

NOTICE: Summary decisions issued by the Appeals Court pursuant to its 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 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

18-P-1247

COMMONWEALTH

vs.

DORIANE SYLVESTRE.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Following a bench trial, the defendant, Doriane Sylvestre, was convicted of trafficking a person for sexual servitude in violation of G. L. c. 265, § 50 (a).¹ On appeal, the defendant argues there was insufficient evidence to support her conviction. She also argues the Commonwealth's case deteriorated from evidence presented by the defendant. We affirm.

1. Background. The judge could have found the following facts. The victim was sixteen years old and living at a group

¹ The defendant was also indicted for inducing a person under eighteen years of age to have sexual intercourse, G. L. c. 272, § 4, engaging in sexual conduct for a fee, G. L. c. 272, § 53A, and kidnapping, G. L. c. 265, § 26. The judge allowed the defendant's motion for a required finding as to the indictments alleging inducing a person under eighteen years of age to have sexual intercourse and engaging in sexual conduct for a fee. The judge found the defendant not guilty on the indictment alleging kidnapping.

home in Fitchburg. On January 6, 2017, after communicating with Chinier Bennett, a friend from a prior group home, a car was dispatched to the victim's residence and brought her to the defendant's apartment in Brockton under false pretenses. The defendant, who was not employed, needed help paying rent and bills. She permitted Keith Grace, who was also not employed, to reside at the apartment if he helped out with paying the rent.² The defendant had previously worked as a sex worker in New York and had resumed this work in January, 2017, when Grace paid for her to post an advertisement for her sexual services on a website called Backpage.com.

After arriving in Brockton, the victim learned that it was the intention of Grace to have her work as a sex worker. Grace was described as "a big guy," was seen hitting his pregnant girlfriend, at various points was heard yelling and screaming, and at one point punched a wall and a refrigerator. The victim asked the defendant and Bennett to leave multiple times; both told her she could not leave.³ Out of fear of Grace, the victim complied with his demands that she pose for photographs to create an advertisement for herself as a prostitute to be posted

² Grace's pregnant girlfriend was also residing at the apartment. The defendant permitted the girlfriend to stay there because she was pregnant and had nowhere else to stay.

³ Bennett told the victim that he could not let her leave "unless [she was] sick or dying." The victim then lied and said she had a heart condition that she did not have.

on Backpage.com and also performed oral sex on a stranger. Eventually, the victim was able to communicate her situation to her mother and some friends using a messaging application on her cell phone. This prompted a door-to-door search by law enforcement that led to her rescue on January 7, 2017.

2. Discussion. a. Sufficiency. We review the evidence to determine whether "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt" (citation omitted). Commonwealth v. Latimore, 378 Mass. 671, 677 (1979).⁴

General Laws c. 265, § 50 (a), in relevant part, makes an individual criminally liability who knowingly:

"(i) subjects, or attempts to subject, or recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person to engage in commercial sexual activity . . . or causes a person to engage in commercial sexual activity . . . or (ii) benefits, financially or by receiving anything of value, as a result of a violation of clause (i). . . ."

⁴ The defendant moved for a required finding of not guilty pursuant to Mass. R. Crim. P. 25, as amended, 420 Mass. 1502 (1995). At the close of the Commonwealth's case, the defendant argued the motion orally as to the other indictments but waived argument as to the trafficking a person for sexual servitude indictment. Nonetheless, we review the sufficiency of the evidence with respect to the trafficking indictment because "findings based on legally insufficient evidence are inherently serious enough to create a substantial risk of a miscarriage of justice." Commonwealth v. McGovern, 397 Mass. 863, 867-868 (1986).

See Commonwealth v. McGhee, 472 Mass. 405, 418 (2015) (G. L. c. 265, § 50 [a], "forbids . . . individuals . . . from knowingly undertaking specified activities that will enable or cause another person to engage in commercial sexual activity").

While the defendant offered testimony that, like the victim, she was afraid of Grace, she did not rely on a defense of duress.⁵ The evidence warranted a finding by the judge that the defendant's own acts with respect to the victim constituted human trafficking. Most notably, these acts included that the defendant participated in the taking of lewd photographs of the victim knowing that they would be used in an advertisement for the victim's sexual services, and later posted those pictures in an advertisement on Backpage.com. See Commonwealth v. Dabney, 478 Mass. 839, 854 (2018). We reject the defendant's argument that the evidence was insufficient because there was no "concrete evidence" that the advertisement was posted because the judge could have credited the victim's testimony that she saw the advertisement on the defendant's cell phone. The defendant also encouraged the victim to engage in commercial sexual activity by telling her that providing sexual services for a fee was "a good way of life" that "makes money" and that

⁵ The judge appears to have partially credited this testimony. At sentencing, the judge stated, "I think her behavior was in some way affected by other participants."

the victim would "get used to it." See id. In addition, with knowledge of Grace's intention to have the victim perform services as a sex worker, the defendant permitted the victim to remain at her apartment and told her she could not leave. From these acts, the judge could have found beyond a reasonable doubt that the defendant "attempt[ed] to subject[,]" "harbor[ed,]" "recruit[ed]," or "entice[d]" the victim to engage in commercial sexual activity (either as a joint venturer or a principle) in violation of G. L. c. 265, § 50 (a).⁶ To support a conviction under G. L. c. 265, § 50 (a) (i), the Commonwealth was not required to prove the defendant received anything of value. McGhee, 472 Mass. at 417.

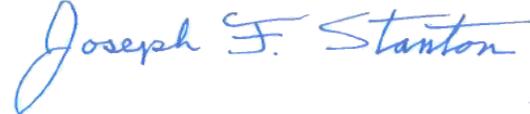
b. Deterioration. We reject the defendant's argument that the Commonwealth's case deteriorated after presentation of the defendant's case. The defendant's case consisted only of her own testimony. That testimony, which contradicted the Commonwealth's evidence in certain ways, did not demonstrate that the Commonwealth's case was "incredible or conclusively incorrect" (citation omitted). Commonwealth v. Merry, 453 Mass.

⁶ We are guided by the plain and ordinary meaning of these words. See Dabney, 478 Mass. at 855 (court was guided by dictionary definition of word "entice" in interpreting G. L. c. 265, § 50 [a]).

653, 663 (2009), and could have been rejected as not credible by the judge sitting as the finder of fact.

Judgment affirmed.

By the Court (Wolohojian,
Agnes & Neyman, JJ.⁷),



Clerk

Entered: April 7, 2020.

⁷ The panelists are listed in order of seniority.