

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

19-P-161

COMMONWEALTH

vs.

ANTHONY D. BATTLES

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

In 2018, a jury convicted defendant Anthony D. Battles of (1) carrying a firearm without a license under G. L. c. 269, § 10 (a), and (2) carrying a loaded firearm without a license under G. L. c. 269, § 10 (n). On appeal, the defendant challenges the sufficiency of the evidence to support the conviction for possession of a loaded firearm and the judge's denial of his motion to suppress the firearm. We affirm.

Background. We summarize the facts from the police report, which was introduced at the motion to suppress by agreement of the parties in lieu of testimony.¹ On April 28, 2017, while

¹ We rely on the police report only to evaluate the defendant's claim regarding his motion to suppress and rely on the trial transcript and exhibits to evaluate the sufficiency claim. We note, however, that the testimony at trial was largely consistent with the police report and we do not separately set out the trial testimony here, except where indicated.

approaching the intersection of Johnson Street and Dickinson Street, two officers from the Springfield Police Department were flagged down by a woman in her car.² The woman frantically yelled that she had just seen a female being "punched in the face" by a male and pointed down Dickinson Street. The police activated the lights on their unmarked cruiser and proceeded in that direction. Soon thereafter, the officers saw a crowd of people clustered near a parked sedan and stopped at the scene. While the officers were exiting their cruiser, two of the individuals from the crowd pointed at the sedan and yelled, "they are in the car, he punched her in the face." The police observed the defendant in the driver's seat and a female companion in the passenger's seat. The occupants were arguing and the police observed that the woman's face was bleeding from the area around her nose and mouth.

The officers ordered the defendant to exit the vehicle, but he was uncooperative and refused the order twice. Police also heard him telling the passenger to "shut up and not to say anything." The defendant was removed from the car and placed in handcuffs. During a patfrisk, one of the officers felt a hard object in the defendant's right pants pocket. Believing it

² At the time of the incident, the officers were serving on an anticrime detail focusing on high crime areas. Because of a recent murder on Johnson Street, the officers were patrolling that street.

could be a small firearm, the officer looked into the pocket, discovered a firearm, and removed it. The firearm was loaded with six bullets, one of which was found in the chamber. The police officer testified at trial that when they discovered the firearm, the defendant yelled at the passenger something to the effect of "look what just happened, look what you just did to me."

The defendant was subsequently charged with carrying a loaded firearm without a license, in violation of G. L. c. 269, § 10 (n), assault and battery on a family or household member, in violation of G. L. c. 265, § 13M (a), witness intimidation, in violation of G. L. c. 268, § 13B, and carrying a firearm without a license, in violation of G. L. c. 269, § 10 (a). The defendant filed a motion to suppress the firearm, which was denied after a nonevidentiary hearing. At the ensuing jury trial, the defendant testified that he had found the gun on the train tracks and thought it was a lighter similar to one possessed by his uncle. He claimed to have pulled the trigger and "nothing happened" before placing it in his pocket. The jury convicted the defendant of carrying a firearm without a license and carrying a loaded firearm without a license.³

³ The defendant was acquitted of witness intimidation, and the Commonwealth entered a nolle prosequi on the assault and battery on a family or household member charge.

Discussion. 1. Motion to suppress. On appeal, the defendant argues that his motion to suppress should have been allowed because the police lacked probable cause to remove him from the car as they were relying upon information from an "unnamed citizen informant." We review a motion to suppress de novo. Commonwealth v. Tremblay, 480 Mass. 645, 654-655 (2018).

We disagree with the defendant's assertion. "Where police officers have a reasonable, articulable suspicion that a person in a vehicle has committed, is committing, or is about to commit a crime, they may stop that vehicle, issue an exit order, and conduct a threshold inquiry." Commonwealth v. Greenwood, 78 Mass. App. Ct. 611, 616 (2011). See Commonwealth v. Bostock, 450 Mass. 616, 619-620 (2008). The police report indicated that officers responded to the scene because a bystander flagged them down and frantically told them she had just witnessed a crime being committed. As the judge found, the reliability of the bystander's information was established by a combination of factors: she spoke to the officers in person immediately after witnessing the reported events, the independently-given statements by unrelated witnesses corroborated the bystander's report, and the officers' observations of the victim's facial injuries were consistent with the type of injuries that could have been the result of the reported assault and battery. See Commonwealth v. Costa, 448 Mass. 510, 515-516 (2007). To the

extent there was any question as to the bystander's reliability, "[i]ndependent police corroboration may make up for deficiencies" in an informant's knowledge or reliability. Id. at 514-515. We agree with the judge that the police had reasonable suspicion in ordering the defendant out of the car, placing him in handcuffs, and subjecting him to a patfrisk while the officers determined the nature of the interaction.⁴ See Bostock, 450 Mass. at 621; Commonwealth v. Galarza, 93 Mass. App. Ct. 740, 743-744 (2018). There was no error in denying the motion to suppress.

2. Sufficiency of the evidence. The defendant also argues that the evidence presented at trial was insufficient to support his conviction for carrying a loaded firearm because the Commonwealth did not prove he had knowledge the firearm was loaded. In assessing a sufficiency claim, we review the evidence "in the light most favorable to the prosecution" to determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Commonwealth v. Resende, 94 Mass. App. Ct. 194, 199 (2018),

⁴ The patfrisk was justified. For the reasons explained above, the officer was "rightfully in the presence of the party who was ultimately frisked," Commonwealth v. Johnson, 454 Mass. 159, 162 (2009), and there was a "reasonable basis to suspect the officer's safety or the safety of the public was at risk" in light of the condition of the victim and the defendant's refusal to cooperate with police and obey a lawful order. Id. at 163.

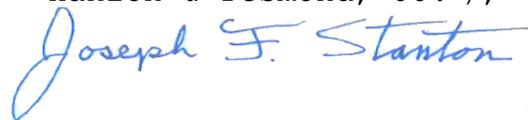
quoting Commonwealth v. Latimore, 378 Mass. 671, 677 (1979). Proof of knowledge may be circumstantial, and the inferences from circumstantial evidence "need not be necessary, but only reasonable and possible." Resende, supra at 200.

Here, the loaded firearm was found in the defendant's pocket. In Resende, we noted that when a gun is found in the waistband of a defendant, it is reasonable to assume that the defendant has knowledge regarding whether the firearm is loaded. See Resende, 94 Mass. App. Ct. at 200 ("A commonsense inference . . . is that a person would check to see if the firearm was loaded before putting it in his waistband"). We see no reason to distinguish between a firearm found in a waistband and one found in a pants pocket. Beyond that, there were other indicia that the defendant knew the firearm was loaded. When the gun was found on the defendant's person, police testified that he "became more upset," exclaiming to the woman in the vehicle, "look what just happened, look what you just did to me" -- a nonsensical reaction if the police had simply discovered what the defendant believed was a lighter. A common-sense view of the evidence, taken in the light most favorable to the Commonwealth, supports the inference that the defendant knew he

possessed a loaded gun.

Judgments affirmed.

By the Court (Wolohojian,
Hanlon & Desmond, JJ.⁵),



Clerk

Entered: November 8, 2019.

⁵ The panelists are listed in order of seniority.