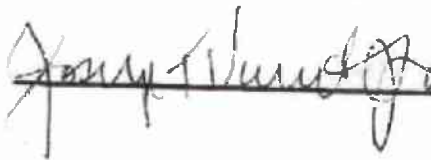
A true bill.


Assistant District Attorney.


Foreperson of the Grand Jury.

BRISTOL, SS. On this Eighteenth day of July
in the year Two Thousand and Nineteen this indictment was returned and
presented to said Superior Court by the Grand Jury and ordered to be filed and filed.

Attest:



Clerk/Magistrate

TA-DI

No. ...1973.C.R.00246.2

INDICTMENT

Commonwealth

vs.

Cameron Lougee

Rape of Child Aggravated by Age
265/23A(b)

Sup. C. July Sitting 2019

Commonwealth of Massachusetts

BRISTOL, SS.

At the SUPERIOR COURT holden at Fall River within and for the County of Bristol, for the transaction of criminal business on the First Monday of July, 2019,

THE JURORS for the said Commonwealth on their oath present, That

Cameron Lougee,

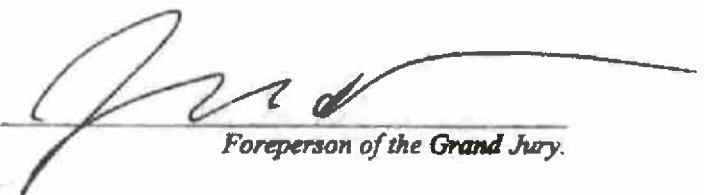
on or about February 21, 2019, at Taunton, in the County of Bristol aforesaid,

did have natural and/or unnatural sexual intercourse with a child under the age of sixteen years old and at least twelve years of age, where there existed more than a ten-year age difference between him and said child.

(G.L. Chap. 265, Sec. 23A(b))

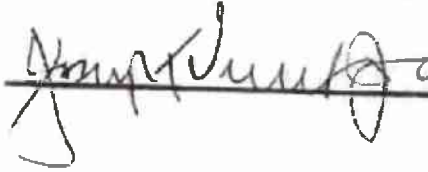
A true bill.


Assistant District Attorney.


Foreperson of the Grand Jury.

BRETON, SS. On this Eighteenth day of July
in the year Two Thousand and Nineteen this indictment was returned and
presented to said Superior Court by the Grand Jury and ordered to be filed and filed.

Attest:



Clerk/Magistrate

TA-DI

No. .../22368.00.214.3

INDICTMENT

Commonwealth

vs.

Cameron Lougee

Ind A&B on Child w/14 265/13B

Sep. C. July Sitting 2019

Commonwealth of Massachusetts

BRISTOL, SS.

At the SUPERIOR COURT holden at Fall River within and for the County of Bristol, for the transaction of criminal business on the First Monday of July, 2019,

THE JURORS for the said Commonwealth on their oath present, That

Cameron Lougee,

on divers dates and at divers times from on or about November 17, 2012, to on or about


February 20, 2019, at Taunton, in the County of Bristol aforesaid,

did indecently assault and beat a child under the age of fourteen years.

(G.L. Chap. 265, Sec. 13B)

A true bill.


Assistant District Attorney.


Foreperson of the Grand Jury.

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

SUFFOLK, ss.

OE-144

In Re: COVID-19 (Coronavirus) Pandemic

UPDATED ORDER REGARDING COURT OPERATIONS UNDER THE EXIGENT CIRCUMSTANCES CREATED BY THE COVID-19 (CORONAVIRUS) PANDEMIC

To safeguard the health and safety of the public and court personnel during the COVID-19 (coronavirus) pandemic while continuing to conduct court business, the Supreme Judicial Court, pursuant to its superintendence and rule making authority, issues the following ORDER:

1. Prior orders. Effective May 4, 2020, this order shall repeal and replace the Order Regarding Court Operations Under The Exigent Circumstances Created By The COVID-19 (Coronavirus) Pandemic issued by the court on April 1, 2020.
2. In-person emergency matters. Until at least June 1, 2020, all the courts of the Commonwealth will be open to conduct court business, but courthouses will continue to be closed to the general public, except where entry is required to address emergency matters that cannot be resolved virtually (i.e., by telephone, videoconference, email, or comparable means, or through the electronic filing system) because it is not practicable or would be inconsistent with the protection of constitutional rights. The Appeals Court and each of the Trial Court departments have issued standing orders or guidelines, specifying what constitutes an emergency matter in that particular court, and have posted all such orders and guidelines on the "Court System Response to COVID-19" webpage (<https://www.mass.gov/guides/court-system-response-to-covid-19>) (COVID-19 webpage) (see paragraph 15 below). The Chief Justice of a Trial Court department, after consultation with the Chief Justice of the Trial Court, may order that a court division or location conduct all business virtually and/or may transfer all in-person emergency matters to specified courts within the department.
3. Virtual non-emergency matters. a. Trial Court departments. Trial Court departments shall identify categories of non-emergency matters that they will attempt to address virtually, in whole or in part, where it is practicable to do so in view of skeletal court staffing, technological constraints, and the need to prioritize emergency matters, and where doing so is consistent with the protection of constitutional rights. Each Trial Court department shall provide clear guidance to the public and members of the bar regarding the categories of non-emergency matters that it will attempt to address virtually by posting periodic notices to the COVID-19 webpage (see paragraph 15 below).

b. SJC and Appeals Court. The Supreme Judicial Court and Appeals Court will continue to conduct oral arguments virtually in non-emergency matters.

4. Clerks', Registers', and Recorder's Offices. All court clerks', registers', and recorder's offices shall continue to conduct court business in all emergency matters and in non-emergency matters designated by their respective court department, including accepting the filing of pleadings and other documents, scheduling and facilitating hearings, and issuing orders. In addition, these offices shall continue to answer questions from attorneys, litigants, and the general public. All such business will be conducted virtually, except when the filing of pleadings and other documents in emergency matters cannot be accomplished virtually.

5. Who can enter courthouses for an emergency in-person proceeding. Entry into a courthouse for the purpose of an emergency in-person proceeding shall continue to be limited to attorneys, parties, witnesses, and other necessary persons as determined by the judge presiding over the proceeding, plus no more than three members of the "news media" as defined in Supreme Judicial Court Rule 1:19(2).

Further, in cases where a trial court judge has ordered electronic monitoring in the form of either GPS or remote alcohol monitoring or in cases where, pursuant to an earlier court order, previously installed electronic monitoring equipment requires maintenance or removal, all installations, maintenance, or removals of such equipment may occur in the courthouse to ensure security and access to personal protective equipment by probation personnel.

6. Jury and Bench Trials. All jury trials, in both criminal and civil cases, scheduled to commence in Massachusetts state courts between March 13, 2020, and July 1, 2020, are hereby continued to a date no earlier than July 1, 2020. All bench trials, in both criminal and civil cases, scheduled to commence in Massachusetts state courts between March 13, 2020, and June 1, 2020, are hereby continued to a date no earlier than June 1, 2020, unless they may be conducted virtually by agreement of the parties and of the court.

7. Application for exception. Upon a showing of exceptional circumstances, a party who had a trial or evidentiary hearing postponed as a result of this Order or the Prior SJC Orders¹ may apply for an exception from said order(s) by motion directed to the court where the trial or evidentiary hearing was to occur. No exception shall be granted except with the approval of the judge and the Chief Justice of the applicable Trial Court department and in no event shall a jury empanelment or jury trial occur during this time period due to the inherent risk involved in doing so.

8. Application for conference. A party who has had a trial or evidentiary hearing postponed as a result of this Order or the Prior SJC Orders may apply for a conference with the court where the trial or evidentiary hearing was to occur to address matters arising from the

¹ The April 1, 2020 order and the two orders it repealed and replaced, i.e., the March 13 Order Regarding Empanelment Of Juries and the March 17 Order Limiting In-Person Appearances In State Courthouses To Emergency Matters That Cannot Be Resolved Through A Videoconference Or Telephonic Hearing, are collectively referred to as the "Prior SJC Orders."

postponement, which shall be conducted virtually. In criminal cases, where appropriate, a defendant may ask the court for reconsideration of bail or conditions of release. Nothing in this Order addresses the disposition of such requests for reconsideration.

9. Speedy Trial Computations. The continuances occasioned by this Order and the Prior SJC Orders serve the ends of justice and outweigh the best interests of the public and criminal defendants in a speedy trial. Therefore, the time periods of such continuances shall be excluded from speedy trial computations under Mass. R. Crim. P. 36.

10. Grand jury. No new grand jury shall be empaneled prior to July 6, 2020. Grand juries whose terms expire before the July 2020 empanelment of a new grand jury shall be extended until the date of that new empanelment.

11. Statutes of limitation. All statutes of limitation are tolled from March 17, 2020, through May 31, 2020.

12. Deadlines set forth in statutes or court rules, standing orders, or guidelines. Unless otherwise ordered by the applicable court, all deadlines set forth in statutes or court rules, standing orders, tracking orders, or guidelines that expired or will expire between March 16, 2020, and June 1, 2020, are tolled until June 1, 2020, and the new deadline in each instance is calculated as follows: determine how many days remained after March 16, 2020, until the original deadline, and that same number of days will remain as of June 1, 2020, until the new deadline. For example, if a rule set a thirty (30) day deadline and twelve (12) days remained after March 16 before that deadline was reached, then twelve (12) days will continue to remain as of June 1, before the new deadline is reached (i.e. June 15, because June 13 is a Saturday). If the thirty (30) day period commenced after March 16, then thirty (30) days remain as of June 1 before the new deadline is reached (i.e. July 1).

13. Court-ordered deadlines in particular cases. Unless otherwise specifically ordered by the applicable court, all deadlines established by a court in a particular case on or before March 16, 2020, that expire between March 16, 2020, and June 1, 2020, are tolled until June 1, 2020. To calculate the new deadline, see the guidance in paragraph 12. Probation termination dates are not tolled by this provision.

14. Expiring injunctions and similar orders. Unless otherwise ordered by the applicable court, all orders in a particular case that were issued prior to March 17, 2020, after an adversarial hearing (or the opportunity for an adversarial hearing), that enjoined or otherwise restrained or prohibited a party from taking some act or engaging in some conduct until a date between March 16, 2020, and June 1, 2020, shall remain in effect until the matter is rescheduled and heard.

15. Publication of COVID-19 orders. All orders, standing orders, guidelines, and notices under paragraph 3 issued by any court department or appellate court in response to the pandemic, as well as all amendments, modifications, and supplements thereto, or the equivalent, shall be posted upon issuance on the judiciary's COVID-19 webpage. Links to each document may be found on that webpage.

16. The Court may issue further Orders regarding this matter as necessary to address the circumstances arising from this pandemic.

This Order is effective May 4, 2020, and shall remain in effect until further order of the court.

<u>RALPH D. GANTS</u>)
) Chief Justice
<u>BARBARA A. LENK</u>)
)
<u>FRANK M. GAZIANO</u>)
) Justices
<u>DAVID A. LOWY</u>)
)
<u>KIMBERLY S. BUDD</u>)
)
<u>ELSPETH B. CYPHER</u>)
)
<u>SCOTT L. KAFKER</u>)

Entered: April 27, 2020
Effective: May 4, 2020

LAW OFFICE OF
JOSHUA D. WERNER
43 BELMONT STREET
SOUTH EASTON, MASSACHUSETTS 02375

Joshua D. Werner (508)238-4383

Facsimile (508)238-2036

April 30, 2020

Clerk for Criminal Business
Bristol Superior Court
186 South Main Street
Fall River, MA 02721

Re: Commonwealth v. Cameron Lougee
Docket No: 1973CR0216

Dear Sir/Madam:

Enclosed please a Motion to Release the Defendant from 58a Hold and Remit to Bail and an Affidavit of Joshua D. Werner. A copy of this has Motion has been sent to the Assistant District Attorney pursuant to the Standing Order of the Supreme Judicial Court for her response. Kindly docket and file the same.

If you have any questions or concerns regarding this matter, please do not hesitate to contact my office.

Thank you for your attention to this matter.

Sincerely,


Joshua D. Werner, Esq.

JDW/tbw
Enclosures

cc: Jennifer Thompson, ADA

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

**SUPERIOR COURT DEPARTMENT
INDICTMENT NO.: 1973 CR 0216**

COMMONWEALTH

V.

CAMERON LOUGEE

MOTION TO RELEASE THE DEFENDANT FROM 58a HOLD AND REMIT TO BAIL

Now comes the defendant in the above captioned matter and respectfully request this Honorable court release the defendant from his 58a "held without bail as dangerous" hold and conduct a bail hearing and remit him to bail.

As reasons therefore the defendant asserts that he was arraigned in the Bristol Superior Court in September 5, 2019 and found to be dangerous on September 13, 2019 by the Court. His 180-day 58a clock started to run at that time. The expiration of that time would have been statutorily March 13, 2020. The defendant had this case marked up for trial on March 23 by the Court. The case was continued for a final pretrial date of March 6, 2020, and had a trial date of March 23, 2020 which would have put the defendant just a few days beyond his 180-expiration date had it gone to trial on March 23, 2020. At no point prior to March 6, 2020 did the defendant or the Commonwealth ask for any additional time. On March 6, 2020 due to a scheduling issue with an expert, the defendant asked for a new trial date of May 11, 2020 which was allowed by the Court. The period of time between March 6, 2020 and May 11 is excludable from the 58a calculations. The hold on the defendant would have expired on March 13 thus the defendant was

ONLY 7 days short of his expiration date of the 58a hold. Thus, had the case been reached on May 11, 202 there was still 7 days left on his 58a hold. The period of time from under 58a will expire on May 18, 2020. 180 days (less any excludable time) will run on that date.

The case has now been continued over the defendant's objection to June 12, 2020 for trial assignment. Since this case is going to be jury trial, based on the most recent order of the Supreme Judicial Court, it is unlikely that the matter will be heard before July 1, 2020, and more likely that it will be heard long after the 180 day hold, as outlined in the 58a order has expired. Notwithstanding the Covid order of the SJC, the defendant is entitled to a redetermination of his bail status upon the expiration of his 180-day hold. The Covid order of the SJC makes specific reference to the "tolling" of the Rule 36 time as part of the emergency nature of the situation but makes no specific reference to the tolling of the clock as it relates to 58a orders. Specifically, in Mendonza v. Commonwealth, 423 Mass. 771, 783 (1996) the Court held that unlike Rule 36, an order of detention pursuant to 58a is a "limited and preliminary detention" which has a definitive expiration date. Id. At 783. In fact, in Commonwealth v. Vieira, 483 Mass. 417 (2019), the SJC recently reaffirmed "Pretrial detention is a measure of last resort. See Brangan, 477 Mass. at 704, 80 N.E.3d 949 ("in our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception" [citation omitted]). Prior to conviction, a criminal defendant is presumed not to have committed the crimes charged. See Commonwealth v. Madden, 458 Mass. 607, 610, 939 N.E.2d 778 (2010)

Holding a defendant beyond the expiration of his 180 days no longer makes it limited nor preliminary but rather open ended and uncertain. The issue is not one of form over substance since no doubt the Commonwealth will suggest that the tolling o Rule 36 applies to 58a as well. Clearly it does not. The two are significantly different types of detention and each has a different

genesis in the legislative history which underlies the thinking and the reasons for the detentions. Rule 36 governs the time clock on all criminal matters and has set parameters for determining when the clock starts and when it stops (or tolls) 58a has no such parameters since it was designed to ensure a quick preventative detention that would expire on a date certain barring certain exception.

Even if the Court so finds that the Covid order applies to 58a matters, the new order of the Supreme Judicial Court dated April 27, 2020 makes reference to the calculations of time based on a stop date of March 16, 2020 and a start date of June 1, 2020. Based on those calculations the stop date of March 16 was the end of the 180-hold based on 58a thereby making the defendant's presumptive at the end of his 180 hold. If we add in the period of time asked for by the defendant in his motion to continue, it would add a period of time from March 6 to March 16, thus a total of 10 days. If we add that in to the date of June 1 as set forth by the SJC outlined in paragraph 12 of the order dated April 27, 2020, that puts his new end date as June 10, 2020 from the 180 hold. And since no jury trial will take place prior to July 1, 2020 once the defendant gets to June 10, 2020, his 180 days has run.

For this reason, the Court should view the hold under 58a as having expired and that the court must conduct bail hearing and set a bail pursuant to the terms of Branagan on behalf of the defendant in this matter.

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

SUPERIOR COURT DEPARTMENT
INDICTMENT NO.: 1973 CR 0216

COMMONWEALTH

V.

CAMERON LOUGEE

AFFIDAVIT OF JOSHUA WERNER

Now comes Joshua Werner, attorney and hereby deposes and says as follows:

1. My name is Joshua D. Werner and I represent the defendant, Cameron Lougee in the above captioned matter.
2. He was arraigned on September 5, 2020 in the Superior Court and held as dangerous by the Court with the order being entered on September 13, 2020. He has been held since that time.
3. Neither party moved to continue the case but kept it on track to comply with the dates as set forth in the 58a order.
4. The case was set for trial on March 23, 2021 which was a few days over the expiration of the defendant's 180 hold which would have expired on March 13, 2020.
5. On March 6, I moved to contain the trial date. There were 7 days left on the defendant's hold. The case was continued until May for trial.
6. The case has no been put on hold since mid-march and we have a trial assignment date of June 12, which is long after the expiration of the 180 day hold under 58a.
7. There are no other periods of time to be counted against the defendant since the date of his arraignment.

Signed under the pains and penalties of perjury, this 29th day of April, 2020.

Joshua D. Werner, Esquire

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon each party and the attorney of record for each other party by mail (by-hand) on 4/30/2020.



The Commonwealth of Massachusetts

OFFICE OF THE

DISTRICT ATTORNEY

BRISTOL DISTRICT

THOMAS QUINN III
DISTRICT ATTORNEY

218 South Main Street
Suite 101
Fall River, MA 02721
(509) 961-1856

May 2, 2020


Criminal Clerk's Office
Bristol Superior Court
186 S. Main Street
Fall River, MA 02721

RE: Commonwealth v Cameron Lougee
Docket No.: 1973cr216

Dear Sir or Madam:

Enclosed please find a copy of the Commonwealth's Opposition to the Defendant's Motion to Release the Defendant from 58A Hold and Remit to Bail.

Very truly yours,


Jennifer Thompson
Assistant District Attorney

Enclosure
cc: Joshua Werner, Esq.

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

SUPERIOR COURT
INDICTMENT. NO 1973cr216

COMMONWEALTH

V.

CAMERON LOUGEE

**COMMONWEALTH'S OPPOSITION TO THE DEFENDANT'S MOTION TO
RELEASE THE DEFENDANT FROM 58a HOLD AND REMIT TO BAIL**

NOW COMES the Commonwealth of Massachusetts and respectfully submits its Opposition to the Defendant's Motion to release the defendant on bail. The defendant is held pending trial pursuant to M.G.L.c. 276 § 58A as a result of the Court's Order of September 13, 2019 (See docket entry #5). During the ordinary course, a final pre-trial hearing was scheduled for March 6, 2020 and a trial date was selected of March 23, 2020 without objection by the defendant and with the acquiescence of the defendant. (See Massachusetts Rules of Criminal Procedure Rule 36 - excludable periods of time include when the "acquiesced in, is responsible for, or benefited from the delay" Rule 36 citing Comm. V. Lauria, 411 Mass. 63, 68 (1991).) Between September 13, 2019 and March 6, 2020, 176 days had elapsed. On March 6, 2020 the defendant had requested a continuance of the final pre-trial conference and the trial because his expert witness was unavailable. A new final pre-trial conference date was selected and new trial date of May 11, 2020 was given. The Court excluded the time between March 6, 2020 and May 11, 2020 in accordance with Rule 36 and M.G.L. c. 276 § 58A (See Docket Entries of 3/6/20). Shortly thereafter, the Supreme Judicial Court issued standing orders which continued the trials scheduled in March, and subsequently April and May to future dates due to the COVID-19 Pandemic.

In its March 17, 2020, standing order ("Supreme Judicial Court Order limiting in-person appearances in state courthouses that cannot be resolved through a videoconference or telephonic hearing") the Supreme Judicial Court ordered that:

"Except as provided herein, all trials, whether jury or bench, in both criminal and civil cases, scheduled to commence in Massachusetts state courts between the date of this Order and April 17, 2020, are hereby continued to a date no earlier than April 21, 2020 . . . The continuances occasioned by this Order serve the ends of justice and outweigh the best interests of the public and criminal defendants in a speedy trial. Therefore, the time periods of such continuances shall be excluded from speedy trial computations under Mass. R. Crim. P. 36."

The April 6, 2020 standing order (Supreme Judicial Court Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (CORONAVIRUS) Pandemic), subsequently replaced the March 17, 2020 order and further continued trials to May 4, 2020 or thereafter:

"All trials, whether jury or bench, in both criminal and civil cases, scheduled to commence in Massachusetts state courts between March 13, 2020 and May 1, 2020, are hereby continued to a date no earlier than May 4, 2020..... The continuances occasioned by this Order ...serve the ends of justice and outweigh the best interests of the public and criminal defendants in a speedy trial. Therefore, the time periods of such continuances shall be excluded from speedy trial computations under Mass. R. Crim. P. 36. "

Most recently, the Supreme Judicial Court has issued a new standing order which is to take effect on May 4, 2020 (Updated Order REGARDING COURT OPERATIONS UNDER THE EXIGENT CIRCUMSTANCES CREATED BY THE COVID-19 (CORONAVIRUS) PANDEMIC). This May 4, 2020 order has further continued all trials scheduled to commence between March 13, 2020 and July 1, 2020 to a date no earlier than July 1, 2020. Again, the SJC continued to include in its ruling that this time is excluded for purposes of Rule 36 calculations: "The continuances occasioned by this Order and the Prior SJC Orders serve the ends of justice and outweigh the best interests of the public and criminal defendants in a speedy trial. Therefore, the time periods of such continuances shall be excluded from speedy trial computations under Mass. R. Crim. P. 36."

Based on the standing orders, the time between the last trial date of May 11, 2020 and July 1, 2020 is also now excluded in the speedy trial computation under Rule 36.

In his Motion, the defendant asserts that the "Covid Order...makes specific reference to the 'tolling' of the Rule 36 time ...but makes no specific reference to the tolling of the clock as it relates to 58A orders." He further argues that rule 36 specifically does not apply to G. L. c. 276, § 58A. However, in reading the statute, G. L. c. 276, § 58A, explicitly incorporates the tolling provisions of Rule 36. As the SJC noted in Commonwealth v. G.F., 479 Mass. 180, 199 (2018): "G. L. c. 276, § 58A (3), permits pretrial detention for 120 days, excluding any period of delay as defined in Mass. R. Crim. P. 36 (b) (2)." See G. L. c. 276, § 58A(3) ("A person detained under this subsection shall be brought to a trial as soon as reasonably possible, but in absence of good cause, the person so held shall not be detained for a period exceeding 120 days by the district court or for a period exceeding 180 days by the superior court **excluding any period of delay as defined in Massachusetts Rules of Criminal Procedure Rule 36(b)(2).**"). (emphasis added). See also Garcia v. Commonwealth, 481 Mass. 1005 (2018) (at footnote 2 – excludable time under Rule 36 applicable to G. L. c. 276, § 58A).

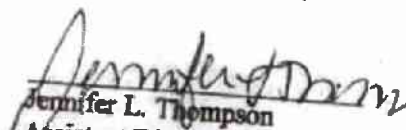
Furthermore, Mass. R. Crim. P. 36 (b) (2) is the section of Rule 36 dealing with "Excluded Periods," and among them is 36(b)(2)(F): Any period of delay resulting from a continuance granted by a judge on his own motion or at the request of the defendant or his counsel or at the request of the prosecutor, if the judge granted the continuance on the basis of his findings that the ends of justice served by taking such action outweighed the best interests of the public and the defendant in a speedy trial. No period of delay resulting from a continuance granted by the court in accordance with this paragraph shall be excludable under this subdivision unless the judge sets forth in the record of the case, either orally or in writing, his reasons for finding that the ends of justice served by the granting of the continuance outweigh the best interests of the public and the defendant in a speedy trial. Mass. R. Crim. P. 36(b)(2)(F).

Here, the justices of the SJC have granted continuances on their own motion in light of the current public health crisis, and found in writing that these continuances "serve the ends of justice and outweigh the best interests of the public and criminal defendants in a speedy trial."

By the very terms of § 58A and Rule 36, this means that the time falling under those continuances is excluded for the purpose of calculating the defendant's 180 days under § 58A.

WHEREFORE, the Commonwealth respectfully requests that the Court deny the defendant's motion.

Respectfully submitted
For the Commonwealth,



Jennifer L. Thompson
Assistant District Attorney
Bristol District

218 S. Main Street

Fall River, MA 02721

BBO#: 658529

(508) 961-1965

DATE: May 1, 2020

CERTIFICATE OF SERVICE

I hereby certify that I am serving defendant's counsel, Joshua Werner, Esq., a photocopy of this Commonwealth's Opposition to the Defendant's Motion to Release the Defendant from 58A Hold by delivering same to him by electronic mail on May 1, 2020 and first class mail on May 2, 2020.



Jennifer Thompson

#17

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

SUPERIOR COURT DEPARTMENT
INDICTMENT NO.: 1973 CR 0216

COMMONWEALTH

V.

CAMERON LOUGEE

BRISTOL, SS SUPERIOR COURT
FILED

MAY - 4 2020

MARC J SANTOS, ESQ.
CLERK/MAGISTRATE

MOTION TO RELEASE THE DEFENDANT FROM 58a HOLD AND REMIT TO BAIL

Now comes the defendant in the above captioned matter and respectfully request this Honorable court release the defendant from his 58a "held without bail as dangerous" hold and conduct a bail hearing and remit him to bail.

As reasons therefore the defendant asserts that he was arraigned in the Bristol Superior Court in September 5, 2019 and found to be dangerous on September 13, 2019 by the Court. His 180-day 58a clock started to run at that time. The expiration of that time would have been statutorily March 13, 2020. The defendant had this case marked up for trial on March 23 by the Court. The case was continued for a final pretrial date of March 6, 2020, and had a trial date of March 23, 2020 which would have put the defendant just a few days beyond his 180-expiration date had it gone to trial on March 23, 2020. At no point prior to March 6, 2020 did the defendant or the Commonwealth ask for any additional time. On March 6, 2020 due to a scheduling issue with an expert, the defendant asked for a new trial date of May 11, 2020 which was allowed by the Court. The period of time between March 6, 2020 and May 11 is excludable from the 58a calculations. The hold on the defendant would have expired on March 13 thus the defendant was

After a hearing by video (Defendant) and telephone (counsel), the motion is allowed. Under ordinary circumstances, Defendant's 180 day detention under G.L. c. 276, § 58A would end on May 13, 2020. This Court does not need the State's Updated Standing Order, effective May 13, 2020, as it is not a "decision" for purposes of 58A. (cont. below)

the Standing Order, nor is it a "Judicial Trial Impediment" for purposes of 99.0 of the Standing Order. Accordingly, Defendant is entitled to a bail hearing, which will take place by teleconference on May 13, 2020, at 2:00 pm. XCH 5/6/20

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
SJ-2020-_____
FALL RIVER SUPERIOR COURT
DOCKET NUMBER 1973CR00216

COMMONWEALTH

V.

CAMERON LOUGEE

COMMONWEALTH'S PETITION PURSUANT TO
CHAPTER 211, SECTION 3

A judge of the Superior Court, Davis, J., has ordered that the defendant, who is currently held as a danger pursuant to G.L. c. 276, § 58A, must as a matter of law be admitted to bail on May 15th [Appx.30]. This ruling is predicated on a conclusion that the Supreme Judicial Court's Updated Order Regarding Court Operations Under The Exigent Circumstances Created By The Covid-19 (Coronavirus) Pandemic, OE-144, effective May 4, 2020 ("Standing Order") [Appx.16], which excludes time periods from Mass. R. Crim. P. Rule 36 calculations on account of the current pandemic, does not apply when Rule 36 is

used to calculate excludable time under § 58A. The Commonwealth submits that this is not a reasonable interpretation of the language of the Standing Order. Regardless of who is correct here, this is a question that has broad implications for all defendants currently held pursuant to § 58A, and thus necessitates clarification from this Court.

STATEMENT OF THE CASE

On May 6, 2020, the judge made the following endorsement [Appx.30] on the defendant's Motion to Release the Defendant from 58A Hold and Remit to Bail:

After a hearing by video (Defendant) and telephone (counsel) this motion is Allowed. Under ordinary circumstances, Defendant's 180 day detention under G.L. c., 276, § 58A, would end on May 15, 2020. This Court does not read the SJC's updated Standing Order, effective May 4, 2020, as tolling or extending the end date for Defendant's detention. It is not a "deadline" for purposes of ¶ 12 of the Standing Order, nor is it a "Speedy Trial Computation" for the purposes of ¶ 9 of the Standing Order. Accordingly, Defendant is entitled to a bail hearing, which will take place by teleconference on May 15, 2020, at 2 p.m.

ARGUMENT

- I. **A PETITION PURSUANT TO CHAPTER 211, SECTION 3 IS THE PROPER METHOD FOR SEEKING RELIEF IN THIS CIRCUMSTANCE.**

"General Laws c. 211, § 3, provides that the Supreme Judicial Court 'shall have general superintendence of all courts of inferior jurisdiction

to correct and prevent errors and abuses therein if no other remedy is expressly provided." *CPCS v. Chief Justice*, 484 Mass. 431, 446 (2020), quoting G.L. c., 276, § 58A. "The court's general superintendence authority extends to 'the administration of all courts of inferior jurisdiction,' and permits the issuance of 'writs, summonses and other process and such orders, directions and rules as may be necessary or desirable for the furtherance of justice.'" *Id.* "In the past," the Court has "exercised [its] extraordinary superintendence authority to remedy matters of public interest 'that may cause further uncertainty within the courts.'" *Id.*, quoting *Simmons v. Clerk-Magistrate of the Boston Div. of the Hous. Court Dep't*, 448 Mass. 57, 61 (2006). "A petitioner seeking relief under G. L. c. 211, § 3, 'must present a substantial claim involving important substantive rights, and demonstrate that any error cannot adequately be remedied in the course of trial or normal appellate review.'" *Id.*, quoting *Lavallee v. Justices in the Hampden Superior Court*, 442 Mass. 228, 233 (2004).

This case turns on the proper interpretation of the Supreme Judicial Court's own language, in

circumstances where only one of two proposed interpretations can be correct, and where either interpretation has wide-ranging implications for the rights of both the defendant and the Commonwealth. In no circumstance should different defendants' cases be handled differently depending on the interpretation given to the Standing Order by any particular judge. Consequently, it is crucial that this question be resolved, and no lower court is in a position to resolve it.

The Superior Court judge in this case has concluded that the Standing Order provides no means for excluding the time lost to the pandemic for the purpose of calculating the point at which a defendant held pursuant to G.L. c. 276, § 58A, must be provided a bail hearing if he has not been tried. On account of the provisions of that same Standing Order, the Commonwealth lacks any practical ability to try the defendant, certainly without his agreeing to waive significant rights. Consequently, if the motion judge's interpretation of the Standing Order is correct, the continuing passage of time may lead to the release of every defendant currently held as dangerous, because the Commonwealth has not been able

to try him or her as trials are currently prohibited by the terms of the same Standing Order. At the same time, if the motion judge's interpretation is correct, the Commonwealth has been incorrectly arguing, and other judges have been incorrectly finding, that defendants who are currently held as dangerous should continue to be held as dangerous, during this period when it is not currently possible to bring them to trial. This question demands an answer.

II. THE LANGUAGE OF THE STANDING ORDER, WITH REGARD TO THE EXCLUSION OF TIME UNDER MASS. R. CRIM. P. RULE 36, NECESSARILY APPLIES TO THE EXCLUSION OF TIME UNDER G.L. c. 276, § 58A, WHICH EXPLICITLY ADOPTS THE COMPUTATION PROVISIONS OF RULE 36(b)(2).

This petition presents a question of law: Does the Supreme Judicial Court's COVID Standing Order, OE-144, effective May 4, 2020, toll time calculations under G.L. c. 276, § 58A?

The Standing Order provides:

6. Jury and Bench Trials. All jury trials . . . scheduled to commence in Massachusetts state courts between March 13, 2020, and July 1, 2020, are hereby continued to a date no earlier than July 1, 2020. All bench trials . . . scheduled to commence in Massachusetts state courts between March 13, 2020, and June 1, 2020, are hereby continued to a date no earlier than June 1, 2020,

unless they may be conducted virtually by agreement of the parties and of the court.¹

. . .

9. Speedy Trial Computations. The continuances occasioned by this Order and the Prior SJC Orders serve the ends of justice and outweigh the best interests of the public and criminal defendants in a speedy trial. Therefore, the time periods of such continuances shall be excluded from speedy trial computations under Mass. R. Crim. P. 36 [Appx.17-18].

General Laws ch. 276, sec. 58A, explicitly incorporates the tolling provisions of Rule 36, as the Supreme Judicial Court noted in *Commonwealth v. G.F.*, 479 Mass. 180, 199 (2018): "G. L. c. 276, § 58A (3), permits pretrial detention for 120 days, excluding any period of delay as defined in Mass. R. Crim. P. 36 (b) (2)." See G. L. c. 276, § 58A(3) ("A person detained under this subsection shall be brought to a trial as soon as reasonably possible, but in absence of good cause, the person so held shall not be detained for a

¹ Paragraph 7 of the Order provides: "Application for exception. Upon a showing of exceptional circumstances, a party who had a trial or evidentiary hearing postponed as a result of this Order or the Prior SJC Orders¹ may apply for an exception from said order(s) by motion directed to the court where the trial or evidentiary hearing was to occur. No exception shall be granted except with the approval of the judge and the Chief Justice of the applicable Trial Court department and in no event shall a jury empanelment or jury trial occur during this time period due to the inherent risk involved in doing so." [Appx.17].

period exceeding 120 days by the district court or for a period exceeding 180 days by the superior court excluding any period of delay as defined in Massachusetts Rules of Criminal Procedure Rule 36(b)(2).").

Mass. R. Crim. P. Rule 36(b)(2) is the section of Rule 36 dealing with "Excluded Periods," and among them is 36(b)(2)(F):

Any period of delay resulting from a continuance granted by a judge on his own motion or at the request of the defendant or his counsel or at the request of the prosecutor, if the judge granted the continuance on the basis of his findings that the ends of justice served by taking such action outweighed the best interests of the public and the defendant in a speedy trial. No period of delay resulting from a continuance granted by the court in accordance with this paragraph shall be excludable under this subdivision unless the judge sets forth in the record of the case, either orally or in writing, his reasons for finding that the ends of justice served by the granting of the continuance outweigh the best interests of the public and the defendant in a speedy trial.

Mass. R. Crim. P. 36(b)(2)(F).

Here, the justices of the Supreme Judicial Court continued all trials on their own motion in light of the current public health crisis, and found in writing that these continuances "serve the ends of justice and outweigh the best interests of the public and criminal defendants in a speedy trial" [Appx.18]. By the very

terms of § 58A and Rule 36, the plain meaning of the Standing Order is that the time falling under those continuances is excluded for the purpose of calculating the defendant's 180 days under § 58A. It is also consistent with the general tenor of the standing order.

Indeed, if this is not the proper meaning of these provisions of the Standing Order, then the Standing Order would appear to contain no provision that prevents any current § 58A detention from terminating due to the passage of time, for reasons entirely outside the power of the Commonwealth. Trials are currently permitted only in exceptional circumstances, and jury trials are entirely unavailable. And, quite properly, the Commonwealth has no power to compel a defendant to proceed with a bench trial. This would mean that - depending on how long the current closures persist - many or most of the defendants in whose cases a judge has "f[ound] by clear and convincing evidence that no conditions of release will reasonably assure the safety of any other person or the community," will become eligible for release notwithstanding the Commonwealth's best

efforts to bring them to trial "as soon as reasonably possible[.]" See G.L. c. 276, § 58A(3).

The Commonwealth acknowledges that no rule seeking to adapt § 58A tolling to the current circumstances can be structured so as to prejudice no one: either dangerous defendants are held for a longer period of time pretrial, through no fault of their own, or they may be released, despite their dangerousness and through no fault of the Commonwealth. But it submits that the Standing Order, reasonably read, does permit such tolling, and that the Order's conclusions that such tolling "serve[s] the ends of justice and outweigh[s] the best interests of the public and criminal defendants in a speedy trial" is the correct one.

CONCLUSION

The Commonwealth respectfully asks that this Court vacate the Superior Court's order allowing the defendant's motion, and clarify that the continuances occasioned by the COVID Standing Order are excludable from calculations of time under G.L. c. 276, § 58A, as that statute specifically incorporates the tolling provisions of Mass. R. Crim. P. Rule 36.

Respectfully submitted,

THOMAS M. QUINN III
DISTRICT ATTORNEY
BRISTOL DISTRICT

/s/ Shoshana Stern

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May 8, 2020

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. SJ-2020-

SUPERIOR COURT 1973 CR 0216

COMMONWEALTH

v.

CAMERON LOUGEE

DEFENDANT'S RESPONSE TO THE COMMONWEALTH'S EMERGENCY
PETITION PURSUANT TO G.L. 211, § 3.

The Commonwealth has petitioned this Court to overturn the decision of the Superior Court, Davis, J ordering the defendant to have a bail hearing and to have bail set since the Court has determined that the time period allowed to hold him under 58A has (or will expire) this Friday. Currently a bail hearing has been set and will be held this Friday at 2:00 pm in an electronic fashion. The Court, Davis, J. specifically ruled that the Standing Order of the Supreme Court covering the current Covid crisis makes reference to "Speedy Trial computations" in paragraph 9 and "Deadlines" in paragraph 12 and neither of those sections (nor any other part of the order) covered time periods as set forth in 58A holds of dangerousness. Absent any excludable time periods, the Court held that the time will expire. The defendant suggests that the Superior Court Judge was correct.

The defendant adopts the Commonwealth statement of the case and the addendum that has been submitted attached to their petition. The defendant respectfully suggests that the Superior Court Judge is correct in his ruling and for the following reasons the order should stand and the 58A hold shall expire and a bail hearing should be held.

In Mendonza v. Commonwealth, 423 Mass. 771, 783 (1996) this Court held that unlike Rule 36, an order of detention pursuant to 58A is a “limited and preliminary detention” which has a definitive expiration date. Id. At 783. Following on that ruling the Court held in Commonwealth v. Vieira, 483 Mass. 417 (2019), and reaffirmed that “Pretrial detention is a measure of last resort. See Brangan, 477 Mass. at 704, 80 N.E.3d 949 (“in our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception” [citation omitted]). Prior to conviction, a criminal defendant is presumed not to have committed the crimes charged. See, Commonwealth v. Madden, 458 Mass. 607, 610, 939 N.E.2d 778 (2010).

The Standing Order of the Supreme Court effective May 4, 2020, along with the Prior Standing orders of the Court make no reference to 58A orders of detention. The Court must be cognizant of the very unique nature of a 58A detention order. When a defendant is so held, the Court has ruled that the defendants must be presumed NOT (emphasis added) to have committed the offense charged when deciding if they should be held. This recognizes the serious presumption of innocence that must accompany the decision to hold a person without any chance of bail for the limited period of 180 days on a Superior Court matter. (120 days in District Court matters) The Court has further ruled that any such detention under 58A shall be LIMITED (emphasis added) see, Mendonza, Id at 783.

The absence of any language in the Standing Order suggests that the Court took into account the fact that the defendant so held are presumed to be innocent and that any such hold remains limited in nature. To rule otherwise would violate the decisions of the Court to the contrary since its clear that the time period would be extended to some date

in the future which is not calculable and open ended. The current Standing Order states that the "time clock" stopped on March 16, 2020 and "restarts" in June of 2020 but at the same time states that there will not be any jury trials until at least July, 2020. Thus, if the period of 58A is tolled it will become impossible to calculate the period of time that any dangerousness hold would expire. Jury trials in July are not a sure thing. Nor is the reopening of Court in June a sure thing. The court requires definitive start and end dates when dealing with individuals held without bail.

Asserting that Rule 36 in the Standing order implicitly drags 58A into it is incorrect. Rule 36 governs the time clock for all matters set for trial it does not cover the specifically limited holdings of dangerousness that are used to hold a person without any bail under 58A. While the Standing Order recognized that all matters pending in the Court system will have time deadlines (paragraph 12 of the Order) extended a 58A hold without bail is not a deadline. Deadlines are for the filing of documents and such under current court orders. And while the Standing Order states that speedy trial computations will be tolled that as well, that is not a consideration of the unique nature of a 58A hold without bail. In fact, the motion presented to this Judge was not suggesting that the matter be dismissed due to Speedy Trial considerations but rather that the hold be released and a bail set.

It should be recognized that this ruling of the Superior Court does not negate the Commonwealth's ability to seek a bail using all of the factors at their disposable under the Bail Statute. The Defendant does not get a dismissal but rather a bail set at which any Court may take into consideration the factors of the case along with the prior history of the defendant, defaults, ties to the community and the bail factors under Branagan.

Compare §58A(3) (time limit for preventive detention excludes "any period of delay as defined in Massachusetts Rules of Criminal Procedure Rule 36(b)(2)"), with Commonwealth v. Graham, 480 Mass. 516, 529 (2018) (under common law, defendant not *entitled to dismissal* if he acquiesces in delays not specifically enumerated under Rule 36). The Commonwealth loses nothing if the Superior Court Judges Order is upheld and the defendant's case continues into a trial posture when and if the Courts are able to accommodate it and there are jurors willing to sit and hear the evidence.

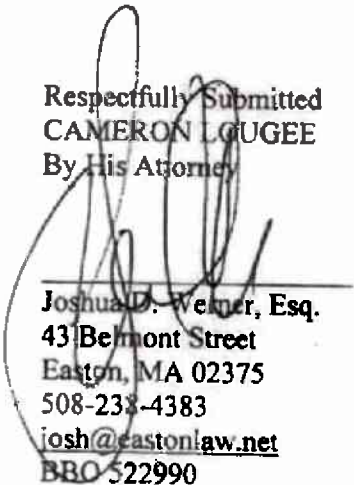
In reality and using common sense, it is highly unlikely that Superior Court Jury trials will commence any time soon. See generally Erin Bromage, *The Risks – Know Them – Avoid Them*, <https://www.erinbromage.com/post/the-risks-know-them-avoid-them> (last updated May 11, 2020) (summary of current research by UMass Dartmouth epidemiologist, noting that the most dangerous activities are those requiring large numbers of people to be indoors together talking for extended periods of time). Given the current nature of the pandemic, there may be a general reluctance to serve as a juror and the time to empanel and well as seat a jury on matters may need to be extended to an uncertain date in the future which makes the 58A hold end date uncertain and incalculable.

Thus, even if the time limit provided in the statute has not yet technically run due to this Court's orders, the Superior Court in deciding this motion properly considered the total halt of jury trials in the trial courts as a changed circumstance supporting the defendant's admission to bail. The defendant is held pending trial, but he cannot be tried. He therefore stands to be held indefinitely, even though he has not been convicted of any crime. This violates his right to due process of law under article 12 of the Massachusetts

Declaration of Rights. Cf. Brangan, 477 Mass. at 710 ("In upholding pretrial detention of a defendant to assure his or her future presence in court or safeguard other persons or the community, we have emphasized the temporary nature of this detention").

For all the foregoing reasons the defendant asserts that the decision of the Superior Court Judge should be upheld and this Court should hold that the time periods as set forth in 58A holds without bail should not toll under the Standing orders but shall be calculated and determined based upon the 180 days for Superior Court cases and 120 days for District Court matters absent any excludable time periods requested by either side.

Respectfully Submitted
CAMERON LOUGEE
By His Attorney



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BBO 522990

CERTIFICATE OF SERVICE

I, Joshua Werner, hereby certify that I emailed a copy of the foregoing
Defendant's Response to the Commonwealth's Petition to Shoshana Stern, ADA at
shoshana.e.stern@state.ma.us on March 11, 2020.



Joshua D. Werner, Esquire

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. SJ-2020-0347

Bristol Superior Court
No. 1973CR00216

COMMONWEALTH

v.

CAMERON LOUGEE

RESERVATION AND REPORT

This matter came before the Court, Cypher, J., on a petition for relief under G. L. c. 211, § 3, filed by the Commonwealth, which seeks relief from an order of a Superior Court judge, dated May 6, 2020, allowing Cameron Lougee's motion for release from his detention pursuant to G. L. c. 276, § 58A, and scheduling a bail hearing for May 15, 2020.¹ The judge ruled that this court's standing order of May 4, 2020 does not toll or extend the defendant's detention period under § 58A. In its petition, the Commonwealth argues that this was an error of law and that delays occasioned by our standing order are to be excluded from the § 58A detention period. Lougee has filed an opposition.

Upon consideration of the parties' submissions, it is hereby ORDERED that:

1. The Commonwealth's request for relief from the judge's order of May 6, 2020 is denied to the extent that the bail hearing shall go forward as scheduled on May 15, 2020; and

¹ The defendant was indicted for forcible rape of a child and other offenses. In September 2019, after a dangerous hearing pursuant to G. L. c. 276, § 58A, the defendant was detained without bail for a period not to exceed 180 days.

2. The Commonwealth's petition is hereby reserved and reported to the full court for determination. The record comprises the following:

- a. All the papers filed in No. SJ-20-347, Commonwealth vs. Cameron Lougee;
- b. This reservation and report; and
- c. The docket sheet in No. SJ-20-347.

The parties shall prepare and file a statement of agreed facts in the full court.

The clerk of the county court shall assemble the record and transmit it to the full court forthwith. Oral argument shall take place in June, 2020, or at such time as the full court may direct. The parties shall confer with the clerk as to a briefing schedule. This case shall be considered along with No. SJ-20-348, Commonwealth vs. Shamus Horton, which I reserved and reported today.

By the Court, (Cypher, J.)

/s/ Maura S. Doyle
Clerk

Dated: May 14, 2020

FINDINGS AND ORDER on Motion for Detention under G.L. c. 276, § 58A	DOCKET NO. 1973CR00216	MASSACHUSETTS TRIAL COURT
DEFENDANT'S NAME: Cameron Lougee		COURT DIVISION: Bristol Superior Court

SECTION I FINDINGS

The REASONS for the Court's order under G.L. c. 276, § 58A, are:

1. ☒ The defendant is charged with an offense designated in G.L. c. 276, § 58A(1). Forcible Rape of Child
2. ☐ The nature and seriousness of the danger posed to any person or to the community that would result in the defendant's release _____
3. ☐ The nature and circumstances of the offense charged _____
4. ☐ The potential penalty the defendant faces _____
5. ☐ The defendant's family ties _____
6. ☐ The defendant's employment record _____
7. ☐ The defendant's history of mental illness _____
8. ☐ The defendant's reputation _____
9. ☐ The risk that the defendant will obstruct or attempt to obstruct justice or threaten, injure or intimidate, or attempt to threaten, injure or intimidate a prospective witness or juror _____
10. ☐ The defendant's record of convictions _____
11. ☐ The defendant's record for illegal drug distribution _____
12. ☐ The defendant's present drug dependency _____
13. ☐ The defendant is on bail awaiting adjudication of a prior charge _____
14. ☐ The acts alleged in this case involve abuse as defined in G.L. c. 209A, § 1, or a violation of a temporary or permanent order issued pursuant to G.L. c. 208, §§ 18, 34B or 34C; G.L. c. 209, § 32; G.L. c. 209A, §§ 3, 4 or 5, or G.L. c. 209C, §§ 15 or 20.
15. ☐ The defendant has a history of orders issued against him or her pursuant to the statutes listed in item 14 _____
16. ☐ The defendant is on probation, parole, or other release pending completion of a sentence for any conviction.
17. ☐ The defendant is on release pending sentence or appeal for any conviction.

SECTION II FINDINGS

Additional findings of fact and further explanation if necessary: See Addendum.

DATE:
May 18, 2020

JUSTICE

Thomas F. McGinnis, Jr.

Thomas F. McGinnis, Jr., J.

FINDINGS AND ORDER
under G.L. c. 276, § 58A

DOCKET NO.

1973CR00216

TRIAL COURT OF MASSACHUSETTS

☐ **ORDER OF RELEASE ON PERSONAL RECOGNIZANCE WITHOUT SURETY**

I find the Commonwealth has not met its burden of clear and convincing evidence that no conditions of release will reasonably assure the safety of individuals or the community. The evidence does not demonstrate that the defendant's release on personal recognizance (1) will endanger the safety of another person or the community or (2) will not reasonably assure the appearance of the defendant.

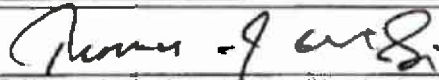
☐ **ORDER OF PRETRIAL DETENTION**

Following the Commonwealth's motion for a detention hearing pursuant to G.L. c. 276, § 58A(2), and after a hearing conducted in accordance with G.L. c. 276, § 58A(2) & (5), I find, based upon clear and convincing evidence, that no conditions of release imposed upon the defendant will reasonably assure the safety of ☐ another person, namely, _____, and/or ☐ the community. G.L. c. 276, § 58A(3). I therefore **ORDER** the detention of the defendant pending trial. The defendant shall be brought to trial as soon as reasonably possible, but in the absence of good cause, the defendant shall not be detained for a period exceeding 120 days, excluding any period of delay as defined in Mass. R. Crim. P. 36 (b)(2). I further order the defendant be committed to custody or confinement in a correctional facility separate, to the extent practicable, from persons awaiting or serving sentence or being held in custody pending appeal. I further **ORDER** that the defendant be afforded reasonable opportunity for private consultation with counsel. The Court's reasons for this order are listed in Sections I and II.

☒ **ORDER OF CONDITIONAL RELEASE**

Following the Commonwealth's motion for a detention hearing pursuant to G.L. c. 276, § 58A(2), and after a hearing conducted in accordance with G.L. c. 276, § 58A(4) & (5), I find that the defendant's release on personal recognizance alone will not reasonably assure the appearance of the defendant as required or will endanger the safety of another person in the community. G.L. c. 276, § 58A(2). I **THEREFORE IMPOSE THE FOLLOWING CONDITIONS** which I find are the least restrictive conditions that will reasonably assure the appearance of the defendant as required and the safety of all other persons and the community. G.L. c. 276, § 58A(2)(B). The Court's reasons for this order are listed in Sections I and II.

1. ☒ Defendant will not commit a federal, state or local crime during the period of release. Should the defendant commit a violation of this or any other condition imposed by this order, the order may be revoked and the defendant ordered to pretrial detention. G.L. c. 276, § 58B. (This condition is required in all orders. G.L. c. 276, § 58B)
2. ☐ Defendant will remain in the custody of _____, who agrees to assume supervision and to report any violation of a release of condition to this Court, and is able reasonably to assure the Court that the defendant will appear as required and will not pose a danger to the safety of any person or the community.
3. ☐ Defendant will maintain or actively seek employment;
4. ☐ Defendant will maintain or commence an education program;
5. ☒ Defendant will abide by the following specific restrictions on personal associations, place of abode or travel:
Stay 500 yards away from the alleged victim, her home and school.
6. ☒ Defendant will avoid all contact with the alleged victim(s) of the crime charged and with any potential witness(es) who may testify concerning the offense:
7. ☐ Defendant will report on a regular basis to the following law enforcement agency, pretrial service agency, or other agency as follows: _____
8. ☐ Defendant will comply with the following curfew: _____
9. ☐ Defendant will not possess a firearm, destructive device, or other dangerous weapon;
10. ☐ Defendant will refrain from the excessive use of alcohol or any use of a narcotic drug or other controlled substance, without a prescription from a licensed medical practitioner;
11. ☐ Defendant will undergo available medical, psychological, or psychiatric treatment, or treatment for drug or alcohol dependency and/or remain in a specified institution if required for that purpose, as follows: _____
12. ☐ The defendant will execute an agreement to forfeit property upon failing to appear as required and provide proof of ownership, value and encumbrances (see separate agreement attached hereto).
13. ☐ Defendant shall execute a bail bond in the sum of \$ _____;
14. ☐ Defendant will return to the custody of _____ for the following hours after release for employment, schooling or limited purpose, as follows: _____
15. ☒ Defendant will satisfy the following other conditions: _____
Defendant shall post bail in the amount of \$ 75,000 cash.

DATE: May 18, 2020	JUSTICE: 
DATE:	DEFENDANT: I have read and understand these conditions. I understand if I violate any condition it may result in my arrest and incarceration, and the revocation of my release.
DATE:	INTERPRETER: Signature of Interpreter, if any: I have translated the terms of this Order and the acknowledgement set forth above to the defendant prior to his / her signature.

ADDENDUM

The court (Donatelle, J.) previously ordered the defendant held without bail pursuant to G.L. c. 276, § 58A. Under that statute, the maximum period of detention is 180 days, subject to extension for good cause or due to periods of delay excludible under Mass. R. Crim. P. 36 (b) (2). G.L. c. 276, § 58A (3). On May 6, 2020, the court (Davis, J.) determined that the maximum period of detention would expire on May 15, 2020. The court therefore held a hearing on that date to determine appropriate pretrial conditions of release.

The defendant is charged with forcible rape of a child, G.L. c. 265, § 22A; indecent assault and battery on a child under fourteen, G.L. c. 265, § 13B; and rape of a child aggravated by an age difference of more than ten years, G.L. c. 265, § 23A (b).

The defendant is forty-one years old. He has a record of prior convictions for crimes of violence including mayhem, assault and battery with a dangerous weapon, assault with a dangerous weapon and assault and battery. He has numerous other convictions for property crimes, including three convictions for breaking and entering in the nighttime with intent to commit a felony, as well as drug offenses. He has violated the terms of probation on eight convictions. He has defaulted seven times on various charges. He has been the subject of an abuse prevention order (unrelated to the present victim). As a juvenile, he was adjudged delinquent on numerous serious matters, including multiple charges of breaking and entering and burning a dwelling house.

The court therefore imposes the following conditions of release:

- The defendant shall commit no further offenses.
- The defendant shall stay at least 500 yards away from the alleged victim and her home and school.

- The defendant shall have no contact with the alleged victim and potential witnesses.
- The defendant shall be subject to G.P.S. monitoring to enforce the exclusion zones around the alleged victim's home and school.
- The defendant shall post bail in the amount of \$ 75,000 cash.

Section 58A provides that the court "may not impose a financial condition under this section that results in the pretrial detention of the person." G.L. c. 276, § 58A (3). Given that the court has previously ruled that the defendant is indigent, he likely cannot post the amount of bail the court has ordered. However, the statute also provides: "Nothing in this section shall be interpreted as limiting the imposition of a financial condition upon the person to reasonably assure his appearance before the courts." *Id.* The purpose of bail is to assure the defendant's appearance. Therefore, the amount of bail should be no higher than necessary to accomplish that purpose. *Brangan v. Commonwealth*, 477 Mass. 691, 701 (2017).

In light of the seriousness of the pending charges and the defendant's record of prior convictions, he is facing the potential of a long sentence. That increases the risk that he will flee. In light of those facts and the defendant's history of defaults, the court finds that \$ 75,000 bail is necessary to ensure the defendant's appearance, even though that amount is likely more than he can post.

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

SJC-12949

COMMONWEALTH

V.

CAMERON LOUGEE

PARTIES' AGREED STATEMENT OF FACTS

Pursuant to the Single Justice's order that "[t]he parties shall prepare and file a statement of agreed facts in the full court," the parties submit the following:

On March 26, 2019, an arrest warrant issued in the Taunton District Court, along with a complaint charging Cameron Lougee with forcible rape of a child (G.L. c. 265, § 22A), rape of a child aggravated by a ten-year age difference (G.L. c. 265, § 23A), and indecent assault and battery on a child under fourteen (G.L. c. 265, § 13B). Mr. Lougee was arrested on the warrant and arraigned the following day. The Commonwealth filed a motion for pretrial detention under G.L. c. 276, § 58A, and Mr. Lougee was held pending a hearing on the motion. The District Court dangerousness hearing was held on April 18, 2019, on which date the judge (Brennan, J.) found Mr. Lougee dangerous but determined that he could be released on

conditions pursuant to § 58A(2). One of the conditions set by Judge Brennan was cash bail in the amount of \$25,000. Mr. Lougee was unable to post the bail, and remained held.

On July 18, 2019, the Bristol Grand Jury handed up indictments, 1973CR00216, charging Mr. Lougee with the same offenses listed in the District Court complaint. Mr. Lougee was arraigned in the Bristol Superior Court on September 5, 2019, and a new dangerousness hearing was conducted on September 9 (McGuire, J.). On September 19, 2019, Judge McGuire ordered Mr. Lougee held without bail pursuant to § 58A(3).

Trial was scheduled for March 23, 2020. On March 6th, Mr. Lougee filed a motion to continue the trial due to the unavailability of his expert witness. The motion was allowed (Pasquale, J.) over the Commonwealth's objection, and a new trial date was set for May 11. Judge Pasquale ordered the resulting period of delay to be excluded from the calculation of both Mr. Lougee's speedy trial time under Mass. R. Crim. P. 36, and from the maximum period of his pretrial detention under § 58A.

On April 24, 2020, the Supreme Judicial Court issued an Updated Order Regarding Court Operations Under The Exigent Circumstances Created By The Covid-19 (Coronavirus) Pandemic, OE-144, effective May 4th, providing that jury trials scheduled to begin between March 13, 2020, and July 1, 2020, were continued to a date no earlier than July 1, 2020.

On May 4, 2020, Mr. Lougee filed a Motion to Release the Defendant from 58A Hold and Remit to Bail. The Commonwealth filed an opposition, and a hearing was held on May 6th (Davis, J.). At the hearing, Judge Davis calculated that, after accounting for the excluded time resulting from the motion to continue the trial, Mr. Lougee's 180-day detention would expire on May 15, 2020, unless this Court's standing orders related to COVID-19 operated to toll the time permitted for detention under § 58A. The Commonwealth declared itself satisfied with the judge's calculation. Following the hearing, the judge made the following endorsement on the defendant's Motion:

After a hearing by video (Defendant) and telephone (counsel) this motion is Allowed. Under ordinary circumstances, Defendant's 180 day detention under G.L. c., 276, § 58A, would end on May 15, 2020. This Court does not read the SJC's updated Standing Order, effective May 4, 2020, as tolling or extending the end date for Defendant's

detention. It is not a "deadline" for purposes of ¶ 12 of the Standing Order, nor is it a "Speedy Trial Computation" for the purposes of ¶ 9 of the Standing Order. Accordingly, Defendant is entitled to a bail hearing, which will take place by teleconference on May 15, 2020, at 2 p.m.

The Commonwealth filed a petition pursuant to G.L. c., 211, § 3, with the Single Justice (Cypher, J.), who ordered the bail hearing to go forward as scheduled but reserved and reported the underlying question of law to the Full Court.

At the May 15th bail hearing, Judge McGuire set bail at \$75,000 with conditions, finding that, in light of Mr. Lougee's history, this amount was required to ensure his appearance for trial notwithstanding his indigency. Mr. Lougee again was unable to post bail, and presently remains incarcerated at the Bristol County Jail in North Dartmouth.

Respectfully submitted,

For the Commonwealth:

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DISTRICT ATTORNEY
BRISTOL DISTRICT

/s/ Shoshana Stern

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May 21, 2020