

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-1439

COMMONWEALTH

vs.

JOSHUA MICHAEL CORBETT.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

Convicted of a subsequent offense of failure to register as a sex offender under G. L. c. 6, § 178H (a) (2), the defendant appeals, arguing that the judge should have allowed his motion for a required finding of not guilty, and should not have instructed the jury that he was required to inform police at least ten days before he moved to a different town. We affirm.

Background. Viewed in the light most favorable to the Commonwealth, see Commonwealth v. Latimore, 378 Mass. 671, 676-677 (1979), the evidence at trial established the following facts. As a result of the defendant's prior conviction for rape of a child, the Sex Offender Registry Board (SORB) classified him as a level two sex offender. On December 9, 2016, the defendant went to the Natick Police Department and registered as a sex offender. He told the police that he was homeless and

listed his Natick address as a location under the Speen Street bridge. The police informed him that because he was homeless, he was required to verify his information in person at the Natick Police Department every thirty days. The defendant signed and initialed a sex offender registration form acknowledging that he understood that obligation -- i.e., that he was required to appear at the Natick Police Department on or before January 8, 2017. See G. L. c. 6, § 178F^{1/2} ("A homeless sex offender shall appear in person at such local police department every [thirty] days to verify . . . that the registration data on file remains true and accurate"). The form also notified him that if he moved to another town he was required to notify the Natick police of his new address at least ten days before the move, and that if he obtained a secondary address by staying at another location "for a period of [four] or more consecutive or nonconsecutive days in any month," he was required to notify the Natick police of that secondary address. See G. L. c. 6, §§ 178E(h), 178F^{1/2}.

January 8, 2017 passed without the defendant's return to the Natick Police Department. Five days later, on January 13, 2017, Detective Edward Arena sent the following e-mail to the defendant: "Why have you not re-registered as required? You . . . are technically in violation. Where have you been? No

one has seen you and I have a lot of eyes and cameras out there. I expect to hear from you . . . ASAP."

Five days later, on January 18, 2017, the defendant e-mailed Detective Arena, stating "we ended up going to [B]oston t[o] try and make some money and we got stranded out there[. I] can be in to see you in the morning." Detective Arena replied, "I'm changing your status to 'in violation' and doing the report." About one-half hour later, the defendant replied, "Detective [I] am sorry [I] haven't gotten ahold of [yo]u sooner but [I] can come in tomorrow and re[-]register with [yo]u. I have been lit[erally] stranded and [I] am almost to my goal of funds to get to [yo]u." Detective Arena soon replied, "[W]here have you been? . . . [W]here have you been staying? Since you registered in Natick I only saw you once, riding a bike near the mall." About one-half hour after that, the defendant sent Detective Arena three e-mails in quick succession, stating that he "got stuck in [B]oston," where he was "sleeping under the bridge on the wat[er]front but . . . had to move out of there and have been bouncing from one place in [B]oston to the next. So [I] have been sp[on]ging to get the money to come back."¹

¹ After trial on the underlying offense, the defendant was convicted at a jury-waived trial of having previously been convicted of failure to register as a sex offender.

Required Finding. The standard for reviewing the denial of the defendant's motion for a required finding is "whether the Commonwealth produced enough evidence, taken in the light most favorable to the Commonwealth, to satisfy any rational trier of fact beyond a reasonable doubt that each element of the crime was present." Commonwealth v. Hilton, 398 Mass. 63, 64 (1986). Here, the Commonwealth was required to prove that the defendant (1) lived in Massachusetts, (2) had previously been convicted of an offense requiring him to register as a sex offender, (3) knew of his obligation to register, and (4) failed to comply with the obligation to register.² See Commonwealth v. Bell, 83 Mass. App. Ct. 82, 84 (2013). See also Instruction 7.240 of the Criminal Model Jury Instructions for Use in the District Court (2009). The defendant does not contest the sufficiency of the evidence of the first three elements, and so we focus our discussion on whether there was sufficient evidence of the fourth one, that he failed to comply with his obligation to register.

The indictment included allegations that the defendant either "(1) did knowingly fail to register as a sexual offender, or (2) did knowingly fail to verify registration information, or

² The judge instructed that the Commonwealth was required to prove that the defendant had failed "to re-register," rather than using the verb "to verify," as set forth in the statute. See G. L. c. 6, § 178F½ ("to verify . . . that the registration data on file remains true and accurate"). The defendant did not object to the instruction, and does not raise the issue here.

(3) did knowingly fail to provide notice of a change of address."³ Arguing the required finding motion at trial, the defendant maintained that the Commonwealth failed to establish whether his obligation to register was in Natick or Boston. The judge denied the motion, ruling that there was sufficient evidence to prove that the defendant had failed both to verify his information with the Natick police by January 8, 2017 and to notify Natick police of his address in Boston.

On appeal, the defendant argues that he was entitled to a required finding because the Commonwealth did not prove that he intended to move to Boston, that he had a secondary address there, or that he stayed in Boston for four or more nights in a month. We are not persuaded.

The jury heard evidence from which it could have found that the defendant did not verify his registration information at the Natick Police Department by January 8, and that he stayed in Boston for at least four consecutive nights without notifying the Natick police of his location, whether that lodging constituted a move or a secondary address. In response to Detective Arena's January 13 e-mail stating that the defendant had not verified his information and had not been seen in

³ The indictment also alleged that the defendant "did knowingly provide false information," but the judge did not instruct the jury on that theory.

Natick, the defendant admitted on January 18 that he had been "stranded" and "stuck" in Boston. From those communications, the jury could have inferred that he was no longer living in Natick and had spent five consecutive nights in Boston. See Commonwealth v. Coffman, 84 Mass. App. Ct. 33, 39 (2013). Contrast Commonwealth v. Arce, 467 Mass. 329, 334-335 (2014) (where defendant registered as homeless but admitted he was "staying" at his aunt's address elsewhere in Lowell, that did not prove it was secondary address, absent evidence of number of nights he spent there); Commonwealth v. Kateley, 461 Mass. 575, 581 (2012) (defendant's statements that he stayed "elsewhere" not sufficient to establish secondary address or length of time spent there); Commonwealth v. Bolling, 72 Mass. App. Ct. 618, 619, 624-626 (2008) (homeless defendant registered permanent address as "[s]treets of Greenfield," but stayed in Montague for three nights; evidence did not prove secondary address for "[four] or more . . . days in any month," G. L. c. 6, § 178C). Finally, the jury heard evidence that the defendant failed in his obligation to inform the Natick police of his whereabouts regardless of whether he intended to return to Natick, move to Boston, or use Boston as a secondary address. See Coffman, supra at 39. The trial judge properly denied the motion for a required finding of not guilty.

Jury instructions. The defendant argues that the judge improperly instructed the jury that he was required to inform the Natick police "at least ten days" before he moved to Boston. Because the defendant objected to that instruction, we review the claim for prejudicial error, determining whether there was an error, and if so, "whether there is a reasonable possibility that the error might have contributed to the jury's verdict." Commonwealth v. Odgren, 483 Mass. 41, 46 (2019), quoting Commonwealth v. Wolfe, 478 Mass. 142, 150 (2017).

The defendant requested that the judge instruct the jury that the Commonwealth was required to prove that he "failed to provide notice of a change of address." At the charge conference, the judge noted that she intended to instruct that a level two sex offender has an obligation to report to the local police department "at least ten days" before moving to notify the police of a change of address or a secondary address. The defendant objected on the grounds that the ten-day timeframe was not mentioned in the indictment.

The judge instructed:

"Pursuant to the statute, a sex offender who has been classified as a [l]evel [two] sex offender is required to report in person to the local police department where he resides at least ten days before moving to provide notice of a change of address or a secondary address by delivering by hand a Board approved form that includes all of the required information and is signed under the penalties of perjury (emphasis added)."

That instruction was an accurate summary of the statute as applied to the facts of this case. G. L. c. 6, § 178E(h) ("[a] sex offender . . . who intends to move to a different city or town within the commonwealth shall, not later than ten days prior to establishing such new residence" give notice of the "intended home address" or "intended secondary address"); G. L. c. 6, § 178F½ (level two sex offender "shall give the required notice [of a move pursuant to § 178E(h)] in person at the police department in the city or town where such sex offender resides"). See Instruction 7.240(B) of the Criminal Model Jury Instructions for Use in the District Court.⁴

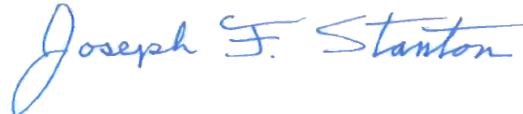
Even though the indictment did not specify that the defendant was required to give notice to the Natick police ten days before his move, the judge was not required to omit the statutory timeframe from her instructions. The indictment need not define the crime at that level of detail. See G. L. c. 277,

⁴ The SORB sex offender registration confirmation signed by the defendant stated that he was required to notify the police of any change of address at least ten days in advance "when possible," while the registration form itself set forth the ten-day notice requirement without those words. At the charge conference, trial counsel requested that the judge include the words "when possible" in her instruction about the ten-day notice requirement. The judge declined to do so, noting that those words "are not in the law." The defendant quotes that exchange in his brief, but does not argue that omission of the words "when possible" was error, or cite to any legal authority on that point. See Mass. R. A. P. 16 (a) (9) (A), as appearing in 481 Mass. 1629-1630 (2019). We conclude that it was not.

§§ 18, 34. The indictment cited to G. L. c. 6, §§ 178C through 178P, and alleged that the defendant "did knowingly fail to provide notice of a change of address." Thus, the defendant was able to understand and prepare a defense to the charge that he had failed to report his move to a different city or town "not later than ten days prior" to establishing residence there. G. L. c. 6, § 178E(h).

Judgment affirmed.

By the Court (Massing,
Sacks & Grant, JJ.⁵),



Clerk

Entered: May 3, 2021.

⁵ The panelists are listed in order of seniority.