

Circuit Court for Baltimore County  
Case No. 03-K-15-6454

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1658

September Term, 2016

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SAMANTHA CHENOWETH

v.

STATE OF MARYLAND

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Kehoe,  
Leahy,  
Alpert, Paul E.,  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Kehoe, J.

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Filed: August 4, 2017

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Samantha Chenoweth, appellant, was convicted at a bench trial by the Circuit Court for Baltimore County of neglect of a minor and was thereafter sentenced to eighteen months imprisonment.<sup>1</sup> Appellant presents one issue on appeal, which we have slightly reworded: Was the evidence sufficient to support a conviction for neglect of a minor? Finding no error or reversible abuse of discretion, we affirm the court’s judgment.

### **Background**

B., the victim in this case, is appellant’s son, who was three and a half years old at the time of the alleged offense. On August 31, 2015, at 5:24 p.m., Officer Green<sup>2</sup> of the Baltimore County Police Department was dispatched to the parking lot of a McDonald’s restaurant located at the intersection of Loch Raven Boulevard and Taylor Avenue to respond to an anonymous call reporting three individuals using drugs in a red vehicle with historic tags. Officer Green, the State’s sole witness at trial, testified that the vehicle was parked adjacent to the McDonald’s drive-through on the side of the road, and further, that “[t]here was a young child or young boy outside of the vehicle ... on a grassy median between the two parking lots.” Then, the following colloquy occurred regarding the child’s location when Officer Green arrived at the scene:

[PROSECUTOR:] Okay. Does he have any fencing around him?

OFFICER GREEN: No, ma’am.

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<sup>1</sup> On January 25, 2017, Chenoweth’s sentence was modified to two years’ probation.

<sup>2</sup> Officer Green did not provide his first name throughout the proceedings.

[PROSECUTOR:] Okay. Was there any physical barrier to keep him from running in the parking lot?

OFFICER GREEN: No.

[PROSECUTOR:] And this is a parking lot that had vehicles coming in and out of it?

OFFICER GREEN: Yes, ma'am.

[PROSECUTOR:] Okay. Are you familiar with that area?

OFFICER GREEN: Yes.

[PROSECUTOR:] Does that McDonald's get a lot of vehicle traffic?

OFFICER GREEN: It's very busy. It's right next to the drive-through, so it's a very busy location.

THE COURT: And how close is that median to the lane that cars are driving in when they are going through the drive-in?

OFFICER GREEN: It's, the drive-in lane is literally right next to the McDonald's. There's another lane where if someone is coming through just to kind of pass through.

[PROSECUTOR:] To get through the parking lot?

OFFICER GREEN: Yes. And it's literally right there.

[PROSECUTOR:] And then the median is right there?

OFFICER GREEN: The median is to the left of where the cars were. So it would be McDonald's, it would be the drive-through lane, then it would be the part where the vehicles can come through.

Officer Green reported that as he approached the vehicle, the three individuals inside began moving frantically, seemed panicked, and appeared to be attempting to hide unknown items. He identified appellant as the person in the driver's seat, Andrew Wise

as the front passenger, and Trevin Schoppert as the individual in the back seat. Officer Green testified that Schoppert did not listen to his instructions and looked as though he was trying to conceal something, so he removed appellant and the passengers from the vehicle and searched the back seat, which revealed two capped hypodermic needles.

After Officer Green asked whether there were any more needles or paraphernalia inside the vehicle, Wise stated that there was a needle inside the glove box. A subsequent search revealed one capped hypodermic needle. Officer Green then searched a black purse resting in the center console and located an un-capped hypodermic needle filled with a brown liquid substance that he believed to be heroin. Appellant, Wise, and Schoppert were arrested and transported to the precinct, and B., after being transported to the precinct in another vehicle, was released to the care of an aunt at appellant's request.

As noted, the trial court found appellant guilty of one count of neglect of a minor, finding "this child was literally a baby put in traffic. I can't think of a more substantial risk of harm to a child of that age than to put him in the situation that he was in."

### **Discussion**

Appellant's sole contention on appeal is that the State's evidence was insufficient to prove neglect of a child beyond a reasonable doubt, and therefore, this Court must reverse. Appellant asserts that the State failed to meet its burden of proving that she, through her actions, intentionally created a substantial risk of harm to her child's physical health. In this regard, she contends that the State failed to introduce evidence regarding the size of the median, what B.C. was doing or how long he had been outside the car at

the time Officer Green arrived, whether B. was a child known to be obedient or one who routinely disregarded limits, or whether she was under the influence of any substances or was otherwise impaired at the time the police arrived. Appellant contends that in the absence of such evidence, “the trial court’s ruling that [she] neglected her child amounted at best to speculation.”

The State, in response, asserts that whether appellant committed neglect does not turn on her child’s behavior, but rather on her conduct. In this regard, the State claims that appellant “acted in an objectively unreasonable manner and created a substantial risk of harm to the child” when she intentionally left B. on the median in the middle of a busy parking lot. The State contends that the evidence was sufficient to allow a rational trier to conclude that she was guilty of neglect of a minor.

This Court, upon review of the sufficiency of the evidence to support a criminal conviction, must inquire 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.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original). “We do not measure the weight of the evidence; rather, our concern is only whether the verdict was supported by sufficient evidence, direct or circumstantial, which could fairly convince a trier of fact of the defendant’s guilt of the offenses charged beyond a reasonable doubt.” *Taylor v. State*, 346 Md. 452, 457 (1997).

A.

Maryland’s criminal child neglect statute, Section 3-602.1 of the Criminal Law Article (“CR”), Maryland Code (2012 Repl. Vol.), states, “A parent, family member, household member, or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not neglect the minor.” “Neglect” means the intentional failure to provide necessary assistance and resources for the physical needs or mental health of a minor that creates a substantial risk of harm to the minor’s physical health or a substantial risk of mental injury to the minor.” *See* CR § 3-602.1(a)(1)(5)(i). With regard to assessing intent, the Court of Appeals has explained that “[t]he question of one’s state of mind, or his intention, at a particular time is one of fact, and is subjective in nature. Therefore it must be determined by a consideration of his acts, conduct and words.” *State v. Martin*, 329 Md. 351, 363, *cert. denied* (1993) (citations and internal quotation marks omitted).

Appellant relies upon *Hall v. State*, 448 Md. 318 (2016) to support her assertion that this Court must reverse. In *Hall*, the Court of Appeals held that the evidence was insufficient to sustain a conviction for neglect of a minor where a mother left her three year old son in the care of his fourteen year old sister overnight, and the younger child slipped out of the house and was nearly struck by a passing truck while in the middle of a six lane roadway. *Id.* at 325. The Court of Appeals explained that:

The standard to be utilized, then, is whether the parent intentionally failed to provide necessary assistance and resources for the physical needs of the child by acting in a manner that created a substantial risk of harm to the

child, measured by that which a reasonable person would have done in the circumstances.

*Id.* at 331.

The Court of Appeals further explained that “[i]t is not conjecture about potential harm, however, that governs, but rather whether the conduct at issue, evaluated objectively, created a substantial risk of harm.” *Id.* at 328. The Court acknowledged that the State had established that the younger child was “admittedly, difficult to handle,” with a history of leaving the house unattended, but ultimately concluded that leaving the child in the care of his fourteen year old sister was objectively reasonable considering that “statutorily a thirteen year-old is deemed an appropriate caretaker for a child under eight years of age.” *Id.* at 336. The Court, citing *State v. McLeod*, 165 Ohio.App.3d 434 (2006), explained that “[t]he failure to realize an ideal level of supervisory attention of a child does not equate to acting with heedless indifference to the consequences [.]” *Id.* at 335.

B.

Viewing the evidence in the light most favorable to the State, and with *Hall* in mind, we conclude that the evidence was sufficient to support appellant’s conviction for neglect of a minor. The police officer who responded to the scene testified that appellant’s child was unattended on a median between the McDonald’s drive-through lane and a pass-through lane to access the adjoining restaurant parking lot, that the area is typically “very busy” with vehicular traffic, and that there was no physical barrier to keep the child from running into the drive-through lane or parking lot. The State also

established that the child was three and a half years old at the time of the incident. In addition, the fact-finder could reasonably conclude that appellant's attentions were focused on concealing illegal drug activity rather than supervising her child at the time Officer Green arrived.

Appellant's reliance on *Hall* is misplaced because unlike the custodial parent in that case, she did not leave her child under the supervision of any caretaker, let alone one deemed responsible under statute. In the present case, the State presented evidence that appellant intentionally placed her toddler on a median between two through lanes of traffic in a busy parking lot and diverted her attention to illicit activities. Based upon this evidence, the trial court could have rationally concluded that her actions did not meet the standard of what a reasonable person would have done in the circumstances, and, in fact, created a substantial risk of harm to her child's physical health. This is enough to sustain the conviction.

**THE JUDGMENT OF THE CIRCUIT COURT FOR  
BALTIMORE COUNTY IS AFFIRMED. COSTS TO BE PAID  
BY APPELLANT.**