

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-1215

20-P-1216

COMMONWEALTH

vs.

JOHN B. BRIGHT, JR. (and three companion cases¹).

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The Commonwealth appeals from an order of a Superior Court judge allowing motions to suppress filed by the defendants, John B. Bright, Jr. and Elijah Rosario. Concluding that the judge's finding that the police did not have probable cause is based on reasonable inferences drawn from the detectives' testimony, we affirm.

1. Standard of review. "In reviewing the grant 'of a motion to suppress, we accept the judge's subsidiary findings of fact absent clear error and accord substantial deference to the judge's ultimate findings.'" Commonwealth v. Saywahn, 91 Mass. App. Ct. 706, 708 (2017), quoting Commonwealth v. Carr, 458

¹ An additional indictment against John B. Bright, Jr., and two indictments against Elijah Rosario.

Mass. 295, 298 (2010). "The ultimate legal conclusions to be drawn from the findings, however, are matters for review by this court." Saywahn, supra.

"Our deference to the judge's assessment of the weight and credibility of testimonial evidence includes inferences 'derived reasonably from the testimony.'" Commonwealth v. Gonzalez, 487 Mass. 661, 668 (2021), quoting Commonwealth v. Kennedy, 426 Mass. 703, 708 (1998). We will not conduct our own "independent fact finding . . . to reach a conclusion of law that is contrary to that of a motion judge who has seen and heard the witnesses, and made determinations regarding the weight and credibility of their testimony." Commonwealth v. Tremblay, 480 Mass. 645, 655 (2018), quoting Commonwealth v. Jones-Pannell, 472 Mass. 429, 438 (2015).

2. Probable cause. "Under the protections of the Fourth Amendment to the United States Constitution and art. 14 of the Declaration of Rights of the Massachusetts Constitution, a police officer may not lawfully arrest a person without probable cause to believe that a crime has been committed." Commonwealth v. Landry, 438 Mass. 206, 210 (2002). "Where, as is the case here, an arrest and attendant search are made without a warrant, the Commonwealth bears the burden of establishing that the actions of the police" were supported by probable cause. Commonwealth v. Chown, 459 Mass. 756, 763 (2011), quoting

Commonwealth v. Santaliz, 413 Mass. 238, 240 (1992). "Probable cause to arrest exists when, 'at the moment of arrest, the facts and circumstances within the knowledge of the police are enough to warrant a prudent person in believing that the individual arrested has committed or was committing an offense.'"

Commonwealth v. Pridgett, 481 Mass. 437, 439 (2019), quoting Commonwealth v. Storey, 378 Mass. 312, 321 (1979), cert. denied, 446 U.S. 955 (1980).

Here, the police knew that Bright's driver's license was suspended. See Commonwealth v. Rosario-Santiago, 96 Mass. App. Ct. 166, 174 (2019). To uphold the arrest, however, the Commonwealth must have shown that the police had probable cause to believe that Bright -- not someone else -- was operating the motor vehicle. See Pridgett, 481 Mass. at 439, quoting Storey, 378 Mass. at 321.²

The Commonwealth introduced no evidence that the police officers involved in the arrest had ever seen Bright before that night or that they knew what Bright looked like.³ One of the two

² Contrary to the Commonwealth's argument, defense counsel did argue at the suppression hearing that "[t]here was no evidence that any of the officers could actually identify, positively identify Mr. Bright prior to the time that he was arrested." Neither counsel gave an opening; nor is there any reason counsel would have predicted at the outset of the hearing that the Commonwealth might fail to produce adequate evidence that the officers could identify Bright.

³ The motion judge found that the police did not have a booking photo for Bright.

detectives who testified at the suppression hearing stated that he had had no prior dealings with Bright, and the other detective did not testify to any prior experience with Bright.

One detective testified that, prior to the arrest, he notified his lieutenant that he observed Bright operating a motor vehicle. To be sure, the motion judge could have reasonably inferred from that testimony that the detective recognized Bright by sight. The motion judge, however, could also infer that the detective based this report merely on the identity of the motor vehicle, considering that the officer had earlier received an e-mail that Bright "was suspected to be operating that vehicle." The choice between these two reasonable inferences from the testimony was for the motion judge, who saw the demeanor of the detective, not for us, from a cold record. See Gonzalez, 487 Mass. at 668.

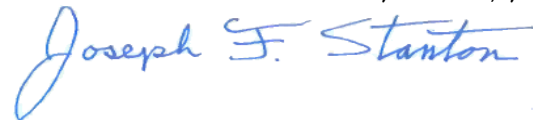
Similarly, that the officers later identified the driver as Bright has no bearing on "what [they] knew at the time that [they] made the decision to arrest the defendant." Rosario-Santiago, 96 Mass. App. Ct. at 172. Accord Commonwealth v. Luna, 92 Mass. App. Ct. 523, 527 (2017), quoting Commonwealth v. Charley, 91 Mass. App. Ct. 223, 228 (2017) (existence of probable cause determined "at the moment of arrest"). Accordingly, "there was no error in the judge's findings, including his reasonable inferences drawn from testimony at the

[suppression hearing], that the Commonwealth failed to meet its burden to show" that the police had probable cause to believe, at the time of the arrest, that the driver of the motor vehicle was Bright. Gonzalez, 487 Mass. at 670.

The detectives ordered Rosario to exit the vehicle "[i]mmediately" "once Bright was taken out and secured." Quite properly, the Commonwealth takes no issue with the motion judge's conclusion that the subsequent observations made by the police were fruits of the illegal stop and arrest. See Commonwealth v. Soriano-Lara, 99 Mass. App. Ct. 525, 530 (2021). Accordingly, the narcotics, alcohol, and Rosario's statements were properly suppressed. See Commonwealth v. Darosa, 94 Mass. App. Ct. 635, 637 (2019).

Order allowing motions to
suppress affirmed.

By the Court (Meade,
Desmond & Ditkoff, JJ.⁴),



Clerk

Entered: December 3, 2021.

⁴ The panelists are listed in order of seniority.