UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0191

September Term, 2014

TABITHA DOBRZYNSKI

v.

STATE OF MARYLAND

Wright,
Hotten,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: June 3, 2015

*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.

At about 2:30 p.m. on Sunday, August 5, 2012, while operating a vehicle on the United States Route 13 Bypass in Salisbury, Maryland, appellant, Tabitha Dobrzynski, lost control, traveled off the roadway, and overturned. As a result, the sole passenger not wearing a seatbelt, her 11 year-old daughter Sophia, was thrown from the vehicle and killed.

Ms. Dobrzynski was charged in the Circuit Court for Wicomico County with a number of offenses, including criminally negligent manslaughter by vehicle (Md. Code Ann., Criminal Law § 2-210),[1] and homicide by motor vehicle while impaired by drugs (§ 2-505). After a bench trial on December 16, 2013, (Beckstead, J.), Ms. Dobrzynski was acquitted of the felony, homicide while impaired by drugs, but convicted of the misdemeanor, criminally negligent manslaughter. She was also convicted of driving while impaired by a drug, four counts of transporting a minor while impaired by a drug, negligent driving, and operating a motor vehicle with an unrestrained person under the age of sixteen years old. Ms. Dobrzynski timely appealed to this Court, raising the following question, which we quote:

> Is the evidence sufficient to show that Ms. Dobrzynski is guilty of criminally negligent homicide?

For the reasons set forth below, we answer this question in the affirmative.

FACTUAL BACKGROUND

This case arises out of a tragic automobile accident which took place while appellant was attempting to drive her four minor children – Charles, Sophia, Emma, and Bella – from

[1] All statutory references herein will be to the Maryland Criminal Law Article.

their grandparents' camp vacation home at Big Bear Lake, West Virginia, to Ocean City, Maryland. The oldest child on the trip, Charles Dobrzynski, IV, was thirteen at the time of the incident, and fifteen at trial. He testified that their family resided in New Kensington, Pennsylvania, which is a two-hour drive from the home at Big Bear Lake. In August 2012, his grandparents brought Charles and his eleven year-old sister, Sophia, to their camp home for a two-day vacation visit, and their mother, Ms. Dobrzynski, arrived the following night with younger sisters, Emma and Isabella. The next day – Saturday, August 4th – Mrs. Dobrzynski awoke at 10:30 a.m. That day was filled with family activities around the lake area and local water park for the four children and their mother.

The family had initially planned on returning home to New Kensington the following morning. However, Ms. Dobrzynski decided that, instead, they should leave Saturday night around midnight, and instead of heading home, they should embark on a 350 mile road trip to Ocean City, Maryland. Ms. Dobrzynski was driving a "soft-topped" Jeep Wrangler. Charles, the oldest child, sat in the front passenger seat. His younger sisters Emma and Bella were on the outside back seats, and Sophia sat in the middle, which was not equipped with a seatbelt. As a result, everyone was wearing a seatbelt except 11 year-old Sophia.

Charles testified that, a couple hours after departing, Ms. Dobrzynski stopped at a gas station to ask directions because they were fairly lost and needed to back-track. While they drove, Charles spoke with his mother in order to help keep her alert and to help correct driving errors that she made. The record shows that Ms. Dobrzynski was somewhat

confused while driving. She got lost on more than one occasion, heading back toward the grandparents' camp home instead of toward their beach destination, and heading into Pennsylvania on at least two occasions. At about 7:30 a.m., the family stopped at a McDonald's for breakfast. This restaurant was located in Breezewood, Pennsylvania, which was a considerable distance into the northern state.

About fifteen minutes prior to the accident itself, the family stopped at a CVS in Easton, Maryland, to get a drink. After they left, Ms. Dobrzynski seemed to not be paying attention while driving, and Charles told her she was going off the side of the road. In an attempt to correct their path, Ms. Dobrzynski over-corrected, then lost control of her vehicle. As it went off the road and overturned, Sophia was ejected. Maryland State Trooper J. Zimmerman, an expert in accident reconstruction, opined that at the time of the crash, the vehicle was traveling between 69 and 78 miles-per-hour, while the area speed limit was 65.

Maryland State Trooper Mark Miller of the Maryland State Police testified that at 2:38 p.m. on August 5, 2012, he responded to a single-car collision. He arrived after the EMS responders, and found Ms. Dobrzynski sitting on a curb being consoled by her son. She was crying, speaking in a slow, slurred voice, and "seemed very confused about what had happened and what was going on." While Trooper Miller checked her pertinent information, Ms. Dobrzynski told him that she was coming from West Virginia and returning home to Pennsylvania, which she confirmed when asked. Ms. Dobrzynski also

told the trooper that "while she was driving down the road, she became sleepy and fell asleep, and that was the last thing that she remembered."

Trooper Miller later interviewed Ms. Dobrzynski at the hospital, after she had learned of her daughter's passing away. She again told him that she was en route from West Virginia to their home in Pennsylvania; then, when asked why they were in Salisbury, Maryland, Ms. Dobrzynski paused and then stated that the family had decided, at the last minute, to go to Ocean City, Maryland. According to Trooper Miller, the crash scene was 350 miles from the West Virginia lake where the family began their travels.

Although Ms. Dobrzynski displayed "drunk-like behavior" and performed poorly on a series of field sobriety tests, she had no alcohol in her system, as confirmed by a blood test performed by hospital staff. Trooper Miller testified that appellant told him that she had taken prescription medications during the road trip, including two Vicodin at 5:30 that morning, and two Soma, one Prozac and one Oxycodone at 10:00 a.m. As part of the variety of personal items recovered from the accident scene, the police recovered the following prescription medications: (1) one bottle containing a single pill of Flucanazole; (2) one bottle containing 24 Amoxicillin pills; (3) one bottle containing 10 Oxycodone pills (a schedule 2 CDS); and (4) a small change purse containing 10 tablets of Carisoprodol (a.k.a. "Soma"), a schedule 4 CDS.

Dr. Donald Alves, Medical Director of the Maryland State Police, testified as an expert regarding the composition and effects of prescription drugs. According to Dr. Alves,

the drug Soma – also known as Carisoprodol – is a muscle relaxant. It is a significant depressant which causes extensive sedation, making a person "very sleepy, groggy when they are first put on it. As they get used to that effect, it interferes with balance, concentration, fine motor skills."

Dr. Alves's review of Ms. Dobrzynski's blood test results showed a level of Carisoprodol consistent with someone having taken more than one Soma pill six-to-eight hours prior to her blood test, which he compared to having taken six shots of alcohol. The Vicodin (Hydrocodone) is a narcotic pain medication that can cause "fine motor impairment and some slight cognitive delay." According to Dr. Alves, combining these two drugs would have the effect of making it difficult for a person to drive a vehicle in traffic. He testified:

> If you were avoiding oncoming vehicles, or if you were doing any sort of task in terms of maintaining speed, steering, watching traffic ahead and behind, things of that nature where you have to do several things all at once. It would be difficult to maintain with proper effectiveness.

In addition to the effects of the medication, if the person taking the drugs is already excessively tired, driving would be even more difficult. Dr. Alves testified that having not slept for 24 hours would be "the functional equivalent of having a .08 blood alcohol level." At the time of the accident, Ms. Dobrzynski had been awake for 28 hours.

After the trial judge denied her motion for judgment of acquittal, Ms. Dobrzynski offered no evidence in her own defense. The court acquitted her of § 2-505, but found her

guilty of vehicular manslaughter, in violation of § 2-210, as well as several other traffic violations. In this ruling, the court orally reviewed the evidence before the court, including the following:

> [A]ccording to the evidence before me, Ms. Dobrzynski has her son and her three children in a Jeep. Only three of the occupants can be belted, and so, unfortunately, Sophia was not belted, which is a pretty egregious standard of breach in and of itself because that's why it's the law is when you have a vehicular incident, whether it's caused by you or someone else, and someone is not belted, the greatest likelihood is that they could be seriously injured or killed. I mean, she's the parent here, and she leaves knowing that.

After leaving Hazleton, West Virginia at midnight, "there must have been a serious problem" because, by 7:34 a.m., the family had been driving for a "significant" time but had only reached a McDonald's located in Breezewood, Pennsylvania, which was somewhat off the path to the beach.

> So . . . even if they stop for breakfast and things of that nature, it would normally be roughly a two-hour drive, it took a very long time, and the testimony was they got lost. . . . [J]ust their being in Pennsylvania at all is really kind of surprising. But her son stated that they went through Pennsylvania twice and then West Virginia one more time, and they turned around a couple of times in route. So at the very best, we have a confused driver, someone who had been up since 10:30 a.m. on the 4th, and then has taken by her own admission two Vicodin at 5:30 a.m.
>
> Now . . . the consequences of mixing that with Soma was testified to by the State's expert. From 7:34 a.m. until 2:30 a.m. (sic) broad daylight, what was that, seven and a half hours, from Breezewood to Salisbury under normal circumstance, it would take five. Even the testimony of her son was that there was confused driving and being lost in that timeframe as well.
>
> At 10:30 a.m., four hours before the accident, by her own admission, Ms. Dobrzynski administers two Soma, two Oxycodone and Prozac. Now, I

have the prescription for the Oxycodone, and that's twice the prescribed amount.

* * *

So we have her transporting four minors, one of who is not belted. She has been on the road for at 2:30, 14 hours, lost, asking directions. She has not slept since 10:30 a.m. the day before which is 28 hours without sleep, and her son is reminding her about where they're going because she can't remember.

Now, she knows that she can't remember. She knows that she has been lost. She knows – I mean, because he is obviously saying, no, no, we're not going back to camp, we're going to Ocean City. So if there were a question of whether she was aware that this may have the effect that it ended up having, it seems to me that long before this accident occurred, she should have known something is terribly wrong, and I need to stop and I need to check into a hotel here somewhere in route and get some sleep, not have any medication on board. And even assuming she was going to go along with the lack of a seatbelt, I think that she was well on notice that she was confused, disoriented, and that it was well in excess of what would be ordinary results or side effects that she was having.

* * *

I should not fail to note, and I meant to note, that each of these prescription bottle says right on the bottle for the Oxycodone . . . May cause drowsiness and dizziness. Alcohol may intensify this effect. Use care when operating a car or dangerous machines. Do not take other medicines that have acetaminophen prescription, whether prescription or non-prescription without checking with your doctor. Do not drink alcoholic beverages while taking this medicine. Contains acetaminophen. Do not take more than recommended. Too much may cause liver damage. Discuss any question with your doctor.

* * *

So she is mixing the Soma which she takes for the stated reasons with the Oxycodone, which she takes for the stated reasons, and it seems obvious to me that she was warned. She has doubled the dose. I'm inferring when it says, at least for the Soma one tablet. For the Oxycodone, it says take one

tablet by mouth 4 times a day, not two tablets by mouth every – at your pleasure.

She was clearly impaired when she was dealing with the police officer. And the defense would have really an outstanding point because no one is in any way minimizing the fact that she had just learned that her daughter had died, and it was a terribly tragic circumstance for her. Nor is anyone minimizing that a normal person may have adverse reactions under those circumstances, emotional swings and might not be the most coherent historian, but all of the conduct that preceded the accident leads me to believe that her – the slowness of her speech, her slowness of thought, her disorientation about where she was headed, that all was happening by her son's own account before the accident occurred.

So we do not know how long she has had these medications. I'm inferring that she has had the Soma for some time because of the way she packaged it and carried it with her and the way she dealt with it. I can't make that inference as to the Oxycodone. I don't believe I have a shred of evidence that she had it any time before it was prescribed on August 3rd.

Under those circumstances, I have a scintilla of doubt as to 2-505 . . .so I'm going to enter a finding of not guilty as to Count 1.

But as to Count 3, I have absolutely no doubt that she is guilty of 2-210(b), criminally negligent – I'm not sure what they call that count.

[STATE]: Criminally negligent manslaughter – vehicle.

THE COURT: That's it.

* * *

[I]t is clear to me that before this accident occurred, she was well on notice that she had no business being behind the wheel of a car, and, really, her son was doing his darndest to keep her alert and oriented and on it. He's 13 years old, and she apparently, I'm inferring, was determined to get to the destination when she should have stopped. Unfortunately for her, this consequence was that her reaction time was inappropriate. She dazed off and went off, and then when she tried to correct, she hyper-corrected, and the vehicle turned over and

> her daughter wasn't belted and was ejected from the vehicle and died as a direct result thereof. So I'm convinced beyond a reasonable doubt that she is guilty under Count 3.

DISCUSSION

Appellant argues that the evidence before the trial court was insufficient to justify her conviction for criminally negligent homicide by vehicle because there was insufficient evidence of a "failure to perceive a risk to life in gross deviation from the standard of care a reasonable person would exercise." Ms. Dobrzynski argues that the prescription medication she ingested "manifested itself in ways that neither [she] nor a reasonable person in her position, would perceive, and thus, her failure to perceive the pharmacological influences cannot constitute criminal negligence." According to the State, the trial court did much more than find that Ms. Dobrzynski ingested prescription medication prior to driving while being awake for too long, but found that a "reasonable person would not have consumed this quantity and variety of sedative narcotics and then embarked on a fourteen-hour road trip across Maryland with a destination that was merely a few hours away, while speeding at the time of [the] crash, and failing to buckle an eleven-year-old who sat in the back of a soft-top Jeep." The State points out that Ms. Dobrzynski does not dispute any of the court's factual findings as clearly erroneous, but "simply does not agree with the trial court's verdict."

The standard of review for sufficiency of evidence is well settled. "We must determine '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.'" *Handy v. State,* 175 Md. App. 538, 561-62 (quoting *Jackson v. Virginia,* 443 U.S. 307, 319 (1979) (emphasis in original), *cert. denied,* 402 Md. 353 (2007)); *Skidmore v. State,* 166 Md. App. 82, 85 (2005). In considering the sufficiency of the evidence, we do not undertake "a review of the record that would amount to a retrial of the case." *Winder v. State,* 362 Md. 274, 325 (2001). The question is not "'whether the evidence *should have* or *probably would have* persuaded the majority of fact finders but only whether it *possibly would have* persuaded *any* rational fact finder.'" *Allen v. State,* 158 Md. App. 194, 249 (2004) (quoting *Fraidin v. State,* 85 Md. App. 231, 241 (1991) (emphasis in original), *aff'd,* 387 Md. 389 (2005)). Because Ms. Dobrzynski was tried without a jury, we will review the case on both the law and the evidence presented below. *See* Md. Rule 131(c) (2014).

In 2011, Maryland's General Assembly created the criminal offense under which appellant was convicted. Titled "Manslaughter by vehicle or vessel – Criminal negligence," this statute provides as follows:

> (a) *"Vehicle" defined.* – In this section, "vehicle" includes a motor vehicle, streetcar, locomotive, engine, and train.
>
> (b) *Prohibited.* – A person may not cause the death of another as the result of the person's driving, operating, or controlling a vehicle or vessel in a criminally negligent manner.
>
> (c) *Criminal negligence.* – For purposes of this section, a person acts in a criminally negligent manner with respect to a result or a circumstance when:

> (1) the person should be aware, but fails to perceive, that the person's conduct creates a substantial and unjustifiable risk that such a result will occur; and
>
> (2) the failure to perceive constitutes a gross deviation from the standard of care that would be exercised by a reasonable person.
>
> (d) *Exception.* – It is not a violation of this section for a person to cause the death of another as the result of the person's driving, operating, or controlling a vehicle or vessel in a negligent manner.
>
> (e) *Violation.* – A violation of this section is criminally negligent manslaughter by vehicle or vessel.
>
> (f) *Penalty.* – A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding $5,000 or both.

Md. Code Ann., Crim. Law § 2-210 (2011, 2012 Repl. Vol.).

Prior to the creation of this law, there was no statute governing vehicular death based solely upon criminal negligence. However, the felony offense of vehicular manslaughter based upon gross negligence had long been in effect, which prohibits causing another person's death "as a result of driving, operating, or controlling a vehicle in a grossly negligent manner." § 2-209(b). By creating § 2-210(b), a new offense regarding death based on "criminal negligence," the Legislature established a distinct offense with a lesser degree of culpability, in which the focus is more upon the behavior of the driver than the driving itself. In order to convict, the State must show that the defendant should have been aware, but failed to perceive that his or her conduct created a "substantial and unjustifiable risk" to human life and that this failure to perceive such a risk was a "gross deviation" from

the standard of care exercised by an ordinary person. *See,* 96 Op. Att'y Gen. 128 (Dec. 21, 2011).

In *Beattie v. State,* 216 Md. App. 667 (2014), this Court affirmed the sufficiency of evidence in a conviction based upon the same statute, ruling as follows:

> Here, the circuit court made extensive factual findings in support of its verdict, which appellant does not contest. Specifically, the court found that appellant drove his 70-foot tractor trailer, in the dark, across three lanes of traffic on a highway where the speed limit was 65 miles per hour. Due to his location near the curve of the road, he could see only a distance of a quarter mile.
>
> This evidence supports the court's finding that appellant's conduct created a substantial and unjustifiable risk of death, and his failure to perceive this risk was a gross deviation from the standard of care that would be exercised by a reasonable person. The evidence was sufficient evidence to support appellant's conviction for criminally negligent vehicular manslaughter.

Id. at 684-85.

Similarly, in the case *sub judice,* the trial court made extensive findings of fact in support of its verdict, and Ms. Dobrzynski does not contest these facts. Rather, she contends that "the most pernicious result of the prescription medication [she] ingested was that it manifested itself in ways that neither [she] nor a reasonable person in her position would perceive," so her "failure to perceive the pharmacological influences cannot constitute criminal negligence."

However, the court's ruling shows that Ms. Dobrzynski did more than fail to perceive the effect a prescription pill may have on her. After spending a full day with her four

children, engaged in family activities at an outdoor vacation camp, instead of putting everyone to bed for a good night's sleep, she loaded everyone into a small SUV, knowing that one of her daughters was not wearing a seat belt, and then embarked upon a several hundred mile long road trip from West Virginia to Ocean City, Maryland. As the mother, she was fully aware that her child in the middle back seat was riding without a seatbelt, yet she exceeded the speed limit as she drove in Salisbury.

From the beginning of the trip until the time it came to its tragic ending over fourteen hours later, Ms. Dobrzynski was a very confused driver, making several wrong turns and spending many hours stopping to ask directions and having to back-track in order to find the correct route. At 7:30 a.m., when an attentive driver would have already reached the Atlantic coast, she was having breakfast in an off-route location, Breezewood, Pennsylvania. A reasonable person would have decided to head home to New Kensington, Pennsylvania for some rest, postponing the unplanned beach trip for a better day, rather than continuing to attempt to head eastbound. The evidence showed that driving after not having had sleep in over 24 hours, was equivalent to having a blood alcohol content of .08.

Given that Ms. Dobrzynski's repeated need to ask directions and turn around, combined with the constant attempts by her son to keep her alert and attentive, she had to be aware of her own state of confusion and fatigue. Then, already in a condition in which no reasonable person would undertake a long distance drive with four children, Ms. Dobrzynski chose to consume several highly *sedative* prescription medications. Her failure

to perceive the substantial and unjustifiable risk created by her conduct was a gross deviation from the standard of care an ordinary person would have exercised. § 2-210(b); *Beattie,* 216 Md. App. at 683. We affirm the judgment of the trial court.

JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED;

COSTS TO BE PAID BY APPELLANT.