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25-P-396

Appeals Court

COMMONWEALTH vs. DEIVISSON GOULART.

No. 25-P-396.

Middlesex. May 14, 2026. – September 18, 2026.

Present: Shin, Ditekoff, & Tan, JJ.

Rape. Practice, Criminal, Mistrial, Instructions to jury, Impoundment order. Impoundment. Sealing.

Indictments found and returned in the Superior Court Department on August 4, 2017.

The cases were tried before Christopher K. Barry-Smith, J.

Karl Suchecki (James J. Coviello also present) for the defendant.

Ryan McCrorey, Assistant District Attorney, for the Commonwealth.

DITKOFF, J. The defendant, Deivisson Goulart, was convicted on May 4, 2022, after a jury trial in the Superior Court, of two counts of rape of a child, aggravated by age difference, G. L. c. 265, § 23A (b), and one count of forcible

rape of a child, G. L. c. 265, § 22A.¹ The jury acquitted the defendant of another count of forcible rape of a child.

Concluding that the judge acted within his discretion in denying a motion for a mistrial after the victim stated that the defendant pulled down the pants of "any kid that . . . was around," and the judge struck that testimony, we affirm.

We write further because both parties filed impounded briefs, without a version for the public. When asked for an explanation, both parties stated that they did so because the briefs mentioned the acquittal, which occurred before the Supreme Judicial Court decided Commonwealth v. J.F., 491 Mass. 824 (2023) (holding that G. L. c. 276, § 100C, requires mandatory impoundment of acquitted charges absent defendant's written request). That acquittal remains unimpounded in the Superior Court, and defense counsel confirmed at oral argument that the defendant has no intention of moving to impound it there. Concluding that the parties have failed to demonstrate good cause to impound this acquittal, we unimpound the briefs.

1. Background. a. The rapes. The victim first came to the United States on a six-month visa when she was fifteen years old. She lived in a two-family home with her much older sister.

¹ A defendant may be convicted under both statutes based on the same act. See Commonwealth v. Foreman, 101 Mass. App. Ct. 398, 410-411 (2022).

The victim's much older niece was married to the defendant, and they lived on the other side of the house.² Soon, she began working with the defendant, doing construction, yard work, and mechanic's work.

The defendant began talking about sex with the victim, touching her, and licking her ears. The defendant asked her "a few times" to fellate him, but the victim refused. Then, on one occasion, while the victim and the defendant were working on a house, the defendant "jump[ed] out of nowhere," put his hand over her mouth, and said, "shh." He pulled down the victim's pants and underwear and penetrated the victim's anus with his penis.³ When the victim tried to talk to the defendant the next morning about what had happened, the defendant became angry, told the victim that she would have "worse problems" if she told anyone, and instructed her, "Just don't tell anyone."

After this, the victim felt that she "fell in love for him." On another occasion while working on the same house, the defendant started to "whisper things on [the victim's] ears" and then "lick [her] ears." He then "pulled [her] hair" and "put

² The defendant was more than eleven years older than the victim.

³ This was the basis of the forcible rape of a child conviction and one of the convictions of aggravated rape of a child.

his entire dick inside [her] mouth." After that, the defendant had the victim fellate him "like every other day."⁴

Several years later, when the victim returned to the United States, she reported what had happened. During the ensuing investigation, Stoneham police interviewed the defendant. The defendant spontaneously brought up the victim's sexual orientation and stated that "[h]e expected that [the victim] would be in love with him, and expected that [the victim] would . . . claim rape."

b. The victim's testimony. At one point during her trial testimony, the victim stated that the defendant told sexual jokes to her. When asked to explain, she said, "he did it to anyone, any kid that it was around. It wasn't just me, but like -- put like pa -- take the pants and put it down, like you know, . . . like this and stuff." The defendant immediately moved for a mistrial, which the judge denied. The judge instead instructed the jury, "The last question and answer are stricken from the record. And, let me just explain why. And, that means you can't consider them. There are no contentions, no

⁴ These incidents were the basis of the acquittal of forcible rape of a child and conviction of the other count of aggravated rape of a child. Inferably, the jury harbored a reasonable doubt whether these rapes were forcible. The jury were instructed that they had to agree unanimously on at least one particular oral rape.

allegations of any sort involving any persons other than . . .
this witness."

The victim then piped in with, "There is. Yeah, there is."⁵
The judge again instructed the jury "there's no evidence in that
regard" and to "strike that testimony." The judge then excused
the jury and instructed the prosecutor to talk to the victim
"about not interrupting and what she's allowed and not allowed
to testify about." The defendant renewed his motion for a
mistrial, and the judge again denied it.

When the jury returned, the judge instructed the victim to
"listen to the question" and "[d]o your best to answer the
question." He then again struck the victim's testimony and told
the jury, "you need to stay focused on what needs to be decided
in this case. There [are] no charges, no accusations concerning
anything other than what you'll hear from about [the victim] and
this defendant, and there's no evidence in that regard either."
There were no further issues of this sort, but the victim
remained a very difficult witness, requiring redirection from
the judge multiple times.

⁵ The defendant had been tried in Pennsylvania for rape and
was acquitted and had also been investigated for abuse of his
two stepdaughters, but the claims were unsupported. Prior to
trial, the trial judge allowed the defendant's motion in limine
to exclude this information. Thus, the jury did not hear this.

Ultimately, the jury convicted the defendant of two counts of aggravated rape of a child and one count of forcible rape of a child, and acquitted the defendant of one count of forcible rape of a child. This appeal followed.

2. Mistrial. "The decision whether to declare a mistrial is within the discretion of the trial judge." Commonwealth v. Escobar, 493 Mass. 694, 706 (2024), quoting Commonwealth v. Bryant, 447 Mass. 494, 503 (2006). "The trial judge is in the best position to assess any potential prejudice and, where possible, to tailor an appropriate remedy short of declaring a mistrial." Commonwealth v. Ferguson, 497 Mass. 199, 211 (2026), quoting Commonwealth v. Martinez, 476 Mass. 186, 197 (2017).

Here, the judge "provided timely and forceful curative instructions to the jury." Commonwealth v. Gamboa, 490 Mass. 294, 298 (2022). The judge repeatedly told the jury that the testimony was stricken and they could not consider it. He also reminded the jury during the final charge to disregard any testimony that he had struck. In addition, he specifically told the jury twice that there were no other allegations or evidence about any other allegations.

Moreover, the improper statement "was not highlighted; indeed, it was not repeated or otherwise referenced." Commonwealth v. Doughty, 491 Mass. 788, 797 (2023). Accord Commonwealth v. Dufresne, 489 Mass. 195, 208 (2022). The

prosecutor did not mention the improper testimony, and the defendant used the victim's hostility to his advantage, arguing in closing, "What are we to make of a witness who comes into court and shows disrespect to the proceedings? Is that the kind of person who would have no qualms about making up a charge against someone against whom she has vendetta[?]" Finally, the victim's vague statements were not so prejudicial that they could not be corrected by the judge's instructions. See, e.g., Gamboa, 490 Mass. at 297 (inadmissible identification of defendant); Dufresne, supra (statement that charged incident was "the last time" defendant assaulted victim); Commonwealth v. Paige, 488 Mass. 677, 683 (2021) (prosecutor inadvertently played video recording of defendant's statement about prior cases); Commonwealth v. Proia, 98 Mass. App. Ct. 125, 129 (2020) (inadmissible testimony that defendant refused field sobriety tests). The jury's partial acquittal is evidence that they were able to follow the judge's instructions and analyze the evidence dispassionately. See Commonwealth v. Foreman, 101 Mass. App. Ct. 398, 403 (2022). The judge acted within his discretion in denying a mistrial.

3. Impoundment. a. Standard of review. "The requirements of impoundment are properly demanding, as 'impoundment is always the exception to the rule, and the power to deny public access to judicial records is to be strictly

construed in favor of the general principle of publicity.'" Boston Globe Media Partners, LLC v. Chief Justice of the Trial Court, 483 Mass. 80, 98 (2019), quoting Republican Co. v. Appeals Court, 442 Mass. 218, 223 (2004). "The burden of demonstrating the existence of good cause [for impoundment] always remains with the party urging [the] continued impoundment [of court records]." Commonwealth v. George W. Prescott Publ. Co., 463 Mass. 258, 269 (2012), quoting Republican Co., supra at 225. "In determining good cause, the court shall consider all relevant factors, including, but not limited to, (i) the nature of the parties and the controversy, (ii) the type of information and the privacy interests involved, (iii) the extent of community interest, (iv) constitutional rights, and (v) the reason(s) for the request." Rule 7(b) of the Uniform Rules on Impoundment Procedure (2015) (U.R.I.P.). Accord New England Internet Café, LLC v. Clerk of the Superior Court for Criminal Business in Suffolk County, 462 Mass. 76, 83 (2012).

- b. History. In 1973, the Legislature first enacted G. L. c. 276, § 100C, which then stated, in pertinent part,

"In any criminal case wherein the defendant has been found not guilty by the court or jury, or a no bill has been returned by the grand jury, or a finding of no probable cause has been made by the court, the defendant may, on a form furnished by the commissioner of probation, request that the commissioner seal said court appearance and disposition recorded in his files. The commissioner shall comply with such request and he shall notify forthwith the clerk and the probation officers of the courts in which the

proceedings occurred or were initiated who shall likewise seal the records of the proceedings in their files."

St. 1973, c. 322, § 1. In 1983, the Legislature amended the statute to require the impoundment⁶ of an acquittal unless "the defendant makes a written request to the commissioner not to seal the records of the proceedings." St. 1983, c. 312. In 1984, the Legislature further amended the statute to require the court to impound the acquittal without waiting for notification from the commissioner of probation. St. 1984, c. 123. The statute now states, in pertinent part,

"In any criminal case wherein the defendant has been found not guilty by the court or jury, or a no bill has been returned by the grand jury, or a finding of no probable cause has been made by the court, the commissioner of probation shall seal said court appearance and disposition recorded in his files and the clerk and the probation officers of the courts in which the proceedings occurred or were initiated shall likewise seal the records of the proceedings in their files. The provisions of this paragraph shall not apply if the defendant makes a written request to the commissioner not to seal the records of the proceedings."

The statute soon found itself under constitutional attack and, in 1989, the United States Court of Appeals for the First Circuit determined that the statute was an unconstitutional

⁶ Although we generally use the word "impounded" to refer to court documents that are unavailable to the public but available to the parties and "sealed" to refer to court documents that are available only to the court, see U.R.I.P. 1(b)(9), the Supreme Judicial Court has determined that the Legislature used the word "sealed" in § 100C in its nontechnical sense, and intended this material to remain available to the parties. See Gravito v. Commonwealth, 496 Mass. 756, 765 (2025).

violation of the public's right of access to court documents guaranteed by the First Amendment to the United States Constitution. Globe Newspaper Co. v. Pokaski, 868 F.2d 497, 509 (1st Cir. 1989). (The court suggested that the law would be constitutional if it required the defendant to seek impoundment of the acquittal and to demonstrate good cause for the impoundment. Id. at 507.) The Supreme Judicial Court adopted procedures concerning § 100C consistent with Pokaski. See Commonwealth v. Doe, 420 Mass. 142, 149-150 (1995). Accordingly, "the statute generally had not been enforced." Gravito v. Commonwealth, 496 Mass. 756, 757 n.3 (2025).

On May 5, 2023, the Supreme Judicial Court decided J.F., 491 Mass. 824. The court expressly determined that Pokaski was wrongly decided and would no longer be followed. J.F., supra at 833-836. Instead, "where a defendant stands acquitted on a charge . . . , the records pertaining to those charges shall be sealed, unless the defendant 'makes a written request to the commissioner' not to seal the records of the proceedings." Id. at 840, quoting G. L. c. 276, § 100C. The court also decided that, where a defendant was convicted of some counts and acquitted of others, § 100C still applied to the acquittals. J.F., supra at 838.

In response, on February 8, 2024, the Executive Office of the Trial Court issued Transmittal No. 24-4. See Gravito, 496

Mass. at 757. The Chief Justice of the Trial Court directed that, beginning on March 11, 2024, acquittals were to be sealed automatically unless the defendant files the proper form with the commissioner of probation to request otherwise within ten days of the acquittal. For cases decided on or after May 5, 2023, the Chief Justice directed that notices were to be sent to each acquitted defendant of the right to request that the acquittal not be sealed. If the proper form was not timely filed with the commissioner of probation requesting that those acquittals remain public, those acquittals would also be sealed. Finally, the Chief Justice determined that J.F. did not apply to cases decided before May 5, 2023.⁷

The practical consequence of all this is that almost all acquittals that occurred on or after May 5, 2023, have been impounded. Acquittals before that date have been impounded only if the defendant made an affirmative request for impoundment.

c. Application. Here, the jury acquitted the defendant of one count of forcible rape of a child on May 4, 2022, just over a year before the issuance of J.F., and the defendant made no

⁷ It is hard to imagine what else the Chief Justice could have done. Defendants prior to J.F. had no reason to inform anyone whether they wanted their acquittals impounded, and it could be close to impossible to inform every defendant with an acquittal since 1983 of the right to request that the acquittal remain public. Indeed, even the bureaucratic burden of locating and sealing every acquittal since 1983 seems daunting and possibly insurmountable.

affirmative request for impoundment of that acquittal.

Consequently, the Superior Court never impounded the acquittal, and to this day it remains publicly available from that court.

Despite this, the defendant takes the position that, not only should the fact of the acquittal be impounded, but also any description of the conduct that underlies the acquittal. To begin, we reject the proposition that any description of the conduct that underlies the acquittal should be impounded. The statute requires the impoundment of the "court appearance and disposition recorded in [the] files." G. L. c. 276, § 100C.⁸ We interpret this to mean all mention of the criminal count that was acquitted. Nothing in the statute suggests that particular testimony or factual descriptions need to be impounded, and this case demonstrates how impractical such an interpretation would be to implement. Here, the jury convicted the defendant of oral

⁸ We acknowledge that the statute also references "the records of the proceedings," G. L. c. 276, § 100C, which we also interpret as referring to the records of the acquitted count. To interpret this as requiring the complete sealing of all court records regarding a prosecution where even a single count is acquitted would make no sense in light of the Legislature's careful delineation of which convictions may be sealed in G. L. c. 276, § 100A. See Josh J. v. Commonwealth, 478 Mass. 716, 719 (2018), quoting Paquette v. Commonwealth, 440 Mass. 121, 130 (2003), cert. denied, 540 U.S. 1150 (2004) ("where 'two or more statutes relate to the same subject matter, 'they should be construed together so as to constitute a harmonious whole,' creat[ing] a consistent body of law, and giv[ing] full effect to the expressed intent of the Legislature'").

rape and acquitted only of the count charging that it was forcible. There is no way in this case to separate out the conduct underlying the acquittal from the conduct underlying the conviction.

Both the Commonwealth and the defendant urge the impoundment of the acquittal, despite the fact that it remains publicly available in the trial court.⁹ It bears mention that we have no role in directly reviewing the propriety of the Chief Justice's transmittal; such supervisory power is vested in the Supreme Judicial Court. See G. L. c. 211, § 3 ("the justices of the supreme judicial court shall also have general superintendence of the administration of all courts of inferior jurisdiction"). See also G. L. c. 211A, § 10 (Appeals Court jurisdiction limited to "appellate jurisdiction," except where "case is transferred by the supreme judicial court to the appeals court"); G. L. c. 211A, § 12 (Supreme Judicial Court may transfer to Appeals Court "any case or issue pending before it which has not been determined by the appeals court, including those within the original jurisdiction of the supreme judicial court"). That said, since J.F., the Supreme Judicial Court has consistently treated pre-J.F. acquittals as unimpounded and

⁹ As mentioned supra, defense counsel stated at oral argument that the defendant has no intention of asking the Superior Court to impound the acquittal.

reported them in published opinions. See, e.g., Commonwealth v. Palmer, 498 Mass. 117, 121 (2026); Commonwealth v. Conza, 497 Mass. 500, 506 (2026); Commonwealth v. Larace, 496 Mass. 644, 652 n.11 (2025); Commonwealth v. Carvajal, 496 Mass. 490, 495 n.6 (2025); Commonwealth v. Njuguna, 495 Mass. 770, 775 (2025); Commonwealth v. Rateree, 495 Mass. 610, 611 n.1 (2025); Commonwealth v. Chism, 495 Mass. 358, 365 n.5 (2025); Commonwealth v. Strong, 495 Mass. 119, 126 (2024); Commonwealth v. Jacques, 494 Mass. 739, 741 (2024); Commonwealth v. Rodriguez, 494 Mass. 723, 725 nn.3, 4 (2024); Commonwealth v. Hinds, 494 Mass. 681, 685 (2024).

In any event, the fact remains that the defendant's acquittal remains unimpounded in the trial court, whether rightly or wrongly. It is our duty to impound in the Appeals Court any "material impounded in the trial court." S.J.C. Rule 1:15, § 2 (b), as appearing in 472 Mass. 1301 (2015). Requests to impound in the Appeals Court in the first instance must be made in accordance with the Uniform Rules on Impoundment Procedure. S.J.C. Rule 1:15, § 1 (b). Those rules, in turn, require a "written motion," supported by an affidavit, and stating "with particularity (i) the material sought to be impounded, (ii) the duration for which impoundment is sought, (iii) the reasons impoundment is necessary, and (iv) the reasons other alternatives to impoundment will not afford adequate

protection." U.R.I.P. 2(a)(1)-(2). Such a motion would need to establish the basis for "a written finding of good cause."

U.R.I.P. 8(a). Nothing in our rules allows for self-help impoundment;¹⁰ parties may not impound any document for the first instance in the Appeals Court on their own motion without court approval.

The parties here did not file proper motions to impound their briefs (and the defendant's appendix) and, more to the point, have failed to demonstrate good cause for impoundment. The acquittal here remains publicly available in the Superior Court, and the defendant has made no showing how its availability in the Appeals Court would prejudice him.¹¹ See Commonwealth v. Pon, 469 Mass. 296, 316-317 (2014) (describing

¹⁰ This does not mean that parties may not redact sensitive, or even simply irrelevant, information from documents included in an appendix or addendum on their own. See Mass. R. A. P. 18 (a) (1) (A) (v) (b), as appearing in 481 Mass. 1637 (2019) (appendix must contain "any document, or portion thereof, filed in the case relating to an issue which is to be argued on appeal [emphasis added]). Indeed, S.J.C. Rule 1:24, § 10 (b) (2016), specifically permits parties to redact appendix documents that are unredacted in the trial court.

¹¹ We do not mean to suggest that it is impossible that there could be good cause for impoundment in the Appeals Court where material is available in the trial court, merely that none has been shown here. There are many documents unimpounded in the trial court, but unavailable through the Internet. Placing such documents in an appellate filing might well make them practically available. If good cause were shown to impound them, the fact that they were unimpounded in the trial court might not be a barrier to impoundment here.

possible disadvantages from public access to criminal record). Indeed, it is hard to imagine how the defendant, with convictions of two counts of aggravated rape of a child and one count of forcible rape of a child, would be harmed by the public's learning that he was also acquitted of one count of forcible rape of a child. Cf. id. at 317 (judge determining good cause for sealing of criminal charge "should consider other evidence on whether sealing would alleviate the identified disadvantages"). Accordingly, the briefs filed by the parties shall be unimpounded.¹²

4. Conclusion. The judgment is affirmed. The Clerk of the Appeals Court shall unimpound the parties' briefs. The defendant shall file a public version of his appendix that redacts the victim's name from page 19.¹³ See G. L. c. 265, § 24C; George W. Prescott Publ. Co., 463 Mass. at 266 & n.11 (sexual assault victim's name must be redacted from judicial record, but document impounded only "on a showing of good cause").

So ordered.

¹² It is worth noting that, even if good cause were shown to impound the acquittal, we may require the parties to file redacted versions of their briefs and appendices for public view, and would do so in this situation as a matter of policy. See S.J.C. Rule 1:15, § 2 (c).

¹³ The docketing statement reflects that the victim's name was impounded pursuant to G. L. c. 265, § 24C.