

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

20-P-1034

COMMONWEALTH

vs.

ROBERT ANDERSON.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

In February 2020, a jury convicted Robert Lee Anderson of witness intimidation, G. L. c. 268, § 13B, stemming from Anderson's verbal abuse of a police officer during a booking procedure. Among numerous issues raised on appeal, we are asked to consider the sufficiency of the evidence. Because we conclude that the evidence at trial was insufficient to permit a rational trier of fact to find that Anderson intimidated or harassed another person within the meaning of § 13B, we reverse.

Background. We summarize the facts pertinent to our analysis as the jury could have found them. In January 2019, Anderson was arrested as a suspect in an armed robbery and was brought into the Springfield Police Department for booking. Springfield Police Officer Christopher Bates (Officer Bates),

who had assisted detectives in locating Anderson prior to his arrest, escorted Anderson in handcuffs to the booking area. Officer Bates testified that Anderson "became very enraged and irate" in the booking area. The entire event, lasting just two minutes, was video and audiotaped. Anderson called Officer Bates offensive names, accused Officer Bates of making up the charges against him, and told Officer Bates to "shut the fuck up before I spit in your face, bitch." At one point, Anderson took a few steps towards Officer Bates, asking him, "what is it you have personally against me?" Another police officer restrained Anderson by holding onto his jacket, and a few times attempted to redirect his attention to the booking sergeant. When Anderson began laughing and called Officer Bates offensive names anew, the booking sergeant had him placed in a cell for ten to fifteen minutes to "calm him down." The booking procedure then was completed without further incident.

Anderson was charged with armed robbery, G. L. c. 265, § 17; assault and battery with a dangerous weapon, G. L. c. 265, § 15A (b); and intimidation of a witness, G. L. c. 268, § 13B (b). At trial, the judge denied Anderson's motions for a required finding of not guilty on all three charges. The jury acquitted Anderson of the first two charges but found him guilty under § 13B based on his interaction with Officer Bates during

booking. The judge sentenced Anderson to six to eight years imprisonment. This appeal timely followed.

Discussion. The Commonwealth was required to prove, in relevant part, the following three elements to support a conviction under § 13B: that Anderson "willfully . . . [1] intimidate[d] or harass[e]d . . . [2] [a] police officer . . . [3] with the intent to or with reckless disregard for the fact that it may . . . interfere with . . . a criminal investigation . . . or other criminal proceeding of any type or . . . retaliate against . . . such person . . . for participat[ing] in any of the proceedings described" G. L. c. 268, § 13B (b). We consider Anderson's sufficiency challenge "to determine whether, viewing the evidence in the light most favorable to the Commonwealth, any rational finder of fact could have found each of the elements of the offense beyond a reasonable doubt." Commonwealth v. Jones, 477 Mass. 307, 316 (2017). Because it is dispositive, we need address only the first element, that is, whether Anderson willfully intimidated or harassed Officer Bates.¹ G. L. c. 268, § 13B (b).

¹ We agree with the Commonwealth's concession at oral argument that Anderson's threat to spit in Officer Bates's face did not qualify as "threaten[ing] . . . physical, emotional or economic injury" as provided under § 13B. There was also no evidence that Anderson's conduct was "mislead[ing]" or that he "convey[ed] a gift, offer or promise of anything of value to" Officer Bates. G. L. c. 268, § 13B (b).

Under § 13B, harassment is defined as "an act directed at a specific person . . . that seriously alarms or annoys such person . . . and would cause a reasonable person . . . to suffer substantial emotional distress" Id. Intimidation, though not defined in § 13B, has been interpreted as conduct that provokes fear in the person targeted "for the purpose of compelling or deterring conduct." Commonwealth v. Gordon, 44 Mass. App. Ct. 233, 234, 235 (1998), quoting Planned Parenthood League, Inc. v. Blake, 417 Mass. 467, 474, cert. denied, 513 U.S. 868 (1994) (defendant intimidated victim by standing inches away from her, commenting on her appearance, and saying, "I've had my eye on you since day one; you're a juror on the [murder] case"); Commonwealth v. Potter, 39 Mass. App. Ct. 924, 925-926 (1995) (defendant intimidated victim by calling her at work, laughing, and asking if she liked being stalked by him).

The evidence at trial on this point consisted primarily of testimony from the booking officers (including Officer Bates), Anderson's own testimony, and the video recording of the booking procedure. Although the booking officers testified that Anderson was verbally abusive and angry, and Anderson admitted as much, no testimony was introduced regarding what effect, if any, Anderson's statements had on Officer Bates's mental state. In fact, in the video recording, Officer Bates appears attentive and calm despite Anderson's accusations and insults. Even taken

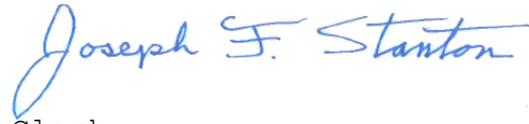
in the light most favorable to the Commonwealth, this evidence showed that Anderson engaged in a brief, albeit ill-advised, outburst, which had a negligible effect on his intended target. That was not sufficient to permit the jury to find that Anderson either provoked fear in Officer Bates or "seriously alarm[ed] or annoy[ed]" him in such a way that would cause a reasonable person "substantial emotional distress." G. L. c. 268, § 13B (b). Cf. Gordon, 44 Mass. App. Ct. at 234, 236 (Commonwealth presented evidence that defendant's conduct made victim "nervous," "scared," and "afraid").²

Judgment reversed.

Verdict set aside.

Judgment for the defendant.

By the Court (Blake, Shin & Walsh, JJ.³),



Clerk

Entered: July 20, 2021.

² Because we reverse on this ground, we need not reach the other issues raised on appeal.

³ The panelists are listed in order of seniority.