COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-264

COMMONWEALTH

vs.

MARK MARGARITIS.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

On May 22, 2017, the defendant was arrested on domestic violence-related charges after allegedly assaulting and threatening his wife in a parking lot of a Wareham shopping plaza. The police searched the defendant's vehicle pursuant to an inventory search and found a firearm and ammunition. After a two-day jury trial, the defendant was convicted of unlawful possession of a firearm and unlawful possession of ammunition, and acquitted of various other charges.[1] For the reasons set forth below, we affirm.

Background. On May 22, 2017, the defendant drove from his home in New Hampshire to Wareham, and showed up unannounced at his wife's place of work. The couple had been separated for

[1] The defendant was acquitted of charges of assault and battery, strangulation or suffocation, threat to commit a crime, and vandalism.

several months, but the defendant hoped to mend their relationship. The two went out to the defendant's Chevy Impala, which was parked in the lot of the shopping plaza, and soon their conversation degenerated into a physical altercation. Each party testified to a different account of what transpired.[2] The interaction ended with the defendant "tear[ing] off" in his car, and a Wareham police officer who was patrolling the parking lot subsequently pulled him over.

The police placed the defendant under arrest for domestic assault and battery, pat-frisked him for weapons, and found a knife in his front pocket and an empty gun holster on his belt. The defendant told police that he did not have a gun with him. The police then impounded the defendant's vehicle and conducted an inventory search, pursuant to a written policy. As a result of the search, the police found a nine-millimeter semiautomatic firearm and three magazines filled with ammunition inside a pouch on the floor of the vehicle, behind the passenger seat. They also recovered two boxes of ammunition from the defendant's trunk. At trial, the defendant acknowledged that the weapons were his, but argued that he did not know they were in the car and thought he had left them at a friend's house. A police

[2] At trial, the defendant's wife testified that, while in the car, the defendant put his hands around her neck, "squeezed really hard," and said, "I could kill you right now." The defendant denied these accusations.

officer also testified at trial that the defendant did not have a license to carry a firearm in Massachusetts.

Prior to trial, the defendant moved to suppress the firearm and ammunition. The judge denied the motion, finding that the search of the vehicle was permissible as an inventory search. The motion to suppress hearing was not properly recorded, so no transcript from that hearing exists. After trial, the motion judge allowed a motion to reconstruct the record using his handwritten notes from the motion to suppress hearing. He found that the defendant's vehicle was not parked in a parking spot when he was stopped by police, the parking lot was "subject to vandalism and thefts from cars," and there was no one available to take the defendant's vehicle upon his arrest. The judge also noted that he "d[id] not credit any of [the defendant's] testimony about where he was parked or his claims that others could take his car before being towed."

Discussion. The defendant raises three issues on appeal, which we address in turn.

1. Sufficiency of the evidence. The defendant first argues that the trial evidence was insufficient to prove that he knowingly possessed the firearm when he drove from New Hampshire to Massachusetts on May 22, 2017. See Commonwealth v. Romero, 464 Mass. 648, 652 (2013). The defendant does not deny ownership of the vehicle, firearm, or ammunition, and argues

only that there was insufficient proof that he knew that he possessed the firearm and ammunition that day. According to his testimony, he was unaware that he had the firearm in his car when he drove to Massachusetts, because he had reason to think that -- the day before -- he had left it at a friend's house in New Hampshire. The jury, of course, were not required to credit his testimony, see Commonwealth v. Merry, 453 Mass. 653, 661 (2009), and the fact that the defendant was wearing a holster on his belt when the police stopped him gave the jury particular reason not to believe him. The Commonwealth presented ample evidence from which a rational juror could conclude, beyond a reasonable doubt, that the defendant knew that the firearm found in the back seat of his car was there. Nothing more was required. Commonwealth v. Gonzalez, 452 Mass. 142, 146 (2008).

2. Jury instruction. At trial, the defendant testified that it was "well-known in [New Hampshire that firearms could] be legally carried without an FID card." The Commonwealth objected on the grounds that the defendant had impermissibly "testif[ied] to a legal conclusion," and the parties went to sidebar. Subsequently, the judge instructed the jury that "if the defendant did not know that he was required to have a

license before carrying a firearm, that is not something the Commonwealth is required to prove."[3]

"The necessity, scope, and character of a judge's supplemental jury instructions are within his or her discretion." Commonwealth v. Wolinski, 431 Mass. 228, 233 (2000), quoting Commonwealth v. Watkins, 425 Mass. 830, 840 (1997). Here, the supplemental jury instruction was accurate. See Franklin Office Park Realty Corp. v. Commissioner of the Dep't of Envtl. Protection, 466 Mass. 454, 465 n.14 (2013) ("ignorance of the law is no excuse"). Further, the trial judge instructed the jury extensively that the Commonwealth needed to prove knowledge in order to convict the defendant of possession of a firearm. Thus, the judge hardly "vitiated" the defendant's defense strategy, and did not abuse her discretion in giving the supplemental jury instruction. See L.L. v. Commonwealth, 470 Mass. 169, 185 n.27 (2014).

3. Order denying the motion to suppress. Finally, the defendant challenges the order denying his motion to suppress

[3] Portions of the sidebar conversation are denoted as being indiscernible due to "low audio." However, it is clear from the record that the court took issue with the defendant's statement because it apparently insinuated that he "didn't know [he] needed a license to carry" in Massachusetts. The defense counsel twice clarified that he was not relying on that defense, but rather that his defense was a lack of knowledge that the firearm was in the car. In any event, the judge neither overruled nor sustained the Commonwealth's objection, and instead stated that she would give a supplemental jury instruction after the close of evidence.

the firearm and ammunition. The Commonwealth's primary justification for the warrantless search was that it was an inventory search, and so we begin our analysis by determining whether the police officers' decision to impound the vehicle was reasonable.[4] See Commonwealth v. Crowley-Chester, 476 Mass. 1030, 1031 (2017); Commonwealth v. Oliveira, 474 Mass. 10, 13 (2016). "[W]e accept [the motion judge's] subsidiary findings of fact absent clear error 'but conduct an independent review of his ultimate findings and conclusions of law.'" Crowley-Chester, supra at 1031, quoting Commonwealth v. Eddington, 459 Mass. 102, 104 (2011).

After reconstructing the record with his own notes, the motion judge found that "the [parking] lot [wa]s subject to vandalism and thefts from cars," "the [defendant's] vehicle was not parked in a parking spot," and that "there was no one else to take the vehicle." Based on these findings, we determine that the police impounded the vehicle for a legitimate purpose. See Oliveira, 474 Mass. at 13. We also agree that it was necessary for the police to impound the vehicle, noting that "[a]n important factor [to consider] . . . is whether the driver chose where to park the vehicle or whether the police stopped a moving vehicle and caused it to be parked at a location the

[4] Although the defendant was acquitted of the domestic violence charges, he does not argue -- nor could he -- that his arrest was a pretext to conduct an inventory search of the car.

driver otherwise would not have chosen." Id. at 14. Further, we accept the motion judge's finding that no one was available to take the defendant's vehicle away.[5] See id. at 14-15.

After determining that the police officer's decision to impound the vehicle was reasonable, we must also determine whether "the search of the vehicle that follow[ed] . . . was conducted in accord with standard police written procedures." Oliveira, 474 Mass. at 13. The motion judge found that, "[b]efore the tow, the police searched the vehicle pursuant to a written policy," a finding the defendant has neither argued nor shown to be clearly erroneous. Thus, the Commonwealth also met its burden of proving this second prong. Id. The inventory search of the defendant's vehicle was lawful, and the motion to

[5] Although the defendant stated in an affidavit that a police officer had denied his request to allow his wife or another friend to remove his vehicle, the motion judge explicitly stated that he "d[id] not credit any of" this testimony. We are bound by that finding. See Crowley-Chester, 476 Mass. at 1031.

suppress was properly denied.[6] See id.

Judgments affirmed.

By the Court (Wolohojian, Milkey & Blake, JJ.[7]),

Joseph F. Stanton

Clerk

Entered: April 9, 2019.

[6] Because the search of the defendant's vehicle was justified as an inventory search, we need not address whether the search would have been authorized under the public safety or community caretaking exception to the warrant requirement, or whether there was probable cause to search the vehicle pursuant to the automobile exception.

[7] The panelists are listed in order of seniority.