

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
No. SJ-2021-0044

JUVENILE COURT DEPARTMENT  
BOSTON DIVISION  
No. 19YO0022BO  
No. 19DL0327BO

COMMONWEALTH

v.

ELI VIGIANI.

RESERVATION AND REPORT

The Commonwealth brings this petition pursuant to G. L. c. 211, § 3, seeking relief from an order of the Juvenile Court denying the Commonwealth's motion to report certain questions and, alternatively, its motion to preclude the juvenile's mother from testifying at a hearing on the juvenile's motion to suppress in the underlying Juvenile Court proceeding. The juvenile proffers that his mother will testify to conversations she had with a police officer of the Massachusetts Bay Transit Authority (MBTA) and with the juvenile, relevant to whether the juvenile invoked the right to counsel prior to making certain incriminatory statements to the MBTA police.

The Commonwealth contends that the motion judge erred in denying the motion to preclude the mother's testimony because G. L. c. 233, § 20, Fourth, creates a parent-child disqualification that bars the mother from testifying. The Commonwealth further argues that the resolution of this novel question of statutory interpretation will have a significant systemic impact, warranting reservation and report to the full court. The juvenile, on the other hand, argues that this case does not warrant extraordinary relief because the motion judge correctly

determined that the statute did not bar the mother’s testimony, and, in any event, because the court would not need to resolve the statutory interpretation issue raised by the Commonwealth if it were to agree with the juvenile that, on the facts presented here, the juvenile’s constitutional right to present a complete defense trumps any statutory disqualification that might exist.

I agree with the Commonwealth that the issue of whether G. L. c. 233, § 20, Fourth, creates a parent-child disqualification, as opposed to a waivable privilege, is novel, of systemic import, and warrants the extraordinary measure of resolution by the full court in the first instance. See Commonwealth v. Dilworth, 485 Mass. 1001, 1003 (2020); Commonwealth v. Fontanez, 482 Mass. 22, 26 (2019). I recognize, but am not persuaded by, the juvenile’s argument that the court could, conceivably, resolve the case without reaching this issue if it determines that the juvenile’s constitutional rights override any statutory disqualification that might exist. In my view, the issue of whether the statute disqualifies the testimony (as the Commonwealth contends) conceptually ought to be decided first, before the issue of whether any “exception” applies (as the juvenile argues), especially where the exception at issue is at root a claim that the statute, as applied, violates a constitutional right. See Commonwealth v. Jones, 471 Mass. 138, 143 (2015), quoting United States v. X-Citement Video, Inc., 513 U.S. 64, 69 (1994) (“[A] statute is to be construed where fairly possible so as to avoid constitutional questions”). I therefore exercise my discretion to reserve and report to the full court so much of the case as involves the Commonwealth’s motion to preclude the testimony of the juvenile’s mother, with the expectation that the full court will in fact decide the important statutory interpretation question that the Commonwealth raises.<sup>1</sup>

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<sup>1</sup> I decline to report to the full court the aspect of the petition that concerns the Juvenile Court judge’s refusal to report questions of law pursuant to Mass. R. Crim. P. 34. The judge’s decision in that regard was “highly discretionary,” see McMenimen v. Passatempo, 452 Mass.

The record before the full court will consist of the Commonwealth's petition, with exhibits; the juvenile's response, with exhibits; the county court docket; and this reservation and report. The parties shall also prepare and file in the full court a comprehensive statement of agreed facts necessary to resolve the issues raised by the petition. The statement shall be prepared in time for inclusion in the parties' record appendix.

The Commonwealth shall be deemed the appellant, and the juvenile shall be deemed the appellee. The case will be scheduled for the May sitting of the full court. The parties shall consult with the Clerk of the Supreme Judicial Court for the Commonwealth regarding a timetable for the service and filing of briefs that will permit this to happen. This matter shall proceed in all other respects in accordance with the Massachusetts Rules of Appellate Procedure.

By the Court,

/s/ Serge Georges, Jr.  
Associate Justice

Dated: March 17, 2021

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178, 189 (2008), and I know of no case in which this court or the Appeals Court has ever held that a judge abused his or her discretion in declining to report an interlocutory matter. *Id.* The Commonwealth's request for extraordinary general superintendence relief as to that ruling is therefore denied. The parties should focus their briefs in the full court on motion to preclude the mother's testimony, which is the real crux of the dispute between them.