Circuit Court for Dorchester County
Case No. C-09-CR-23-000122

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2468

September Term, 2024

MARCUS SEMIONE PEAK

v.

STATE OF MARYLAND

Leahy,
Tang,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: July 9, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Following a bench trial in the Circuit Court for Dorchester County, the appellant, Marcus S. Peak, was convicted of various offenses arising from the abuse of his daughter, N. On appeal, the appellant challenges the sufficiency of the evidence to sustain the convictions. For the reasons discussed below, we affirm.

BACKGROUND

The appellant and N.'s mother share two children together. N. is the younger of the two children. The following facts were presented at trial and are recounted here in the light most favorable to the State, the prevailing party. *See Davis v. State*, 207 Md. App. 298, 303 (2012).

The Incident

On April 21, 2023, N. was approximately five weeks old. She slept in a bassinet located at the foot of her parents' bed. N.'s mother took the older child to daycare while the appellant remained home with N., which was their usual routine. After the mother returned home, the family ate, slept, and awoke later in the afternoon. According to the mother, N. had been acting normally throughout the day.

At approximately 4:15 or 4:20 p.m., the mother left to pick up the older child from daycare, leaving the appellant alone with N. She was gone for only ten to fifteen minutes. When she returned, she sat outside on the front steps talking on the phone. The mother heard a slight cry and assumed that N. had awakened and been fed because the crying quickly stopped. A few minutes later, the mother entered the home and observed the

appellant walking around while patting N. on the back. The appellant told her that he had fed N., laid her down, and that she had "choked on her spit-up."

N. was draped over the appellant's shoulder and appeared tired. When she took N. and patted her back, the mother noticed that N.'s eyes were rolling back. They immediately called 911.

Emergency medical personnel arrived approximately five minutes later. The ambulance transported N. and the mother to the hospital in Cambridge. City of Cambridge Police Corporal Ronald William Allen, Jr., responded to the home and spoke to the appellant to gather information to provide to the hospital staff. The appellant told Corporal Allen that he had fed N., placed her in her bassinet, and gone into another room. When he returned, he saw white fluid coming from N.'s nose and mouth, and she was gasping for air. The appellant did not report that N. had suffered any trauma.

Dr. Eric Klotz treated N. at the hospital. N. was in full cardiac arrest. Her heart had stopped, and she was not breathing. She was taken into the resuscitation bay, and CPR was started. Her mouth and airway were suctioned because they contained vomit. A breathing tube was put in her airway. Dr. Klotz did not observe scalp lacerations, spinal injuries, neck injuries, bruising on N.'s arms, legs, or neck, rib fractures, or abdominal injuries.

Initially, Dr. Klotz was told by paramedics and N.'s mother that the mother left for the store, and when she came back, N. had vomit in her mouth. Based on this information and because the cause of the cardiac arrest was not known, Dr. Klotz took a "shotgun approach of let's treat everything" and "figure it out on the back end." Blood was drawn to

look for causes of cardiac arrest. Since infection is often a cause for infants, Dr. Klotz administered antibiotics to N. Because the Cambridge hospital had no resources beyond serving as a "free-standing" emergency room, it called the University of Maryland hospital and had them launch a helicopter once N.'s heart was restarted.

As treatment progressed, the paramedics drew Dr. Klotz's attention to bruising around the left eye and face. N.'s fontanel was bulging, which is an indicator of increased pressure in and around the brain, possibly from trauma. Accordingly, Dr. Klotz focused on trauma as a cause and ordered a CT scan of N.'s head. The scan revealed both subdural and subarachnoid bleeding. Dr. Klotz testified that, at that point, he suspected trauma as the cause of the cardiac arrest. Because pediatric trauma patients had to be transported by helicopter to Johns Hopkins Hospital, the hospital changed plans and called Johns Hopkins to arrange for N.'s treatment there.

N. remained hospitalized for several weeks. Although she survived, she sustained a traumatic brain injury. At the time of trial, N. was one year old, required a feeding tube, and was developmentally delayed.

Appellant's Differing Accounts of the Incident

As mentioned, the appellant first told Corporal Allen that he had fed N., placed her in her bassinet, and gone into another room. When he returned, he saw white fluid coming from N.'s nose and mouth and noticed she was gasping for air. The appellant did not report that N. had suffered any trauma.

Later that same evening, sometime after 6:00 p.m., Detective Rebecca Clark went to the home and interviewed the appellant. As he told Corporal Allen, the appellant stated that he had fed N., burped her, and placed her in her bassinet, where she fell asleep. He explained that he proceeded to "do things around the house" and later checked on her, at which point he saw white liquid coming from her nose and mouth. According to the appellant, the mother returned home, attempted to burp N., and discovered that she was unresponsive, prompting the 911 call. When Detective Clark specifically asked whether N. had suffered any trauma, the appellant denied it, instead stating that "she probably choked on her own vomit because she throws up a lot."

At around 11 p.m., Kamaria Clemons, a social worker with the Dorchester County Department of Social Services, responded to Johns Hopkins Hospital. She interviewed the appellant, who was at the hospital at that time. The appellant told Ms. Clemons that "he wasn't sure like how we got here and that it must have been because [N.] had choked" on her vomit after he fed her, burped her, and laid her on her back. He stated that he left the room for five to ten minutes and, upon returning, found N. lying on her side with spit-up coming from her nose and mouth. He cleaned the spit-up from her face, noticed that she was not moving, and described her as gasping for air. He stated that he then called for N.'s mother, who instructed him to call 911.

Ms. Clemons spoke with medical personnel. At about 12:30 a.m., Ms. Clemons confronted the parents with concerns about what she had been told. She told the parents that they needed to be honest about what happened to N. During this second interview, the

appellant stated that he wanted to be honest. He explained that he had placed N. on the edge of the bed to change her diaper and then walked away. When he later returned and sat down on the bed, N. rolled off the bed and onto the floor. He acknowledged that he had left her near the edge of the bed. The bed consisted of a mattress and box spring with a large frame, headboard, and footboard, and the bedroom had hardwood flooring. An investigation by police determined that the distance from the mattress to the floor was approximately two feet.

The appellant further told Ms. Clemons that he found N. on the floor, picked her up, and held her over his head to get her to "come to." At that moment, he noticed that her eyes were not moving, and she was very limp, which prompted him to call for the mother. He explained that he had not disclosed the fall earlier because "as her father, he should have protected her, and he was scared, in that, he, as a protector, should have made sure she didn't fall off the bed, so he didn't call."

On April 27, 2023, police filed charges against the appellant related to child abuse. The following day, Detective Clark arrested him and transported him to the police department, where he agreed to provide a recorded statement. Portions of that interview were admitted into evidence.

During the April 28 interview, the appellant stated that N. needed a diaper change and that he placed her on the edge of the bed because he did not expect her to move. He described the mattress as "airy" and explained that when he sat or "flopped" onto the bed, the mattress's movement caused N. to roll, pop up, and fall onto the hardwood floor. He

further stated that N. was unresponsive when he picked her up and that he shook her and spoke to her to get her to respond.

The appellant stated that he was "the last person she's supposed to be getting hurt with. Period. You feel me. Fall or no fall." The appellant explained that to rouse the baby, "I really shook her bro, I did shake her. That's why I feel I messed up, I wasn't supposed to do that. That's where I feel like I really messed up." He demonstrated how he shook N. by lifting his hands over his head, shaking them. He further stated that he "ruined everything trying to shake her" and he "should have just called the cops prior to the fall. This probably wouldn't be going down, but I was just–I was just nervous. I was scared."[1]

The State proceeded to trial on the following six counts: first-degree assault (count 3); first-degree child abuse (count 4); second-degree child abuse (count 5); second-degree assault (count 6); neglect of a minor (count 7); and reckless endangerment (count 8).

The appellant elected to waive a jury and tried the case before the court. The appellant's defense was twofold. First, he argued that the State failed to prove he committed an act of abuse. Specifically, he claimed there was no evidence that he committed an act with the intent to injure, or an act that reflected inhumane treatment or malice. Second, he asserted that N. sustained the injury when she accidentally fell from a bed to the floor. He

[1] A transcript of this interview is not included in the record. The quoted excerpts come from the State's brief, and the appellant has not disputed their accuracy. We have reviewed the recorded interview and found no material discrepancies with the State's quoted passages.

argued that although he did not initially disclose that N. had fallen off the bed, he did report the fall several hours later.

State's Expert Testimony

Dr. Klotz testified at trial, and he was admitted as an expert in emergency medicine. He testified to his treatment of N. and her transfer to Johns Hopkins Hospital. Dr. Klotz testified that he regularly treats children and infants admitted with fall injuries. He explained that such cases include situations where a parent accidentally drops a child, a sibling drops an infant, or an infant falls from a bed or couch. In the "vast majority" of such cases, there are no injuries at all.

Dr. Klotz recognized that when he evaluates a child's injuries, he must keep "an open mind" in determining whether the injuries are accidental or non-accidental. He testified that "oftentimes," the "story" is "inconsistent with the injury" and the injuries observed "don't seem to match up" with "what is being told."

Dr. Klotz testified that in his many years of practice, he had never treated a fall that resulted in injuries as severe as those sustained by N. When asked by the prosecutor what the injuries were consistent with, Dr. Klotz stated, with a reasonable degree of medical certainty, that they were "consistent with a high mechanism of injury"[2] and were "more than [he had] seen with previous, similar stories, if you will, histories." He also noted that

[2] Dr. Klotz testified that a high mechanism of injury could refer to, for example, a high-speed rollover accident or a fall from a height greater than 0.9 meters (2.95 feet).

if he had been informed about the alleged fall at the start of treatment, he would not have administered the antibiotic, although he clarified that giving it was not harmful.

Defense Experts' Testimony

The defense presented testimony from Dr. Joseph Scheller, who was accepted as an expert in pediatric neurology with a subspecialty in pediatric neuroimaging. After reviewing N.'s medical records and imaging studies, Dr. Scheller confirmed that N. had blood clots in between her brain and inside the skull. He also confirmed that N. had retinal hemorrhages, which means that "the lining of her eyeball, the retina, was bleeding and had drops of hemorrhage in there."

Dr. Scheller opined that "even though infants fall often" and even though "the vast majority of [them] do not suffer serious consequences, there are exceptions to that rule, and . . . it [wa]s possible that [N.] suffered very serious neurological consequences from a short fall." He stated that, while the odds of an infant suffering a serious head injury from a two-foot fall were very unlikely, it was possible—perhaps one or two in a thousand. Dr. Scheller testified that the injuries were not inconsistent with the history of a fall from a bed.

The defense also called Dr. Matthew Monson, a biomedical engineer specializing in biomechanics and head-injury mechanisms. The court accepted Dr. Monson as an expert in biomechanics. Based on his review of the case and research, Dr. Monson opined that N.'s alleged fall of about twenty-six inches onto a hardwood floor could have resulted in the injuries observed.

Court's Decision

Ultimately, the court found the appellant guilty of all counts. The court imposed a sentence of twenty-five years' imprisonment for first-degree child abuse resulting in serious physical injury (count 4), with all but fifteen years suspended. The court merged counts 3, 5, 6, and 8 for sentencing purposes. For neglect of a minor (count 7), the court imposed a three-year suspended sentence, to run consecutively to the sentence imposed on count 4.

We will supply additional facts as they become relevant to the discussion.

STANDARD OF REVIEW

Maryland appellate courts apply "a deferential standard when reviewing sufficiency of evidence that asks whether '*any* rational trier of fact could have found the elements of the crime beyond a reasonable doubt.'" *State v. McGagh*, 472 Md. 168, 193 (2021) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In so doing, "[w]e do not measure the weight of the evidence[.]" *Taylor v. State*, 346 Md. 452, 457 (1997). Nor do we ask ourselves if we "believe[] that the evidence at the trial established guilt beyond a reasonable doubt." *Dawson v. State*, 329 Md. 275, 281 (1993) (citations omitted).

Instead, "[i]f the evidence 'either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt[,]' then we will affirm the conviction." *Bible v. State*, 411 Md. 138, 156 (2009) (citation omitted). In accordance therewith, we view "the evidence in a light most favorable to the State, [and] also all

reasonable inferences deducible from the evidence in a light most favorable to the State." *Smith v. State*, 415 Md. 174, 185–86 (2010).

DISCUSSION

The appellant argues that there was insufficient evidence to support convictions for all counts. First, we address the sufficiency of the evidence regarding first- and second-degree child abuse (counts 4 and 5, respectively), then the offenses for first- and second-degree assault and reckless endangerment (counts 3, 6, and 8, respectively), and then the offense of neglect (count 7).

A.

Child Abuse

The crime of child abuse is divided into degrees, the elements of which are defined in Maryland Code, § 3-601 of the Criminal Law Article ("CR"). *Kouadio v. State*, 235 Md. App. 621, 633 (2018). First-degree child abuse includes a parent causing abuse to a minor that results in the death of the minor or causes severe physical injury to the minor. CR § 3-601(b)(1)(i)(2). Second-degree child abuse includes a parent causing abuse to a minor. CR § 3-601(d)(1)(i).

"Abuse" is defined as "physical injury sustained by a minor as a result of cruel or inhumane treatment or as a result of a malicious act under circumstances that indicate that the minor's health or welfare is harmed by the treatment or act." CR § 3-601(a)(2). Under first-degree child abuse, "severe physical injury" includes brain injury or bleeding within the skull." CR § 3-601(a)(5)(i).

The appellant does not challenge the evidence that N. sustained severe physical injury. Nor does he challenge parentage or N.'s status as a minor. Instead, he challenges the sufficiency of the evidence that he caused abuse to N. under both counts. Specifically, he argues there was insufficient evidence that he treated N. in a "cruel or inhumane" manner or that he committed a "malicious act" that resulted in her injuries. He explains that while the State proved that N. sustained severe physical injury while she was in his exclusive care, the State did not prove that her injuries were inflicted by him and that they were not caused by an accident.

The court began its ruling by stating the undisputed facts in the case. In relevant part, the court noted that "this traumatic injury either occurred or seems to have occurred or became noticeable while [N.] was in [the appellant's] exclusive care and custody." Another "given" was the "various and shifting accounts" from the appellant about the incident.

The court explained that it had reviewed the evidence, including all the recorded statements of the appellant, noting his demeanor and the "evolving stories that came out from him." The court, "quite frankly, d[id] not find . . . the evolving version of events to be credible." The court summarized the appellant's initial statements to Corporal Allen and Detective Clark, which were "somewhat similar." The court noted the discrepancy between the appellant's first statement to Ms. Clemons, the social worker, which substantially mirrored his prior statements to Corporal Allen and Detective Clark, and his second statement to Ms. Clemons several hours later, when the appellant said he wanted to be

honest and told her that the child had rolled off the bed and struck her head on the hardwood floor. Then, the court noted the second conversation with Detective Clark (after the appellant's arrest), in which he described sitting on the bed and it having "the effect of sort of launching [N.] up at a higher level" that resulted in her coming down and striking the hardwood floor.

The court found Dr. Klotz's testimony credible, noting his significant experience in emergency medicine. Although the court described his opinion as "somewhat limited," it relied on his testimony that he had "not seen this type of injury resulting from some of the more minor falls in his practice." In other words, the court understood Dr. Klotz's testimony to mean that he had "not seen this type of injury from the type of accidental cause that was described" in this case, i.e., falling from a height of approximately two feet.

The court assigned less weight to the testimony of the defense experts. It explained that Dr. Scheller and Dr. Monson considered whether the injuries resulted from an accidental fall. However, focusing on Dr. Scheller's testimony, the court noted that although it was possible for a fall of this kind to result in severe injury, it was not likely. The court explained that Dr. Scheller "put the statistics on this type of injury resulting from that type of fall at about 1 in 1,000, . . . bearing in mind the improbable, unlikely and inconsistent versions as provided by [the appellant]."

We conclude that the evidence was sufficient to show that the appellant treated N. in a cruel or inhumane manner or that he committed a malicious act that caused her injuries. This could have been inferred from Dr. Klotz's testimony that N.'s injuries were consistent

with a "high mechanism of injury" and, by implication, less consistent with the accidental fall claimed by the appellant. In addition, the appellant initially furnished a substantially different account of the incident, from which the court could have inferred that N.'s injury was not the result of an accident. *See Thomas v. State*, 372 Md. 342, 351 (2002) ("A person's behavior after the commission of a crime may be admissible as circumstantial evidence from which guilt may be inferred. This category of circumstantial evidence is referred to as 'consciousness of guilt.'"). Although the defense witnesses opined that N.'s injuries could have been a result of an accident, the court was not required to credit such evidence. *See Kouadio*, 235 Md. App. at 634 ("Although witnesses produced by the defense opined that those injuries could have been natural or accidental, the jury obviously did not credit that evidence; nor was it required to do so.").

The appellant cites various cases for the purported proposition that, to prove child abuse of an infant, with no eyewitnesses and a competing claim of an accident, either an expert is required to testify that they believed the injuries were caused by abuse or the State is required to disprove accidental injury, neither of which occurred here.

Regarding the first contention, none of the cases the appellant cites hold that the State is required to present an expert opinion that conclusively establishes the injuries were a result of abuse. Regarding the second contention, the State is not required to negate the inference of innocence. This Court explained:

> Even in a case resting solely on circumstantial evidence, and resting moreover on a single strand of circumstantial evidence, if two inferences reasonably could be drawn, one consistent with guilt and the other consistent with innocence, the choice of which of these inferences to draw is exclusively

> that of the fact-find[er] [] and not that of a[n appellate] court assessing the legal sufficiency of the evidence. *The State is **NOT** required to negate the inference of innocence.* It is enough that the [fact-finder] must be persuaded to draw the inference of guilt.

Ross v. State, 232 Md. App. 72, 98 (2017) (emphasis added). The medical testimony, statements by the appellant, and Dr. Klotz's expert opinion suggesting that the injuries were not accidental were evidence from which the court could find that the appellant inflicted the injuries on (i.e., abused) N. *See, e.g., Deese v. State*, 367 Md. 293 (2001) (explaining that a rational jury could have inferred, beyond a reasonable doubt that the defendant inflicted fatal injuries where the child was under the defendant's exclusive supervision during the relevant time, death was due to blunt force injuries to head and possibly due to shaking, among other circumstances); *Kouadio*, 235 Md. App. at 634 ("[The defendant] alone had the opportunity to cause the damage during that three-hour period. Deliberation and malicious, cruel, inhumane intent may be inferred from that circumstance and from the nature and severity of the injuries inflicted."). For the reasons stated, there was sufficient evidence to support the convictions for first- and second-degree child abuse.

B.

Second- and First-Degree Assault and Reckless Endangerment

CR § 3-203(a) provides that a person may not commit an assault. Second-degree assault includes three modalities: battery, attempted battery, and placing of a victim in reasonable apprehension of an imminent battery. *Lamb v. State*, 93 Md. App. 422, 428 (1992). The only modality at issue here is battery. The battery "form of second-degree assault requires: (1) that the defendant caused offensive physical contact with the victim;

(2) that the contact was the result of an intentional or reckless act of the defendant and was not accidental; and (3) that the contact was not consented to or legally justified." *Pryor v. State*, 195 Md. App. 311, 335 (2010). "[T]he presence of a specific intent or criminal negligence is a necessary component of the crime of battery and it is the State's burden to prove one or the other of these elements . . . ." *Elias v. State*, 339 Md. 169, 184–85 (1995). The court found the appellant guilty of second-degree assault for the same reasons it found him guilty of child abuse.

"First-degree assault requires all the elements of second-degree assault, plus that the accused causes or attempts to cause 'serious physical injury to another.'" *Pryor*, 195 Md. App. at 335–36 (citation omitted); *see* CR § 3-202 (b)(1) ("A person may not intentionally cause or attempt to cause serious physical injury to another."). Serious physical injury includes injury that creates a substantial risk of death or causes permanent or protracted serious "impairment of the function of any bodily member or organ." CR § 3-201(d).

"[S]ince intent is subjective and, without the cooperation of the accused, cannot be directly and objectively proven, its presence must be shown by established facts which permit a proper inference of its existence." *Pryor*, 195 Md. App. at 336 (citation omitted). In determining intent, the factfinder may consider the defendant's acts or statements, as well as the surrounding circumstances. MPJI-Cr 3:31. Further, the factfinder may, but is not required to, infer that a person ordinarily intends the natural and probable consequences of his acts. *Id.*; *see Jones v. State*, 440 Md. 450, 457 (2014); *see, e.g.*, *State v. Raines*, 326 Md. 582, 591–93 (1992) (finding that Raines's actions in directing a gun at a tractor cab

window, knowing the driver was on the other side, permitted the inference that he intended to shoot with the intent to kill, as it was reasonable to assume that Raines intended the victim's death as a natural and probable consequence of his actions); *Chilcoat v. State*, 155 Md. App. 394, 404 (2004) ("The jury could determine whether inflicting a serious physical injury was the natural and probable consequence of hitting [the victim] with the stein.").

For reckless endangerment, CR § 3-204(a)(1) provides that a person may not recklessly "engage in conduct that creates a substantial risk of death or serious physical injury to another."

> The elements of a prima facie case of reckless endangerment are: 1) that the defendant engaged in conduct that created a substantial risk of death or serious physical injury to another; 2) that a reasonable person would not have engaged in that conduct; and 3) that the defendant acted recklessly.

Jones v. State, 357 Md. 408, 427 (2000). "The test is whether the appellant's misconduct, viewed objectively, was so reckless as to constitute a gross departure from the standard of conduct that a law-abiding person would observe, and thereby create the substantial risk that the statute was designed to punish." *Id.* (citation omitted).

The appellant argues that the State failed to identify any act that would have constituted a battery upon N. or any reckless conduct in which the appellant engaged that created a substantial risk of death or serious physical injury to N. For the more serious offense of first-degree assault, he further contends that the State did not prove that he intentionally caused serious physical injury to N. He explains that, as with the two child abuse convictions, there was no evidence of the mechanism of injury and no expert to

testify that the injuries were intentionally caused by him and not caused by an accident. We are unpersuaded.

For the same reasons that we reject the appellant's challenges to the child abuse convictions, and based on the same evidence which we incorporate here by reference, we conclude there was sufficient evidence from which the court could have inferred that the appellant's actions constituted battery under second-degree assault, satisfied the additional intent element required for first-degree assault, and demonstrated that the appellant engaged in conduct creating a substantial risk of death or serious physical injury to N. under reckless endangerment.

Furthermore, we are not persuaded by the claim that the State was required to prove exactly how the appellant injured her. The expert testimony suggested that N.'s injuries were extremely unlikely to have resulted from the two-foot fall from the bed as claimed by the appellant, and instead that the mechanism of injury was more forceful. *See, e.g.*, *Deese*, 367 Md. at 314 (concluding that although "[t]here was no direct evidence of how the force was applied. . . . once Deese's exclusive presence was established, and in the absence of any alternative explanation, a rational jury could infer beyond a reasonable doubt that Deese inflicted the blunt force head injuries that caused [the victim's] death"); *People v. Griffin*, No. 300254, 2011 WL 4952213, at *2 (Mich. Ct. App. Oct. 18, 2011) (rejecting the argument that the evidence was insufficient to support the conviction due to the prosecutor's failure to establish the exact mechanism of injury because, among other

reasons, medical testimony clearly demonstrated that the child's injuries could not have resulted from a fall from a swing as claimed by the defendant).[3]

Recognizing that the court weighed the appellant's credibility heavily, he argues that the credibility determination "alone cannot transform insufficient evidence to sufficient evidence" and that consciousness of guilt "by itself" is insufficient to establish guilt. However, as the State explains, the appellant's differing accounts of the incident were not the only evidence that the court relied on in finding him guilty of the offenses. Dr. Klotz testified that N. suffered from a high mechanism of injury, suggesting that her injuries were inconsistent with the appellant's claim that N. fell off the bed. All this evidence, in addition to the appellant's different explanations about what happened to N., supported his convictions, which did not rest on his credibility or consciousness of guilt alone. For the reasons stated, there was sufficient evidence to support the convictions for second-degree assault, first-degree assault, and reckless endangerment.

[3] Maryland Rule 1-104(b) provides that an unreported opinion issued by a court in a jurisdiction other than Maryland "may be cited as persuasive authority if the jurisdiction in which the opinion was issued would permit it to be cited as persuasive authority or as precedent." Michigan Court Rule 7.215(C)(1) provides that "[a]n unpublished opinion is not precedentially binding under the rule of stare decisis." "Although MCR 7.215(C)(1) provides that unpublished opinions are not binding under the rule of stare decisis, a court may nonetheless consider such opinions for their instructive or persuasive value." *Cox v. Hartman*, 911 N.W.2d 219, 228 (Mich. Ct. App. 2017).

C.

Neglect

CR § 3-602.1(b) provides in pertinent part that a parent "who has permanent or temporary care or custody or responsibility for the supervision of a minor may not neglect the minor." Neglect is "the intentional failure to provide necessary assistance and resources for the physical needs . . . 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." CR § 3-602.1(a)(5)(i). An objective standard applies to the element of risk creation. *Hall v. State*, 448 Md. 318, 331 (2016). The defendant's conduct is measured against what "a reasonable person would have done in the circumstances." *Id.*

> The proper inquiry is whether the risk should be considered substantial at the time that the parent or other caretaker acted. One who creates a very small risk of harm to a child is not criminally negligent simply because an unforeseeable tragedy follows. On the other hand, a parent or caretaker may be criminally negligent when that individual creates a substantial risk of harm, whether or not the harm actually befalls the child.

Id. at 338 (McDonald, J., concurring).

The court found the appellant guilty of neglect. There was no dispute about the child's being a minor or that the appellant was the child's father. Regarding "neglect," the court made the following findings:

> One, whenever [the appellant] found [N.] in this state, he did not seek immediate medical attention for her, and it would certainly appear at some point along the way he discovered it prior to notifying the child's mother. More importantly, perhaps, not only did he not openly . . . tell the E.M.S. workers and police and medical professionals what had happened to her, he lied. He lied about what happened to [N.], and that resulted in, if not a delay in treatment, certainly treatment that didn't have to take place. We talked

> about the antibiotics and the things like that that were just unnecessary. And one can only believe, as this [c]ourt does, that the unnecessary medical treatment and the medical professionals having to treat things that weren't there could only have provided a situation that placed [N.] in greater harm. One can only imagine how much more aggressive, perhaps, the treatment for a head injury would have been had he told E.M.S., police and medical professionals just what happened, and he didn't do it. For those reasons, the [c]ourt finds [the appellant] guilty, Count 7, neglect of a minor.

The appellant argues that the evidence is insufficient to sustain his conviction for neglect. First, he contends that the court made a clearly erroneous finding of fact because there was no evidence that there was a delay between the time the appellant found N. unresponsive and when he reported this to N.'s mother, and that he, or they, as a result of his delayed disclosure, failed to seek immediate medical attention for N. In other words, he claims that the evidence did not support a finding that he delayed seeking medical attention for N., such that he "intentionally failed to provide necessary assistance" for N.'s physical needs, and that by delaying, he created "a substantial risk of harm" to N.'s physical health.

Second, he contends that the court incorrectly drew inferences based on speculation that his failure to disclose to EMS, police, or medical staff exactly what happened to N. caused N. to suffer more harm than she suffered from the injury itself. He argues that the evidence did not support a finding that the unnecessary antibiotic placed N. in greater harm and that the emergency department staff would have treated N. more aggressively than they did if he had informed them of the head trauma immediately.

We conclude there was sufficient evidence to support the conviction for neglect. Regarding his first contention, the mother's testimony established that when she returned

home after picking up her older child, the appellant did not immediately tell her that N. had fallen off the bed. Instead, he told her only that N. had vomited. It was only later that she noticed the child's eyes rolling back, prompting her and the appellant to call the police. Moreover, the appellant admitted to Detective Clark after his arrest that "he should have called the cops" sooner. While it is not clear how much time elapsed between when the appellant injured N. and when emergency medical services were called, the court's inference that there was a delay was reasonable based on this evidence.

Regarding his second contention, the appellant misinterprets the court's reasoning. The court's comments about unnecessary medical treatment and the possibility of more aggressive care for N.'s head injury were meant to illustrate that the appellant's failure to promptly disclose N.'s injury created a substantial risk of harm to her, not that the delay actually affected her treatment. This inference was supported by the evidence.

Upon N.'s admission, Dr. Klotz had only the information from paramedics and the mother indicating that N. had vomit in her mouth. This limited information resulted from the appellant withholding the fact that N. had suffered an injury. Because the cause of N.'s cardiac arrest was unknown, Dr. Klotz adopted a "shotgun approach" to treatment, addressing all possible causes. After N.'s heart was restarted with a breathing tube and CPR, the hospital immediately contacted the University of Maryland to dispatch a helicopter. However, when bleeding was later detected following the head CT scan, along with bruising and a bulging fontanel, Dr. Klotz's concern shifted to trauma. As a result, the hospital changed plans and called Johns Hopkins Hospital to arrange for N.'s transport

there instead. Based on all the evidence, the court could reasonably infer that the appellant failed to provide necessary assistance for N.'s physical needs by acting in a way that created a substantial risk of harm, as measured by what a reasonable person would have done under the circumstances. *See Hall*, 448 Md. at 331.

JUDGMENTS OF THE CIRCUIT COURT FOR DORCHESTER COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.