

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

19-P-1718

COMMONWEALTH

vs.

MARVIN HUNT.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

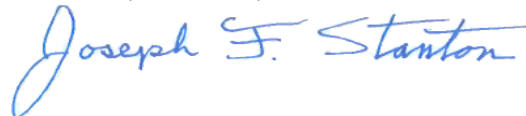
The defendant was convicted after a jury-waived trial of indecent assault and battery on a person over the age of fourteen. See G. L. c. 265, § 13H. To sustain a conviction under G. L. c. 265, § 13H, the Commonwealth had to prove beyond a reasonable doubt that "the defendant committed 'an intentional, unprivileged, and indecent touching of the victim.'" Commonwealth v. Benedito, 95 Mass. App. Ct. 548, 549 (2019), quoting Commonwealth v. Kennedy, 478 Mass. 804, 810 (2018). The defendant's sole argument on appeal is that the Commonwealth failed to prove that he touched the victim. We disagree.

The victim testified that she was talking to two police officers outside a liquor store when the defendant, her ex-boyfriend, "ran behind and pinched [her] butt." While the

victim's testimony would alone be sufficient for the Commonwealth to meet its burden of proof, her account was corroborated by an officer's testimony that the defendant "passed directly behind [the victim] and that prompt[ed] kind of a . . . surprised strange response from her." This evidence was sufficient to show that the defendant committed an intentional touching.¹ Cf. Commonwealth v. Mosby, 30 Mass. App. Ct. 181, 184-185 (1991). In arguing otherwise, the defendant observes that the victim told the officers that she did not want to press charges and that the officers made no effort to arrest the defendant and allowed him to leave. But these facts go to the credibility of the witnesses, which was an issue for the fact finder to resolve. It is "not [a] proper subject[] for appeal." Commonwealth v. King, 445 Mass. 217, 235 (2005).

Judgment affirmed.

By the Court (Henry, Lemire & Shin, JJ.²),



Clerk

Entered: October 7, 2020.

¹ The defendant does not challenge the sufficiency of the evidence regarding the other elements of the crime.

² The panelists are listed in order of seniority.