

**Supreme Court**

No. 2000-328-M.P.  
(31-2000-3145)

City of Warwick :  
v. :  
Mark T. Adams. :

Present: Williams, C.J., Lederberg, Bourcier, Flanders, and Goldberg, JJ.

**OPINION**

**PER CURIAM.** This case concerns the propriety of a District Court judge’s refusal to allow a person accused of a misdemeanor to withdraw the jury-trial waiver that the accused had executed during an initial appearance before a justice of the peace authorized to set and take bail under G.L. 1956 § 12-10-2 (bail commissioner). The petitioner, Mark T. Adams (petitioner or Adams), sought a writ of certiorari from this Court to review a District Court judge’s refusal to permit him to withdraw his previous jury-trial waiver. The respondent City of Warwick (city) did not object to the petition. The parties met with a single justice of this Court, who vacated the District Court’s decision and transferred the case to the Superior Court. Thereafter, this Court issued the requested writ and assigned this case to the show cause calendar, ruling that the issue raised by the petition was “capable of repetition, but may evade review.” We then ordered counsel for the petitioner to file a supplemental memorandum and invited counsel for the city and the Attorney General to file responsive memoranda.<sup>1</sup> We specifically

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<sup>1</sup> Only the Attorney General’s office did so.

invited the Attorney General to discuss “the current practice in the District Court relative to Dist. R. Crim. P. 23 which may be relevant to our determination in this case.”<sup>2</sup>

The facts are not in dispute. As previously noted, Adams waived his right to a jury trial during a preliminary hearing at the Warwick police station, where he was charged with the crime of assault. Within ten days of this hearing, after consulting with counsel, Adams attempted to revoke his waiver of a jury trial in District Court, but he was not permitted to do so. Adams then filed the present petition with this Court.

The parties agree, as was stated in the previous order, that a jury-trial waiver may be withdrawn if the defendant does so within ten days of his or her initial appearance before a bail commissioner without the necessity of showing good cause. However, we hold that when good cause becomes a

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<sup>2</sup> Rule 23 of the District Court Rules of Criminal Procedure provides as follows:

**“Trial by jury or by the court.** — A defendant who is charged with an offense which is punishable by imprisonment for a term of more than six (6) months shall be advised by the Court, at the time of the defendant's initial appearance, that the defendant has a right to trial by jury in the first instance, but in the event the defendant chooses to waive that right and to stand trial in the District Court without a jury and is found guilty the defendant is entitled to appeal that judgment to the Superior Court where the defendant will receive a trial de novo before a jury. The defendant shall also be informed that if within ten (10) days of the date of his or her arraignment the defendant does not file a written waiver of his or her right to a jury trial in the first instance, the proceedings shall be transferred to the Superior Court for trial in that court. If the defendant files such a waiver the case shall proceed in accordance with these rules. If the defendant does not file a waiver within ten (10) days of his or her initial appearance before the Court, or if the defendant is allowed, for good cause shown, to withdraw his or her waiver after said ten-day period, the clerk shall transmit the record in the case to the clerk of the Superior Court for the county in which the offense was committed.”

prerequisite for withdrawing a waiver, the fact that the defendant has decided to waive a jury trial at an initial hearing without the benefit of counsel constitutes good cause for allowing the withdrawal.

In explaining current District Court practice, the Attorney General indicates that defendants charged with misdemeanors usually are given an opportunity to waive their right to a jury trial when they appear before a bail commissioner. The state suggests that most District Court judges are “reasonable” about allowing a defendant to withdraw a waiver of his or her right to a jury trial, either before or after the passage of ten days following the defendant’s initial court appearance. According to the state, the District Court judge’s denial in this case of petitioner’s request to withdraw his jury trial waiver was an anomaly.

The powers of bail commissioners are enumerated in § 12-10-2. Under § 12-10-2(a), they are authorized “to set and take bail in all complaints bailable” and “to commit to the adult correctional institutions all respondents arrested on such complaints.” They also “issue warrants, and complaints,” but may not issue search warrants. *Id.* In addition, in misdemeanor cases, they “may accept pleas of not guilty,” and then “schedule a pretrial conference date before a judge of the district court.” Section 12-10-2(b). Finally, in non-capital felony cases, they “may also schedule felony screening dates.” Section 12-10-2(c).

An administrative order issued by the chief judge of the District Court specifies the procedures to be followed by bail commissioners “when conducting arraignments in misdemeanor cases and initial appearances in felony cases.” District Court Administrative Order 88-18 at 1 (effective November 22, 1988) (Appendix A). The petitioner argues that a bail commissioner may not conduct such arraignments and that the administrative order that grants bail commissioners “full-fledged power to arraign” is ultra vires.

As we construe the administrative order, however, it does not extend the powers of bail commissioners beyond those which are provided by § 12-10-2. In misdemeanor cases, the bail commissioner may only accept a plea of not guilty. See District Court Administrative Order 88-18 at 1 (Order 88-18). Although the administrative order refers to this process as a “special arraignment,” it does not constitute an arraignment as that term is used in the District Court’s Rules of Criminal Procedure because it does not occur “in open court.” Dist. R. Crim. P. 10; see also Dist. R. Crim. P. 11. If the defendant wishes to enter a plea of guilty or nolo contendere, the case must be reassigned for arraignment before a judge of the District Court. See Order 88-18 at 1. In felony cases, the bail commissioner must explain to the defendant that because the charge is beyond the jurisdiction of the District Court, no plea may be entered. See id. at 3. The bail commissioner must also inform the misdemeanor defendant that he has a right to a trial by jury and that he may waive that right and stand trial in District Court. See id. at 2. If the defendant wishes to waive his right to a jury trial, the bail commissioner must have the defendant execute a waiver of rights form, which is returned to the court the following day. See id. at 2, 5.

The petitioner contends that these initial proceedings before bail commissioners, at which they may accept a not-guilty plea to a misdemeanor, should not be considered arraignments as that term is used in the District Court Rules of Criminal Procedure because, by definition, an arraignment “shall be conducted in open court” and the defendant must be allowed to plead as he chooses. Dist. R. Crim. P. 10; see also Dist. R. Crim. P. 11. The petitioner argues that the District Court Rules refer to “hearings” before a bail commissioner, but when discussing arraignments, the rules refer to the court. Dist. R. Crim. P. 6(e), 9, 10; see also Dist. R. Crim. P. 16(f), 23. As a matter of public policy, petitioner argues, a defendant should not be allowed to waive important rights, such as the right to trial by jury,

outside of court. The petitioner asks this Court to hold that arraignments may occur only in open court and that a defendant may waive his right to a jury trial only in open court.

The state contends that the use of the term “court” in the District Court Rules includes bail commissioners for some purposes. Although the District Court Rules do not specifically recognize the power of a bail commissioner to accept a plea of not guilty, the state explains that the rules have not yet been revised to comport with the 1988 amendment to § 12-10-2, which established this authority. The state indicates that bail commissioners serve an important function in controlling the District Court’s caseload by accepting pleas as authorized by § 12-10-2 outside of the normal court day. The state suggests that the District Court Rules may have to be amended to account for bail commissioners’ authority to conduct the proceedings authorized by § 12-10-2. But it still urges this Court not to accept petitioner’s argument that bail commissioners should be precluded from conducting such proceedings or accepting waivers of the right to a jury trial.

At first glance, there appears to be a conflict between § 12-10-2(b) and the District Court Rules. Although the statute allows a bail commissioner to accept misdemeanor pleas of not guilty, Rule 10 provides that arraignments “shall be conducted in open court.” Moreover, rules of court supersede any statutory regulation with which they conflict. See G.L. 1956 § 8-6-2.

As now constituted, the District Court Rules do not provide for bail commissioners to conduct arraignments. After an arrest, a defendant is to be brought before a judge of the District Court “without unnecessary delay.” Dist. R. Crim. P. 5(a), 9(a). Both Rules 5 and 9, however, begin with the qualification, “[u]nless otherwise provided by statute.” Therefore, the court’s rules leave some room for statutory adjustment in the manner in which a defendant can make an initial appearance after his or her arrest to enter certain pleas, as is provided in § 12-10-2, and, importantly, to obtain his or her release

on bail. Moreover, as a practical matter, if a defendant could be brought only before a District Court judge, the likelihood of delay would be increased more than if the defendant also could be brought before a bail commissioner. In addition, § 12-10-2 allows a bail commissioner to accept only pleas of not guilty in misdemeanor cases, thus reserving for the court the determination of whether a plea of guilty or nolo contendere “is made voluntarily with understanding of the nature of the charge and the consequences of the plea.” Dist. R. Crim. P. 11. Therefore, the legislative directive that allows a bail commissioner to accept pleas of not guilty in misdemeanor cases is valid and does not conflict with the District Court’s rules. However, this does not mean that these initial-appearance proceedings constitute an arraignment “conducted in open court” as required by Rule 10. Indeed, we hold that they do not.<sup>3</sup>

The petitioner also questions whether a bail commissioner should be allowed to accept a defendant’s waiver of the right to trial by jury. Section 12-10-2 does not require a bail commissioner to inform defendants of their right to a jury trial and their option to waive that right. In addition, the statute does not indicate that these officials may accept a waiver of the right to a jury trial. District Court Administrative Order 88-18 details this procedure. The District Court’s rules, however, require that defendants promptly be informed of their right to a jury trial and their right to waive a jury trial. Rule 9 provides that in misdemeanor cases punishable by more than six months imprisonment, the judge is

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<sup>3</sup> In light of this apparent conflict, the District Court should consider recommending to this Court amendments to Rules 5 and 10 of the District Court Rules of Criminal Procedure (and any other rule changes deemed necessary or advisable by the District Court) to provide that, in cases where an accused is brought before a bail commissioner and a plea of not guilty is taken and the accused is released on bail or personal recognizance, the requirement that the arrested person shall be taken “without unnecessary delay before a judge of the District Court” is obviated; and, because a pretrial conference before a judge of the District Court has been scheduled, there is no need for an arraignment “in open court” in accordance with Rule 10. Certainly, when the accused is not released on bail or personal recognizance, an appearance before a judge of the District Court “without unnecessary delay” is required.

required to inform defendants that they have the right to a jury trial, but that they may waive that right and proceed to trial in District Court. Rule 23 elaborates upon this process and provides that “at the time of the defendant’s initial appearance” he or she shall be advised by the court of the right to a trial by jury and that he or she may choose to waive that right and stand trial in District Court without a jury. The waiver of the right is revocable: if defendants waive their right to a jury trial before a bail commissioner, they may, within ten days of their initial appearance before the court, withdraw that waiver. After that ten-day period expires, defendants may withdraw their waiver for good cause shown. See Rule 23. The state argues — and we so hold — that the absence of counsel at any such initial hearing constitutes good cause for the later withdrawal of a waiver. Thus, the opportunity to abuse this process is minimal.

The petitioner contends that the arraignment process should not be altered in any way because it is significant for several reasons. First, petitioner argues, the right to counsel attaches at that time.<sup>4</sup> In addition, petitioner suggests that a defendant’s arraignment marks the beginning of numerous time periods for motions and filings. For example, a defendant has ten days from arraignment to file a motion for a bill of particulars. See Rule 6(e). The defendant must claim the defense of insanity within thirty days of entering his plea, and he or she must file a motion to dismiss on double jeopardy grounds within fifteen days after the plea is entered. See Rule 12(b)(3)(4), (c). Discovery motions must be made within fifteen days after arraignment. See Rule 16(f). However, these issues are not appropriately

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<sup>4</sup> An accused’s right to counsel attaches “at or after the time that judicial proceedings have been initiated against him \* \* \* ‘whether by way of formal charge, preliminary hearing, indictment, information or arraignment.’” State v. Baton, 488 A.2d 696, 703 (R.I. 1985) (quoting Brewer v. Williams, 430 U.S. 387, 398, 97 S. Ct. 1232, 1239, 51 L. Ed. 2d 424, 436 (1977) and Kirby v. Illinois, 406 U.S. 682, 689, 92 S. Ct. 1877, 1882, 32 L. Ed. 2d 411, 417 (1972)).

before us. Nor does petitioner explain how a defendant would be aided in meeting these deadlines by entering a plea of not guilty before a judge rather than a bail commissioner.

We conclude that the state is correct in its assessment of these circumstances. Although the District Court Rules do not specifically provide for all of the authority given to a bail commissioner by § 12-10-2, there is no necessary conflict between them and, as a practical matter, the functions carried out by these officers are important to the day-to-day running of the District Court.

The petitioner requests that this Court hold that his initial appearance before the bail commissioner was invalid, that he had a unilateral right to revoke his waiver of right to a jury trial within the ten-day period after that appearance, and that the state's failure to afford him the opportunity to consult with counsel prior to executing the waiver constituted good cause within the meaning of Rule 23. We deny that portion of the petition that seeks to invalidate the bail-commissioner proceedings, but we grant certiorari with respect to the petitioner's latter two requests. Thus, we rule that Adams possessed the unilateral right to withdraw his jury-trial waiver at any time before the expiration of the ten-day period that began to run after his initial appearance before the District Court or a judge of that court — but not after his initial appearance before the bail commissioner. We further hold that the absence of counsel during the proceeding before the bail commissioner constituted good cause to revoke the waiver after the expiration of the ten-day period. We quash any orders in this case that are inconsistent with this decision and return the file in this case to the District Court with our decision endorsed thereon.



# COVER SHEET

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**TITLE OF CASE:** City of Warwick v. Mark Adams.

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**DOCKET NO.:** 2000-328-M.P.

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**COURT:** Supreme Court

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**DATE OPINION FILED:** May 11, 2001

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**Appeal from**

**SOURCE OF APPEAL:** District

**County:**

3rd Division

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**JUDGE FROM OTHER**

**COURT:** Erickson, J.

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**JUSTICES:** Williams, CJ, Lederberg, Bourcier,  
Flanders, Goldberg, JJ.

**Concurring**

**Not Participating**

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**WRITTEN BY:** PER CURIAM

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**ATTORNEYS:** Lauren Sandler Zurier/Aaron Weisman, Esq., Assistant Attorney  
General

Paul Dutra

**For Plaintiff**

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**ATTORNEYS:** Barbara Hurst (Asst. Public Defender)

**For Defendant**

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