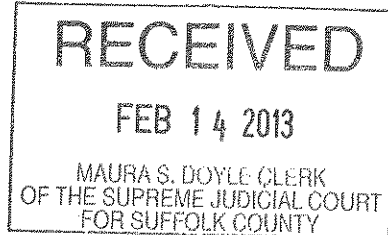


COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. SJ-2013- 066



COMMONWEALTH

v.

SHUBAR CHARLES

COMMONWEALTH'S EMERGENCY PETITION

PURSUANT TO G.L. c. 211, § 3

TO EXTEND A SUPERIOR COURT ORDER, NOW SET TO EXPIRE ON
FRIDAY, FEBRUARY 15, 2013 AT 2 P.M., STAYING THE STAY OF
EXECUTION OF SENTENCE¹

Introduction

Pursuant to G.L. c. 211, § 3, the Commonwealth petitions this Court, on an emergency basis, to extend a Superior Court order (Lu, J.) staying an order allowing a motion to stay execution of a sentence. The Commonwealth understands that this is the first case to be presented to this or any appellate court as to the nature and extent of the authority of Special Magistrates appointed pursuant to an Order of Assignment by the Chief Justice of the Superior Court, Rouse, J., (Comm. Exh. 2), see Mass. R. Crim. 47, "to preside over criminal proceedings in connection with

¹ References are as follows: Superior Court docket (Comm. Exh. 1); Order of Appointment (Comm. Ex. 2); defendant's Board of Probation record, redacted of personal identifying information (Comm. Exh. 3), affidavit of trial prosecutor (Comm. Exh. 4), and New Bedford and Lynn police reports (Comm. Exh. 5).

cases relating to the William A. Hinton State Laboratory Institute in Jamaica Plan" (Comm. Exh. 2).

The Commonwealth seeks the extension in order to file a second petition, pursuant to G.L. c. 211, § 3, 1) to clarify the authority of the Special Magistrate and a justice of the Superior Court to consider and grant a motion to stay execution of a sentence *pending a new trial motion*; 2) to clarify the authority of the Special Magistrate to vacate a guilty plea and to conduct a partial guilty plea colloquy; and 3) to determine whether a plea conducted pursuant to the procedure established under the Order of Appointment is valid.² By contrast, the issue raised in this petition is limited to whether the Special Magistrate (who originally allowed the defendant's motion to stay execution of his sentence) and the Superior Court (which considered the issue anew and also allowed the motion) had the power to consider and allow the motion.

The Commonwealth has no other avenue to obtain relief. Moreover, the second petition will raise "substantial claims of irremediable error, or repeated or systemic misapplication of the law," requiring the Court's intervention "to protect substantive rights." Commonwealth

² The Commonwealth expects to file the second petition on February 25, 2013.

v. Tobias T., 462 Mass. 1001, 1001 (2012), (internal citations and quotations omitted).

Procedural Statement and Brief Argument

On October 18, 2010, the defendant pled guilty to possession of a Class B substance with intent to distribute, possession of ammunition, and being a felon in possession of ammunition, with one prior qualifying predicate conviction (No. ESCR-2009-00697). He had been indicted for a gun possession charge and for being a felon-in-possession with three prior qualifying convictions, a charge with a fifteen-year mandatory minimum sentence, but nolle prosequis were entered on these charges as part of the plea bargain (Whitehead, J., presiding) (Comm. Exhs, 1, 4). For the felon-in-possession and possession-of-a-class-B substance convictions, he was sentenced to concurrent four to seven year state prison terms; for the possession of ammunition charge, he was sentenced to a concurrent two-year house of correction term (Comm. Exh. 1). He was represented by attorney Christopher Norris (Comm. Exh. 1).

On December 17, 2012, the defendant filed a motion for new trial on grounds related to the analysis of the drugs at the Hinton State Drug Lab; Chemist Annie Dookhan was the primary chemist in his case.

On January 31, 2013, over the Commonwealth's objection that the Special Magistrate (Cratsley, S.M.) lacked authority to consider or grant a motion to stay execution of a sentence pending adjudication of a new trial motion, see Mass. R. Crim. P. 31 and Mass. R. App. P. 6, and on the merits of the motion, the Special Magistrate granted a stay of execution of the defendant's sentence subject to the following terms: \$5000 cash bail and the defendant must reside at a particular address in Lynn with his brother, abide by a 10 p.m. to 6 a.m. curfew, submit to GPS monitoring, and report weekly to probation.

The Commonwealth filed its objection³ on February 4, 2013, pursuant to the Order of Assignment, and J. Lu then stayed S.M. Cratsley's order, pending further hearing. On February 8, 2012, pursuant to that the Order of Assignment, J. Lu heard the defendant's motion anew.

Over the Commonwealth's objection as to the court's authority to consider or grant the motion and as to the merits of the motion, J. Lu allowed the motion, with the same conditions imposed by S.M. Cratsley and with the

³ The Order of Assignment (Comm. Exh. 2) provides for an objection by either party, but does not describe the procedure to be followed thereafter by the Superior Court justice. The Commonwealth understood that J. Lu considered the motion anew, but no such notation appears on the docket.

following additional conditions: the defendant must submit to random alcohol and drug screens and home confinement (except for emergency medical care and court appearances), and must consent to searches of his person, home, bedroom, and motor vehicle by probation, police, or federal agents regardless "of whether or not the searchers know of his consent" (Lu, J.).

Yesterday, February 13, 2013, J. Lu allowed the Commonwealth's motion to stay the order staying execution of the sentence,⁴ *but only until 2 p.m. tomorrow, Friday, February 15* and the Commonwealth filed a notice of appeal. The Commonwealth's motion had sought to stay the stay-of-execution order until Friday, February 22, 2013, pending appeal by the Commonwealth of the allowance of the stay motion and/or a final ruling on a petition for extraordinary relief pursuant to G.L. c. 211, § 3 as to the plea procedure established pursuant to the Order of Assignment.

In allowing the motion for a stay of execution of sentence, J. Lu was persuaded by the following: the defendant's claim that he would not have pled guilty, but

⁴ At the hearing, the defense counsel reported to J. Lu that the defendant had not yet posted bail.

for the fact that drugs (later tested by Doohkan)⁵ were in his pocket; and he has served a portion of the four to seven year sentence and has relatively favorable disciplinary record while incarcerated. The judge was also of the view that the felon-in-possession charge related to one bullet in the defendant's pocket, notwithstanding the prosecutor's argument that the defendant also possessed a baggie of thirty .22 caliber hollow-point rounds.

The allowance of the motion to stay execution of the sentence, by both the Special Magistrate and by the Superior Court judge, was *ultra vires*: no statute and no court rule authorized either to consider or allow a motion to stay execution of a sentence, pending a ruling on a new trial motion. See Mass. R. Crim. P. 31 (authorizing a stay of execution of sentence *pending appeal*) and Mass. R. App. P. 6 (governing "Stay or Injunction Pending Appeal"). Further, as to the Special Magistrate, such authority was not, and could not lawfully be, conferred by the Order of Assignment.

⁵ As to this, the prosecutor countered that the motivating factor in the plea negotiations was the fifteen-year mandatory minimum term that the defendant faced for the felon-in-possession charge, as to which the Commonwealth submits an affidavit from the trial prosecutor, which was referenced in the argument before J. Lu (Comm. Exh. 4).

Moreover, the allowance of the motion to stay execution of sentence was an abuse of discretion for two reasons. First, it cannot be reconciled with the evidence before the Special Magistrate or the judge as to:

- the facts of the underlying case in which he held a gun to the face of a former girlfriend, threatened to kill her, and left threatening message on her telephone, to which the defendant pled guilty;
- his criminal record for firearms and drug offenses and crimes of violence (Comm. Exh. 2);
- his history of defaults (Comm. Exh. 2); and
- his repeated and continuing failure to conform his conduct, even after periods of probation and incarceration.

Second, in allowing the motion, the judge considered at least one factor -- the length of time the defendant has already served on his sentence -- that is not a lawful basis for allowing a motion to stay the execution of a sentence.

Since the motion to stay execution of the sentence, as allowed by the Superior Court judge, will go into effect tomorrow afternoon, the Commonwealth hereby seeks an emergency extension of the stay order, staying the effective date of the stay of execution of the sentence pending appeal by the Commonwealth of the allowance of the stay motion and/or a final ruling on a petition for

extraordinary relief pursuant to G.L. c. 211, § 3 as to the plea procedure established pursuant to the Order of Assignment.

Statement of the Facts⁶

I. Commonwealth's evidence in opposition to the motion to stay the execution of the sentence pending the new trial motion

A. The underlying crimes and the New Bedford assault and battery by means of a dangerous weapon (see Comm. Exh. 5, police reports)

The events giving rise to the Essex prosecution began in New Bedford on April 2, 2009, and continued into Lynn on April 3, 2009. On April 2, the New Bedford police responded to a call from the defendant's then-and-now former girlfriend that although they had been broken-up for some time, she invited him to New Bedford for her mother's birthday party; she knew him to carry a gun, but believed he was not then carrying one; she and he argued about him telling her what to do; during the argument, he forced her against her will into the basement of the house where they were, drew a black firearm, pressed it to the left side of her face and threatened to kill her; he then fled. As she was speaking with the police about the assault and about a

⁶ The facts recited herein were before J. Lu.

restraining order,⁷ she received four messages from him on her telephone: that he would kill her and her entire family, that there is an "S.O.S." -- "shoot on sight" order -- against her, and that it is an "all out war" and he "will come back and kill everyone."⁸

She provided three addresses for him. The New Bedford police looked for him but could not find him, so they searched for him utilizing the GPS function on his cell phone. That search disclosed a particular location in Lynn; police there were familiar with that location because they had received a report a week earlier of a man selling cocaine from that apartment; that man matched the description of the defendant. That apartment was rented to a married couple, Scott Robinson and his wife.

When the police knocked at the apartment, Mr. Robinson opened the door. The police explained why they were there and he admitted them. Several other people were in the

⁷ That night, she received a restraining order against him (Comm. Exh. 5, p. 5 of New Bedford police report).

⁸ The defendant later pled guilty to three crimes arising from his conduct in New Bedford: assault and battery by means of a dangerous weapon (the gun); assault and battery; and witness intimidation (Comm. Exh. 3). For the ABDW and witness intimidation convictions, he was sentenced to a two year to two year and one day state prison term, and for assault and battery, he was sentenced to a two year house of correction term, all to be served concurrently with the Essex sentences. (Comm. Exh. 3).

living room. In the sole bedroom, the police found and searched the defendant; in his pocket, they found a bag containing twenty small bags of crack cocaine.

While they are taking him into custody for the new Bedford offenses, Mr. Robinson told police that the defendant had been waving a small black handgun,⁹ and that when the police knocked, he stuffed something in the side of a recliner and then ran into the bedroom. He had no left the apartment between the time he waved the gun and ran into the apartment. Mr. Robinson asked the police to check the apartment and said that he would consent to a search. On the floor next to the couch, police found a bag containing twenty additional twists of crack cocaine, a separate bag of more crack cocaine, and a scale. In the recliner, they found a baggie containing thirty .22 caliber hollow-point rounds and in the bedroom where he was found, the police found a fully-loaded .22 caliber firearm.¹⁰ The rounds in the firearm appeared to be the same as the rounds in the baggie found in the recliner. Mr. Robinson said the gun was the same one that the defendant waved around. The

⁹ The color of the gun matched the color of the gun described by the New Bedford victim.

¹⁰ This was the charged that was nolle prossed (Comm. Exh. 1).

police also found eleven additional baggies and several pieces of crack cocaine under the mattress and \$120 in cash.

At the station, the police found a .22 caliber round in the defendant's right coat pocket -- it appeared to match the rounds found in the recliner and in the gun, itself -- and one more twist of crack cocaine in the defendant's pocket.

2. The defendant's criminal record, including restraining orders (Comm. Exh. 3)

The defendant has been convicted of violent crimes and serious drug offenses, and has served committed time for convictions including assault and battery; he has a history of defaults, specifically on drug charges and on "true name" convictions, and including on probation; he has accrued new charges within months of release from incarceration; he has been the subject of four restraining orders -- three by his father and one by the victim in the New Bedford case. The most recent restraining order involving his father expired on January 6, 2009, only three months before the New Bedford crimes (committed with a gun).

Argument

- I. NEITHER THE SPECIAL MAGISTRATE NOR THE SUPERIOR COURT JUDGE HAD THE AUTHORITY TO STAY THE EXECUTION OF THE DEFENDANT'S SENTENCE WHERE A) NO APPEAL WAS PENDING; B) THE MOTION FOR NEW TRIAL WAS PENDING, BUT HAD NOT YET BEEN HEARD; AND C) THE STAY WAS NOT WITHIN THE INHERENT AUTHORITY OF THE COURT; AND, IN ANY EVENT, THE SPECIAL MAGISTRATE ACTED BEYOND THE SCOPE OF HIS AUTHORITY UNDER RULE 47 OF THE MASSACHUSETTS CRIMINAL PROCEDURE AND THE ORDER OF ASSIGNMENT WHEN HE ACTED ON THE DEFENDANT'S STAY MOTION.

"Sentences are to be executed forthwith unless suspended or stayed for the exceptional reasons *permitted by law.*" Commonwealth v. McLaughlin, 431 Mass. 506, 520 (2000), quoting Mariano v. Judge of Dist. Court of Cent. Berkshire, 243 Mass. 90, 92 (1922) (emphasis added). Here, the Special Magistrate erred when he considered and allowed the defendant's motion to stay the execution of his sentence. And J. Lu also erred when he likewise considered and allowed the defendant's motion. Neither had the authority to enter a stay of execution of the sentence because a) no appeal was pending; b) the new trial motion had not yet been ruled on; and c) the stay was beyond the inherent authority of the court. As such, the defendant's motion should have been denied.

No statute or court rule allows a court to stay the execution of a sentence without a pending appeal or a ruling on a motion for new trial. Two court rules govern

motions to stay the execution of sentences *pending appeal*. Rule 31 of the Massachusetts Rules of Criminal Procedure (Rule 31) "confers discretionary power to stay the execution of sentence pending appeal." Commonwealth v. Allen, 378 Mass. 489, 496 (1979). However, Rule 31 "*does not address stays of execution of a sentence when an appeal is not pending.*" Reporter's Notes. (emphasis added). Rule 6 of the Rule of Appellate Procedure "establishes the procedure that is available after the trial judge acts on a motion for a stay [pursuant to Rule 31]." Reporters Notes. By its very terms, Rule 6 applies only if an appeal is pending. See Mass. R. App. P. 6(b)(1) (appeal of ruling from trial court on stay motion to be filed in court where appeal is pending). Thus, neither Rule 31 nor Rule 6 governs the present situation -- a motion for a stay of execution of sentence where no appeal is pending.

Additionally, nothing in Rule 30 of the Massachusetts Rules of Criminal Procedure allows a judge to stay a sentence before a ruling on a new trial motion. Pursuant to Rule 30(8)(A), a judge may, in his discretion, "admit[] [a defendant] to bail *pending decision of the appeal [of the ruling on the motion for new trial]*" (emphasis added). There has been no ruling on the new trial motion, so Rule 30(8)(A) has been triggered.

The Supreme Judicial Court has recognized an "inherent authority" of the Court to stay the execution of sentence. McLaughlin, 431 at 518-520. However, it has also recognized that such power is extremely limited because, aside from Rule 31, "the only other provisions of statutes or rules that authorize stay of execution in any circumstances are Mass. R. Crim. P. 43(b) [summary contempt] . . . and Rules 7(e) and 9(c) of the District Court Rules for Probation Violation Proceedings". Id. at 518 n.12; see also Smith, Criminal Practice and Procedure § 42.4, ("A trial judge is not authorized to stay execution of a penal sentence when an appeal is not pending."). Although the Court has not fully detailed the scope of any inherent authority, it has stated that, at a minimum, "normally this power should be exercised only with the consent of the defendant and for *short periods of time*." Id. at 519-520 (emphasis added). In other words, any stay granted under the inherent authority of the Court should not be open-ended.

Here, consent of the defendant is not at issue, but the stay is open-ended, presumably pending the completion of the investigation by the Inspector General into the issues at the Hinton Laboratory, which could take months, if not longer. See McLaughlin, 431 Mass. at 520 (judge

acted beyond inherent authority where she stayed defendant's criminal sentence "until the date of his release from civil commitment").

Finally, even should this Court, one the Commonwealth's second petition, hold that the Superior Court judge had authority to grant the stay of execution of sentence, the Special Magistrate certainly did not. Rather he acted beyond the scope of his authority, which is limited by the Order of Assignment and Rule 47 of the Massachusetts Rules of Criminal Procedure. The rule provides:

The justices of the Superior Court may appoint special magistrates to preside over criminal proceedings in the Superior Court. Such special magistrates shall have the powers to preside at arraignments, to set bail, to assign counsel, to supervise pretrial conferences, to mark up pretrial motions for hearing, to make findings and report those findings and other issues to the presiding justice or Administrative Justice, and to perform such other duties as may be authorized by order of the Superior Court. The doings of special magistrates shall be endorsed upon the record of the case. Special magistrates shall be compensated in the same manner as is provided by the General Laws for the compensation of masters in civil cases.

The Reporters Notes to the rule provide further guidance on the authority of the Special Magistrate,¹¹

¹¹ The Commonwealth has found no case discussing the role of Rule 47 Special Magistrates.

including that Special Magistrates have "some fact finding functions" whose "exact dimension[s]" are "left to definition by appropriate order of the Administrative Justice of the Superior Court Department." The Notes also explain that Special Magistrates have "quasi-judicial responsibilities" and thus "preferably [should] be retired judges." While Special Magistrates are "similar" to federal magistrates, see 28 U.S.C. 636, Special Magistrates do "not carry with it such broad powers." Finally, the the defendant's "is to have no objection to proceeding before a [Special Magistrate] since the functions to be performed by the office of Special Magistrate are *administrative rather than adjudicatory*" (emphasis added).

Even though the rule and the Order of Assignment allow the Special Magistrate "to set bail," neither expressly allow him to rule on motions to stay the execution of a sentence, (assuming the Chief Judge had power to grant the Special Magistrate such authority) which involve more than just the consideration of the bail factors. See Commonwealth v. Levin, 7 Mass. App. Ct. 501, 505 (1979) (when considering motion to stay court considers "security" factors and "the likelihood of success on the merits of the appeal"). Since the Special Magistrate was not authorized to act and because his duties are "administrative rather

than adjudicatory," he Special Magistrate acted beyond the scope of his authority when he allowed the stay motion.¹²

Finally, assuming there was authority to issue a stay of execution of sentence, he abused his discretion in doing so, given the obvious risk to public safety presented by the defendant and the potential risk of harm to the victim in the New Bedford case. See p. 11 and Comm. Exh. 3.

Two factors govern this Court's consideration of the defendant's motion for stay of execution of sentence pending appeal: 1) the security risk they present, Commonwealth v. Levin, 7 Mass. App. Ct. 501, 505 (1979); and 2) the likelihood of success of their appellate claims. Id. at 504; see also Commonwealth v. Hodge, 380 Mass. 851, 855 (1980); Commonwealth v. Allen, 378 Mass. 489, 498 (1979). That the defendant had served a significant portion of his committed term put him in no different position than many other defendants who file new motions, and is not a recognized factor for consideration. Moreover, the driving factor in the plea negotiations was not the drug charge, as both the Special Magistrate and the judge found (Comm. Exh. 1), but the felon-in-possession

¹² As noted above, the Commonwealth expects to file a second petition regarding the Special Magistrate's authority to conduct plea colloquies.

charge, with its high mandatory minimum sentence (Comm. Exh. 4). The motion for a stay of execution of sentence failed on security and likelihood-of-success grounds (namely, any deficiencies in Annie Dookhan's performance as a drug chemist, were unrelated to the felon-in-possession charge for the ammunition), and thus the allowance of the motion for the reasons given by Special Magistrate Cratsley J. Lu (Comm. Exh. 1) was an abuse of discretion.

II. EXERCISE OF THIS COURT'S SUPERINTENDENCE POWER IS NECESSARY.

Relief under G.L. c. 211, § 3, is appropriate only "if no other remedy is expressly provided." G.L. c. 211, § 3; Planned Parenthood League of Mass., Inc. v. Operation Rescue, 406 Mass. 701, 706 (1990). Although the Commonwealth can appeal the allowance of a motion to stay execution of sentence that is properly granted under Mass. R. Crim. P. 31 or Mass. R. App. P. 6, no vehicle provides a right to appeal a stay motion granted by a Special Magistrate or judge without authority to do so. Moreover, if the order staying the stay-of-execution order is not extended on an emergency basis, before 2 p.m. tomorrow, the risk of harm to the public, in general, and to the victim of the New Bedford prosecution, in particular, will be significant. This is especially so given that the defense

As such, this Court should exercise its general
superintendence powers in this case.

CONCLUSION

For the foregoing reasons, the Commonwealth requests
that this Court extend the stay of the order allowing the
defendant's motion to stay the execution of his sentence,
pending appeal or pending final order on the Commonwealth's
petition pursuant to G.L. c. 211, § 3 as described above at
as the "second petition."

FOR THE COMMONWEALTH:



ELIN H. GRAYDON
Assistant District Attorney
for the Eastern District
BBO# 208140

and



RONALD E. DEROSA
Assistant District Attorney
for the Eastern District
BBO# 658915

10 Federal Street
Salem, MA 01970
(978)745-6610, ext. 5014

February 15, 2013

NEW BEDFORD POLICE DEPARTMENT

2009-05151

PAGE 2

Offense Involved: AGGRAVATED ASSAULT Injury: APPARENT MINOR INJURY
Offense Involved: KIDNAPING/ABDUCTION Injury:
Victim's Relationship to Offender#: 01 - BOYFRIEND/GIRLFRIEND OR EX
Victim Synopsis:
Statement:

POLICE OFFICER WITNESSES

Name: BORDEN, GEORGE J Rank: OFF Agency: NEW BEDFORD POLICE
Unit Assignment: PATROL 3C SHIFT Empl#:3915 Tel#:508-991-6300
Involvement in the Report:
Officer's Statement:

Name: REBELO, CEASAR Rank: OFF Agency: NEW BEDFORD POLICE
Unit Assignment: PATROL 3C SHIFT Empl#:3613 Tel#:508-991-6300
Involvement in the Report:
Officer's Statement:

Name: CASSIDY, MICHAEL P. Rank: OFF Agency: NEW BEDFORD POLICE
Unit Assignment: PATROL 3A SHIFT Empl#:3808 Tel#:508-991-6300
Involvement in the Report:
Officer's Statement:

Name: HODSON, PAUL E II Rank: OFF Agency: NEW BEDFORD POLICE
Unit Assignment: PATROL 3A SHIFT Empl#:3885 Tel#:508-991-6300
Involvement in the Report:
Officer's Statement:

ARREST OR SUMMONS INFORMATION

Person Type: ARRESTED OR SUMMONSED Name: CHARLES, SHUBAR Seq#:
Arrest Date: 04/02/09 Time: 02:00 MNI#: 242583 OBTN#: TNEB000112436
Arrest Type: APPL FOR COMPLAINT 9 Location: 204 DAVIS ST
DOB: 10/30/1983 Age: 25

Arrested by: 3909 LAWLESS, KEVIN S

Charges:

Chap:265 Sec:26 Charge: KIDNAPPING
Chap:265 Sec:13A Charge: A&B HOUSEHOLD MEMBER
Chap:268 Sec:13B Charge: INTIMIDATION OF WITNESS
Chap:269 Sec:10A Charge: UNLAWFUL CARRY POSSESS FIREARM
Chap:265 Sec:18B Charge: UNLAWFUL POSS FIREARM COMMISSION OF
Chap:265 Sec:15B Charge: ASSAULT BY DANGEROUS WEAPON
Chap:268 Sec:13B Charge: INTIMIDATION OF WITNESS
Chap:268 Sec:13B Charge: INTIMIDATION OF WITNESS

NEW BEDFORD POLICE DEPARTMENT

PAGE 2

NEW BEDFORD POLICE DEPARTMENT

2009-05151

PAGE 3

Chap:268 Sec:13B Charge: INTIMIDATION OF WITNESS
Chap:265 Sec:15A Charge: A&B DANGEROUS WEAPON

Prisoner's Property:

NO CITATIONS ASSOCIATED TO THIS REPORT

NO TOWS ASSOCIATED TO THIS REPORT

PROPERTY

Type: Property Status: NONE
Qty: Brand/Make: Model:
Article Value: Article Number: 00238281
Serial #: Value: \$ Rec: \$
Description:
Owner:

Total Property Value Stolen: \$ 0 Recovered: \$ 0

PHOTOS AND FINGERPRINTS

Processed: YES By:

Photos: YES Prints: NO

NARRATIVE

Sir,

On the above time and date while assigned to unit 31C along with Officer Borden, the undersigned was dispatched to 204 Davis St. on the report of a male that just pointed a firearm at a female. While enroute, dispatch advised that the suspect had fled the area on foot.

Upon arrival, the undersigned was met by the listed victim, JORDANA CHANEY. Chaney explained that she had just been involved in a verbal argument with her ex-boyfriend, SHUBAR CHARLES. Chaney states that during the argument, Charles forced her against her will into the basement of her house. Once in the basement, Chaney states drew a black colored firearm from either his pocket or his waistband and pressed it against the left side of her face and threatened to kill her. She states the firearm was hot to the touch and felt like it burned her face. The undersigned did not see a mark on Chaney's face and she refused medical treatment. Chaney states that Charles eventually fled the area

=====

NEW BEDFORD POLICE DEPARTMENT

2009-05151

PAGE 4

on foot. She did not know which way he ran and was unsure of where he might go. She noted that he did not have a vehicle and had taken a bus from Lynn to New Bedford. She described him as a black male approximately 5'7" wearing a black sweatshirt and a baseball hat. The undersigned put out a BOLO (all unit message) to be on the lookout for Charles and to use caution since he was in possession of a firearm. Chaney states that she has known Charles to carry firearms in the past but did not know that he had one presently.

When asked, Chaney explained that she and Charles have been broken up for some time but she invited him to her house for her mother's birthday celebration. Chaney states that Charles will sometimes try to control her and she feels as though she no longer has to listen to him since they are no longer involved in a relationship. The fact that she no longer allows Charles to control her seems to enrage him. This is what caused his behavior this evening. While the undersigned was speaking with Chaney, Charles left a message on her cell phone threatening to kill her and her entire family. Chaney did add that the entire incident took place approximately thirty minutes before she decided to call for Police assistance. She states she was reluctant to call at first but decided it was the right thing to do after speaking with her mother.

A warrant and restraining order check on both parties returned all negative. Chaney was advised of her rights under 209A to which she replied she understood and did wish to seek an emergency order against Charles. Unit 34A (Officer Hodson) transported Chaney to Police Headquarters where she was assisted by the Domestic Violence Advocates in obtaining a restraining order.

The undersigned along with Officer Borden and several other assisting units began to search the area for Charles since he does not have a vehicle and is not familiar with the area. We felt as though he may still be in the area since he was on foot. Our search of the area produced negative results. While preparing this report, the undersigned was contacted by the Domestic Violence Advocates. The undersigned was informed that Charles had left three more threatening messages on Chaney's voicemail. The undersigned again spoke with Chaney who confirmed that there were three new messages. On these messages, Charles again threatens to kill Chaney and her family. He also tells her she has an "S.O.S" (shoot on site) order on her. He also claims that it is an "all out war" and he "will come back and kill everyone." Chaney also stated that the only other place he is known to be in New Bedford is the downtown bus terminal or the Hungry Whale Bar across the street from the terminal. After speaking with Chaney the undersigned immediately contacted dispatch who in turn sent downtown units to check the area for Charles. Their search also yielded negative results. It should be noted that an emergency restraining order was granted for Chaney.

The undersigned then contacted the Lynn Police Department and advised them of the situation. At the time of this report Officers were responding to Charles last known address in an attempt to locate him.

Due to the severity of the charges and the fact we only have a last known address for Charles, the undersigned is respectfully requesting a warrant be issued for the above listed charges.

Respectfully submitted,

NEW BEDFORD POLICE DEPARTMENT

PAGE 4

NEW BEDFORD POLICE DEPARTMENT

2009-05151

PAGE 5

Ofc. Kevin S. Lawless #3909

NOTE: Sgt. J Jose was able to make contact with Charles at approximately 2:05 A.M. via cell phone. Sgt. Jose advised Charles of the restraining order and all of the stipulations in the order against him, to which he stated he understood. Any contact made by Charles after this time should be considered a violation of the order. Sgt. Jose was able to verify it was Charles by confirming his date of birth. Charles was able to immediately respond with his date of birth without delay when asked.

ADMINISTRATION

Electronic Signature by Logon: LAWLESS, KEVIN S

Report Entered by Officer: LAWLESS, KEVIN S

Unit OFC1: BORDEN, GEORGE J

#: 3915 Unit: 31C Date: 04/02/09

Unit OFC2: LAWLESS, KEVIN S

#: 3909 Unit: 31C

Routing:

Date:

Div:

Clearance :

Clearance Date:

Supervisor : FLOOD, THOMAS F

#: 3528

Approved By: JOSE, JAMES M

#: 3749

Attachments:

Digital Photos Attached: Y

NEW BEDFORD POLICE DEPARTMENT

2009-05151

PAGE 6

NEW BEDFORD POLICE DEPARTMENT 2009-05151/1

671 Rockdale Avenue, New Bedford, MA 02740

UCR SUPPLEMENT REPORT

FOLLOW-UP: AGGRAV ASSLT-FAMILY-GUN

OCCURRED: 04/02/2009 23:21

TO:

RECEIVED: 04/02/2009 23:33

ARRIVED: 23:48

COMPLETED: 23:53

FOLLOW-UP ADDRESS: 204 DAVIS ST

APT#

CITY.:

STATE:

ZIP: 84840

CENSUS TRACT:

ZONE:

AREA:

NO OFFENSES ASSOCIATED TO THIS REPORT

NO BUSINESS OR ORGANIZATION ASSOCIATED TO THIS REPORT

NO OTHER POLICE OFFICER WITNESSES ASSOCIATED TO THIS REPORT

NO ARRESTS ASSOCIATED TO THIS REPORT

NO CITATIONS ASSOCIATED TO THIS REPORT

NO TOWS ASSOCIATED TO THIS REPORT

NO PROPERTY ASSOCIATED TO THIS REPORT

Total Property Value Stolen: \$

0 Recovered: \$

0

PHOTOS AND FINGERPRINTS

NEW BEDFORD POLICE DEPARTMENT

PAGE 6

NEW BEDFORD POLICE DEPARTMENT

2009-05151

PAGE 7

Processed: YES By:

Photos: NO Prints: NO

NARRATIVE

Sir,

On the above date I, Sergeant James M. Jose was assigned as patrol supervisor at Station 3. While there I spoke with Officer Lawless, who informed me that he had a serious case, a short time prior to my arriving at work.

Officer Lawless informed me that the defendant in his case had made numerous threats to kill the victim, and at one point he allegedly held a small black handgun to her head. He also informed me that the victim stated that the defendant had called her, via cellular telephone several times since the incident, each time threatening to return and kill her.

I instructed Officer Lawless to again contact the victim and obtain the telephone number that the defendant was calling on. Upon obtaining his number I called the defendant, asked his name, and upon his providing the correct name I advised him that a 209A had been placed against him, by the victim, and advised him of the order's stipulations. The defendant stated that he understood. I then asked the defendant if he could provide me with his date of birth, so I could assure that I was really speaking with him. Without hesitation the defendant provided the correct date of birth.

Not wanting to tip off the defendant, that police were seeking to arrest him, I provided no other information and ended the call. During the call I was able to hear several other people talking in the background, as though the defendant was in some type of a building.

I then contacted Sergeant Ortega, who was the Communications Supervisor, and asked him if he would contact T-Mobile, which is the company that is the carrier for the defendant's cell phone, and attempt to have the phone "pinged."

This is a method that is utilized to triangulate where a cell phone is located. A few moments later Sergeant Ortega called me and advised me that T-Mobile informed him that the phone in question was currently in Lynn, Massachusetts.

At that time I telephoned the Lynn Police Department and apprised them of the situation. I spoke with a Sergeant Kelly, from Lynn P.D. and informed him that if the defendant was located, that we would take him as an arrest, and that the defendant should be considered armed and dangerous. I also advised him that a 209A had been faxed to his station, and asked that if possible they could attempt to also serve that.

Approximately 1 hour later I was contacted and advised that Lynn P.D. had located the defendant and found him to be in possession of a .22 Cal. handgun and over 14 grams of crack cocaine. They advised me that he was also served with the 209A, and that they would be holding him on their charges.

Sergeant James M. Jose

ADMINISTRATION

Electronic Signature by Logon: JOSE, JAMES M

Report Entered by Officer: JOSE, JAMES M

Unit OFC1: BORDEN, GEORGE J

3915 Unit: 31C Date: 04/03/09

NEW BEDFORD POLICE DEPARTMENT

PAGE 7

NEW BEDFORD POLICE DEPARTMENT

2009-05151

PAGE 8

Unit OFC2: LAWLESS, KEVIN S

#: 3909 Unit: 31C

Routing:

Date:

Div:

Clearance :

Clearance Date:

Supervisor : CHAVES, JOAO

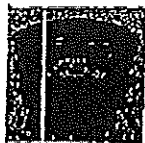
#: 3712

Approved By: CHAVES, JOAO

#: 3712

Attachments:

Digital Photos Attached: N



LYNN POLICE DEPT
LYNN, MA
Incident Report #9017895

Page 1 of 7

Case Title	Location
SHUBAR CHARLES ARREST	185 NORTH COMMON ST (11)
Date/Time Reported	Date/Time Occurred
04/03/2009 02:30:06	04/03/2009 02:30:00 to 04/03/2009 03:00:00
Incident Type/Offense	
TRAFFICKING CLASS B: 28+ GRAMS C94 S32E(94C/32E/2)	

Persons							
Role	Name	Sex	Race	Age	DOB	Phone	Address
1 INVOLVED PARTY	ROBINSON, JEANINE L	FEMALE	WHITE	37	10/02/1971	(home) 781-598-1083 (cell)	185 NORTH COMMON ST LYNN, MA
2 INVOLVED PARTY	ROBINSON, SCOTT	MALE	BLACK	44	11/30/1966	(home) 781-842-3357 (cell)	185 NORTH COMMON ST LYNN, MA

Offenders							
Status	Name	Sex	Race	Age	DOB	Phone	Address
1 DEFENDANT	CHARLES, SHUBAR	MALE	BLACK	25	10/30/1983	(home) (cell)	201 ESSEX STREET LYNN, MA
2 SUSPECT	ROBINSON, DEMETRICE JAMAIN	MALE	BLACK	21	03/04/1988	(home) 617-427-1638 (cell) N/A	98 WOODLEDGE ST BOSTON, MA

Vehicles							
Role	Type	Year	Make	Model	Color	Reg #	State
Stolen S	Rec Code	Data Rec		Rec S	Rec By		

Property						
Class	Description	Make	Model	Serial #	Value	

Narrative

On April 3, 2009 Officer's Avery and Hagerby were working in plain clothes in an undercover capacity. At roll call we were given information by Sgt. Haberek that New Bedford PD was interested in (D) Shubar, Charles for Domestic/Kidnapping related charges involving a firearm. Sgt. Haberek gave possible Lynn addresses of 85 Essex St, 97 Newhall St, and a Fouldrick Terrace address. At approximately 0215 hrs we were provided with additional information from Officer Dean that New Bedford PD contacted him and stated they did a GPS location search of Charles's cell phone and determined the cell phone was in use in the area of Hall St, and North Common St.

(Continued on next page)

Reporting Officer	Reviewing Officer	Approving Officer
AVERY R. (6788)		
4/11/09 03:07 AM (25:05)		

LYNN POLICE DEPT
LYNN, MA
Incident Report #9017895

Page 2 of 7

Case Title SHUBAR CHARLES ARREST	Location 185 N COMMON ST (11)
Date/Time Reported 04/03/2009 02:30:06	Date/Time Occurred 04/03/2009 02:30:00 to 04/03/2009 03:00:00
Incident Type/Offense TRAFFICKING CLASS B: 28+ GRAMS C94 S32B(94C/32B/H)	

Persons (continued from page 1)							
Role	Name	Sex	Race	Age	DOB	Phone	Address
3 INVOLVED PARTY	WOOTEN, RICHARD ALLEN	MALE	BLACK	40	09/15/1968	(home) 5980884 (cell)	23 JEFFERSON ST LYNN, MA
4 INVOLVED PARTY	JOHNSON, LINDSAY	MALE	BLACK	43	12/12/1965	(home) (cell)	559 WESTERN AVE LYNN, MA

Offenders							
Status	Name	Sex	Race	Age	DOB	Phone	Address
						(home) (cell)	
						(home) (cell)	

Vehicles							
Role	Type	Year	Make	Model	Color	Reg #	State
Stolen S	Rec Code	Date Rec	Rec S	Rec By			

Property						
Class	Description	Make	Model	Serial #	Value	

Narrative (continued from page 1)

Having this information in mind, Officer's Avery and Hagerty are familiar with 185 N. Common St, specifically Apartment #11. This apartment building is located at the corner of Mall St. and N. Common St. This apartment has been the source of numerous arrests and incidents involving narcotics and prostitution. Approximately one week ago Officer Hagerty had obtained information from a female party who frequents this apartment. This information involved a black male that has been using this apartment on a regular basis to sell crack cocaine. This female described the black male as a short and skinny.

(Continued on next page)

Reporting Officer AVERY R. (6788)	Reviewing Officer	Approving Officer
---	--------------------------	--------------------------

LYNN POLICE DEPT
LYNN, MA
Incident Report #9017895

Page 3 of 7

Case Title	Location
SHUBAR, CHARLES ARREST	285 N COMMON ST (11)
Date/Time Reported	Date/Time Occurred
04/03/2009 02:30:06	04/03/2009 02:30:00 to 04/03/2009 03:00:00
Incident Type/Offense	
TRAFFICKING CLASS B- 28+ GRAMS C94 S32B(94C/32B/E)	

Persons (continued from page 2)							
Role	Name	Sex	Race	Age	DOB	Phone	Address
INVOLVED PARTY	EMILIANO, JOSE A	MALE	UNKNOWN	39	02/06/1970	NO PHONE #	185 N COMMON ST LYNN, MA
						(home)	
						(cell)	

Offenders							
Status	Name	Sex	Race	Age	DOB	Phone	Address
						(home)	
						(cell)	
						(home)	
						(cell)	

Vehicles							
Role	Type	Year	Make	Model	Color	Reg #	State
Stolen	Rec Code	Date Rec	Rec S	Rec By			

Property						
Class	Description	Make	Model	Serial #	Value	

Narrative (Continued from page 2)

Officer's Avery, Hagerty, along with S1 (Sgt. Kelly), S3 (Sgt. Haberek), Car 15 (P. Holey-Hunter), Car 7 (Manning), Car 9 (McHale), and Car 11 (McKenna) went to 185 N. Common St. apartment #11. With New Bedford's information regarding a firearm, we positioned officers in the common hallway as well as outside in the rear yard. Officer's Avery, Hagerty, Manning, Sgt's Kelly and Haberek went to the apartment door. These officers could immediately hear several voices coming from the apartment and could smell an overwhelming odor of burnt marijuana. These officers knocked on the door which

(Continued on next page)

Reporting Officer	Reviewing Officer	Approving Officer
AVERY, R. (5788)		
04/03/2009 11:03:05		

LYNN POLICE DEPT
LYNN, MA
Incident Report #9017895

Page 4 of 7

Case Title	Location
SHUBAR CHARLES ARREST	185 N COMMON ST (11)
Date/Time Reported	Date/Time Occurred
04/03/2009 02:30:06	04/03/2009 02:30:00 to 04/03/2009 03:00:00
Incident Type/Offense	
TRAFFICKING CLASS B: 28+ GRAMS C94 §32B(94C/32B/E)	

Narrative (Continued from page 3)

was answered by (IP) Jeanine and Scott Robinson. Officer's Avery and Hagerby have had numerous conversations in the past with Scott and Jeanine Robinson regarding the noise and foot traffic coming from their apartment in the early morning hours. These officers have also met with the owner of the building regarding these issues. Officer Hagerby walked through this building last week with the owner who expressed his concerns for the traffic coming from apartment #11. These officers were allowed into the apartment by the Robinson's as we informed them we were looking for a suspect (Shubar Charles). Once inside the apartment, Officer's encountered several male's in the front living room directly across from the front door. Officer's Hagerby, Holey, Hunter, Manning, along with Sgt. Kaberek entered the living room and had conversation with the above listed involved parties: (IP) Lindsay Johnson, (IP) Michael Wooten, (S) Demetria Robinson, and (IP) Jose Milliano.

Officer Avery went to the right and located (D) Shubar Charles, who Officer Avery is familiar with coming out of the lone bedroom. Officer Avery placed Charles into custody for the New Bedford PD charges. A search of Charles person was conducted and Officer Avery located a clear plastic baggie containing 20 individual bag's of a white powdery substance believed to be cocaine and one individual bag of a white rock like substance believed to be crack cocaine. These items were located in Charles right front pants pocket. Officer Avery also located \$197 in cash, this money was contained 8 \$20 bill's folded separately, 2 \$10 bill's folded together, and a \$5 dollar bill and 12 \$1 bill folded together. Through Officer Avery's training and experience this money was folded in such a way that it is consistent with someone making several narcotics transactions and how they hold their money. This money was subsequently seized at booking as it is believed to be proceeds from drug transactions.

After placing Charles into custody, Scott Robinson asked Officer Hagerby if he could speak to him privately. Scott Robinson stated to Officer Hagerby that when these officers knocked on the door Shubar Charles had run into the bedroom that Officer Avery located him coming out of.

Scott Robinson also stated to Officer Hagerby that prior to the officer's coming to his apartment, Shubar Charles was waving around a small black handgun and that he had never left the apartment prior to officers coming in. Scott Robinson also stated that he wanted officers to check through his apartment and would consent to a search of anything. Scott Robinson also advised Officer Hagerby that he should check under the cushions of his recliner because when officers knocked at the door Charles stuffed something into the side before running into the bedroom.

Officer Holey read Charles his Miranda rights from a prepared card. Charles stated he understood his rights and would answer any questions. Officer Holey asked Charles if there was a gun in the apartment and he stated he did not know anything about a gun. Charles asked Officer Avery what he was being arrested for. Officer Avery informed him that he was not sure

(Continued on next page)

Reporting Officer	Reviewing Officer	Approving Officer
AVERY R (6488)		

LYNN POLICE DEPT
LYNN, MA
Incident Report #9017895

Case Title SHUBAR CHARLES ARREST	Location 185 N COMMON ST (11)
Date/Time Reported 04/03/2009 02:30:06	Date/Time Occurred 04/03/2009 02:30:00 to 04/03/2009 03:00:00
Incident Type/Offense TRAFFICKING CLASS B; 28+ GRAMS C9A 532E(94C/32E/B)	

Narrative (Continued from page 4)

of the specific charges but she involved a domestic related incident in New Bedford. Charles stated "Yea I got into a beef with my girl and I think she's got a restraining order." Both Jeannine and Scott Robinson, along with Lindsay Johnson, Richard Wooten, Jose Emiliano, and Dematrice Robinson were all pat frisked for weapons and checked for warrants. Officer Avery prepared a Voluntary Consent to Search form which was read to and read by Scott Robinson. Robinson stated he understood this form and signed it consenting to officer's searching the apartment.

Officer Haley observed in plain view on the floor next to the couch closest to where Dematrice Robinson and Jeannine Robinson were sitting, a bag with 20 individual twists of suspected crack cocaine, a bag of chunky white suspected crack cocaine, a digital scale, and a razor blade. See Officer Haley's supplemental report on this. These items were seized and later placed into NPD Evidence control by Officer Haley for analysis and fingerprints.

Upon further search of the apartment Officer's Hunter and Haley located a baggie of Qty. 30 22 caliber hollow point Remington rounds of ammunition in the hallway that Scott Robinson advised Officer Hagerty to search. Sgt. Kabarek searched the lone bedroom that Officer Avery observed Shubar Charles coming out of. Sgt. Kabarek located a small black 22 caliber Jennings Model J-22 firearm. This weapon was fully loaded with 5 rounds of 22 caliber ammunition. This was the same exact ammunition as the rounds recovered by Officer's Hunter and Haley. Sgt. Kabarek also located 11 baggies of suspected crack cocaine, another plastic bag with several pieces of suspected crack cocaine, and \$120 in 20 dollar bills under the mattress of the bed. Scott Robinson observed Officer's attempting to make the recovered firearm safe and advised these officers that the firearm was the one Shubar Charles was waving around earlier.

Shubar Charles was transported to the station and booked by Officer's McHale and McKenna. Upon search of Charles' person for property Officer McKenna located in his right coat pocket one round of 22 caliber hollow point ammunition. In Charles' left front pants pocket Officer McKenna located a twist of suspected crack cocaine. Officer McKenna also seized Charles' \$197 that Officer Avery put back into his left front jacket pocket. Note: The ammunition found by Officer McKenna was the same ammunition located in the apartment and in the firearm.

Shubar Charles was charged with the following:
 Charge # 1

140.129C UNL POSSESSION AMMO NO FID

OR Charged Charge Notes

04/03/2009 02:54:00 UNL POSSESSION AMMO NO FID

(Continued on next page)

Reporting Officer

AVERY R. (8788)

Reviewing Officer

Approving Officer

LYNN POLICE DEPT
LYNN, MA
Incident Report #9017895

Page 6 of 7

Case Title	Location
SHUBAR CHARLES ARREST	185 N COMMON ST (11)
Date/Time Reported	Date/Time Occurred
04/03/2009 02:30:00	04/03/2009 02:30:00 to 04/03/2009 03:00:00
Incident Type/Offense	
TRAFFICKING CLASS B: 25+ GRAMS C94 S32E(94C/32B/2)	

Narrative (continued from page 5)

Charge # 2

Charge Code Charge Desc Counts

269/10/H FIREARM WITHOUT FID CARD, SUBSQ.OFF. C269 S10

Dt Charged Charge Notes

04/03/2009 05:23:00 FIREARM WITHOUT FID CARD, SUBSQ.OFF. C269 S10

Charge # 3

Charge Code Charge Desc Counts

94C/32E/H TRAFFICKING CLASS B: 14+ GRAMS C94 S32E

Dt Charged Charge Notes

04/03/2009 05:13:00 TRAFFICKING CLASS B: 14+ GRAMS C94 S32E (OVER 14 GRAMS)

Charge # 4

Charge Code Charge Desc Counts

94C/32A/H DRUG, POSSESS TO DISTRIB CLASS B, SUBSQ. C94C S32A

Dt Charged Charge Notes

04/03/2009 05:14:00 DRUG, POSSESS TO DISTRIB CLASS B, SUBSQ. C94C S32A

Charge # 5

Charge Code Charge Desc Counts

94C/32U DRUG VIOLATION NEAR SCHOOL C94C S32U

Dt Charged Charge Notes

04/03/2009 05:14:00 DRUG VIOLATION NEAR SCHOOL C94C S32U

Officer Hagerty placed into LPM Evidence Control, Envelope #1 contained 11 twists suspected crack cocaine, baggie with several pieces of suspected crack cocaine, and the Consent to Search Form. Envelope #2 contained the bag with 20 individual bag's of suspected cocaine and 1 twist of suspected crack cocaine (found on Charles during booking). Envelope #3 contained \$120 US Currency seized. Envelope #4 contained \$197 US Currency seized from Charles along with Currency seizure form. Envelope #5 contained the small black 22 caliber Model 5-22 Jennings firearm with magazine and 5 rounds of ammunition. Envelope #6 contained Qty. 30 22 Caliber Remington Hollow Point Ammunition. Envelope #7 contained single round of 22 caliber Remington Hollow Point Ammunition (found on Charles during booking).

(Continued on next page)

Reporting Officer	Reviewing Officer	Approving Officer
AVERR R. (6788)		
14/03/07 07:00:25:05		



LYNN POLICE DEPT
LYNN, MA

Page 7 of 7

Incident Report #9017895

Case Title	Location
SHUBAR CHARLES ARREST	185 N COMMON ST (11)
Date/Time Reported	Date/Time Occurred
04/03/2009 02:30:05	04/03/2009 02:30:00 to 04/03/2009 03:00:00
Incident Type/Offense	
TRAFFICKING CLASS B, 28+ GRAMS C94 S32E(94C/32E/R)	

Narrative (continued from page 6)

Note: a Googly Earth search was done and it was discovered that Connery Elementary School is approximately 587 feet from 185 N. Common St.

Reporting Officer	Reviewing Officer	Approving Officer
AVERY R. (6788)		
01 14/04/2009 03:25:05		



LYNN POLICE DEPT
LYNN, MA

Incident Summary #9017895

Case Title	Location	Apt/Unit #
SHUBAR CHARLES ARREST	185 N COMMON ST	11
Date/Time Reported	Date/Time Occurred	
04/03/2009 02:30:06	04/03/2009 02:30:00 to 04/03/2009 03:00:00	
Incident Type/Offense		
TRAFFICKING CLASS B: 28+ GRAMS C94 S32E		

Persons

Role	Name	Sex	Race	Age	DOB	Phone	Address
INVOLVED PARTY	ROBINSON, JEANINE	FEMALE	WHITE	37	10/02/1971	(home) 781-598-1083 (cell)	185 NORTH COMMON ST 11 LYNN, MA
INVOLVED PARTY	ROBINSON, SCOTT	MALE	BLACK	42	11/30/1966	(home) 781-842-3357 (cell)	185 NORTH COMMON ST 11 LYNN, MA
INVOLVED PARTY	WOOTEN, RICHARD	MALE	BLACK	40	09/15/1968	(home) 598-0884 (cell)	23 JEFFERSON ST LYNN, MA
INVOLVED PARTY	JOHNSON, LINDSAY	MALE	BLACK	43	12/12/1965	(home) (cell)	559 WESTERN AVE LYNN, MA
INVOLVED PARTY	EMILIANO, JOSE	MALE	UNKNOWN	39	02/06/1970	(home) NO PHONE # (cell)	185 N COMMON ST 11 LYNN, MA

Offenders

Status	Name	Sex	Race	Age	DOB	Phone	Address
DEFENDANT	CHARLES, SHUBAR	MALE	BLACK	25	10/30/1983	(home) (cell)	201 ESS STREE LYNN,
SUSPECT	ROBINSON, DEMETRICE JAMAIN	MALE	BLACK	21	03/04/1988	(home) 617-427-1638 (cell) N/A	98 WOOD ST 1R BOSTO

Vehicles

Property

Class	Description	Make	Model	Serial #	Value
-------	-------------	------	-------	----------	-------

DRUGS/NARCOTICS 21 BAGS OF COCAINE
DRUGS/NARCOTICS 11 BAGS OF CRACK COCAINE

Officer Report

Report Type	Report #	Officer	Report Date
INVESTIGATIONS	6	FRAMPTON R	05/09/2009 12:05:40

Narrative

On April 22, 2009 a request was sent by ADA Greg Friedholm asking that a firearm which had been recovered as a result of this incident be processed for fingerprints.

On April 22, 2009 I went to the Evidence Room and spoke with Evidence Control Officer M. Richmond and was given two evidence envelopes (Envelopes #5 and #6). Upon bringing them to the Identification Unit Lab I found that they contained:

ENVELOPE #5 contained:

Jennings Firearms
J-22
.22 Caliber Long Rifle
Serial # 451312

This envelope also contained a magazine that held five .22 caliber cartridges (later found to be 3 - "REM" and 2 - "C" cartridges)

ENVELOPE #6 contained:

One knotted, clear "baggie type" plastic bag that held thirty (30) .22 caliber "REM" cartridges
(It should be noted that this plastic bag had a hole in the lower portion and appears to have been torn open to access the ammunition.)

Upon receiving these items, D. Passareillo (a college intern assigned to the ID Unit) and I examined them for visible fingerprints using a bright light and an ultraviolet lamp. As a result of this examination we were unable to see any usable fingerprints.

After examining the handgun, the magazine (loaded with ammunition), and the loose cartridges for visible fingerprints we took several digital images of these items, processed them by fuming them with the heated vapors of Cyanoacrylate and then dusted them with contrasting colored fingerprint powders.

When we examined the items after having processed them we could see where friction ridges had been made visible on the metal portion of the handgun grip area. Upon closer examination of these friction ridges I was able to determine that they were overlapped, of insufficient quality and lacked the quantity of characteristics required to make an individualization or elimination of possible suspect(s).

When we examined the magazine after it had been fumed we could not see any

usable prints on it. We were also unable to see where any friction ridges had been developed on the three (3) "REM" cartridges or the two (2) "C" cartridges that were removed from the magazine after it had been fumed.

Upon examination of the thirty loose .22 caliber "REM" cartridges we could see where friction ridges had been developed on three of the .22 caliber bullets that had been processed. After further examination of the three cartridges I determined that the friction ridges that had been developed would be of no use in making an individualization or an elimination of suspect(s).

Based on the above listed findings my portion of this investigation is closed.

On May 11, 2009 the handgun, magazine and .22 caliber ammunition were placed into a secured evidence locker.

-R.E.Frampton #6241

**LYNN POLICE DEPT
LYNN, MA**

Page 1 of 3

Supplementary Report #9017895/2

Case Title SHUBAR CHARLES ARREST	Location 185 N COMMON ST (11)
Date/Time Reported 04/03/2009 02:30:06	Date/Time Occurred 04/03/2009 02:30:00 to 04/03/2009 03:00:00
Incident Type/Offense TRAFFICKING CLASS B: 284 GRAMS 094 #32B(94C/32E/E)	

Persons							
Role	Name	Sex	Race	Age	DOB	Phone	Address
1 INVOLVED, PARTY	ROBINSON, JEANINE L	FEMALE	WHITE	37	10/02/1971	(home) 781-598-1083 (cell)	185 NORTH COMMON ST LYNN, MA
2 INVOLVED, PARTY	ROBINSON, SCOTT	MALE	BLACK	42	11/30/1966	(home) 781-8423357 (cell)	285 NORTH COMMON ST LYNN, MA

Offenders							
Status	Name	Sex	Race	Age	DOB	Phone	Address
1. DEFENDANT	CHARLES, SHUBAR	MALE	BLACK	25	10/30/1983	(home) (cell)	201 BESEN STREET LYNN, MA
2 SUSPECT	ROBINSON, BENEATICE JAMAYNE	MALE	BLACK	21	03/04/1988	(home) 617-427-1638 (cell) N/A	98 WOODLEDGE ST BOSTON, MA

Vehicles							
Role	Type	Year	Make	Model	Color	Reg #	State
Stolen \$	Rec Code	Date Rec	Rec S	Rec Bv			

Property						
Class	Description	Make	Model	Serial #	Value	

Narrative

Car # 9 (McHale) and Car # 11 (McKenna) transported Charles Shubar to the station for booking purposes. As part of the booking process I conducted a search of Shubar. I found the following items on his person. A single .22 caliber hollow point round was located in his right front coat pocket. A wad of cash totaling \$ 197 was found in his left front coat pocket. A small clear plastic twist of white substance was found in his front left pant pocket. These items were confiscated and turned over to Officer Avery to be placed into evidence. No other contraband found on Shubar.

Reporting Officer McKENNA 5(6727) (04/03/2009 03:29:12)	Reviewing Officer	Approving Officer
---	-------------------	-------------------



LYNN POLICE DEPT
LYNN, MA

Supplementary Report #9017895/2

Page 2 of 3

Case Title	Location
SHUBAR CHARLES ARREST	185 N COMMON ST (1.1)
Date/Time Reported	Date/Time Occurred
04/03/2009 02:30:05	04/03/2009 02:30:00 to 04/03/2009 03:00:00
Incident Type/Offense	
TRAFFICKING CLASS B: 28+ GRAMS C94 SIZE (94C/32E/2)	

PERSONS (Continued from page 1)								
Role	Name	Sex	Race	Age	DOB	Phone	Address	
3 INVOLVED PARTY	WOOTEN, RICHARD ALLEN	MALE	BLACK	40	09/15/1968	(home) 5980884 (cell)	29 JEFFERSON ST LYNN, MA	
4 INVOLVED PARTY	JOHNSON, LINDSAY	MALE	BLACK	43	12/12/1965	(home) (cell)	559 WESTERN AVE LYNN, MA	

Offenders								
Status	Name	Sex	Race	Age	DOB	Phone	Address	
						(home) (cell)		
						(home) (cell)		

Vehicles							
Role	Type	Year	Make	Model	Color	Reg #	State
Stolen \$	Rec Code	Date Rec		Rec S	Rec By		

Property						
Class	Description	Make	Model	Serial #	Value	

Narrative

Reporting Officer	Reviewing Officer	Approving Officer
MCKENNA J (6727) (04/03/2009 03:29:12)		

Page 3 of 3

Case Title	Location
STUBBS, CHARLES ARREST	185 N COMMON ST (11)
Date/Time Reported	Date/Time Occurred
04/03/2009 02:30:05	04/03/2009 02:30:00 to 04/03/2009 03:00:00
Incident Type/Offense	
TRAFICKING CLASS B: 20+ GRAMS C94 S32E(940/32E/E)	

Persons (Continued from page 2)							
Id#	Name	Sex	Race	Age	DOB	Phone	Address
5	INVOLVED PARTY	MALE	UNKNOWN	39	02/06/1970	Home: NO PHONE # Cell:	185 N COMMON ST LYNN, MA
						Home: Cell:	

Defenders							
Status	Name	Sex	Race	Age	DOB	Phone (home) (cell)	Address
						(home) (cell)	
						(home) (cell)	

Vehicles							
Role	Type	Year	Make	Model	Color	Reg#	State
Stolen \$	Rec Code	Date Rec	Rec \$	Rec By			

Property						
Class	Description	Make	Model	Serial #	Value	

Narrative	Date	Time	Location	Weather	Wind	Sea	Visibility	Remarks	Remarks

Reporting Officer	Reviewing Officer	Approving Officer
MCKENNA, J (6727) (04/03/2009 03:29:12)		

NO. 2674. P. 13

11780070 1000

Wages



LYNN POLICE DEPT LYNN, MA

Supplementary Report #9017895/3

Case Title	Location
SHUBAR CHARLES ARREST	185 N COMMON ST (11)
Date/Time Reported	Date/Time Occurred
04/03/2009 02:30:06	04/03/2009 02:30:00 to 04/03/2009 03:00:00
Incident Type/Offense	
TRAFFICKING CLASS B: 28+ GRAMS C94 532E(94C/32E/E)	

Persons								
Role	Name	Sex	Race	Age	DOB	Phone	Address	
1 INVOLVED PARTY	ROBINSON, JEANINE L	FEMALE	WHITE	37	10/02/1971	Home 781-598-1083 (cell)	185 NORTH COMMON ST LYNN, MA	
2 INVOLVED PARTY	ROBINSON, SCOTT	MALE	BLACK	42	11/30/1966	Home 781-8423357 (cell)	185 NORTH COMMON ST LYNN, MA	

Offenders								
Status	Name	Sex	Race	Age	DOB	Phone	Address	
1 DEFENDANT	CHARLES, SHUBAR	MALE	BLACK	25	10/30/1983	Home (cell)	201 ESSEX STREET LYNN, MA	
2 SUSPECT	ROBINSON, DEMETRICE JAMATINE	MALE	BLACK	21	03/04/1988	Home 617-427-1638 (cell) N/A	98 WOODLEDGE ST BOSTON, MA	

Vehicles							
Role	Type	Year	Make	Model	Color	Reg #	State
Stolen \$	Rec Code	Date Rec	Rec \$	Rec By			

Property						
Class	Description	Make	Model	Serial #	Value	

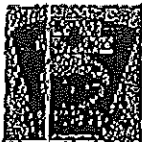
Narrative

On this date and time car 15 officers Dave Hunter and Paul Holey went to 185 North Common St apt 11 to assist Car 17 Officers C Hagarty and Avery. Officers went to this apartment in search of Shubar Charles, who was wanted by New Bedford Police for Domestic and weapon charges.

Officers Hunter and Holey went into apartment 11 after Car 17 located Charles inside the apartment. Once inside the apartment officers received a consent to search the apartment from Scott Robinson. Officer Holey was in the living room area where several other persons were located. One of the subjects in this room was Demetrice Robinson. Robinson was sitting on a

(Continued on next page)

Reporting Officer	Reviewing Officer	Approving Officer
HOLEY PA. (6507) (04/03/2009 03:46:42)		



LYNN POLICE DEPT
LYNN, MA

Supplementary Report #9017895/3

Page 2 of 4

Case Title	Location
SHIBAR CHARLES ARREST	185 N COMMON ST (11)
Date/Time Reported	Date/Time Occurred
04/03/2009 02:30:06	04/03/2009 02:30:00 to 04/03/2009 03:00:00
Incident Type/Offense	
TRAFFICKING CLASS B: 20+ GRAMS C9A 592E(94C/32E/E)	

Persons (Continued from page 1)							
Role	Name	Sex	Race	Age	DOB	Phone	Address
3 INVOLVED PARTY	WOOTEN, RICHARD ALLEN	MALE	BLACK	40	09/13/1968	(home) 5980834 (cell)	23 JEFFERSON ST LYNN, MA
4 INVOLVED PARTY	JOHNSON, LINDSAY	MALE	BLACK	43	12/12/1965	(home) (cell)	555 WESTERN AVE LYNN, MA

Offenders							
Status	Name	Sex	Race	Age	DOB	Phone	Address
						(home) (cell)	
						(home) (cell)	

Vehicles							
Role	Type	Year	Make	Model	Color	Reg #	State
Stolen S	Rec Code	Date Rec	Rec S	Rec By			

Property						
Class	Description	Make	Model	Serial #	Value	

Narrative (Continued from page 1)

couch next to Jeanine Robinson. On the floor next to Jeanine Robinson and Damarice Robinson, Officer Holey observed several clear plastic baggies. On further inspection Officer Holey could see that there were several twists of believed Crack Cocaine in the bags. At that time Officer Holey secured a clear plastic bag which had 20 twists of Crack Cocaine and a second bag with chunks of Crack Cocaine inside. Located next to the bags was a razor blade. Located on the table in front of Damarice Robinson was a blue digital scale. All this was secured by Officer Holey. The razor and the scale will be checked for finger prints as it was believed Damarice Robinson was in the process of packaging the drugs for sale. This was believed as

(Continued on next page)

Reporting Officer	Reviewing Officer	Approving Officer
HOLEY PA. (6307) (04/03/2009 02:46:42)		



LYNN POLICE DEPT
LYNN, MA

Page 3 of 4

Supplementary Report #9017895/3

Case Title	Location
SHUBAR CHARLES ARREST	185 N COMMON ST (11)
Date/Time Reported	Date/Time Occurred
04/03/2009 02:30:06	04/03/2009 02:30:00 to 04/03/2009 03:00:00
Incident Type/Offense	
TRAFFICKING CLASS B: 28+ GRAMS, C94 #32B(94C/32B/E)	

PERSONS (Continued from page 2)							
Role	Name	Sex	Race	Age	DOB	Phone	Address
5 INVOLVED PARTY	EMILIANO, JOSE A	MALE	UNKNOWN	39	02/06/1970	(home) NO PHONE # (cell)	185 N COMMON ST LYNN, MA
						(home) (cell)	

Offenders							
Status	Name	Sex	Race	Age	DOB	Phone	Address
						(home) (cell)	
						(home) (cell)	

Vehicles							
Role	Type	Year	Make	Model	Color	Reg #	State
Stolen \$	Rec Code	Date Reg	Rec \$	Rec By			

Property						
Class	Description	Make	Model	Serial #	Value	

Narrative (Continued from page 2)
Officer Haley received information from one of the subjects in the apartment that Demetrice Robinson put the drugs in the corner when the police knocked on the apartment door. This person did not want to be named for fear of retaliation. If Demetrice Robinson's prints are located on the razor blade and/or scale then he will be charged with the following. 1. Possession Class B Crack Cocaine with intent to distribute 2. Possession Class B Crack Cocaine with intent to distribute within 1000 feet of the Connery School. (Continued on next page)

Reporting Officer	Reviewing Officer	Approving Officer
Haley PA. (6507) (04/03/2009 03:45:42)		

LYNN POLICE DEPT
LYNN, MA
Supplementary Report #9017895/3

Page 4 of 4

Case Title	Location
SEIBAR CHARLES ARREST	185 N COMMON ST (11)
Date/Time Reported	Date/Time Occurred
04/03/2009 02:30:05	04/03/2009 02:30:00 to 04/03/2009 03:00:00
Incident Type/Offense	
TRAFFICKING CLASS B: 24+ GRAMS, 09A 532B(24C/22B/E)	

Narrative (continued from page 3)

The drugs and evidence were placed into the LPD Evidence Control Room per LPD policy. The Crack Cocaine will be sent for analysis.

Reporting Officer	Reviewing Officer	Approving Officer
HONEY EA. (6507)		
(04/03/2009 03:46:42)		



LYNN POLICE DEPT
LYNN, MA
Supplementary Report #9017895/2

Page 1 of 3

Case Title	Location
SHUBAR CHARLES ARREST	185 N COMMON ST (11)
Date/Time Reported	Date/Time Occurred
04/03/2009 02:30:06	04/03/2009 02:30:00 to 04/03/2009 03:00:00
Incident Type/Offense	
TRAFFICKING CLASS B: 28+ GRAMS C94 S32E(94C/32E/E)	

Persons							
Role	Name	Sex	Race	Age	DOB	Phone	Address
1 INVOLVED PARTY	ROBINSON, JEANINE L	FEMALE	WHITE	37	10/02/1971	(home) 781-598-1083 (cell)	185 NORTH COMMON ST LYNN, MA
2 INVOLVED PARTY	ROBINSON, SCOTT	MALE	BLACK	42	11/30/1966	(home) 781-8423357 (cell)	185 NORTH COMMON ST LYNN, MA

Offenders							
Status	Name	Sex	Race	Age	DOB	Phone	Address
1 DEFENDANT	CHARLES, SHUBAR	MALE	BLACK	25	10/30/1983	(home) (cell)	201 ESSEX STREET LYNN, MA
2 SUSPECT	ROBINSON, DEMETRICE JAMAIN	MALE	BLACK	21	03/04/1988	(home) 617-427-1638 (cell) N/A	98 WOODLEDGE ST BOSTON, MA

Vehicles							
Role	Type	Year	Make	Model	Color	Reg #	State
Stolen \$	Rec Code	Date Rec	Rec \$	Rec By			

Property					
Class	Description	Make	Model	Serial #	Value

Narrative

Car # 9 (McHale) and Car # 11 (McKenna) transported Charles Shubar to the station for booking purposes. As part of the booking process I conducted a search of Shubar. I found the following items on his person. A single .22 caliber hollow point round was located in his right front coat pocket. A wad of cash, totaling \$ 197 was found in his left front coat pocket. A small clear plastic twist of white substance was found in his front left pant pocket. These items were confiscated and turned over to Officer Avery to be placed into evidence. No other contraband found on Shubar

Reporting Officer	Reviewing Officer	Approving Officer
MCKENNA J(6727) (04/03/2009 03:29:12)		

NO. 2624 P. 11

APR. 5. 2009 1:03PM JON BLODGETT



LYNN POLICE DEPT
LYNN, MA

Page 2 of 3

Supplementary Report #9017895/2

Case Title SHUBAR CHARLES ARREST		Location 185 N COMMON ST (11)	
Date/Time Reported 04/03/2009 02:30:06		Date/Time Occurred 04/03/2009 02:30:00 to 04/03/2009 03:00:00	
Incident Type/Offense TRAFFICKING CLASS B: 28+ GRAMS C94 S32E(94C/32E/E)			

Persons (Continued from page 1)								
	Role	Name	Sex	Race	Age	DOB	Phone	Address
3	INVOLVED PARTY	WOOTEN, RICHARD ALLEN	MALE	BLACK	40	09/15/1968	(home) 5980884 (cell)	23 JEFFERSON ST LYNN, MA
4	INVOLVED PARTY	JOHNSON, LINDSAY	MALE	BLACK	43	12/12/1965	(home) (cell)	559 WESTERN AVE LYNN, MA

Offenders								
Status	Name	Sex	Race	Age	DOB	Phone	Address	
						(home) (cell)		
						(home) (cell)		

Vehicles							
Role	Type	Year	Make	Model	Color	Reg #	State
Stolen \$	Rec Code	Date Rec	Rec \$	Rec By			

Property					
Class	Description	Make	Model	Serial #	Value

Narrative

Reporting Officer MCKENNA J (6727) (04/03/2009 03:29:12)	Reviewing Officer	Approving Officer
--	-------------------	-------------------

NO. 2624 P. 12

APR. 5. 2009 1:03PM JON BLODGETT



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE
DISTRICT ATTORNEY FOR THE ESSEX DISTRICT
SALEM NEWBURYPORT LAWRENCE

JONATHAN W. BLODGETT
District Attorney

Ten Federal Street
Salem, Massachusetts 01970

2009-00697
00508
TELEPHONE
VOICE (978)745-6610
FAX (978)741-4971
TTY (978)741-3163

February 14, 2013

VIA FACSIMILE (617) 557-1033

email to Asst. Clerk - George Slyva

Maura Sweeney Doyle, Clerk
Supreme Judicial Court for Suffolk County
John Adams Courthouse
One Pemberton Square, Room 1300
Boston, Massachusetts 02108
Attention: George E. Slyva, Second Asst. Clerk

Re: Commonwealth v. Shubar Charles
Supreme Judicial Court for Suffolk County
Docket No. SJ-2013-

Dear Clerk Doyle:

Enclosed please find for filing in the above-referenced case the Commonwealth's Emergency Verified Petition to pursuant to G.L. c. 211, § 3, to Extend a Superior Court Order, Now Set to Expire on Friday, February 15, 2013 at 2 P.M., Staying the Stay of Execution of Sentence, and Certificate of Service.

Thank you for your attention to this matter.

Very truly yours,

Elin H. Graydon
Assistant District Attorney
BBO No. 208140

bbn
cc: Christopher Norris, Esq.
Enclosures