

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as 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 23.0 or 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-1608

COMMONWEALTH

vs.

GILSON A. RAMOS.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

A jury convicted the defendant of assault and battery and furnishing a false name.¹ On appeal the defendant argues that his assault and battery conviction should be reversed because the evidence was insufficient to negate his claim of self-defense. He further argues that the evidence was insufficient to support his conviction of furnishing a false name. We affirm.

Background. Around 5 P.M. on September 6, 2011, the victim, a liquor store manager, observed the defendant put a bottle into his pants and walk toward the exit. The victim told the defendant to "[h]old on" and asked him to take the bottle

¹ The jury also convicted the defendant of shoplifting, assault, and resisting arrest. The defendant makes no argument challenging these convictions.

out of his pants. The defendant denied several times that he took anything. The victim then asked the defendant to pull out his jacket so he could see whether anything was tucked into the pants.

Rather than obliging, the defendant "came at" the victim. After the victim pushed the defendant back, the defendant became more aggressive, so the victim "panic[ked]" and punched him. The defendant "rushed" the victim, overpowered him, and tried unsuccessfully to exit via the wrong door. He then yelled at the victim and punched him four or five times.

At this point the victim told the defendant, "Just give me the bottle. You can leave." Instead, the defendant overpowered the victim again and ran outside. The victim grabbed the defendant by the jacket, pinned him against the window outside the store, and repeated that he could leave if he returned the bottle. The defendant replied that he did not have a bottle, but, as the men struggled, the bottle he took fell down his pants to his ankle.

When the victim reached down to retrieve the bottle, the defendant punched him in the head, causing him to briefly "black out." As the victim regained consciousness, several bystanders wrestled the defendant to the ground and held one of his arms, while the victim held the other. The defendant then leaned over and bit the victim's hand. The victim yelled that the defendant

was biting him and not letting go, causing several of the bystanders to kick the defendant.

Police arrived and took the defendant into custody after a pursuit and physical struggle. At booking the defendant was "belligerent," "yelling," and "not cooperative at all" when officers tried to obtain basic biographical information from him. The defendant "started rattling off" the names of presidents and then said, "My name is Ben Franklin." He reported that his date of birth was June 20, 1965, which an officer noted would put him in his forties, even though he appeared to be in his mid-twenties. He also told officers that he lived in California (but could or would not provide the city or zip code), and he refused to state his place of birth and parents' names. When warned that he would be charged with furnishing a false name if he did not provide his true name, the defendant replied, "I'm a civilian, you're the cop[], you do your job." After searching a database for "some time," an officer found a name with a photograph that matched the defendant.

Discussion. Assault and battery. The defendant claims that the Commonwealth presented insufficient evidence to disprove that he acted in self-defense when he bit the victim. Where, as here, "the defendant has sufficiently raised the issue of self-defense, the Commonwealth carries the burden of proving

beyond a reasonable doubt that the defendant did not act in self-defense." Commonwealth v. McGann, 484 Mass. 312, 324 (2020). To satisfy this burden, "the Commonwealth must establish that at least one of the following factors did not exist: (1) the defendant had a reasonable concern for [his] personal safety; (2) [he] used all reasonable means to avoid physical combat; and (3) 'the degree of force used was reasonable in the circumstances, with proportionality being the touchstone for assessing reasonableness.'" Id. at 325, quoting Commonwealth v. King, 460 Mass. 80, 83 (2011).

Viewing the evidence most favorably to the Commonwealth, see McGann, 484 Mass. at 325, we conclude that the evidence was sufficient to prove that the defendant did not use all reasonable means to avoid physical combat. The jury could have found that the defendant initiated the physical altercation when he "came at" the victim. See Commonwealth v. Grassie, 476 Mass. 202, 211 (2017) (jury could have found that defendant did not use all reasonable means to avoid physical combat where there was evidence that he "invited the fight"). And during the altercation, the defendant bypassed opportunities to avoid physical combat and instead reengaged in the fight. The victim twice told the defendant that he could leave if he gave the bottle back. This permitted the jury to find that the defendant

could have simply returned the bottle and left,² but he chose not to do so and continued the altercation. Cf. Commonwealth v. Berry, 431 Mass. 326, 335 (2000) (defendant failed to "take advantage of every opportunity to avoid combat" when "at least at some point he had adequate means of escape").

The evidence was also sufficient to show that the defendant used more force than what was reasonably necessary. The defendant bit the victim's hand and would not let go, resulting in what one of the officers described as "a piece of meat missing" from the victim's hand, and a scar that the victim still had at the time of trial almost two years later. The jury rationally could have found that the bite was a disproportionate response to the victim's act of holding down the defendant's arm. Although the defendant asserts that the victim's hand could "possibly" have obstructed the defendant's breathing, there was no such evidence presented, and the jury were not required to so find. The defendant further points out that the bystanders were kicking him, but the evidence permitted the jury to find that the kicking did not start until after the defendant bit the victim and refused to let go. The jury could have thus concluded that the degree of force used by the defendant was not reasonable in the circumstances. See King, 460 Mass. at 89

² By convicting the defendant of shoplifting, the jury necessarily found that he stole the bottle.

(jury could have found that defendant used unreasonable force where he responded to punch from victim by punching back with such force that victim fell onto table and hit head on floor).

Furnishing a false name. General Laws c. 268, § 34A, makes it unlawful to "knowingly and willfully furnish[] a false name [or] Social Security number . . . to a law enforcement officer or law enforcement official following an arrest."³ A false name in this context "is one that a person has assumed for a dishonest purpose." Commonwealth v. Clark, 446 Mass. 620, 626 (2006). "Dishonest purposes include, without limitation, concealing one's criminal record for purposes of being charged (avoidance of multiple offender status), concealing one's criminal record for purposes of bail, concealing one's identity to avoid answering to an outstanding warrant, or creating a new identity with the intent to default and avoid prosecution." Id.

Again viewing the evidence most favorably to the Commonwealth, see Commonwealth v. Ayala, 481 Mass. 46, 51 (2018), we conclude that it was sufficient to prove beyond a reasonable doubt that the defendant knowingly and willfully furnished police with a false name after his arrest. The

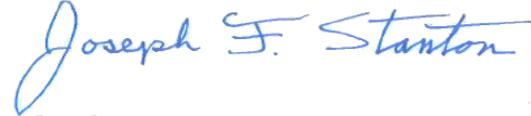
³ After trial in this case, the statute was amended to also criminalize the knowing and willful furnishing of a false "date of birth, home address, mailing address or phone number, or other information as may be requested for the purposes of establishing the person's identity." G. L. c. 268, § 34A.

defendant told police that his name was Ben Franklin, which was indisputably false. And the jury could have inferred that the defendant did so for a dishonest purpose. The defendant reported other information that the jury could have found to be false -- namely, that he lived in California and was born in 1965 -- and he refused to provide his place of birth and parents' names. At no point did the defendant give his true name, and police only obtained his identifying information by combing a database. The totality of these circumstances allowed the jury to find that the defendant acted with a dishonest purpose, such as to conceal his identity and thwart police attempts to charge him. See Clark, 446 Mass. at 628. Although the defendant argues that his conviction cannot be sustained because the officers could not have "honestly believed" that his name was Ben Franklin, what matters is not the officers' belief, but whether the defendant gave the name for a dishonest purpose. This "was a question of fact for the jury," id., and the evidence here was sufficient to support their verdict. Cf. Commonwealth v. Loadholt, 456 Mass. 411, 425-426 (2010), vacated on other grounds, 562 U.S. 956 (2010), S.C., 460 Mass. 723 (2011) (defendant's failure to disclose prior use of different name permitted inference that he acted with dishonest purpose of concealing criminal history under that name, even though

officers knew that name he actually provided was false); Clark,
446 Mass. at 627-628 (similar).

Judgments affirmed.

By the Court (Kinder, Shin &
Singh, JJ.⁴),



Clerk

Entered: January 13, 2021.

⁴ The panelists are listed in order of seniority.