SJC-13140

COMMONWEALTH vs. DEVIN ROMAN.

Hampden. November 1, 2021. - February 3, 2022.

Present: Budd, C.J., Gaziano, Lowy, Cypher, Kafker, Wendlandt, & Georges, JJ.

Practice, Criminal, Plea, Sentence. Superior Court. Constitutional Law, Plea, Equal protection of laws, Sentence.

Indictments found and returned in the Superior Court Department on April 15, 2016.

A motion to withdraw guilty pleas, filed on January 29, 2020, was heard by Douglas H. Wilkins, J.

The Supreme Judicial Court granted an application for direct appellate review.

Andrew P. Power for the defendant.
Lee Baker, Assistant District Attorney, for the Commonwealth.

LOWY, J. At the heart of this case are the different procedural protections afforded Superior Court criminal defendants -- as compared to District Court and Boston Municipal

Court criminal defendants, as well as juveniles in the Juvenile Court -- when those defendants tender guilty pleas without agreeing with the Commonwealth on a sentence.[1] When there is such an unagreed plea, both the defendant and the Commonwealth may provide their own recommendations with respect to sentencing to a judge. In these circumstances in the Superior Court, pursuant to Mass. R. Crim. P. 12 (c) (4) (A), as appearing in 470 Mass. 1501 (2015) (rule 12 [c] [4] [A]), a defendant tenders a "Commonwealth-capped plea": the defendant has a statutory right to withdraw the guilty plea if the trial judge would impose a sentence that exceeds the Commonwealth's recommendation. In contrast, in these circumstances in the District Court, a defendant tenders a "defendant-capped plea": the defendant has a statutory right to withdraw the guilty plea

[1] For ease of reference, we refer throughout to District Court defendants as the class in comparison to Superior Court defendants; we note, however, that our analysis extends to Boston Municipal Court defendants. We further note that juveniles in the Juvenile Court likewise have a statutory right to defendant-capped pleas, although we do not discuss juveniles as a class comparable to the defendant's class. The Legislature initially established defendant-capped pleas in the District Courts and only a few years later "expanded the [statutory] right to tender defendant-capped pleas to include the entire Juvenile Court Department." Charbonneau v. Presiding Justice of the Holyoke Div. of the Dist. Court Dep't, 473 Mass. 515, 521 (2016). In his brief, the defendant does not discuss the Juvenile Court, presumably because there is more that distinguishes his class from the class of juveniles than simply the court in which they were charged.

if the trial judge would impose a sentence that exceeds the defendant's own recommendation.

The defendant, Devin Roman, was charged, pleaded guilty, and was sentenced in the Superior Court. He seeks to withdraw his plea on the basis of a facial challenge to this procedural scheme, which is laid out in G. L. c. 278, § 18,[2] and rule 12 (c) (4) (A).[3] The defendant argues that denying Superior Court

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[2] General Laws c. 278, § 18, states in relevant part:

"A defendant who is before the Boston municipal court or a district court or a district court sitting in a juvenile session or a juvenile court on a criminal offense within the court's final jurisdiction shall plead not guilty or guilty, or with the consent of the court, nolo contendere. Such plea of guilty shall be submitted by the defendant and acted upon by the court; provided, however, that a defendant with whom the commonwealth cannot reach agreement for a recommended disposition shall be allowed to tender a plea of guilty together with a request for a specific disposition. . . . If such a plea, with an agreed upon recommendation or with a dispositional request by the defendant, is tendered, the court shall inform the defendant that it will not impose a disposition that exceeds the terms of the agreed upon recommendation or the dispositional request by the defendant, whichever is applicable, without giving the defendant the right to withdraw the plea."

[3] Rule 12 (c) (4) (A) states:

"The judge shall give both parties the opportunity to recommend a sentence to the judge. In the District Court, the judge shall inform the defendant that the disposition imposed will not exceed the terms of the defendant's request without first giving the defendant the right to withdraw the plea. In the Superior Court, the judge shall inform the defendant that the disposition imposed will not exceed the terms of the prosecutor's recommendation without first giving the defendant the right to withdraw the plea.

defendants the statutory right to a defendant-capped plea violates equal protection principles under both the Federal and State Constitutions. We disagree, and we therefore affirm.

Background. In April 2016, the defendant was indicted on eight charges: two counts of armed assault with intent to murder; two counts of assault by means of a dangerous weapon; one count of assault and battery by means of a dangerous weapon; one count of illegal possession of a firearm; one count of removal or mutilation of serial or identification numbers of firearms during the commission of a felony; and one count of unlawful possession of a loaded firearm. All charges stemmed from an incident on March 19, 2016, during which the defendant targeted and then repeatedly shot at three unarmed individuals, injuring one of them.

The defendant was arraigned in the Superior Court in May 2016, and he pleaded not guilty to all charges. In February 2017, the defendant appeared before a judge of the Superior Court (sentencing judge) to change his pleas. With counsel present -- and after a colloquy with the sentencing judge, during which the judge verified the defendant's capacity to make

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At any time prior to accepting the plea or admission, the judge may continue the hearing on the judge's own motion to ensure that the judge has been provided with, and has had an opportunity to consider, all of the facts pertinent to a determination of a just disposition in the case."

a voluntary and intelligent plea -- the defendant tendered guilty pleas for all charges. The Commonwealth and the defendant had not reached an agreement with respect to sentencing recommendations. Accordingly, pursuant to rule 12 (c) (4) (A), the sentencing judge informed the defendant of his statutory right to a Commonwealth-capped plea: "I will not impose a sentence any longer or more severe than what the prosecutor's recommending unless I tell you first and let you withdraw your guilty plea, if you want to."

The Commonwealth recommended a series of mostly concurrent sentences, the longest of which was from fourteen to fifteen years in State prison,[4] while the defendant sought a sentence of from seven to nine years.[5] The sentencing judge opted for a disposition that would impose a series of mostly concurrent sentences, the longest of which was from ten to twelve years in State prison.

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[4] The Commonwealth recommended from fourteen to fifteen years in State prison for the two counts of assault with intent to murder; from four to five years in State prison for the two counts of assault with a dangerous weapon; from nine to ten years in State prison for the count of assault and battery with a dangerous weapon; from four to five years for illegal possession of a firearm; and from four to five years for the removal of a firearm serial number -- all to run concurrently; and two and a half years in a house of correction for the unlawful possession of a loaded firearm charge, to run from and after the illegal possession of a firearm charge.

[5] Defense counsel did not break down her recommendation charge by charge during the change of plea hearing.

In January 2020, the defendant filed a motion to withdraw his guilty pleas pursuant to Mass. R. Crim. P. 30 (b), as appearing in 435 Mass. 1501 (2001) (rule 30 [b]). In September 2020, the defendant filed, and a different Superior Court judge (motion judge) granted, a motion to admit evidence of racial disparities in the Massachusetts criminal justice system.[6] The defendant argued before the Superior Court judge, as he does on appeal, that he should be able to withdraw his plea because "[r]ule 12 (c) (4) (A) violates . . . equal protection guarantees by withholding the right to a defendant-capped plea from Superior Court defendants only." In November 2020, after a hearing, the motion judge denied the defendant's motion to withdraw his guilty plea. The defendant filed a notice of appeal, and we granted his application for direct appellate review.

Discussion. 1. Standard of review. "A motion to withdraw a guilty plea is treated as a motion for a new trial pursuant to [rule] 30 (b)." Commonwealth v. Resende, 475 Mass. 1, 12 (2016). The defendant's argument focuses not on the particularities or adequacy of his plea but rather on the overarching procedural scheme under which it was tendered.

[6] By this time, the sentencing judge had retired, so this motion and all subsequent motions were before the same motion judge in the Superior Court.

Specifically, the defendant has raised a constitutional challenge to this scheme. When evaluating a trial judge's ruling on such a challenge, we "make an independent determination as to the correctness of the judge's application of constitutional principles to the facts as found" (citation omitted). Commonwealth v. Caldwell, 487 Mass. 370, 374 (2021).

2. Constitutional claims. In particular, the defendant argues that G. L. c. 278, § 18, together with Mass. R. Crim. P. 12 (rule 12), as amended, 482 Mass. 1501 (2019), discriminate against Superior Court criminal defendants in violation of the Fourteenth Amendment to the United States Constitution and cognate provisions of the Massachusetts Declaration of Rights. Together, G. L. c. 278, § 18, and rule 12 confer a right to defendant-capped pleas to defendants in the District Court. See Charbonneau v. Presiding Justice of the Holyoke Div. of the Dist. Court Dep't, 473 Mass. 515, 518 (2016). The defendant contends that the denial of this statutory right to Superior Court defendants constitutes a violation of equal protection principles. However, because there is a rational basis for this distinction between defendants in the Superior Court and those in the District Court, we disagree.

a. Defendant-capped and Commonwealth-capped pleas. A defendant may tender a guilty plea either having struck a bargain with the Commonwealth or not having done so. See G. L.

c. 278, § 18; Mass. R. Crim. P. 12. Where a defendant has entered into an agreement with the Commonwealth, such an agreement may include a sentence recommendation acceptable to both parties. Mass. R. Crim. P. 12 (b) (5) (A). Defendants may withdraw their guilty pleas and choose instead to proceed to trial if a judge would impose a sentence that exceeds an agreed-upon recommendation. Mass. R. Crim. P. 12 (c) (4) (B).

At issue here is what happens when defendants plead guilty without an agreed-upon recommendation -- specifically in what circumstances may such defendants withdraw their guilty pleas in light of the sentences subsequently imposed upon them. In these situations -- where the Commonwealth and defendants have offered opposing sentence recommendations -- defendants in the District Court have a statutory right to withdraw their pleas if their sentences would exceed their own recommendations (i.e., they tender defendant-capped pleas), see G. L. c. 278, § 18; Mass. R. Crim. P. 12 (c) (4) (A), while defendants in the Superior Court have a statutory right to withdraw their pleas only if their sentences would exceed the Commonwealth's recommendations (i.e., they tender Commonwealth-capped pleas), Mass. R. Crim. P. 12 (c) (4) (A). See Charbonneau, 473 Mass. at 518-519 ("The statute, complemented by the rule, defines the two essential elements of a defendant-capped plea: [1] the defendant shall tender a guilty plea; and [2] on the tender of the plea, the judge shall

inform the defendant of his or her unconditional right to withdraw the plea if the proposed disposition exceeds . . . that requested by the defendant"). See also Commonwealth v. Rodriguez, 461 Mass. 256, 258 n.4 (2012) ("The procedure set forth in G. L. c. 278, § 18, applies in the District Court, the Boston Municipal Court, the Juvenile Court, and a District Court sitting in a juvenile session, but not in the Superior Court").

b. Constitutional standards of review. The defendant argues that this procedural scheme, in which certain criminal defendants have a statutory right to defendant-capped pleas and others do not, is on its face violative of equal protection as guaranteed by both the Fourteenth Amendment of the Federal Constitution and cognate provisions of the Declaration of Rights of the Massachusetts Constitution. Our "review of an equal protection claim under the Massachusetts Constitution is generally the same as the review of a Federal equal protection claim, . . . although we have recognized that the Massachusetts Constitution is, if anything, more protective of individual liberty and equality than the Federal Constitution" (citation omitted). Commonwealth v. Freeman, 472 Mass. 503, 505 n.5 (2015).

We assess constitutional claims such as this one along "a continuum of constitutional vulnerability determined at every point by the competing values involved" (citations omitted).

Chelsea Collaborative, Inc. v. Secretary of the Commonwealth, 480 Mass. 27, 36 n.22 (2018). For equal protection claims, "[w]here a statute either burdens the exercise of a fundamental right protected by our State Constitution, or discriminates on the basis of a suspect classification, the statute is subject to strict judicial scrutiny. . . . All other statutes . . . are subject to a rational basis level of judicial scrutiny" (citations omitted). Finch v. Commonwealth Health Ins. Connector Auth., 459 Mass. 655, 668-669 (2011), S.C., 461 Mass. 232 (2012). Under strict scrutiny, a State action "must be narrowly tailored to further a legitimate and compelling governmental interest and must be the least restrictive means available to vindicate that interest," id. at 669, while under rational basis a State action "will be upheld as long as it is rationally related to the furtherance of a legitimate [S]tate interest" (citations omitted). Doe No. 1 v. Secretary of Educ., 479 Mass. 375, 393 (2018).

c. Strict scrutiny. The defendant urges us to apply strict scrutiny here. As defined supra, we apply strict scrutiny "[w]here a statute either burdens the exercise of a fundamental right . . . or discriminates on the basis of a suspect classification." Finch, 459 Mass. at 668-669. Because the procedural scheme of G. L. c. 278, § 18, and rule 12 (c) (4)

(A) neither burdens the exercise of a fundamental right nor implicates a suspect class,[7] we decline to apply strict scrutiny.

"A fundamental right is one that is deeply rooted in this Nation's history and tradition . . . and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if [it] were sacrificed" (quotations and citations omitted). Gillespie v. Northampton, 460 Mass. 148, 153 (2011).

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[7] The defendant does not expressly claim that his class constitutes a suspect class for purposes of equal protection analysis, although the Commonwealth addresses the issue in turn in its brief. We conclude that no suspect class is implicated here.

We have held that classifications based on "sex, race, color, creed, or national origin," as enumerated in art. 106 of the Amendments to the Massachusetts Constitution, are inherently suspect. See, e.g., Doe v. Acton-Boxborough Regional Sch. Dist., 468 Mass. 64, 76 (2014); Finch, 459 Mass. at 662-663. However, this list is not exclusive. "If a class is not addressed by art. 106 it does not follow that strict scrutiny is inappropriate but merely that there is no express constitutional mandate that such scrutiny be applied." Finch, supra at 662-663.

The defendant has been treated differently in the instant case by virtue of where he was charged. Whether a defendant is charged in the Superior Court or the District Court generally is determined by the severity of the alleged offense. Compare G. L. c. 212, § 6 (Superior Court has original jurisdiction over all criminal offenses), with G. L. c. 218, § 26 (District Court has original jurisdiction, concurrent with Superior Court, over only subset of typically lesser offenses). The class of Superior Court defendants so created clearly does not run afoul of the enumerated protections in art. 106. It also does not represent a nonenumerated suspect class. Cf. Commonwealth v. Fernandes, 487 Mass. 770, 777 (2021) ("juveniles who have been charged with murder are not a suspect class" [alterations and citation omitted]).

There is no doubt that there is a fundamental right "to be free from physical restraint," Commonwealth v. Knapp, 441 Mass. 157, 164 (2004), and that this right is implicated here: on tendering a guilty plea, Superior Court defendants face a potentially significant amount of time of incarceration. However, strict scrutiny applies only where State action "'significantly interfere[s] with' the fundamental right at issue," Doe No. 1, 479 Mass. at 392, quoting Zablocki v. Redhail, 434 U.S. 374, 386 (1978), not simply where State action involves a fundamental right. There is no such interference here.

Our decision in Commonwealth v. Fernandes, 487 Mass. 770 (2021), is instructive. In that case, this court concluded that no "direct infringement [on fundamental rights] arises solely from the fact of being tried in the Superior Court rather than in a different court." Id. at 777. The defendant in Fernandes challenged a statute that required a subset of juveniles, aged fourteen to sixteen, be tried in the Superior Court rather than in the Juvenile Court. Id. at 776-777. As is the case for adult criminal defendants who are tried in the Superior Court rather than in the District Court, these juveniles were required to be tried in the Superior Court due to the seriousness of their alleged offenses. Id. at 776 (statute "provided that charges of murder in the first or second degree" against

fourteen to sixteen year olds be brought in Superior Court). And as there are differences between the District Court and the Superior Court, see infra, so too are there differences between the Juvenile Court and the Superior Court. Indeed, "[t]he differences between being tried in the Superior Court and in the Juvenile Court are considerable" and are perhaps greater than those between being tried in the Superior Court and in the other Trial Court departments. Commonwealth v. Walczak, 463 Mass. 808, 827 (2012) (Lenk, J., concurring) (Juvenile Court "is not a punitive scheme strictly akin to the adult criminal justice system" [citation omitted]). Even so, we reasoned that this scheme did not interfere with defendants' fundamental rights because "[d]ue process protections . . . and the right to a fair trial apply in both" courts. Fernandes, supra at 777.

In addition, "[a] defendant has no right to insist that the prosecutor participate in plea bargaining," Commonwealth v. Smith, 384 Mass. 519, 522 (1981), nor does a defendant have a "constitutional right to have [a] plea accepted" (citation omitted), Commonwealth v. Ramos-Cabrera, 486 Mass. 364, 366 (2020). Thus, even if this procedural scheme were to affect defendants' or the Commonwealth's decision-making about pleas in

any court, it would still not interfere with any fundamental right.[8]

d. Rational basis. Accordingly, we apply a rational basis level of judicial scrutiny to the defendant's equal protection claims.[9] "For equal protection challenges, the rational basis

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[8] It follows that there is no constitutional right to a defendant-capped plea, although the defendant emphasizes in his brief that this court concluded in Charbonneau, 473 Mass. at 522, that "a defendant's right to tender a defendant-capped plea at trial is an essential part of the fairness calculus in the guilty plea process." The defendant seems to argue that it is by denying him -- and defendants like him -- this so-called essential procedural safeguard that rule 12 (c) (4) (A) "unjustly burdens Superior Court defendants' exercise of fundamental rights." However, the defendant's argument is based on a misreading of our reasoning in Charbonneau. The sentence that the defendant quotes repeatedly is remarking upon "a defendant's right to tender a defendant-capped plea at trial" (emphasis added). Id. The sentence that follows describes a case "also involv[ing] the tender of a defendant-capped plea on the day of trial" (emphasis added). Id. The following paragraph begins: "[W]e note briefly our rejection of the justice's additional argument that judicial discretion to accept or deny a defendant-capped plea . . . encompasses the authority to truncate the time in which defendants may tender such pleas" (emphasis added). Id. What we deemed essential to the fairness calculus in Charbonneau was not the existence of a right to a defendant-capped plea, but rather -- where there was already the right to tender a defendant-capped plea -- the ability to tender such a plea at any time before trial.

[9] The defendant notes that disparities in sentencing between white defendants and Black and Latinx defendants in the Superior Court drive the disparities in sentencing between white defendants and Black and Latinx defendants across the Massachusetts criminal justice system. See Bishop, Hopkins, Obiofuma, & Owusu, Criminal Justice Policy Program, Harvard Law School, Racial Disparities in the Massachusetts Criminal System, at 1 (Sep. 2020). The reasons for these disparities are complex, as explained in the report cited supra. Nothing in the report, or the record in the instant case, however, suggests

test requires that 'an impartial lawmaker could logically believe that the classification would serve a legitimate public purpose that transcends the harm to the members of the disadvantaged class.'" Goodridge v. Department of Pub. Health, 440 Mass. 309, 330 (2003), quoting English v. New England Med. Ctr., 405 Mass. 423, 428 (1989). Because we conclude that this requirement is met, we hold that the procedural scheme under which Superior Court defendants are statutorily entitled to Commonwealth-capped pleas -- unlike those defendants in the District Court who are statutorily entitled to defendant-capped pleas -- is not in violation of equal protection principles.

The defendant seems to argue there can be no rational basis for the distinction between Superior Court defendants and other criminal defendants because G. L. c. 278, § 18, indicates an "expansive" Legislative intent to extend the statutory right to defendant-capped pleas to all criminal defendants. This argument misses the historical motivations that gave rise to the defendant-capped plea of G. L. c. 278, § 18. Indeed, this historical background provides not only a rebuttal to the defendant's argument about legislative intent but also a compelling reason in itself for the distinction between Superior Court defendants and District Court defendants.

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that such disparities arise from the plea procedures at issue here.

Prior to 1994, there was a two-tier criminal trial de novo system in the District Court. Under this system, a criminal defendant in the District Court had "the [statutory] right to a jury waived bench trial which, if a verdict did not result in acquittal, could be appealed to a de novo jury trial with a different judge in a different session." Malone, Abolition of the District Court Trial De Novo System: One Year Later, 39 Boston B.J. 13 (Mar.-Apr. 1995). "In effect, this was a risk-free opportunity to put the Commonwealth to its proof of the crime charged." Charbonneau, 473 Mass. at 520. When the Legislature abolished the de novo system, it created the defendant-capped plea to offset that loss for District Court defendants. Id. Moreover, when the two-tier system was abolished, there was a serious "worry that the end of de novo would result in an avalanche of jury trials," as defendants would no longer be able to take their chances first with a bench trial -- which could result in acquittal -- while maintaining their right to a jury trial. Keough, Order in the Courts, CommonWealth Mag. (Jan. 1, 2000). Beyond preserving the balance between the Commonwealth and District Court defendants, defendant-capped pleas -- by providing risk-free opportunities for defendants to tender guilty pleas -- helped address this

case-flow management concern.[10] Defendant-capped pleas represented the Legislature's solution to problems that involved only District Court defendants and thus were intended only to be extended to District Court defendants.

Even without this historical background, an impartial lawmaker might reasonably decide to extend this procedural safeguard (i.e., defendant-capped pleas) specifically to defendants in the District Court. The defendant correctly points out that "Superior Court defendants typically receive greater procedural protections." For example, Superior Court defendants are charged via indictment, while District Court defendants are charged via complaint, G. L. c. 263, § 4, and District Court defendants are tried by a six-person jury, G. L. c. 218, § 26A, while defendants in the Superior Court are tried by a twelve-person jury, see G. L. c. 234A, § 68; Mass. R. Crim. P. 20, 378 Mass. 889 (1979). It is quite sensible to confer the

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[10] In the years following the abolition of the de novo system, evidence supported the proposition that defendant-capped pleas were a vital case-flow management tool. See, e.g., Malone, Abolition of the District Court Trial De Novo System: One Year Later, 39 Boston B.J. 13 (Mar.-Apr. 1995) ("At a minimum, however, the first year of the one trial system has resulted in some progress toward eliminating the backlog of District Court criminal cases"); Keough, Order in the Courts, CommonWealth Mag. (Jan. 1, 2000) ("In one study of [D]istrict [C]ourt cases [after the elimination of the two-tier system], [thirty-seven] percent were cleared at arraignment, by dismissal or plea, and another [fifty-one] percent at the pretrial hearing").

right to defendant-capped pleas to defendants in those Trial Court departments that do not offer the same procedural protections as are provided in the Superior Court. The Legislature reasonably may seek to achieve a balance between the Commonwealth and defendants across the Trial Court departments, albeit by different means.

There are other reasons lawmakers affirmatively might choose not to extend the practice of defendant-capped pleas to the Superior Court. For one, lawmakers may choose to bolster prosecutorial discretion in the Superior Court due to the level of severity of the offenses typically prosecuted there. The maximum sentences are much higher in the Superior Court, see G. L. c. 218, § 26; District Court defendants cannot be sentenced to State prison, see G. L. c. 218, § 27; and those District Court defendants who are incarcerated are eligible for parole after only one-half of their term has elapsed, see 120 Code Mass. Regs. § 200.02(1) (2017). As the Superior Court judge noted in denying the defendant's motion to withdraw his plea:

> "[G]iving some significance to prosecutorial recommendations during sentencing after acceptance of a guilty plea is a legitimate purpose. That policy may be most significant in the Superior Court, which handles the most serious cases . . . . In the other courts, . . . there is less room for differences in sentencing recommendations, lower potential consequences in incarceration lengths and, accordingly, less potential for

> seriously undermining prosecutorial authority and discretion."

That is, a lawmaker rationally may choose to create different dispositional processes, with varying degrees of deference for different parties' discretion, based on the severity of the underlying offense. Cf. G. L. c. 218, § 35A ("show cause" hearings); Eagle-Tribune Publ. Co. v. Clerk-Magistrate of the Lawrence Div. of the Dist. Court Dep't, 448 Mass. 647, 650 (2007) ("the implicit purpose of the § 35A hearings is to enable the clerk-magistrate to screen a variety of minor criminal or potentially criminal matters out of the criminal justice system" [alterations and citation omitted]).

Moreover, as a sheer practical matter, a lawmaker might sensibly wish to afford a Superior Court prosecutor a greater degree of control over the plea process as compared to his or her counterparts in the District Court.[11] Indeed, prosecutions in the Superior Court, as opposed to the District Court, generally are more complex. For example, Superior Court

[11] It is also sensible to place correspondingly less of the plea process within the defendant's discretion in the Superior Court, where it is more likely victims would otherwise have to give deeply emotional and profoundly upsetting victim impact statements more than once (i.e., at a plea hearing and at a jury trial, once a plea is withdrawn). See G. L. c. 258B, § 3 (p) (victims have statutory right "to be heard through an oral and written victim impact statement at sentencing or the disposition of the case against the defendant about the effects of the crime on the victim").

criminal trials are likely to involve more forensic evidence, more expert witnesses, and more complex evidentiary issues than prosecutions in other Trial Court departments. Preparation for a criminal trial in the Superior Court includes balancing complex scheduling issues with the effort to present a case of narrative richness in an orderly manner. Often, motions in limine or motions to sever are heard weeks or months before trial. Perhaps exacerbating the difference in complexity of the prosecutions, cases in the District Court typically are prosecuted horizontally, while cases in the Superior Court are prosecuted vertically. That is, a different prosecutor often handles the case on each respective date in the District Court, while a single prosecutor is responsible for the entire prosecution in the Superior Court. Allowing a defendant the statutory right to tender a plea at any time in the judicial process -- including on the trial date -- once the defendant sees the Commonwealth's case meticulously prepared, is a benefit available under rule 12. But allowing a defendant in the Superior Court the ability to enter a defendant-capped plea at any time, whether on a motion to suppress date, a Daubert-Lanigan[12] hearing date, or on a trial date, has implications much

[12] See Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579 (1993) (Federal rule for admissibility of expert testimony); Commonwealth v. Lanigan, 419 Mass. 15 (1994) (Massachusetts rule for admissibility of expert testimony).

different from those arising when such a plea is offered in the District Court.[13]

Conclusion. In short, defendants are afforded different procedural protections in different Trial Court departments for a host of reasons rationally related to legitimate purposes within the purview of the Legislature. Because the procedural scheme of G. L. c. 278, § 18, and Mass. R. Crim. P. 12 survives rational basis scrutiny, we uphold the scheme and affirm the motion judge's denial of the defendant's motion to withdraw his guilty pleas.

So ordered.

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[13] In addition to such a scheme being sensible, it also is wholly permissible for the Legislature to create a system that gives particular weight to prosecutorial discretion in the Superior Court. The procedural scheme at issue here "flows from, and is encompassed within, the Legislature's broad authority to classify criminal conduct, to establish criminal penalties, and to adopt rules of criminal practice and procedure." Commonwealth v. Pyles, 423 Mass. 717, 722 (1996). Although "a statute impermissibly allocating a power held by only one branch to another violates art. 30" of the Massachusetts Declaration of Rights, "[w]ithin these constitutional confines, prosecutors enjoy considerable discretion." Commonwealth v. Ehiabhi, 478 Mass. 154, 160 (2017). With Commonwealth-capped pleas, the Commonwealth is not imposing sentences but rather advocating for a potential maximum sentence. This practice is in keeping with other exercises of prosecutorial discretion -- such as choosing to "charge a defendant under multiple enhancement statutes" or "selecting charges from among multiple applicable subsections" -- that we already have held to be constitutional. Id.