

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-1474

COMMONWEALTH

vs.

JOHN H. HARTFORD, JR.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The defendant, John H. Hartford, Jr., appeals from his conviction of animal cruelty after a jury-waived trial in the District Court. Concluding that the evidence was sufficient to prove that the defendant inflicted fatal injuries on a dog and that the prosecutor's closing argument was proper, we affirm.

1. Motion for required finding. a. Standard of review. When reviewing the denial of a motion for a required finding of not guilty, "we consider the evidence introduced at trial in the light most favorable to the Commonwealth, and determine whether a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Commonwealth v. Oberle, 476 Mass. 539, 547 (2017). "The inferences that support a conviction 'need only be reasonable and possible; [they] need not be necessary or inescapable.'" Commonwealth v. Waller, 90

Mass. App. Ct. 295, 303 (2016), quoting Commonwealth v. Woods, 466 Mass. 707, 713 (2014).

b. Proof of identity. "Circumstantial evidence is competent evidence to establish guilt." Commonwealth v. LaPlante, 73 Mass. App. Ct. 199, 201 (2008), quoting Commonwealth v. Rojas, 388 Mass. 626, 629 (1983). "The Commonwealth . . . does not have to prove that no person other than the defendant could have committed the crime." Commonwealth v. Morgan, 449 Mass. 343, 349 (2007). The Commonwealth's burden is not met, however, when the evidence establishes only that two individuals had "equal opportunity" to commit the crime. Commonwealth v. Salemme, 395 Mass. 594, 601 (1985).

In Commonwealth v. Rojas, the witness left the defendant and the victim together in a locked apartment at approximately midnight, and the next day the witness found the victim dead from a bullet wound. 388 Mass. at 627-628. There were no signs of forced entry, and no one else had a key to the apartment. Id. at 628. On this and other circumstantial evidence, the Supreme Judicial Court found sufficient evidence, explaining, "[i]t is possible that after the defendant left the . . . apartment some third person came to the apartment and killed [the victim]. The jury were warranted, however, in rejecting

that possibility and in concluding beyond a reasonable doubt that the defendant was the killer." Id. at 630.

Here, the defendant lived with his sister's family and their three dogs, but he did not possess a house key. On the morning one of the dogs was killed, the family members with house keys left the home by 8 A.M.. The defendant's brother-in-law testified that, when he left with one of the dogs between 7 A.M. and 8 A.M., the defendant remained in the home alone, and the two dogs remaining in the home were alive. Consistent with household practice, the home would have been unlocked as long as the defendant remained in the home.¹ The defendant's brother-in-law returned at some point between 9 A.M. and 11 A.M. and found the defendant alone in the home and one of the dogs dead. An expert determined that the dog's injuries were consistent with sharp force and blunt force trauma; the lethal wound was a stab wound to the dog's head. The injuries were not consistent with a dog fight. There was no evidence of forced entry or a

¹ The defendant raised no objection to the admission of this testimony. The defendant's challenge to these witnesses' basis of knowledge provided a reason for asking the trier of fact to disbelieve their testimony, but the trier of fact was entitled to credit their version of the facts. See Pinney v. Commonwealth, 479 Mass. 1001, 1004 (2018). "To the extent that conflicting inferences may be drawn from the evidence, it is for the [trier of fact] to decide which version to credit." Commonwealth v. Buttimer, 482 Mass. 754, 761 (2019), quoting Commonwealth v. Webster, 480 Mass. 161, 167 (2018).

robbery, and the crime scene photographs showed no sign of any disturbance other than the killing of the dog.

The Commonwealth presented sufficient circumstantial evidence that the defendant was the only person in the home when the dog died. Taking the evidence in the light most favorable to the Commonwealth, there was a one-hour window (from 8 A.M. to 9 A.M.) in which the dog could have been killed. See Oberle, 476 Mass. at 547. This was a private residence, and there was no evidence of any other perpetrator at the scene whose presence could have created a substantial doubt. See Rojas, 388 Mass. at 630; Salemme, 395 Mass. at 600-601. Thus, "reasonable inferences supported the conclusion that the defendant had the opportunity, indeed the exclusive opportunity, to commit the crime, not just that he was in the general area of the crime." Commonwealth v. Forte, 469 Mass. 469, 482 (2014).

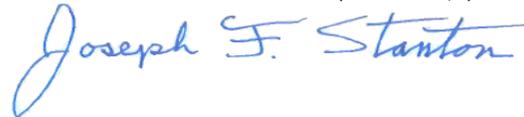
2. Closing argument. "Closing argument must be limited to discussion of the evidence presented and the reasonable inferences that can be drawn from that evidence." Commonwealth v. Rakes, 478 Mass. 22, 45, 82 (2017). "Counsel may, however, zealously argue in favor of those inferences favorable to his or her case." Id. "Because the defendant did not object to the prosecutor's closing argument at trial, we review [any error] for a substantial risk of a miscarriage of justice."

Commonwealth v. Childs, 94 Mass. App. Ct. 67, 76 (2018), quoting Commonwealth v. Proia, 92 Mass. App. Ct. 824, 835 (2018).

The prosecutor argued that the defendant had to have been in the home when the family members left in the morning because the defendant "could not have gotten back in without having a key." Given the evidence that the defendant did not possess a house key, the testimony of family members that the household practice was to lock the door when no one was home, their testimony that the defendant remained in the home alone when they left, and the fact that the defendant was alone in the home when they returned, this inference was reasonable.

Judgment affirmed.

By the Court (Desmond,
Sacks & Ditkoff, JJ.²),



Clerk

Entered: January 21, 2020

² The panelists are listed in order of seniority.