

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

21-P-376

COMMONWEALTH

vs.

AMANDA L. FAY.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

Following a jury-waived trial in the District Court, the defendant was convicted of public assistance fraud, G. L. c. 18, § 5B, and "larceny over \$250 by single scheme," G. L. c. 266, § 30 (1).¹ On appeal the defendant argues that the convictions were based on inadmissible hearsay, and that the evidence was insufficient to prove the elements of each offense beyond a reasonable doubt. Because we agree that the evidence was insufficient, we reverse the judgments of conviction and order the entry of judgments of acquittal.

¹ Although it does not affect the disposition of this appeal, and neither party raised the issue, it appears that the defendant was charged with and convicted of a crime that did not exist. By the time the criminal complaint against the defendant issued, G. L. c. 266, § 30 (1), had been amended to increase from \$250 to \$1,200 the value necessary to convict for felony larceny. See St. 2018, c. 69, § 136.

The Commonwealth's theory at trial was that the defendant falsely concealed that she was living with the father of her youngest child in order to fraudulently obtain benefits from the Massachusetts Department of Early Education and Care (EEC). In support of that theory, the Commonwealth called an investigator with the state auditor's office as its only witness. The investigator testified that the EEC calculated that the defendant received \$8,812.02 in EEC benefits from April 10, 2018, to October 1, 2018. On appeal, the defendant argues that this testimony was inadmissible hearsay and was the only evidence offered on an essential element of the crime of public assistance fraud. The Commonwealth concedes that the investigator's testimony regarding the EEC benefits received by the defendant was hearsay and should have been excluded, but argues that the testimony, to which the defendant did not object, did not create a substantial risk of a miscarriage of justice.

We need not address this issue, however, because the defendant further argues, correctly, that even with the inadmissible hearsay evidence, the evidence at trial was insufficient to prove her guilt beyond a reasonable doubt. See Commonwealth v. Bacigalupo, 455 Mass. 485, 489 (2009).

The complaint alleged that the defendant committed the crime of public assistance fraud by failing to disclose a

material fact affecting her eligibility for public assistance benefits for the purpose of procuring a payment under a public assistance program. See G. L. c. 18, § 5B. Thus, in the circumstances here, the Commonwealth was obligated to prove that (1) the defendant concealed that she was living with another adult, and (2) her concealment of that fact made a difference in her eligibility for EEC benefits.

When reviewing the sufficiency of the evidence, "we ask whether, viewing the evidence in a light most favorable to the Commonwealth, 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" Commonwealth v. Cohen (No. 1), 456 Mass. 94, 120 (2010), quoting Commonwealth v. Latimore, 378 Mass. 671, 677 (1979). After careful review of the record, we conclude that the evidence was insufficient to prove beyond a reasonable doubt that the defendant's statement regarding the members of her household, even if false, was material to her eligibility for public assistance. While the investigator testified generally that "if the composition of the household changes, . . . the benefit may change," there was no evidence that it changed in the defendant's case. That is, there was no evidence regarding the defendant's eligibility or ineligibility for EEC benefits. The investigator did not testify that the defendant would have been ineligible if she reported that she was living with the father

of her child, and the documentary evidence did not establish that fact. Simply put, there was no evidence from which the fact finder could conclude that the defendant's false statement was material to her receipt of benefits.

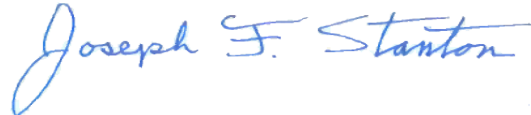
For the same reason, we are not persuaded that the evidence was sufficient to prove larceny by false pretenses.² "In a prosecution for larceny by false pretenses, the Commonwealth must prove that (1) a false statement of fact was made; (2) the defendant knew or believed the statement was false when [s]he made it; (3) the defendant intended the person to whom [s]he made the false statement to rely on it; and (4) the person to whom the false statement was made did rely on it and, consequently, parted with property" (quotations and citation omitted). Commonwealth v. Alvarez, 90 Mass. App. Ct. 158, 159-160 (2016). See G. L. c. 266, § 30. The false statement must be material to the victim's decision to part with the property. See Commonwealth v. Levin, 11 Mass. App. Ct. 482, 495 (1981). For the reasons set forth above, there was insufficient evidence

² The Commonwealth charged the defendant with larceny "by single scheme," presumably to aggregate the benefits she received and treat her as a felon rather than a petty thief. See Commonwealth v. Murray, 401 Mass. 771, 774 (1988); Commonwealth v. England, 350 Mass. 83, 87 (1966). The Commonwealth's operative theory of the case, however, was that the defendant obtained benefits to which she was not entitled by a false pretense.

that the defendant's statements, even if false, were material to her receipt of benefits.

Judgments reversed.
Findings set aside.
Judgments for the defendant.

By the Court (Massing,
Kinder & Shin, JJ.³),



Clerk

Entered: April 11, 2022.

³ The panelists are listed in order of seniority.