

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

21-P-52

COMMONWEALTH

vs.

YEISON SANTANA.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The defendant was convicted after a jury trial of trafficking in cocaine and failing to stop for police.<sup>1</sup> On appeal the defendant challenges the denial of his motion to suppress the cocaine, which was recovered from a warrantless search of his car. We affirm.

We take the facts from the motion judge's findings and the uncontroverted testimony at the suppression hearing. See Commonwealth v. Jones-Pannell, 472 Mass. 429, 431 (2015). On June 24, 2009, Fitchburg Police Detective Perry Pappas was conducting undercover surveillance on Goddard Street in Fitchburg. Pappas, a seven-year veteran of the Fitchburg Police

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<sup>1</sup> The conviction of failing to stop for police was placed on file with the defendant's consent and is not before us in this appeal.

Department's drug suppression unit, was set up on Goddard Street because the police had received recent citizen complaints of drug dealing and had executed numerous search warrants for drugs in that neighborhood.

Around 1:30 P.M. Pappas's attention was drawn to a man pacing on Goddard Street. Approximately five minutes later, a car pulled up to the man and stopped in the middle of the road, across both travel lanes. The man did not wave or otherwise signal to the car before it stopped. Pappas watched as the man put his hands in the car and engaged in "a quick hand-to-hand transaction" with the driver, later identified as the defendant. The man then walked away, and the defendant drove off toward Caldwell Street. Based on his training and experience, Pappas believed he had witnessed a street-level drug sale and radioed for assistance.

State Trooper John Mill was set up near Caldwell Street, conducting "basic observations of . . . a known drug area," when he heard the radio transmission and spotted the defendant's car. Mill followed the defendant onto Arlington Street and tried to initiate a stop by activating his emergency lights and siren. Instead of stopping, the defendant accelerated slightly. At the same time, State Trooper Matt Aumais was driving down Arlington Street from the opposite direction with his emergency lights and siren activated. The defendant "took [an] evasive maneuver" by

driving on the wrong side of the road. This caused the defendant to slow down and pull off to the side of the road, where the troopers were able to box in his car with their cruisers.

Mill removed the defendant from the car, handcuffed him, and placed him under arrest for failure to stop. The troopers then conducted an inventory search of the car and found, on the front passenger seat, a McDonald's bag containing twenty "eight-balls" of packaged cocaine. The State Police inventory policy was admitted in evidence.

The issue on appeal reduces to whether the stop of the defendant's car was justified by reasonable suspicion of criminal activity. The defendant does not independently challenge his arrest for failure to stop or the resulting inventory search. Thus, the only question before us is whether Pappas had reasonable suspicion that the defendant had engaged in a drug sale, justifying Mill's attempt to make the stop.<sup>2</sup> See Commonwealth v. Roland R., 448 Mass. 278, 285 (2007), quoting Richardson v. Boston, 53 Mass. App. Ct. 201, 206 (2001) ("In determining whether police officers have reasonable suspicion for making a stop, 'the knowledge of each officer is treated as

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<sup>2</sup> There is no dispute that a stop occurred in the constitutional sense when Mill activated his emergency lights and siren. See Commonwealth v. Smigliano, 427 Mass. 490, 491-492 (1988).

the common knowledge of all officers' and must be examined to determine whether reasonable suspicion exists").

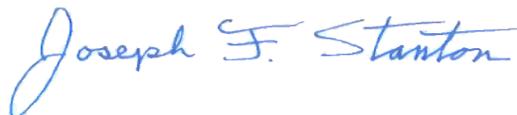
We conclude that the constellation of facts known to Pappas was sufficient to establish reasonable suspicion. Pappas, an experienced drug investigator, testified that the sequence of activity he observed -- the man pacing back and forth, the car pulling up and stopping in the middle of the road, the quick hand-to-hand exchange, and both parties immediately leaving the area -- was consistent with a drug sale. Also, Pappas was surveilling that particular area because of recent complaints of drug activity, which "contribute[s] to the circumstantial evidence that a drug transaction had occurred." Commonwealth v. Freeman, 87 Mass. App. Ct. 448, 452 (2015).

This case is unlike Commonwealth v. Kearse, 97 Mass. App. Ct. 297 (2020), on which the defendant relies, because, there, the police saw only a "hand shake" between two individuals while the defendant stood nearby. See id. at 301. In contrast, Pappas saw the defendant himself engage in what Pappas described as a "hand-to-hand transaction" or "exchange." Nor is it dispositive, as the defendant suggests, that Pappas did not know whether either the defendant or the other man had a prior history of drug dealing. While that is a relevant consideration, the totality of the facts governs our determination of reasonable suspicion. See Commonwealth v.

Privette, 100 Mass. App. Ct. 222, 228 (2021). And considering the totality of the facts here, we conclude that Pappas's suspicion that he witnessed a drug transaction was reasonable, justifying the stop. Our conclusion comports with cases finding reasonable suspicion on similar facts, even where the parties to the transaction were not known to the police. See Commonwealth v. Levy, 459 Mass. 1010, 1011-1012 (2011) (individual made call on public telephone frequently used for drug transactions and, shortly thereafter, car picked him up, drove around block, and dropped him back off); Commonwealth v. Hernandez, 448 Mass. 711, 714 (2007) (defendant paced back and forth until joined by another man and then handed over item hidden in shoe); Commonwealth v. Sweezey, 50 Mass. App. Ct. 48, 49, 52 (2000) (car arrived at parking lot known for drug activity and flashed lights, whereupon defendant approached, talked with driver briefly, received paper bag, and returned to own car).

Judgment affirmed.

By the Court (Rubin,  
Desmond & Shin, JJ.<sup>3</sup>),



Clerk

Entered: November 22, 2021.

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<sup>3</sup> The panelists are listed in order of seniority.