

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-1309

WILTON RANGEL

vs.

GAMAL MOHAMED & others.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

After a jury-waived summary process trial in the Housing Court, judgment for possession of an apartment in Everett entered in favor of the landlord, Wilton Rangel, and against tenant Gamal Mohamed.² Because we are not persuaded by Mohamed's argument that he was entitled to a presumption that the eviction action was retaliatory and are satisfied that the evidence supported the judge's conclusion that service on Mohamed at "1 Colburn Terrace" in Everett was proper, we affirm.

Discussion. 1. Statutory presumption of retaliation. On May 31, 2019, Rangel filed this summary process complaint against Mohamed in the Northeast Housing Court, for nonpayment

¹ Walter Paes, Andre Sampaio, and Atilla Marquez.

² Two other tenants did not participate in the case and have not appealed the default judgments against them. A fourth tenant was dismissed from the action.

of rent. In his answer, Mohamed asserted retaliation as an affirmative defense, claiming that Rangel was evicting him because Mohamed "[had] a criminal case against one of [Rangel's] workers [Walter Paes] who assaulted [me] while working at the house." General Laws c. 239, § 2A establishes an affirmative defense of retaliation in summary process actions that carries a rebuttable presumption if an eviction is initiated within six months after "the tenant's act of . . . reporting to any police officer or law enforcement professional an incident of domestic violence . . . against a tenant, co-tenant or member of the household." G. L. c. 239, § 2A. See South Boston Elderly Residences, Inc. v. Moynahan, 91 Mass. App. Ct. 455, 468-469 (2017).

At trial, uncontested evidence established that Mohamed made a report to the Everett Police that resulted in a criminal complaint issuing against Paes on October 26, 2018. Mohamed acknowledges that Rangel initiated the eviction on May 31, 2019, more than six months after the criminal case against Paes commenced in the District Court. However, he argues that the statutory presumption of retaliation nevertheless applies because the criminal case was ongoing and thus he was "proceeding with" it at the time. We disagree. While Mohamed's reporting the incident to the police may have led to the criminal charges, the case was being prosecuted by the

Commonwealth, not Mohamed. Cf. Matter of Chapman, 482 Mass. 1012, 1014 (2019) ("[p]rivate individuals, including the victims of the crimes being prosecuted, have no standing in our system of justice to prosecute criminal cases"); Bradford v. Knights, 427 Mass. 748, 752 (1998), quoting Tarabolski v. Williams, 419 Mass. 1001, 1002 (1994) ("a private citizen lacks a judicially cognizable interest in the prosecution . . . of another"). The protected behavior here was Mohamed's report to police, which necessarily occurred prior to the commencement of the related criminal proceeding.³ Because Rangel initiated his summary process complaint more than six months after this report, Mohamed was not entitled to the statutory presumption of retaliation.⁴

2. Service. At trial, Rangel submitted a "return of service" certifying that a constable served Mohamed with a notice to quit at his last and usual address and by mail. See

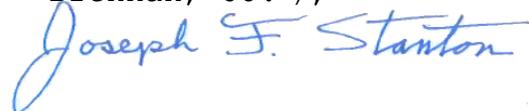
³ General Laws c. 239, § 2A, and a related statute cited by Mohamed, G. L. c. 186, § 18, also address reprisals for a tenant's "act of commencing, proceeding with, or obtaining relief in any judicial or administrative action" related to regulation of premises, tenants' rights organizations, board of health reports, and the like. Mohamed did not argue retaliation for any of these reasons at trial nor does he raise them on appeal.

⁴ None of this is to suggest that Mohamed necessarily would prevail even had the statutory presumption applied. Indeed, as we have stated, in an eviction based on nonpayment of rent, "a finding of retaliation will not normally lie." See Jablonski v. Casey, 64 Mass. App. Ct. 744, 748 (2005).

Mass. R. Civ. P. 4 (d) (1), as amended, 370 Mass. 918 (1976). Rangel also testified that the street address of the premises changed from Gladstone Terrace to Colburn Terrace approximately eight years prior to the eviction and offered corroborating evidence.⁵ The judge expressly discredited Mohamed's testimony that he found only an opened, empty envelope from the constable's office in his apartment. Accordingly, we discern no merit in Mohmed's claim that there was insufficient evidence to support the judge's finding that the notice to quit was served properly on Mohamed.

Judgment affirmed.

By the Court (Milkey, Hand & Brennan, JJ.⁶),



Clerk

Entered: June 22, 2022.

⁵ Rangel produced a map from a government website showing the address as Colburn Terrace and a second floor resident who testified to the same.

⁶ The panelists are listed in order of seniority.