

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. SJ-2010-0072
MIDDLESEX SUPERIOR COURT
No. MICR2010-0123
WOBURN DISTRICT COURT
No. 0953-CR-2987

COMMONWEALTH OF MASSACHUSETTS

vs.

SHAUN MADDEN

RESERVATION AND REPORT

The Commonwealth has brought a petition pursuant to G. L. c. 211, § 3, in which it contends that a Superior Court judge is without authority to review the conditions of release imposed on a defendant by a District court judge pursuant to G. L. c. 276, § 58A, because the defendant does not fall into the class of "aggrieved" persons entitled to such review under the statute.

The statute reads in pertinent part:

"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 recognizance . . ." G. L. c. 276, § 58A (emphasis added).

The defendant was arraigned on one count of assault and battery on his estranged wife. The Commonwealth filed a motion for pretrial detention based on dangerousness, pursuant to G. L.

c. 276, § 58A, which it later withdrew and substituted with a motion for release on conditions, also pursuant to § 58A. The defendant was released on the conditions that he

- (1) stay away from his estranged wife;
- (2) obey a curfew between 7 P.M. and 7 A.M.;
- (3) wear and be monitored by an electronic bracelet (ELMO);
- (4) post \$200 cash bail or \$2000 surety;
- (5) report to the Woburn probation department;
- (6) refrain from possessing any dangerous weapons, surrender any licensed firearms and revoke firearms licenses; and
- (7) abide by all Court orders.

Approximately one month after these conditions were imposed, the defendant sought modification in Superior Court to accommodate his work schedule. A Superior Court judge allowed his motion and modified the conditions, so that the curfew was in effect from 9 P.M. until 7 A.M. Shortly thereafter, a judge of the Probate and Family Court ordered that physical custody of defendant's and his wife's two minor children be granted to him pending a report from a guardian ad litem.

In light of the custody order, the defendant unsuccessfully sought modification of his conditions of release in District Court. He then sought review in the Superior Court and a judge of that Court allowed his motion to amend the conditions, essentially removing the requirements that he wear an electronic bracelet and abide by the curfew. The judge then stayed the

imposition of the new conditions after the Commonwealth indicated that it would seek relief from a single justice of this court. The stay expired on February 11, 2010, and thus the new conditions of the defendant's release have since been imposed.

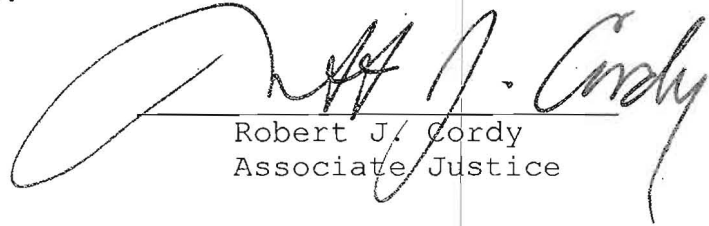
The questions presented are:

- A. Where a defendant is not in custody, but is nonetheless subject to conditions imposed pursuant to G. L. c. 276, § 58A, that restrict his liberty, does a Superior Court judge have authority to review and modify such conditions in accordance with c. 276, § 58A(7)?
- B. If not, whether the defendant's only remedy is to seek relief from a single justice of this court?

Because I am of the view that these are important and recurring questions that ought to be resolved by the full court in the first instance, I hereby reserve and report the Commonwealth's petition to the full court, on the following record:

1. Commonwealth's Motion for Continued Stay Pending Review of its Petition for Relief Under G. L. c. 211, § 3;
2. Commonwealth's Petition for Relief Under G. L. c. 211, § 3 and Memorandum in Support;
3. Defendant's Opposition to Commonwealth's Petition and Motion for Stay;
4. Defendant's Opposition to Commonwealth's Petition and Memorandum in Support;
5. this reservation and report.

The Commonwealth is designated the appellant and the defendant is designated the appellee. The parties shall confer with the Clerk of the Supreme Judicial Court for the Commonwealth regarding the service and filing of briefs. This matter shall proceed in all respects in conformance with the Massachusetts Rules of Appellate Procedure.



Robert J. Cordy
Associate Justice

Entered: February 23, 2010