

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

Superior Court
Criminal Action
No. 07-1514

* * * * *
COMMONWEALTH OF MASSACHUSETTS *
v. *
DANIEL TAVARES *
* * * * *

COPY

BAIL REVIEW HEARING
BEFORE: TUTTMAN, J.

A P P E A R A N C E S:

ON BEHALF OF THE COMMONWEALTH:

Office of the District Attorney
225 Main Street
Worcester, Massachusetts 01608
BY: WILLIAM E. LOUGHLIN, ADA

ON BEHALF OF THE DEFENDANT:

Burwick & Dynice
14 Monument Square, Number 305
Leominster, Massachusetts 01453
BY: BARRY P. DYNICE, ESQ.

Worcester Superior Court
Worcester, Massachusetts
July 16, 2007

Jennifer Witaszek, CVR
Official Court Reporter
(508) 831-2319

(Court in session.)

(Defendant present with counsel.)

THE CLERK: Daniel Tavares.

MR. DYNICE: Good afternoon, your Honor.

THE COURT: Good afternoon, Mr. Dynice. Let me just take a moment to review this.

(There was a pause in the proceedings.)

THE COURT: Go ahead, please, Mr. Dynice.

MR. DYNICE: Thank you, your Honor.

Mr. Tavares is presently held on a \$50,000 cash bail order that was issued out of the Clinton District Court relative to two separate complaints that were sought in that court alleging activities while an inmate at the Souza-Baranowski Correctional Center.

Well, as you can see by looking at the probation record, he has finished serving a sentence for manslaughter.

And although there is a, I believe, three-page record relative to his criminal history, you will note that there is not a single default on his record, your Honor.

And I would ask the Court to pay particular attention to the fact that the offenses that are alleged in these two separate complaints, one of them

1 is alleged to have occurred on December 1st of 2005,
2 your Honor. The second one is alleged to have taken
3 place February 27th of 2006.

4 THE COURT: Why are these complaints just
5 being issued now, Mr. Dynice?

6 MR. DYNICE: Because Mr. Tavares was
7 scheduled to be released, having completed the service
8 of his sentence on the manslaughter charge. And on
9 June 7th, the Baranowski officials for the first time
10 referred both matters to the district attorney's
11 office seeking criminal complaints, your Honor.

12 They have taken interdepartmental
13 disciplinary action against Mr. Tavares on both of
14 these complaints. They took away good time from him.
15 They refused him videotapes that would show in fact
16 that on one of these dates, the December 1st date when
17 he was in fact in a cast due to injuries caused to him
18 by the same prison guards for which there is a pending
19 federal civil rights violation case, that he would
20 have videotape to show that in fact he was assaulted,
21 he was brought to the ground, and that tape has
22 suddenly disappeared.

23 I represent him in the District Court in
24 Clinton, your Honor, as assigned counsel, and his

1 matters are scheduled for Monday, a week from today,
2 for conference on these cases.

3 What is happening is that the Baranowski
4 people are asking the district attorney's office to
5 become complicit in a situation where they continue to
6 keep Mr. Tavares incarcerated, therefore imposing
7 severe restrictions on his ability to defend these
8 cases.

9 He is a person who by statute, your Honor,
10 is entitled to personal recognizance. The government
11 has no evidence to suggest that he is a risk not to
12 appear in court when he's supposed to be. He has
13 pending litigation with counsel in Boston. He is
14 finished serving his time.

15 And the Baranowski people are saying, We'd
16 like to keep him here for however long it may take for
17 these cases to resolve.

18 THE COURT: Has he wrapped his sentence?

19 MR. DYNICE: He has wrapped his sentence as
20 of June 14th, your Honor. And what they're saying is
21 we've known about this. Whether the allegations are
22 true or false, we have sat on these for two years and
23 done nothing to refer them to the district attorney.

24 And I don't think it's a coincidence in any

1 way to suggest that shortly, within three days of his
2 wrap date, they seek two complaints on cases this old.
3 And if you look at the nature of the allegations, one
4 of them alleges that he spit on a guard.

5 THE COURT: Yes.

6 MR. DYNICE: That guard has since been
7 transferred out of the facility and may not even be
8 available as a witness, in part because of his
9 consistent record of inappropriate actions as a guard.
10 This is Mr. Atter, your Honor.

11 The second set of complaints or the earliest
12 one, as I said, medical records within the facility,
13 which will be requested, will confirm that on the date
14 he's alleged to have assaulted the guard, he had just
15 returned from the hospital having had a surgical
16 procedure to remove steel pins from his wrist, and
17 quite candidly, was medicated and barely capable of
18 walking when it's alleged he committed this act of
19 assault.

20 This is all information they don't want
21 anybody to know about, yet they filed these complaints
22 opening the door to this discovery issue. But they
23 want him to stay with them for however long it takes
24 to resolve these matters. It's not appropriate.

1 He's a candidate, is entitled to personal
2 recognizance. He has indicated to me that he has
3 family living in Dighton, which is in Worcester
4 County. He has a sister he can live with there.

5 He is a certified welder. He's 41 years
6 old, your Honor, with a 24-year-old adult daughter.
7 He has a fiancée who I've corresponded with who lives
8 in Washington state.

9 He's received his GED, your Honor, and would
10 agree to be on pretrial probation. He has requested
11 that he be placed on some kind of monitoring system if
12 there's a concern about this.

13 But he has every reason to be in court
14 whenever he's supposed to be. What will be
15 interesting is to see how cooperative the Baranowski
16 facility is and whether these alleged victims ever
17 appear in court, your Honor.

18 THE COURT: Mr. Dynice, what's the potential
19 penalty that he faces on the new charges?

20 MR. DYNICE: Your Honor, if he continues to
21 be charged with the present charge of assault and
22 battery on a corrections officer, it would have to go
23 to the grand jury to then be transferred to the
24 Superior Court, as the District Court doesn't have

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final --

THE COURT: There's no jurisdiction.

MR. DYNICE: -- jurisdiction.

THE COURT: What's the sentencing range?

MR. DYNICE: It's ten years, maximum ten years on and after whatever sentence he's presently serving, which right now is not a sentence he's serving.

THE COURT: Is not a sentence at all.

And he has a place to live?

MR. DYNICE: He does, your Honor.

THE COURT: Does he have employment?

MR. DYNICE: He has employment available to him as a welder, your Honor.

THE COURT: Did you want to say something, Mr. Loughlin?

MR. LOUGHLIN: Yes, your Honor. I suggest that counsel's subscribing theories that, I'd suggest, are just theories at this point.

The fact of the matter is, your Honor, that the defendant, even though these crimes occurred earlier in his incarceration, it's a situation where, your Honor, any sentence he would have would have to be served from and after the sentence he was serving.

1 So the fact that these were brought near the
2 end of his sentence actually helps him because it
3 allows him to accumulate credit towards any possible
4 sentence, where it wouldn't have been if they were
5 brought earlier.

6 I mean, your Honor, counsel's suggesting
7 conspiracy theories. And, your Honor, I'd suggest we
8 have no proof of that at this point except for the
9 defendant's word.

10 He obviously has a history of violence, your
11 Honor. Not only did he just finish a manslaughter
12 sentence, your Honor, but he also, I believe, had an
13 armed -- he had a robbery charge and he had an assault
14 charge, your Honor.

15 So he has a history of crimes of violence,
16 and he committed crimes of violence while he was even
17 serving a crime of violence.

18 I'd suggest a -- high cash bails are needed
19 to secure his appearance, your Honor. I believe we
20 have two separate \$50,000 cash bails, one on each of
21 the incidents, and I'd ask that those bails stay the
22 same.

23 MR. DYNICE: Your Honor, if I could address
24 one point?

1 THE COURT: Yes, Mr. Dynice.

2 MR. DYNICE: If Baranowski was in fact
3 looking to do what was best for my client, then why
4 eliminate over 180 days of good time he'd accumulated
5 as a result of one of the DDU hearings that took place
6 on this and then sit and do nothing?

7 It's not a conspiracy theory issue, your
8 Honor. It's that there is factual information that
9 will come out, and as you well know, the issue before
10 the Court today is will he appear in court.

11 The district attorney's office may choose to
12 conduct a dangerousness hearing, if that's what
13 they're talking about, but they're not presenting
14 that.

15 It's simply what ties to the community, what
16 likelihood is his appearance, and what history is
17 there before you to suggest that he's a risk. And
18 there isn't a single default on any aspect of his
19 record, your Honor, including while on probation, your
20 Honor.

21 THE COURT: All right. I'm going to release
22 him on personal recognizance on conditions of pretrial
23 probation.

24 As I understand it, Mr. Dynice, the

1 defendant is amenable to conditions. Those
2 conditions, if he agrees to them, would include that
3 he reside with the sister with whom he has indicated
4 he is going to reside; that he maintain employment;
5 that he report telephonically three times a week to
6 the Probation Department to confirm his employment and
7 his residence.

8 And are there any other conditions that you
9 recommend, Counsel?

10 MR. DYNICE: No, your Honor. My only
11 question is I'm assuming that would be through the
12 Probation Department here in Worcester Superior Court?

13 THE COURT: It would be through the
14 Probation Department in the District Court where the
15 charges are pending, I believe.

16 Is that correct, Probation? He's being
17 released on conditions of pretrial probation. His
18 present charges are out of the Clinton District Court.

19 MS. ORAWSKY: We would return supervision to
20 Clinton.

21 THE COURT: Clinton District Court. Thank
22 you.

23 MR. LOUGHLIN: Your Honor, may I suggest --

24 THE COURT: Yes, Mr. Loughlin?

1 MR. LOUGHLIN: May I suggest some sort of
2 like ELMO or GPS, your Honor? This defendant has a
3 significant history of violence.

4 THE COURT: He does, Mr. Loughlin, but --
5 Mr. Dynice, Mr. Loughlin has suggested a bracelet.

6 It is the Court's view that Mr. Tavares has
7 wrapped his sentence on the underlying offense. He
8 doesn't have a history of any defaults on his record.
9 And there is no indication before the Court based on
10 the representations of counsel and the record before
11 me that he is a risk of flight, other than the nature
12 and circumstances of the charges.

13 And in light of what I've heard and the age
14 of the charges and the circumstances surrounding his
15 civil case, as well, the Court is not of the view that
16 this defendant poses a flight risk at this juncture.

17 So thank you, Mr. Loughlin.

18 MR. LOUGHLIN: Thank you, your Honor.

19 THE COURT: The Court considers but will not
20 impose any further conditions of pretrial release.

21 MR. DYNICE: Thank you, your Honor.

22 MR. LOUGHLIN: Thank you, your Honor.

23 (End of hearing.)
24

C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS

I, Jennifer Witaszek, official court reporter in and for the Commonwealth of Massachusetts, hereby certify:

That the foregoing is a verbatim transcript, prepared by me, of a bail review hearing in the matter of Commonwealth v. Daniel Tavares, held on July 16, 2007, at which I was present.

I certify further that I am not a party interested in the outcome of the proceedings and am not related to any of the parties.

Jennifer Witaszek
Jennifer Witaszek, CVR
Official Court Reporter