

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

BRISTOL, ss.

2020 SITTING

SJC-12949

COMMONWEALTH

v.

CAMERON LOUGEE

ON APPEAL FROM A JUDGMENT OF
THE BRISTOL SUPERIOR COURT

COMMONWEALTH'S BRIEF

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ISSUES PRESENTED

I. Does this Court's COVID Standing Order, OE-144, effective May 4, 2020, toll time calculations for pretrial detentions based on dangerousness under G.L. c. 276, § 58A?

II. Are any due process concerns arising from defendants' continued detention under § 58A, on account of the current public-health emergency, properly addressed by a totality-of-the-circumstances analysis such as that set out in *Abbott A. v. Commonwealth*, taking into account factors including the length of the pretrial detention, the degree of dangerousness, the seriousness of the offense charged, and any unfair prejudice to the defendant?

STATEMENT OF THE CASE¹

On July 18, 2019, the Bristol Grand Jury handed up Indictment No. 1973CR00216, charging the defendant, Cameron Lougee, with rape of a child with force (G.L. c. 265, § 22A), rape of a child aggravated by a ten-year age difference (G.L. c. 265, § 23A), and indecent

¹ The Single Justice's order reserving and reporting this case provided that "[t]he parties shall prepare and file a statement of agreed facts in the full court." [RA49]. The Commonwealth's Statement of the Case contains a subset of those agreed-upon facts, available in full in the Record Appendix. [RA54-58].

assault and battery on a child under fourteen (G.L. c. 265, § 13B). [RA4-5,11-16]. On September 19, 2019, McGuire, J., ordered the defendant held without bail pursuant to G.L. c. 276, § 58A. [RA6-7].

A jury trial was initially set for March 23, 2020; on March 6th the trial date was continued to May 11th at the request of the defendant, over the objection of the Commonwealth. [RA7-8].

On May 4, 2020, the defendant filed a Motion to Release the Defendant from 58A Hold and Remit to Bail. [RA9,22-25]. The Commonwealth filed an opposition, and a hearing was held on May 6th before Judge Davis. [RA9,27-30]. Following the hearing, Judge Davis 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. [RA9,31].

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. [RA.10,32-49].

At the May 15th bail hearing, Judge McGuire set bail at \$75,000 with conditions, finding that, in light of the defendant's history, this amount was required to ensure the defendant's appearance for trial notwithstanding his indigency. [RA50-53].

ARGUMENT

This case, like those joined with it for hearing by this Court, concerns the proper interpretation of this 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"). [RA17-20]. Judge Davis concluded that none of the provisions of the Standing Order toll time calculations under G.L. c. 276, § 58A; the Commonwealth submits that they do. The Commonwealth further suggests that, to the extent that this Court may have concerns about the length of the period of § 58A tolling occasioned by this Court's cumulative standing orders, and the likelihood that it may be some time before jury trials are able to resume in Massachusetts, these concerns are best dealt with

by the due process analysis set forth by this Court in *Abbott A. v. Commonwealth*, 458 Mass. 24 (2010).

I. 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 appeal presents a question of law: Does this Court's COVID Standing Order, OE-144, effective May 4, 2020, toll time calculations for pretrial detentions based on dangerousness 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.²

. . .

² 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 Orders 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."

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. [RA18-19].

General Laws ch. 276, sec. 58A, explicitly incorporates the tolling provisions of Rule 36(b)(2), as this 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 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 this 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." [RA19]. By the very terms of § 58A and Rule 36(b)(2), 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.

Additionally, it appears that Judge Davis was incorrect in concluding that the end date for the defendant's § 58A detention was "not a 'deadline' for

purposes of ¶ 12 of the Standing Order."³ Paragraph 12 of the Standing Order provides that "deadlines set forth in statutes or court rules . . . that expired or will expire between March 16, 2020, and June 1, 2020, are tolled until June 1, 2020[.]" [RA19]. This Court has explicitly referred to the detention period set forth in section 58A and similar statutes as a 'deadline'. See *Abbott A. v. Commonwealth*, 458 Mass. 24, 37 (2010) (referring to ninety-day detention period in predecessor version of § 58A as a "deadline"). See also *Commonwealth v. Parra*, 445 Mass. 262, 262 (2005) (describing sixty-day period of detention for evaluation set forth in SDP statute, G.L. c. 123A, § 13(a), as "deadline" after which petition for civil commitment must be dismissed).

Indeed, if nothing in the Standing Order served to toll calculations of time under § 58A, it would be fundamentally inconsistent with the overall tenor of the Order - which provides for broad tolling in light

³ Neither party's written filings before Judge Davis directly reference paragraph 12 of the Standing Order, though the defendant's filing uses that paragraph's guidelines for calculating new dates for tolled deadlines to argue that even if the time were tolled, it would not be possible to provide him with a timely jury trial before his 180 days would have run. [RA24].

of the emergency - as well as with the interests of justice.⁴ Defendants found by the judiciary to be too dangerous to release pretrial, after motion by the Commonwealth and in accordance with a detailed process laid out by the Legislature, should not abruptly revert to the status of regular bail applicants simply because a public emergency has made it temporarily impossible for the Commonwealth to bring them to trial. In the absence of some provision for taking into account the impossibility of holding most trials under the current circumstances, 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

⁴ In its April 3rd decision in *CPCS v. Chief Justice*, 484 Mass. 431 (2020), this Court crafted guidance for reconsidering bails in light of the pandemic that was structured to minimize the risk of release of dangerous defendants, whether those defendants were held pursuant to § 58A or not. E.g., *id.* at 435 ("To decrease exposure to COVID-19 within correctional institutions, any individual who is not being held without bail under G. L. c. 276, § 58A, and who has not been charged with an excluded offense (i.e., a violent or serious offense enumerated in Appendix A to this opinion) is entitled to a rebuttable presumption of release. The individual shall be ordered released pending trial on his or her own recognizance, without surety, unless an unreasonable danger to the community would result, or the individual presents a very high risk of flight.")

release notwithstanding the Commonwealth's best efforts to bring them to trial "as soon as reasonably possible[.]" See G.L. c. 276, § 58A(3).

And, crucially, a regular bail proceeding cannot take into account the defendant's danger to individuals or the community, however serious or widely-recognized that danger may be. As this Court wrote in *Brangan v. Commonwealth*, 477 Mass. 691 (2017):

[A] judge may not consider a defendant's alleged dangerousness in setting the amount of bail, although a defendant's dangerousness may be considered as a factor in setting other conditions of release. Using unattainable bail to detain a defendant because he is dangerous is improper. If the Commonwealth wishes to have a defendant held pretrial because he poses a danger to another person or the community, it must proceed under G. L. c. 276, § 58A, and comply with that statute's procedural requirements.

Id. at 705-706. If the Commonwealth must comply with § 58A in order to detain a dangerous defendant, then it must be possible for the Commonwealth to comply with § 58A, even during a state of emergency or other health crisis that unavoidably delays trial.

II. DUE PROCESS CONCERNS OCCASIONED BY THE LENGTH OF THE SHUTDOWN, AND THE LIKELIHOOD THAT JURY TRIALS MAY NOT BE ABLE TO RESUME FOR SOME TIME, ARE BEST ADDRESSED ON A CASE-BY-CASE BASIS UNDER THE ANALYSIS THIS COURT SET FORTH IN ABBOTT A. v. COMMONWEALTH.

This Court issued its first COVID standing order on March 13, 2020, and will hear argument in this case on June 3rd; jury trials may not be able to resume for some months yet. No formal 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 in spite of their dangerousness, through no lack of diligence on the part the Commonwealth.

But this is not the first time this Court has addressed a similar issue. In *Abbott A.*, the Court laid out the due-process analysis required in light of the fact that "an incompetent defendant or juvenile potentially may be detained indefinitely awaiting trial under § 58A." 458 Mass. at 37. The Court noted that "[t]he due process limitation is three-fold." *Id.*

The first factor was the "rule of reasonableness": that "an incompetent defendant or juvenile may not be held in criminal custody awaiting

trial 'more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain [competency] in the foreseeable future.'" *Id.*, quoting *Jackson v. Indiana*, 406 U.S. 715, 733, 738 (1972). The second factor was that "even if it is determined that the adult defendant or juvenile 'probably soon will be able to stand trial, his continued commitment must be justified by progress toward that goal.'" *Id.* at 39, quoting *Jackson*, 406 U.S. at 738.

Here, it is in essence the ability of the justice system itself to proceed with trial that is at issue, rather than the competency of any individual defendant. But it seems safe to say that trials will resume as soon as reasonably possible, and that progress is continually being made toward that goal.

Under these circumstances, the third factor has the greatest bearing on the situation of individual defendants: "even where there is a substantial probability that an adult defendant or juvenile will be restored to competency in the foreseeable future and there is progress toward achieving competency, due process requires that an incompetent defendant or juvenile not be detained under § 58A for an

unreasonable period of time." *Abbott A.*, 458 Mass. at 39. This Court noted that, "[w]ith this durational limitation, as with the rule of reasonableness, we cannot prescribe arbitrary time limits, or bright lines." *Id.* (internal citations and quotation marks omitted). "Rather, we consider the totality of the circumstances, including the length of the pretrial detention, the degree of dangerousness, the seriousness of the offense charged, the probability that the defendant or juvenile shall become competent, the anticipated time frame to achieve competency, whether the defendant or juvenile has prolonged his period of incompetency by refusing to take prescribed medication, and any unfair prejudice to the defendant or juvenile." *Id.* at 39-40.

Here, this totality-of-the-circumstances standard should reasonably incorporate the length of the pretrial detention, the degree of dangerousness, the seriousness of the offense charged, the best information available at the time of a given hearing with regard to the progress the justice system is making toward the resumption of trials, and any unfair prejudice to the defendant. This determination is necessarily made on a case-by-case basis.

As this Court noted in *Abbott A.*, "Pretrial detention under § 58A was intended to be short lived, ending on the conclusion of a speedy trial." 458 Mass. at 40, citing *Mendonza v. Commonwealth*, 423 Mass. 771, 783 (1996) (under § 58A, detention is "limited and preliminary" to main event of trial). "In *Mendonza* . . . , we concluded that, because of this difference in anticipated duration, art. 12 requires proof of dangerousness beyond a reasonable doubt for civil commitment but clear and convincing proof of dangerousness for pretrial detention." *Id.* "Accordingly, once an incompetent defendant's or juvenile's pretrial detention under § 58A violates the 'rule of reasonableness' in *Jackson* or fails to result in progress toward achieving competency or has become unreasonable in duration, due process requires that the Commonwealth either move for civil commitment under G. L. c. 123, § 8 (d), and prove the individual's dangerousness by the more demanding beyond a reasonable doubt standard, or release the individual on bail." *Id.* at 40-41.

The Commonwealth asks this Court to apply this reasoning to the current circumstances, and to hold that where a defendant's detention has exceeded the

procedural protections of § 58A's "clear and convincing proof of dangerousness" standard, the Commonwealth be allowed to satisfy the resulting due-process concerns by demonstrating that the defendant's detention also satisfies a standard of dangerousness beyond a reasonable doubt.

CONCLUSION

For the above reasons, the Commonwealth asks that this Court clarify that the continuances occasioned by the COVID Standing Order are excludable from calculations of time for pretrial detentions under the dangerousness statute, G.L. c. 276, § 58A.

Respectfully submitted,

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COMMONWEALTH'S ADDENDUM

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ADDENDUM

Mass. General Laws, Chapter 123 § 8(d)

Section 8: Proceedings to commit dangerous persons; notice; hearing; orders; jurisdiction

(d) The first order of commitment of a person under this section shall be valid for a period of six months and all subsequent commitments shall be valid for a period of one year; provided that if such commitments occur at the expiration of a commitment under any other section of this chapter, other than a commitment for observation, the first order of commitment shall be valid for a period of one year; and provided further, that the first order of commitment to the Bridgewater state hospital of a person under commitment to a facility shall be valid for a period of six months. If no hearing is held before the expiration of the six months commitment, the court may not recommit the person without a hearing.

Mass. General Laws, Chapter 123A § 13(a)

Section 13: Temporary commitment of prisoner or youth to treatment center; right to counsel; psychological examination

Section 13. (a) If the court is satisfied that probable cause exists to believe that the person named in the petition is a sexually dangerous person, the prisoner or youth shall be committed to the treatment center for a period not exceeding 60 days for the purpose of examination and diagnosis under the supervision of two qualified examiners who shall, no later than 15 days prior to the expiration of said period, file with the court a written report of the examination and diagnosis and their recommendation of the disposition of the person named in the petition.

Mass. General Laws, Chapter 265 § 13B

Section 13B: Indecent assault and battery on child under age of 14; penalties

Section 13B. Whoever commits an indecent assault and battery on a child under the age of 14 shall be punished by imprisonment in the state prison for not more than 10 years, or by imprisonment in the house of correction for not more than 2 1/2 years. A prosecution commenced under this section shall neither be continued without a finding nor placed on file.

In a prosecution under this section, a child under the age of 14 years shall be deemed incapable of consenting to any conduct of the defendant for which such defendant is being prosecuted.

Mass. General Laws, Chapter 265 § 22A

Section 22A: Rape of child; punishment

Section 22A. Whoever has sexual intercourse or unnatural sexual intercourse with a child under 16, and compels such child to submit by force and against his will or compels such child to submit by threat of bodily injury, shall be punished by imprisonment in the state prison for life or for any term of years. A prosecution commenced under this section shall neither be continued without a finding nor placed on file.

Mass. General Laws, Chapter 265 § 23A

Section 23A: Rape and abuse of child aggravated by age difference between defendant and victim or by when committed by mandated reporters; penalties

Section 23A. Whoever unlawfully has sexual intercourse or unnatural sexual intercourse, and abuses a child under 16 years of age and:

(a) there exists more than a 5 year age difference between the defendant and the victim and the victim is under 12 years of age;

(b) there exists more than a 10 year age difference between the defendant and the victim where the victim is between the age of 12 and 16 years of age; or

(c) at the time of such intercourse, was a mandated reporter as defined in section 21 of chapter 119, shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 10 years. The sentence imposed on such person shall not be reduced to less than 10 years, or suspended, nor shall any person convicted under this section be eligible for probation, parole, work release, or furlough or receive any deduction from his sentence for good conduct until he shall have served 10 years of such sentence. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file.

Mass. General Laws, Chapter 276 § 58A

Section 58A: Conditions for release of persons accused of certain offenses involving physical force or abuse; hearing; order; review

Section 58A. (1) The commonwealth may move, based on dangerousness, for an order of pretrial detention or release on conditions for 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 or any other felony that, by its nature, involves a substantial risk that physical force against the person of another may result, including the crimes of burglary and arson whether or not a person has been placed at risk thereof, or a violation of an order pursuant to section 18, 34B or 34C of chapter 208, section 32 of chapter 209, section 3, 4 or 5 of chapter 209 A or section 15 or 20 of chapter 209C, or arrested and charged with a misdemeanor or felony involving abuse as defined in section 1 of said chapter 209A or while an order of protection issued under said chapter 209A was in effect against such person, an offense for which a mandatory minimum term of 3 years or more is prescribed in chapter 94C, arrested and charged with a violation of section 13B of chapter 268 or a charge of a third or subsequent violation of section 24 of chapter 90 within 10 years of the previous conviction for such violation, or convicted of a violent crime as defined in said section 121 of said chapter 140 for which a term of imprisonment was served and arrested and charged with a second or subsequent offense of felony possession of

a weapon or machine gun as defined in section 121 of chapter 140, or arrested and charged with a violation of paragraph (a), (c) or (m) of section 10 of chapter 269, section 112 of chapter 266 or section 77 or 94 of chapter 272; provided, however, that the commonwealth may not move for an order of detention under this section based on possession of a large capacity feeding device without simultaneous possession of a large capacity weapon; or arrested and charged with a violation of section 10G of said chapter 269.

(2) Upon the appearance before a superior court or district court judge of an individual charged with an offense listed in subsection (1) and upon the motion of the commonwealth, the judicial officer shall hold a hearing pursuant to subsection (4) issue an order that, pending trial, the individual shall either be released on personal recognizance without surety; released on conditions of release as set forth herein; or detained under subsection (3).

If the judicial officer determines that personal recognizance will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person—

(A) subject to the condition that the person not commit a federal, state or local crime during the period of release; and

(B) subject to the least restrictive further condition, or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community that the person—

(i) remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is able reasonably to assure the judicial officer that the person will appear as required and will not pose a danger to the safety of any other person or the community;

(ii) maintain employment, or, if unemployed, actively seek employment;

(iii) maintain or commence an educational program;

- (iv) abide by specified restrictions on personal associations, place of abode or travel;
- (v) avoid all contact with an alleged victim of the crime and with any potential witness or witnesses who may testify concerning the offense;
- (vi) report on a regular basis to a designated law enforcement agency, pretrial service agency, or other agency;
- (vii) comply with a specified curfew;
- (viii) refrain from possessing a firearm, destructive device, or other dangerous weapon;
- (ix) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, without a prescription by a licensed medical practitioner;
- (x) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency and remain in a specified institution if required for that purpose;
- (xi) execute an agreement to forfeit upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required, and shall provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial officer may require;
- (xii) execute a bail bond with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably necessary to assure appearance of the person as required and shall provide the court with information regarding the value of the assets and liabilities of the surety if other than an approved surety and the nature and extent of encumbrances against the surety's property; such surety shall have a net worth which shall have sufficient unencumbered value to pay the amount of the bail bond;
- (xiii) return to custody for specified hours following release for employment, schooling, or other limited purposes; and
- (xiv) satisfy any other condition that is reasonably necessary to assure the appearance of the person as

required and to assure the safety of any other person and the community.

The judicial officer may not impose a financial condition that results in the pretrial detention of the person.

The judicial officer may at any time amend the order to impose additional or different conditions of release.

Participation in a community corrections program pursuant to chapter 211F may be ordered by the court or as a condition of release; provided, however, that the defendant shall consent to such participation.

(3) If, after a hearing pursuant to the provisions of subsection (4), the district or superior court justice finds by clear and convincing evidence that no conditions of release will reasonably assure the safety of any other person or the community, said justice shall order the detention of the person prior to trial. 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). A justice may not impose a financial condition under this section that results in the pretrial detention of the person. 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.

(4) When a person is held under arrest for an offense listed in subsection (1) and upon a motion by the commonwealth, the judge shall hold a hearing to determine whether conditions of release will reasonably assure the safety of any other person or the community.

The hearing shall be held immediately upon the person's first appearance before the court unless that person, or the attorney for the commonwealth, seeks a continuance. Except for good cause, a continuance on motion of the person may not exceed seven days, and a continuance on motion of the attorney for the commonwealth may not exceed three business days.

During a continuance, the individual shall be detained upon a showing that there existed probable cause to arrest the person. At the hearing, such person shall have the right to be represented by counsel, and, if financially unable to retain adequate representation, to have counsel appointed. The person shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information. Prior to the summons of an alleged victim, or a member of the alleged victim's family, to appear as a witness at the hearing, the person shall demonstrate to the court a good faith basis for the person's reasonable belief that the testimony from the witness will be material and relevant to support a conclusion that there are conditions of release that will reasonably assure the safety of any other person or the community. The rules concerning admissibility of evidence in criminal trials shall not apply to the presentation and consideration of information at the hearing and the judge shall consider hearsay contained in a police report or the statement of an alleged victim or witness. The facts the judge uses to support findings pursuant to subsection (3), that no conditions will reasonably assure the safety of any other person or the community, shall be supported by clear and convincing evidence. In a detention order issued pursuant to the provisions of said subsection (3) the judge shall (a) include written findings of fact and a written statement of the reasons for the detention; (b) direct that the person be committed to custody or confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentence or being held in custody pending appeal; and (c) direct that the person be afforded reasonable opportunity for private consultation with his counsel. The person may be detained pending completion of the hearing. The hearing 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.

(5) In his determination as to whether there are conditions of release that will reasonably assure the safety of any other individual or the community, said justice, shall, on the basis of any information which he can reasonably obtain, take into account the nature and seriousness of the danger posed to any person or the community that would result by the person's release, the nature and circumstances of the offense charged, the potential penalty the person faces, the person's family ties, employment record and history of mental illness, his reputation, the risk that the person will obstruct or attempt to obstruct justice or threaten, injure or intimidate or attempt to threaten, injure or intimidate a prospective witness or juror, his record of convictions, if any, any illegal drug distribution or present drug dependency, whether the person is on bail pending adjudication of a prior charge, whether the acts alleged involve abuse as defined in section one of chapter two hundred and nine A, or violation of a temporary or permanent order issued pursuant to section eighteen or thirty-four B of chapter two hundred and eight, section thirty-two of chapter two hundred and nine, sections three, four or five of chapter two hundred and nine A, or sections fifteen or twenty of chapter two hundred and nine C, whether the person has any history of orders issued against him pursuant to the aforesaid sections, whether he is on probation, parole or other release pending completion of sentence for any conviction and whether he is on release pending sentence or appeal for any conviction; provided, however, that if the person who has attained the age of 18 years is held under arrest for a violation of an order issued pursuant to section 18 or 34B of chapter 208, section 32 of chapter 209, section 3, 4 or 5 of chapter 209A or section 15 or 20 of chapter 209C or any act that would constitute abuse, as defined in section 1 of said chapter 209A, or a violation of sections 13M or 15D of chapter 265, said justice shall make a written determination as to the considerations required by this subsection which shall be filed in the domestic violence record keeping system.

(6) Nothing in this section shall be construed as modifying or limiting the presumption of innocence.

(7) A person aggrieved by the denial of a district court justice to admit him to bail on his personal

recognizance with or without surety may petition the superior court for a review of the order of the recognizance and the justice of the district court shall thereupon immediately notify such person of his right to file a petition for review in the superior court. When a petition for review is filed in the district court or with the detaining authority subsequent to petitioner's district court appearance, the clerk of the district court or the detaining authority, as the case may be, shall immediately notify by telephone, the clerk and probation officer of the district court, the district attorney for the district in which the district court is located, the prosecuting officer, the petitioner's counsel, if any, and the clerk of courts of the county to which the petition is to be transmitted. The clerk of the district court, upon the filing of a petition for review, either in the district court or with the detaining authority, shall forthwith transmit the petition for review, a copy of the complaint and the record of the court, including the appearance of the attorney, if any is entered, and a summary of the court's reasons for denying the release of the defendant on his personal recognizance with or without surety to the superior court for the county in which the district court is located, if a justice thereof is then sitting, or to the superior court of the nearest county in which a justice is then sitting; the probation officer of the district court shall transmit forthwith to the probation officer of the superior court, copies of all records of the probation office of said district court pertaining to the petitioner, including the petitioner's record of prior convictions, if any, as currently verified by inquiry of the commissioner of probation. The district court or the detaining authority, as the case may be, shall cause any petitioner in its custody to be brought before the said superior court within two business days of the petition having been filed. The district court is authorized to order any officer authorized to execute criminal process to transfer the petitioner and any papers herein above described from the district court or the detaining authority to the superior court, and to coordinate the transfer of the petitioner and the papers by such officer. The petition for review shall constitute authority in the person or officer having custody of the petitioner to

transport the petitioner to said superior court without the issuance of any writ or other legal process; provided, however, that any district or superior court is authorized to issue a writ of habeas corpus for the appearance forthwith of the petitioner before the superior court.

The superior court shall in accordance with the standards set forth in section fifty-eight A, hear the petition for review under section fifty-eight A as speedily as practicable and in any event within five business days of the filing of the petition. The justice of the superior court hearing the review may consider the record below which the commonwealth and the person may supplement. The justice of the superior court may, after a hearing on the petition for review, order that the petitioner be released on bail on his personal recognizance without surety, or, in his discretion, to reasonably assure the effective administration of justice, make any other order of bail or recognizance or remand the petitioner in accordance with the terms of the process by which he was ordered committed by the district court.

(8) If after a hearing under subsection (4) detention under subsection (3) is ordered or pretrial release subject to conditions under subsection (2) is ordered, then: (A) the clerk shall immediately notify the probation officer of the order; and (B) the order of detention under subsection (3) or order of pretrial release subject to conditions under subsection (2) shall be recorded in (i) the defendant's criminal record as compiled by the commissioner of probation under section 100 and (ii) the domestic violence record keeping system.

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

(b) Standards of a speedy trial

The time limitations in this subdivision shall apply to all defendants as to whom the return day is on or after the effective date of these rules. Defendants arraigned prior to the effective date of these rules shall be tried within twenty-four months after such effective date.

(1) Time limits

A defendant, except as provided by subdivision (d)(3) of this rule, shall be brought to trial

within the following time periods, as extended by subdivision (b)(2) of this rule:

(A)

during the first twelve month period following the effective date of this rule, a defendant shall be tried within twenty-four months after the return day in the court in which the case is awaiting trial.

(B)

during the second such twelve-month period, a defendant shall be tried within eighteen months after the return day in the court in which the case is awaiting trial.

(C)

during the third and all successive such twelve-month periods, a defendant shall be tried within twelve months after the return day in the court in which the case is awaiting trial.

(D)

If a retrial of the defendant is ordered, the trial shall commence within one year after the date the action occasioning the retrial becomes final, as extended by subdivision (b)(2) of this rule. The order of an appellate court requiring a retrial is final upon the issuance by the appellate court of the rescript. In the event that the clerk of the appellate court fails to issue the rescript within the time provided for in **Massachusetts Rule of Appellate Procedure 23**, retrial shall commence within one year after the date when the rescript should have issued.

If a defendant is not brought to trial within the time limits of this subdivision, as extended by subdivision (b)(2), he shall be entitled upon motion to a dismissal of the charges.

(2) Excluded periods

The following periods shall be excluded in computing the time within which the trial of any offense must commence:

(A)

Any period of delay resulting from other proceedings concerning the defendant, including, but not limited to:

(i) delay resulting from an examination of the defendant and hearing on his mental competency or physical incapacity;

(ii) delay resulting from a stay of the proceedings due to an examination or treatment of the defendant pursuant to section 47 of chapter 123 of the General Laws;

(iii) delay resulting from a trial with respect to other charges against the defendant, which period shall run from the commencement of such other trial until fourteen days after an acquittal or imposition of sentence;

(iv) delay resulting from interlocutory appeals;

(v) delay resulting from hearings on pretrial motions;

(vi) delay resulting from proceedings relating to transfer to or from other divisions or counties pursuant to **rule 37**;

(vii) delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement.

(B)

Any period of delay resulting from the absence or unavailability of the defendant or an essential witness. A defendant or an essential witness shall be considered absent when his whereabouts are unknown and he is attempting to

avoid apprehension or prosecution or his whereabouts cannot be determined by due diligence. A defendant or an essential witness shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained by due diligence or he resists appearing at or being returned for trial.

(C)

Any period of delay resulting from the fact that the defendant is mentally incompetent or physically unable to stand trial.

(D)

If the complaint or indictment is dismissed by the prosecution and thereafter a charge is filed against the defendant for the same or a related offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge.

(E)

A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is no cause for granting a severance.

(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.

(G)

Any period of time between the day on which a defendant or his counsel and the prosecuting attorney agree in writing that the defendant will plead guilty or nolo contendere to the charges and such time as the judge accepts or rejects the plea arrangement.

(H)

Any period of time between the day on which the defendant enters a plea of guilty and such time as an order of the judge permitting the withdrawal of the plea becomes final

CERTIFICATION

Commonwealth v. CAMERON LOUGEE
SJC-12949

As counsel for the Commonwealth, I certify that this brief complies with the rules of the court pertaining to the filing of briefs, including Mass. R.A.P. 16(a)(6) (pertinent findings or memorandum of decision); Mass. R.A.P. 16(e) (references to the record); Mass. R.A.P. 16(f) (reproduction of statutes, rules, regulations); Mass. R.A.P. 16(h) (length of briefs); Mass. R.A.P. 18 (appendix to the briefs); and Mass. R.A.P. 20 (form of briefs, appendices, and other papers).

This brief is produced in monospaced
Font, Courier New, and contains less than 50 pages
from the statement of the issues through the conclusion.

COMMONWEALTH OF MASSACHUSETTS

___/s/Shoshana Stern_
Shoshana E. Stern
Assistant District Attorney

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

SJC-12949

COMMONWEALTH

V.

CAMERON LOUGEE

CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2020, in the above-referenced case, I caused the Commonwealth's Brief, with Record Appendix and Certificate of Service, to be served on defendant's counsel, Patrick Levin, via e-filing.

/s/ Shoshana Stern

Shoshana E. Stern