

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. SJ-2018-209

Suffolk Superior Court
No. 1684CR00838

COMMONWEALTH v. ABDULLAH YASIN

RESERVATION AND REPORT

This matter came before the Court, Kafker, J., on the Commonwealth's petition, pursuant to G. L. c. 211, § 3, seeking review of the April 9, 2018 ruling of a judge in the Superior Court granting the defendant's motion for a required finding of not guilty under Mass. R. Crim. P. 25(a), nunc pro tunc to the close of the Commonwealth's case. The Commonwealth argues that the judge was not permitted to reserve her ruling on the 25(a) motion, which was filed at the close of the Commonwealth's case, or to grant the motion nunc pro tunc after the jury had rendered a guilty verdict. The Commonwealth requests that this Court either (1) vacate the Superior Court order, or (2) reserve and report this matter to the full court and consolidate this matter with the Commonwealth's pending appeal before the Appeals Court.

Under rule 25(a), a defendant may move, at the close of the Commonwealth's case, for a required finding of not guilty, and

"the judge must rule on that motion at that time and may not reserve it." Commonwealth v. Hurley, 455 Mass. 53, 68 (2009). If the judge grants the defendant's rule 25(a) motion at the close of the Commonwealth's case, the ruling constitutes a judgment of acquittal and the Commonwealth may not appeal. See Smith v. Massachusetts, 543 U.S. 462, 467-468 (2005). Under rule 25(b), if a defendant moves for a required finding of not guilty at the close of all the evidence in a jury trial, the judge may rule on the motion after the jury has returned a guilty verdict. See Mass. R. Crim. P. 25(b). If the judge grants the motion, the Commonwealth may appeal. See Mass. R. Crim. P. 25(c). See also Commonwealth v. Therrien, 383 Mass. 529, 532-533 (1981).

Here, the defendant moved at the close of the Commonwealth's case, under rule 25(a), for a required finding of not guilty on the murder indictment. The judge reserved her ruling on the motion. At the close of all evidence in the case, the defendant made another motion for a required finding of not guilty on the murder indictment. The judge again reserved the motion and submitted the case to the jury. The jury found the defendant guilty of, inter alia, murder in the second degree. After the jury verdict, the defendant submitted a renewed motion for a required finding of not guilty, or, in the alternative, for other relief pursuant to rule 25(b)(2). The judge ruled that the defendant's motion under 25(a) was granted, nunc pro

tunc to the close of the Commonwealth's case. The judge further ruled that, in the alternative, the defendant was entitled to a verdict of not guilty under 25(b)(2).

The Commonwealth, in addition to petitioning the single justice for relief, also filed a notice of appeal from the trial judge's ruling on the murder indictment. The defendant filed a motion to vacate the entry of the Commonwealth's appeal without prejudice, so as to permit the defendant to file a motion to strike the notice of appeal in the trial court. The Appeals Court vacated the entry of appeal without prejudice. The defendant then filed a motion to strike the Commonwealth's notice of appeal, arguing that the Commonwealth has no right to appeal from the judge's ruling because it was made pursuant to 25(a), not 25(b). That motion is currently pending in the trial court.

I hereby reserve and report the following questions to the full court:

1. Whether a judge may reserve ruling on a 25(a) motion made at the close of the Commonwealth's case and, after the jury has returned a guilty verdict, allow that motion nunc pro tunc to the close of the Commonwealth's case, or whether such a ruling falls under 25(b)?
2. May such a ruling be appealed by the Commonwealth?

The defendant's motion to strike the Commonwealth's notice of appeal is stayed pending the decision of the full court. If the full court determines that the Commonwealth is entitled to

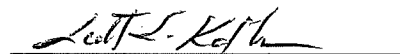
appeal the judge's ruling, the Commonwealth may proceed with its appeal in the normal course.

The petition is reserved and reported as above without decision to the Full Court for determination on the following record:

1. the Commonwealth's petition for relief, with transcript and attachments;
2. the respondent's memorandum in opposition to the petition, with appendix;
3. the docket sheet in SJ-2018-209; and
4. this reservation and report.

The Commonwealth shall be deemed the appellant. This reservation and report shall proceed in all respects with the Massachusetts Rules of Appellate Procedure. The parties shall consult with the Clerk of the Supreme Judicial Court for the Commonwealth regarding the service and filing of briefs.

By the Court,



Scott L. Kafker
Associate Justice

Dated: July 23, 2018