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BRISTOL, SS SUPERIOR COURT
FILED

JUN 11 2015

COMMONWEALTH OF MASSACHUSETTS

MARC J. SANTOS, ESQ.
CLERK/MAGISTRATE

BRISTOL, ss.

BRCR2013-00983

COMMONWEALTH

vs.

AARON HERNANDEZ

COMMONWEALTH'S OPPOSITION TO DEFENDANT'S MOTION FOR
IMPOUNDMENT

Introduction. On April 15, 2015, a superior court jury found the defendant, Aaron Hernandez, guilty of first-degree murder, unlawful possession of a firearm and unlawful possession of ammunition. The defendant now seeks to "Seal" certain post-conviction filings. In his motion, the defendant simply asserts that keeping these matters under seal will maximize the likelihood of discovering the truth in the event the court grants an evidentiary hearing at some future date.¹ In support of his motion, the defendant has filed, *inter alia*, an affidavit describing

¹ The defendant's motion to file his pleadings under seal does not comply with the stringent requirements of The Uniform Rules on Impoundment. Among other things, the defendant has not filed an affidavit in support of his motion to seal.

the nature of alleged extraneous facts within the knowledge of a juror, and a motion for a subpoena seeking various records that might be used to further his claims. He has also filed a motion seeking to impound all pleadings filed in connection with these matters, and to prevent any public disclosure of these pleadings until a "fact-finding process has been complete." It is the latter submission that is at issue here. Given the scope of the order requested by the defendant, he presumably seeks to conduct all proceedings related to his filings in a court-room closed to the public. The Commonwealth opposes the defendant's request for impoundment as it is not permitted by law.

Discussion. Under Massachusetts common law, judicial records are presumptively available to the public. See *Commonwealth v. Silva*, 448 Mass. 701, 706-707 (2007). As Justice Holmes observed in *Cowley v. Pulsifer*, 137 Mass. 392, 394 (1884), "it is of the highest moment that those who administer justice should always act under the sense of public responsibility, and that every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed." To advance these policies, the law places a heavy burden on any party seeking to impound court documents or to exclude the public from court proceedings. See *Republican Co. v. Appeals*

Court, 442 Mass. 218, 225 (2004) (burden of demonstrating lawful basis for impoundment always remains with the party urging impoundment).

Consistent with this strong presumption of public access, judges may restrict access to judicial records through impoundment only where "good cause" is shown, an assessment that requires a careful "balanc[ing of] the rights of the parties based on the . . . facts of each case." *Boston Herald, Inc. v. Sharpe*, 432 Mass. 593, 604 (2000). To determine whether good cause has been shown to justify the extraordinary remedy of impoundment in any particular case, a judge "must take into account all of the relevant factors, 'including, but not limited to, the nature of the parties and the controversy, the type of information and the privacy interests involved, the extent of community interest, and the reason for the request.'" *Id.* at 604 n.22, quoting rule 7 of the Uniform Rules on Impoundment Procedure. Any exercise of the power to restrict access must recognize that 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." *Commonwealth v. Blondin*, 324 Mass. 564, 571 (1949), cert. denied, 339 U.S. 984 (1950). Moreover, any impoundment order must be

tailored as narrowly as possible, consistent with protecting the substantive rights at risk. See *New England Internet Café, LLC v. Clerk of the Superior Court for Criminal Business*, 462 Mass. 76, 85 (2012) (scope of any impoundment order must be limited to "the requirements of the particular facts and circumstances"). See also *Boston Herald, Inc. v. Sharpe*, supra at 605 (impoundment cannot exceed narrowest requirements justified by good cause).

The full scope of the defendant's request seems to be controlled by the SJC's reasoning in *Globe Newspaper Co. v. Commonwealth*, 407 Mass. 879, 884-885 (1990). There, confronted with similar facts, the Court stated:

We see no reason, on this record, why the public should be excluded from the courtroom when the court officer testifies. The tradition in the Commonwealth is that courts are open to the public. In the absence of a statute, a rule of court, or a principle expressed in an appellate opinion authorizing or directing a courtroom to be closed, the expectation is that courtrooms will be open. In this case, no statute or rule of court authorized the closing of the courtroom to the public. There is no apparent reason to keep the court officer's testimony confidential. The alleged impropriety occurred before the jury commenced their deliberations. His testimony thus would not intrude into the forbidden territory of the jury's deliberations While we recognize that a judge may handle an inquiry concerning extraneous influences on a jury without holding an evidentiary hearing (see *Commonwealth v. Fidler*, 377 Mass. 192, 203 [1979]), once a decision is made that an evidentiary hearing is to be held in the presence of the prosecutor and defense counsel, the public is entitled to be present in the absence of a ruling, based on detailed findings of fact, that

confidentiality is warranted in the public interest. On the record before us, there is no finding that justifies taking the testimony of the court officer in a courtroom closed to the public.

The same principles apply with coequal force here.

In the present case, the alleged extraneous information preceded deliberations and so does not touch directly on the area of the jury deliberations. Moreover, the present case is one that has provoked significant "community interest," a factor identified as militating in favor of public access by the SJC in Boston Herald, supra. Indeed, the public attention has been - and continues to be - so acute that any restriction on public access to information at this juncture poses a grave risk of eroding public confidence in the fair administration of justice. There is no indication that any of the matters raised in the defendant's filings implicate particular privacy interests or are protected by any form of privilege. The defendant has provided no factual basis, beyond mere assertion, for this court to conclude that public dissemination of the contents of his filing would in any way interfere with future proceedings. In the complete absence of specific supporting facts for his assertion, contained in an affidavit filed in support of the motion to seal, the defendant failed to meet an essential burden

allocated to him under the law. Indeed, if the defendant's simple assertion was true, all proceedings would be closed to the public.

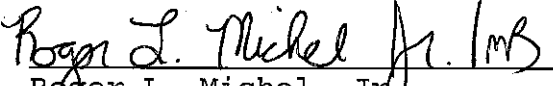
Thus, tested against all of the factors identified as relevant by the SJC, there is simply no appropriate basis for impoundment here. In view of the strong policy against impoundment, and the high burden imposed on any party who seeks that remedy, the defendant's claim must fail.

Even if the Court entered an order, it will not necessarily provide a final resolution to the issue of public access to these proceedings in any event; rather, the question may be revisited at any time. An impoundment order remains at all times an interlocutory order, subject to the continued existence of "good cause." See, e.g., rule 8 of the Uniform Rules on Impoundment Procedure (2004) (orders of impoundment to be time-limited). The presumption of public access to the records that such an order temporarily frustrates remains intact "and does not dissipate on the order's entry." *Republican Co. v. Appeals Court*, 442 Mass. 218 at 224. See also *Press-Enterprise Co. v. Superior Court*, supra at 507-509 (continuing value in disclosure of records regarding criminal proceedings). Unlike other orders and judgments, "an impoundment order carries no continuing presumption of validity to sustain it

against a proper challenge subsequently brought. A party seeking the release of impounded court records does not bear any burden of demonstrating either that there has been a material change in circumstances or that whatever good cause may once have justified their impoundment no longer exists." Id at 224-225. As when an impoundment order is initially sought, the burden of demonstrating the existence of good cause always remains with the party urging their continued impoundment. In any event, for the reasons already noted, impoundment is not indicated here.

WHEREFORE, the Commonwealth respectfully requests that the defendant's motion for impoundment be denied in all respects.

Respectfully submitted,


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Dated: June 10, 2015