

COMMONWEALTH OF MASSACHUSETTS

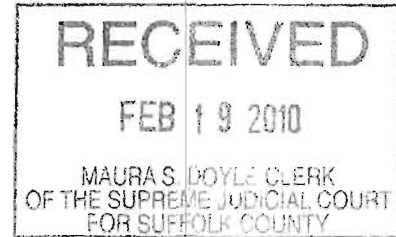
SUPREME JUDICIAL COURT
Woburn District Court
Docket No.: 0953-CR-2987

COMMONWEALTH OF MASSACHUSETTS

VS.

SHAUN MADDEN

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**DEFENDANT'S OPPOSITION TO COMMONWEALTH'S PETITION AND
MEMORANDUM IN SUPPORT**

Now comes the defendant, by and through counsel, and respectfully requests that this Court deny the Commonwealth's Petition for Relief. The Commonwealth's Petition asserts that the Superior Court lacked jurisdiction to review the defendant's bail conditions set by the District Court, thus requiring reversal of the Superior Court's order eliminating the curfew and GPS monitoring conditions of the defendant's bail.

The defendant opposes the Commonwealth's Petition because the Superior Court has proper jurisdiction under G.L. c. 276, §58A to hear and rule upon the defendant's petition for review. Further, the Superior Court did not err when it removed the curfew and GPS monitoring conditions from the defendant's bail conditions.

FACTUAL AND PROCEDURAL BACKGROUND

The defendant is charged with assault and battery in the Woburn District Court for allegedly choking and slapping his wife, Kerri Madden, in front of their minor child E.M.. This incident allegedly occurred on November 20, 2009, approximately one week after Mrs. Madden

was served with divorce papers by Mr. Madden, which in part contained a request that sole custody of their children be awarded to Mr. Madden.

On or about November 23, 2009, after Mr. Madden stipulated to dangerousness, the District Court continued bail at \$200 cash and also imposed several conditions pursuant to G.L. c. 276, §58A. (Ex. A). The conditions were as follows: the defendant will (1) not commit a crime during the period of release; (2) be subject to GPS monitoring with exclusion zone restrictions; (3) have no contact with Kerri Madden; (4) report on a regular basis to Woburn Police; (5) have a curfew from 7 a.m. to 7 p.m.; (6) refrain from possessing a firearm or other dangerous weapon; and (7) comply with any Probate Court orders. Mr. Madden posted bail and has been abiding by the conditions ever since. Id.

On or about December 22, 2009, the Superior Court amended Mr. Madden's bail conditions, to accommodate his work schedule by changing his curfew to 7 a.m. to 9 p.m. and included a provision that no curfew would apply during weeks when he was on call for work. (Ex. B). Mr. Madden was still required to have no contact with Mrs. Madden. Id. The Commonwealth did not appeal this ruling. Mr. Madden has successfully complied with this order.

On or about January 14, 2010, at a pretrial hearing in his criminal matter, the defendant made an oral motion to the District Court judge to reconsider his bail conditions by eliminating the curfew and GPS monitoring requirement. This motion was made due to a change in circumstances. Specifically, on January 13, 2010, the Middlesex County Probate Court issued an order granting the defendant sole custody of his children and indicated that the Court had serious doubts as to the credibility of Mrs. Madden and to the veracity of her allegations currently pending against Mr. Madden. (*See* Ex. C). The motion was denied and the defendant filed a

petition in the Superior Court to again review his bail conditions in light of the Probate Court order.

On or about February 4, 2010, the Superior Court granted the defendant's petition to amend his bail conditions. The Superior Court determined that the GPS monitoring and curfew requirements were no longer necessary to ensure the safety of an individual or the public and removed these conditions of the defendant's bail. The Commonwealth filed a Notice of Appeal on or about February 10, 2010 and filed a petition for relief and motion to stay the execution of the Superior Court's order on or about February 11, 2010.

ARGUMENT

I. The Superior Court has jurisdiction to hear the defendant's petition to amend his conditions of release.

The Superior Court has jurisdiction under G.L. c. 276, §58A (7), to address the defendant's petition to amend his conditions of release. As a result, the Superior Court's order amending the defendant's conditions of release set in the District Court should be affirmed. G.L. c. 276, §58A (7) provides in pertinent part that:

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 review of the order of the recognizance...

The justice of the superior court may, after a hearing on the petition for review, order 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 by the district court.

G.L. c. 276, §58A(7).

The defendant was aggrieved because the District Court did not grant him bail on his “personal recognizance with or without surety.” Instead, the District Court determined that “the release of the defendant on personal recognizance [would] not reasonably assure his appearance and/or would endanger the safety of [sic] any other person or the community.” (*See* Ex. A). Accordingly, the District Court ordered that the defendant’s bail continue to be set at \$200 cash as previously posted and imposed several other conditions of bail including but not limited to GPS monitoring with exclusion zones and a curfew between the hours of 7 am and 7 pm.¹ *Id.*, *See also* (Ex. D)(where the district court clerk entered a notation on the docket that the defendant was released on bail with G.L. 276, §58A conditions as set by the commissioner, not personal recognizance). These conditions significantly impacted the defendant’s liberty interests protected by the constitutions of the United States and the Commonwealth.

II. A defendant may appeal to a Single Justice of the Supreme Judicial Court pursuant to G.L. c. 211, §3 only after being denied relief in the Superior Court.

The Commonwealth relies on Comnesso v. Commonwealth, 369 Mass. 368, 371-372 (1975), to support its proposition that G.L. c. 211, §3 is the appropriate avenue to obtain relief from orders regarding pre-trial release or detention under the bail statutes, not the Superior Court. The Commonwealth is correct that the Supreme Judicial Court does have jurisdiction to “entertain bail petitions,” however, this jurisdiction appears to generally exist only after decision in the Superior Court has been rendered. *See Comnesso*, 369 Mass. at 371-372.

In Comnesso, the Court explains that although G.L. c. 276, §57 allows the Supreme Judicial Court to admit a prisoner or witness to bail in the first instance, an application under that

¹ The Superior Court amended these conditions on or about December 22, 2009 to accommodate the Defendant’s work schedule. (*See* Ex. B).


section will "ordinarily be denied or transferred to the Superior Court... if the matter has not previously been acted on there." Id.

Accordingly, the defendant was correct when he first petitioned the Superior Court for review of his bail conditions and the Superior Court did not err in ruling on his petition. In the event that this Court grants the Commonwealth's request to reverse the Superior Court's order, the defendant requests that this Court review the defendant's petition to amend his bail conditions.

WHEREFORE the defendant requests that this Court:

- I. Deny the Commonwealth's Petition for Relief;
- II. Affirm the Superior Court's order amending the defendant's bail;
- III. Hold a hearing on this matter; and
- IV. Grant such further relief this court deems necessary and proper.

Respectfully submitted,



CHARLES A. BOOKMAN
 Attorney for Defendant
 Bookman & Al-Marayati
 802 Main Street
 Melrose, Massachusetts 02176
 BBO# 632021

Telephone: (781) 712-0007
 Telefax: (781) 662-1132

DATED: February 19, 2010

EXHIBIT A

02-04-2010

11:00

FROM-WOBURN DIST COURT CLERKS OFFICE

7819334404

T-056 P.008/012 F-184

The Defendant will report on a regular basis to the following law enforcement agency, pretrial service agency, or other agency as follows: WOBURN PROBATION

The Defendant will abide by the following curfew 7P.M. TO 7A.M. *after*

The Defendant will refrain from possessing a firearm, destructive device, or other dangerous weapon. *GPS installed*

The Defendant will 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.

The Defendant will 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 as follows: _____

The Defendant will provide bail in the amount of \$200 cash or 2000 surties to ensure appearance of the Defendant and agree to forfeit the same if Defendant fails to appear.

The Defendant will return to the custody of _____ for the following hours after release for employment, schooling, or other limited purpose, as follows: _____

The Defendant will abide by all active restraining orders.

The Defendant will wear an electronic monitoring bracelet, ~~and be restricted to house arrest~~

The Defendant will satisfy the following other conditions: COMPLY WITH PROBATE COURT ORDERS, IF ANY

The defendant is locked down until the installation of a GPS device
The Defendant is warned that should the Defendant commit a violation of this or any existing order of release, or commit a new crime while on release, the Defendant's recognition may be revoked and the Defendant may be held without bail pending disposition of his or her open matters. *WITH EXCLUSION ZONES.*

Respectfully Submitted,
For the Commonwealth
GERARD T. LEONE, JR.,
DISTRICT ATTORNEY,

AGREED TO:

BY: [Signature]
Defendant
[Signature]
Defense Counsel

BY: [Signature]
Assistant District Attorney
Middlesex District Attorney's Office
15 Commonwealth Avenue
Woburn, MA 01801

DATED: 11/23/09

EXHIBIT B

02-04-2010 11:01

FROM-WOBURN DIST COURT CLERKS OFFICE

7810324404

T-066 P.011/012 F-154

Commonwealth of Massachusetts
Trial Court

Middlesex Superior Court
Probation Department

2009- 2987

DECEMBER 22, 2009

Maureen McEachern
Acting Chief Probation Officer

MADDEN, SHAWN has been placed on bail supervision in Middlesex Superior Court until the disposition of the case(s). Unless otherwise excused, you are to return to court as advised by the court.

If you fail to comply with any of the following terms of pre-trial supervision now placed on you by this court, you may be ordered to appear in court again. After due notice, the court may change the term of supervision, extend the periods of supervision or enter an alternate disposition. If you fail to appear, you may be defaulted and a warrant for your arrest will be issued.

TERMS OF SUPERVISION

1. You must obey all court orders and local, state and federal laws
2. You must report to your assigned probation officer at such time(s) and places as (s)he requires
3. You must notify the probation officer immediately of a change of residence and or employment
4. You must not leave the Commonwealth without the express permission of the Court. Such permission may be contingent upon your agreement to waive extradition

SPECIAL TERMS OF SUPERVISION

5. GPS BRACELET WITH CURFEW 9PM TO 7AM
6. HOWEVER NO CURFEW FOR EVERY WEEK DEFENDANT IN ON CALL FOR WORK
7. STAY AWAY FROM VICTIM
8. REMAND TO WOBURN DISTRICT

I have read and understand the above terms of the bail supervision contract and agree to observe them. I acknowledge receipt of the original bail supervision contract and the terms of supervision.

[Handwritten Signature]
Probation Officer (witness)

[Handwritten Signature]
Offender

[Handwritten Signature]
Justice of the Superior Court
12/22/09

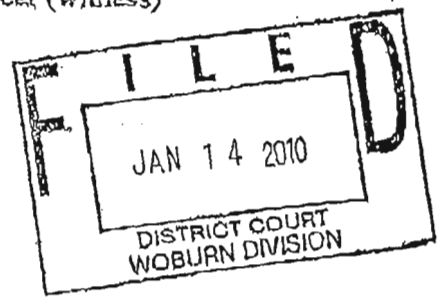


EXHIBIT C

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

MIDDLESEX, ss

DOCKET NO. 09D 4194

SHAUN MADDEN, Plaintiff

v.

KERRI MADDEN, Defendant

FURTHER TEMPORARY ORDER

This case was before the Court on December 9, 2009 on Father's Motion for Custody. After the hearing the Court granted Mother temporary physical custody of the two minor children Michael, age 8, and Ethan, age 3 due to serious allegations Mother made that Father had been physically abusive to her over the past few years culminating in a restraining order issued in November, 2009 which had been extended for a year after a full hearing. The Court awarded the parties were awarded joint legal custody. Father was granted weekly overnight visits. The Court was advised that DCF had been previously involved with this family and was in the process of conducting an investigation into allegations that Father assaulted Mother in the presence of Ethan. Father was requesting custody of both children alleging that the children were unsafe with Mother for reasons detailed below. Mother obtained a 209A restraining order on November 23, 2009 which gave her sole custody of the children and prevented Father from having any contact with the children. The Court continued the matter until January 11, 2010 so that DCF could finish their investigation, the Court could review the entire DCF file and Mother could submit to a hair follicle test.

At the hearing on December 9, 2009 Father alleged that Mother had previously had a serious drug problem and he believed that she might be using drugs again. Mother had been hospitalized in 2007 for three weeks at Bournemouth Hospital for substance abuse treatment. Mother told the Court that she had not been using drugs. The Court performed a urine screen on both parties and Mother tested positive for marijuana. She then acknowledged to the Court that she had smoked marijuana recently. Father's test was negative.

Father also provided the Court with a police report from an incident on June 1, 2009 where Mother allegedly assaulted a William Regan. Mr. Regan had been living in Mother's home for approximately two months and was sharing a room with the children. Mother and Mr. Regan had an argument about his leaving her home and he alleged that Mother scratched his chest and ripped his tee shirt. Mother then left the apartment. The police observed scratches and redness on his chest. Mother filed an affidavit with the Court stating that Mr. Regan was an old high school friend who she ran into in April, 2009 while he was looking for a ride to a homeless shelter. She claims that she only offered him a place to stay for a few days but that he refused to leave. She stated that she and the children would often sleep at other people's homes in order to avoid Mr. Regan. She claims that Mr. Regan only slept in the children's room when

[Handwritten signature]

they were not at home. Mother claims that she never assaulted him but merely put his belongings outside of the apartment so that he would leave. Father alleges that Mother put the children at risk by having Mr. Regan in her home. The Court agrees. Mother showed a total lack of judgment bringing Mr. Regan to live in her home. Even if the Court were to believe Mother's testimony that she was unable to get him to leave for two months and had to sleep elsewhere it shows that Mother was not capable of taking the steps necessary to insure the children's safety which appears to be a recurring theme with Mother's actions. The Court also credits Mr. Regan's statements to the police, which were supported by physical evidence, that Mother assaulted him.

Father also provided the Court with a Property Loss Statement which had a police report attached from an incident on August 23, 2009. The report indicated that Mother had called the police on August 24, 2009 about an incident with her boyfriend Matthew Mulvaney which had occurred the prior day. The police observed a large red and blue welt on Mother's cheek at the police station. Mother told the police that Mr. Mulvaney had arrived at her house with a friend to go out for the evening. Mother claims that they had a long conversation about possibly breaking up. Mother told the police that she had recently underwent surgery and that she was prescribed Percoset which she claims had been on her nightstand along with \$1,200 for her rent money. Mother claims that Mr. Mulvaney asked her for some "perks" but she told him that she only received Tylenol from the hospital. When the police asked her why he had wanted some of her medication she told them that "he has a problem and with abusing prescription medication and other drugs" and that was one of the reasons that she wanted to break up with him. She claims that they began to argue and that he grabbed the medication and her rent money. When she threatened to call the police she claims that he told her "if you call the police that will be the last thing you ever do and you'll never see your kid again". She ran after him and grabbed the money and he struck her. She told the police that she did not call until the following day because she was "petrified" and "didn't even think about it until someone convinced her to do so today." Again only a few months after the incident with Mr. Regan Mother again exposed the children to someone who she knew had a drug problem. Mother also had a previous drug problem and was associating with someone with a current drug addiction. She also had prescription drugs in her home which she was taking and cash in her home which she claims was "stolen". Another "theft" of the same amount of cash occurred in April, 2009 as set forth below. Mother had to be told to call the police again showing her inability to protect her children even after a threat was made against them. It is interesting to note that Mother did go to Court to get a restraining order against Father immediately after the alleged incident with him in November, 2009.

On October 30, 2009 Father filed a Complaint for Divorce which in part sought custody of the minor children. On December 9, 2009 Mother also filed a lengthy affidavit with the Court alleging that Father had been physically abusive to her after he returned from duty in Iraq in 2005. She alleged that he had pushed her down a flight of stairs in November, 2008 which resulted in her suffering a miscarriage. This incident she alleged led to the parties separation. She claimed that after their separation Father regularly threatened her. On November 20, 2009 Mother alleges that Father attacked her in the parking lot of Michael's school by grabbing her by the neck and hitting her across the face. She stated that the incident was witnessed by Ethan

who is three. Mother obtained a 209A restraining order but she did not obtain the order until November 23, 2009. Father denied any abuse on his part during this incident. What Mother does not discuss in her Affidavit, which is verified by DCF records, is that she voluntarily gave Father custody of Michael and he had Ethan every weekend after their separation. She also never alleged an incidents of domestic violence by Father in any prior DCF investigations until the most recent investigation after the November, 2009 incident.

At the hearing on January 11, 2010 the Court obtained the results of Mother 's hair follicle test which tested positive for Oxycodone. Mother provided the Court with a record from Saint's Medical Center indicating that she had been prescribed Percoset following a surgical procedure on October 6, 2009. Mother alleges that this is the reason that she tested positive for Oxycodone. What is interesting to note is that she tested negative for marijuana even though she had tested positive for the substance in Court the day before. She also clearly had obtained a prior prescription for Percoset in August, 2009.

What is even more troubling to the Court was the review of the DCF records which indicate that Mother has a continuing history of abusing prescription medication. She was hospitalized in 2007 but she clearly has continued to abuse narcotics. By her own admission she has continued to use marijuana. She also claims to have had two different prescriptions, in August, 2009 and October, 2009, for pain medication. Mother alleges that she attends regular therapy and NA but the Court does not find her testimony credible. Mother does not seem to have any concern about the use of marijuana even after acknowledging a prior drug dependency. She seems to justify this by stating that her only addiction was to pain killers. After a review of all the records, as more fully set forth below, the Court finds that Mother is an active drug user. She is regularly using marijuana, as admitted by her to DCF on several occasions, and the Court believes that she is continuing to abuse painkillers. She has been able to hide her drug use in the past very effectively. The fact that the results on her hair follicle test were negative for marijuana lead the Court to believe that she may have tampered with the results of the test.

The first 51A was filed against Mother on June 26, 2007 after Mother was admitted to the Bournemouth Hospital to their detox unit. Mother admitted to using 6 to 8 mgs of Oxycontin daily while caring for the children. She admitted to caring for and driving the children while under the influence of drugs. She began her drug use with Percoset and then began to take oxycotin. She would buy her drugs off the street. She admitted the drug use to Father who helped her get into treatment. Father admitted to DCF that he had no knowledge of Mother's drug use until she told him. Apparently Mother was able to hid her drug addiction from friends and family very well. Everyone was surprised to learn of her drug dependency when questioned by DCF.

A second 51A was filed against Mother on April 30, 2009 alleging that Ethan had been wandering the hallways of the apartment building while Mother was sleeping. The reporter alleged that Mother was "unconscious" on her bed and that there was a marijuana pipe next to her bed with a cigarette that was burned to the end. DCF contacted the children's pediatrician who indicated that he was concerned that Mother smelled of smoke when Ethan is brought to his office. He indicated that Ethan has a serious lung issue and that if Mother is smoking around

Ethan that he would be at risk. Father told DCF that Ethan was with him on the date of the alleged incident so that the reporter was incorrect. Mother told DCF that Ethan was an "escape artist" and that she would have to lock herself and Ethan in the room at night. She acknowledged that Ethan has been able to open up locks and get outside of the home without her knowledge in the past. Mother also admitted to DCF that she had smoked marijuana a recently as two week before the interview but claimed that when she smoked marijuana it was never when she had the children. The worker expressed a concern to her about her use of marijuana in light of her past addictions and Mother told the worker that she would not smoke again. She also told the worker that she did smoke cigarettes in the home but claimed that she smoked out the window. Mother also told the worker that she had seen a psychiatrist who prescribed medication for her then he left Bournemouth but she told the worker she never took the pills. She also told the worker that she had a prescription for Vicodin but claimed that her friend holds the pills for her. She also told the worker that she was not in therapy. She was specifically asked about domestic violence issues and denied. She also advised the worker about her miscarriage but never indicated that Father had thrown her down the stairs. She claims that she separated from Father after the miscarriage because he wasn't supportive of her. Another concerning statement made by Mother to the worker was regarding the theft of \$1,200 in cash which she claims was for her rent money. She told the worker that Father had given her the cash to pay her rent and that she left it in an envelope on the landlord's stoop. She claims that the landlord's coworker took the money and she is now being evicted. This story sounds reminiscent of her later claim that her boyfriend stole \$1,200 in cash for her rent that was sitting on her dresser. She told DCF that she would want Father to care for the children if anything was to happen to her. She acknowledged that Michael lived with his Father.

When the worker talked to Father on May 4, 2009. Father told her that Mother had been nervous about the meeting and that if they tried to have her take a drug test that she would "dye her hair and go to GNC to get stuff so the test will be normal". Father told the worker that Mother is not able to parent Michael because he has AD/ID and that she can't get him to school on time and medicated. At that time he did not feel that Ethan was at risk while in Mother's care but he felt that Mother was very immature.

DCF supported the allegations of neglect against Mother. DCF cited Mother's use of marijuana, a concern that she might be using other illegal drugs, Mother's history of substance abuse and the her lack of psychological treatment as reasons for concerns about Ethan's safety. They were also concerned that Ethan was able to open locks in the house and wander off. They suggested that Mother complete a Substance Abuse evaluation and random drug screens. That never occurred.

Mother wrote in Affidavit and testified in Court that she has always been the children's primary care provider. A review of the DCF records from the April, 2009 51A indicated that Michael had been living with Father and that she had custody of Ethan who visited with his Father on weekends.

A 51A was filed on November 24, 2009 against Father by the Burlington Police. Mother reported to the police that Father had assaulted her, in Ethan's presence, and the police observed

"noticeable redness" of the left side of Mother's face and neck. Father was placed under arrest. Mother told the worker during this investigation that Father had a history of being verbally and mentally abusive and that he had physically assaulted her on one other occasion when she miscarried. This directly contradicts the statements that she made to DCF during the last investigation. Mother claims that Father's parents are active alcoholics and that they regularly care for the children when in Father's care. Mother expressed a concern about the grandparent's ongoing substance abuse and lack of supervision that Michael receives when in their care. She referred to an incident two years ago with a neighbors child who placed his fingers in Michael's anus. Michael indicated that this child is his best friend, acknowledged the incident and indicated that it never happened again. Michael also told the worker that he is allowed to play with his friend unsupervised when he is at his grandparents and that his grandmother drinks "Captain Morgan's" and lays in bed a lot watching TV. He also reported that his grandfather drinks alcohol. Father denied that any assault occurred and was angry that his parents had been accused of abusing alcohol which he has denied. It was clear from the report that Michael had recently changed schools so the Court will assume that he continued to reside with Father until Mother obtained the restraining order. The Court is concerned about the grandparents use of alcohol around the children. Michael was clearly able to describe to the worker what his grandparent's drank. Until there is a more thorough investigation the paternal grandparents shall not care for the children nor shall they be with the children unless Father is present.

Mother told DCF that she now under a great deal of stress because of the divorce proceeding and told the worker that she has attended support meetings with a friend twice a month. She told this Court that she went to meetings several times a week and that she attended therapy. The Court does not find her statements credible. Ethan did tell the work that he saw his father hit his mother and said it was "bad". He nodded his head when the worker asked if he was scared. DCF supported the allegation of neglect of Ethan by Father was supported due to Ethan's statements. The Court believes that there was an incident in November, 2009 between Mother and Father which frightened Ethan. Based on all of the other interviews conducted by DCF it does not appear that Ethan is the most accurate reporter both due to his age and his lack of good verbal skills. The veracity of any of Mother's statements about Father are suspect at this point. The Court believes that at this time the children are at risk if they are left in Mother's care.

After consideration of all of the above evidence the Court enters the following temporary orders:

1. Father shall have sole physical custody of the minor children Michael and Ethan Madden commencing on January 15, 2010. Father shall be able to change Michael's school and Ethan's daycare. He shall notify Mother of the name and contact information for the new school/daycare immediately. Father shall pick up the children from school/daycare on January 15, 2010. Mother shall insure that the children are brought to school/daycare on that day. The parties shall continue to have shared legal custody of the children.
2. The parties shall make arrangements for Father to pick up the children's clothing, toys and other personal belongings from Mother's home on Monday, January 18, 2010 at a mutually agreed upon time. If the parties are unable to agree on a time then it shall be at 5:00 p.m. Father

shall have a police officer escort him to Mother's home.

3. Father's child support obligation is suspended. Father shall continue to provide medical insurance coverage for Mother and the minor children and he shall be responsible for all of the children's uninsured medical and dental expenses.

4. Mother shall have visitation with the children every Saturday and Sunday from 10:00 a.m. to 6:00 p.m. Mother shall have no overnight visits. The exchanges for the children shall occur at the Waltham Police Department. Mother shall not have any unrelated males present during her visits with the children.

5. Mother shall submit to random drug screens with the Probation Department of this Court on a weekly basis. Mother shall be responsible for the costs of the screens. Mother shall also attend weekly counseling and provide Father's counsel with a letter from her counselor, on the 1st of each month, beginning February, 2010, verifying her weekly attendance. Mother shall also attend at least 3 NA meetings a weekly and she shall obtain verification from each meeting of her attendance. She shall provide the weekly verification to Father's counsel every Monday for the following week beginning on January 25, 2010.

6. Father shall not allow the children to have any overnight visits at his parent's home nor shall his parents care for the children unless he is present. Father shall be responsible for taking the children to school/daycare and picking them up after work.

7. The Court shall appoint a GAL to investigate the appropriate custodial arrangements for the children, the allegations of Father's domestic violence and Mother's drug abuse, and the GAL shall make recommendations to the Court on the appropriate parenting/custody arrangements. The cost of the GAL shall be paid by Father subject to readjustment pending the outcome of the investigation. The Court finds that Mother presently does not have the funds to pay for a share of the investigation. Father is working and has been relieved of his child support obligations therefore he is in a better position to pay the cost of the investigation. The GAL investigation is limited to 30 hours subject to further Court order. The GAL shall complete their investigation 90 days after their retainer is received. Each party may only provide the GAL with 3 collaterals to contact. The GAL may contact any persons that they determine is necessary for the investigation. The parties shall sign releases to allow the GAL to obtain their medical records and the children's medical and educational records.

8. The 209A restraining order from the Lowell District Court shall be amended to reflect the terms of this order.

9. This matter is scheduled for a Status conference on March 5, 2010 at 2:00 p.m.

(9)

Date:

1/13/10

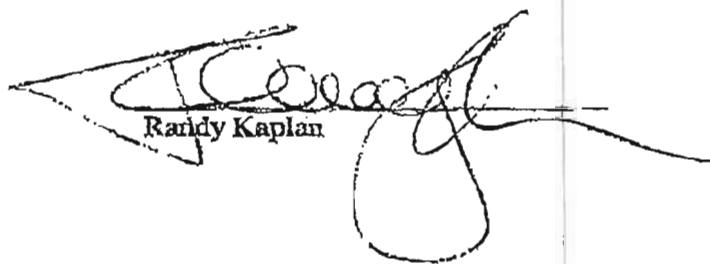

Randy Kaplan

EXHIBIT D

02-04-2010 10:58

FROM-WOBURN DIST COURT CLERKS OFFICE

7819334404

T-058 P.002/012 F-164

CRIMINAL DOCKET		DOCKET NUMBER D953CR002987	NO. OF COUNTS 1	Trial Court of Massachusetts District Court Department
DEFENDANT NAME AND ADDRESS Shaun G Madden 70 Hall St Waltham, MA 02461		DOB 03/28/1979	GENDER Male	COURT NAME & ADDRESS Woburn District Court 30 Pleasant Street Woburn, MA 01801
		DATE COMPLAINT ISSUED 11/23/2009		ARREST
		PRECOMPLAINT ARREST DATE 11/20/2009		
		INTERPRETER REQUIRED 3/2/2009 11/23/2009		

COUNT	CODE	OFFENSE DESCRIPTION	OFFENSE DATE
1	265/13A/B	A&B 265 §13A(a)	11/20/2009

DEFENSE ATTORNEY <i>Bookman</i>	OFFENSE CITY/TOWN Burlington	POLICE DEPARTMENT Burlington PD
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DATE & JUDGE	DOCKET ENTRY	DATE & JUDGE	FEES IMPOSED
NOV 23 2009	<input type="checkbox"/> Attorney appointed (SJC R. 3:10) <input type="checkbox"/> Atty denied & Deft. Advised per 211 D §2A <input type="checkbox"/> Waiver of Counsel found after colloquy Terms of release set: <input type="checkbox"/> PR <input checked="" type="checkbox"/> Bail <i>as set by court</i> <input type="checkbox"/> See Docket for special condition <input type="checkbox"/> Hold (276 §58A) <i>2009/11/23</i>		Counsel Fee (211D § 2A(2)) <input type="checkbox"/> WAIVED Counsel Contribution (211D § 2) <input type="checkbox"/> WAIVED Default Warrant Fee (276 § 30(1)) <input type="checkbox"/> WAIVED Default Warrant Arrest Fee (276 § 30 (2)) <input type="checkbox"/> WAIVED Probation Supervision Fee (276 § 87A) <input type="checkbox"/> WAIVED Bail Order Forfeited
NOV 23 2009	Arraigned and advised: <input checked="" type="checkbox"/> Potential of bail revocation (276 §68) <input type="checkbox"/> Right to bail to review (276 §68) <input type="checkbox"/> Right to drug exam (111B § 10)		
	Advised of right to jury trial: <input type="checkbox"/> Waiver of jury found after colloquy <input type="checkbox"/> Does not waive		
	Advised of trial rights as pro se (Dist. Ct. Supp.R.4)		
	Advised of right of appeal to Appeals Ct. (M.R. Crim P.R. 20)		

NO.	SCHEDULED DATE	EVENT	RESULT	JUDGE	TAPE START/STOP
1	11/23/2009	Arraignment	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	<i>RB</i>	<i>7:25/11:30-11:35</i>
2	11-19-10	<i>PTH</i>	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	<i>TG</i>	<i>2:41/11:15-11:25</i>
3	11/3/10	<i>CTE</i>	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd		
4			<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd		
5			<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd		
6			<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd		
7			<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd		
8			<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd		
9			<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd		
10			<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd		

APPROVED ABBREVIATIONS
 Arr = Arraignment PTH = Pretrial hearing DCB = Clerks compliance & jury selection BTR = Bench trial JTR = Jury trial PCN = Probable cause hearing MOT = Motion hearing SR = Status review
 SRP = Status review of payment/FA = First appearance in jury session BRN = Bench review CWF = Continuance without finding scheduled to terminate PRO = Probation approved to terminate
 QFTA = Defendant failed to appear & was arraigned WAR = Warrant issued WARD = Out-of-warrant hearing WFR = Warrant or default waiver recalled PWH = Probation revocation hearing

A TRUE COPY ATTEST:	CLERK/MAGISTRATE / ASST CLERK <i>X</i>	TOTAL NO. OF PAGES	ON (DATE)
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02-04-2010 11:01

FROM-WOBURN DIST COURT CLERKS OFFICE

7819284404

T-056

P.012/012

F-154

CRIMINAL DOCKET - OFFENSES		DEFENDANT NAME			DOCKET NUMBER		
1 A&B c265 §13A(a)		Shaun G Maddon			0953CR002987		
DISPOSITION METHOD		FINE/ASSESSMENT	SURFINE	COSTS	OUI \$240 FEE	OUI VICTIMS ASMT	
<input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 278 §29D warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		HEAD INJURY ASMT	RESTITUTION	V/W ASSESSMENT	BATTERER'S FEE	OTHER	
FINDING		SENTENCE OR OTHER DISPOSITION				JUDGE	DATE
<input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		<input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (278 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:					
FINAL DISPOSITION		JUDGE	DATE				
<input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)							
COUNT / OFFENSE		DISPOSITION DATE AND JUDGE					
DISPOSITION METHOD		FINE/ASSESSMENT	SURFINE	COSTS	OUI \$240 FEE	OUI VICTIMS ASMT	
<input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 278 §29D warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		HEAD INJURY ASMT	RESTITUTION	V/W ASSESSMENT	BATTERER'S FEE	OTHER	
FINDING		SENTENCE OR OTHER DISPOSITION				JUDGE	DATE
<input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		<input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (278 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:					
FINAL DISPOSITION		JUDGE	DATE				
<input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)							
COUNT / OFFENSE		DISPOSITION DATE AND JUDGE					
DISPOSITION METHOD		FINE/ASSESSMENT	SURFINE	COSTS	OUI \$240 FEE	OUI VICTIMS ASMT	
<input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 278 §29D warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		HEAD INJURY ASMT	RESTITUTION	V/W ASSESSMENT	BATTERER'S FEE	OTHER	
FINDING		SENTENCE OR OTHER DISPOSITION				JUDGE	DATE
<input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		<input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (278 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:					
FINAL DISPOSITION		JUDGE	DATE				
<input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)							
COUNT / OFFENSE		DISPOSITION DATE AND JUDGE					



CRIMINAL DOCKET DOCKET ENTRIES	DEFENDANT NAME Shaun G Madden	DOCKET NUMBER 0953CR002987
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DATE	DOCKET ENTRIES
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NOV 23 2009
 Commenced files into for Cor-Tax
 Detention per 272 & 18A
 Atty T counter appears filed
 Court finds Probable Cause and order Dept
 held into bail pending a 58A Hearing - After
 further hearing court allowed Commenced
 to withdraw its Request for Cor-Tax
 Detention - Dept stipulates and charges removed
 and Dept order released on 58A conditions
 of Release PS R729/2:27-2:36
 Doc out 3tr by Dept to submit copy of
 Victim's COPI - allowed PS R729/2:40-

12-4-09 App of Atty Bookman filed

1/14/10 Def's motion to amend/reconsider conditions of release DENIED *VB*

PRETRIAL CONFERENCE
 REPORT FILED

Notice rec'd from
 Sup Court that conditions amended
 (TG)

APPROVED ABBREVIATIONS
 ARR = Arraignment PTH = Pretrial hearing DCC = Discovery compliance & jury selection BTR = Bench trial JTR = Jury trial PCH = Probable cause hearing MDY = Motion hearing SR = Status review
 BRP = Disposition of payments FAT = First appearance in July session SEN = Sentencing CWF = Continuance without finding scheduled to continue PRD = Probation suspended to terminate
 DFTA = Defendant failed to appear & was defaulted WAR = Warrant issued WARD = Default warrant issued WR = Warrant and default warrant recalled PVR = probation revocation hearing

