

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

19-P-246

COMMONWEALTH

vs.

ANTHONY A. MARTIN.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

A District Court jury convicted the defendant of operating a motor vehicle while under the influence of liquor. Prior to trial, the defendant unsuccessfully argued that the police had no legal basis to order him from his car when police stopped him, and that, as a result, certain evidence obtained after the exit order should have been suppressed. On appeal, the defendant argues that the motion judge erred in denying his motion to suppress. We affirm.

The motion judge made the following succinct findings:

"I find that the defendant's vehicle, traveling on Route 24 at 9:50 pm passed Trooper Healy's cruiser on the right hand side at a speed of 90 mph. The defendant's vehicle then 'abruptly' changed lanes and traveled over three (3) lanes of traffic. Trooper Heal[y] then illuminated his blue lights and the defendant continued traveling at a rate of speed of 90 mph for one and one-half to two miles."

Because those findings are supported by the evidence adduced at the motion hearing, we accept them. See Commonwealth v. Mubdi, 456 Mass. 385, 388 (2010), quoting Commonwealth v. Damian D., 434 Mass. 725, 726 (2001) ("In reviewing the denial of a motion to suppress, we accept the judge's findings of fact absent clear error"). However, we are to "make an independent determination of the correctness of the judge's application of constitutional principles to the facts as found." Commonwealth v. Mercado, 422 Mass. 367, 369 (1996).

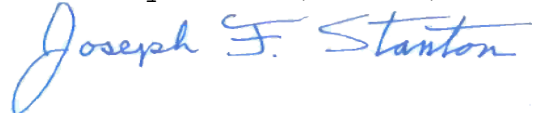
The reckless, unsafe manner in which the defendant was seen operating his car, and his initial failure to stop, provided the trooper an ample basis of reasonable apprehension of criminal activity. See Commonwealth v. Cruz, 459 Mass. 459, 467 (2011) (exit order lawful where police "had reasonable suspicion to believe that the defendant was engaged in criminal activity"). In addition, there was reason to believe "that the safety of the police or that of other persons was in danger."¹ Id. at 466, quoting Commonwealth v. Gonsalves, 429 Mass. 658, 661 (1999). Thus, the trooper had two independent bases to order the

¹ In fact, the trooper here specifically testified as to why the defendant's actions raised reasonable safety concerns. The motion judge implicitly credited that testimony.

defendant from his car. There was no error.

Judgment affirmed.

By the Court (Wolohojian,
Milkey & Shin, JJ.²),



Clerk

Entered: February 27, 2020.

² The panelists are listed in order of seniority.