Circuit Court for Somerset County
Case No. C-19-CR-21-000004

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 567

September Term, 2021

LEWIS ERIC OWENS

v.

STATE OF MARYLAND

Nazarian,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 6, 2022

*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.

Following a bench trial in the Circuit Court for Somerset County, Lewis Eric Owens, appellant, was convicted of manslaughter by vehicle, criminally negligent homicide by vehicle, reckless driving, and various other traffic offenses. His sole contention on appeal is that there was insufficient evidence to sustain his conviction for manslaughter by vehicle. Specifically, he asserts that although there was proof that he drove at an "excessive and inappropriate speed" just prior to the accident, that was insufficient to establish that he acted with gross negligence. For the reasons that follow, we shall affirm.

"The test of appellate review of evidentiary sufficiency is 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." *Donati v. State*, 215 Md. App. 686, 718 (2014) (internal quotation marks and citation omitted). That standard applies to all criminal cases, "including those resting upon circumstantial evidence, since, generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitness accounts." *Neal v. State*, 191 Md. App. 297, 314 (2010). Moreover, "[t]he test is 'not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.'" *Painter v. State*, 157 Md. App. 1, 11 (2004) (citations omitted) (emphasis in original). In making that determination, "[w]e 'must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [we] would have chosen a different reasonable inference.'" *Donati*, 215 Md. App. at 718 (citing *Cox v. State*, 421 Md. 630, 657 (2011)). In so doing, "[w]e defer to the fact finder's 'opportunity

to assess the credibility of witnesses, weigh the evidence, and resolve conflicts in the evidence[.]'" *Neal*, 191 Md. App. at 314 (citations omitted).

Section 2-209(b) of the Criminal Law Article provides that a "person may not cause the death of another as a result of the person's driving, operating, or controlling a vehicle . . . in a grossly negligent manner." To establish that appellant was grossly negligent, the State was required to prove that he acted with "a wanton or reckless disregard for human life." *Plummer v. State*, 118 Md. App. 244, 252 (1997) (citation omitted). In determining whether appellant's actions rise to the level of gross negligence in a vehicular manslaughter case, we look at multiple factors including:

> (a) drinking … ; (b) failure to keep a proper looking and to maintain proper control of the vehicle; (c) excessive speed 'under the circumstances;' (d) flight from the scene without any effort to ascertain the extent of the injuries; (e) the nature and force of the impact; (f) unusual or erratic driving prior to impact; (g) the presence or absence of skid marks or brush marks; (h) the nature of the injuries and the damage to the involved vehicle or vehicles; (i) the nature of the neighborhood, the environment where the accident took place.

Boyd v. State, 22 Md. App. 539, 550–51 (1974).

In considering those factors, we have held that "excessive speed alone does not constitute gross negligence[.]" *Burlas v. State*, 185 Md. App. 559, 570 (2009). Nevertheless, excessive speed "under certain circumstances" may still be sufficient. *Id.* "[W]hat must be looked for in each case is whether, by reason of the speed in the environment, there was a lessening of the control of the vehicle to the point where such lack of effective control is likely at any moment to bring harm to another." *Duren v. State*, 203 Md. 584, 592 (1954). Thus, for example the Court of Appeals has found sufficient

evidence of gross negligence where the defendant was driving 20 miles over the speed limit on a rural two-lane road, which caused him to lose control of his vehicle while attempting to pass another vehicle in a no passing area. *State v. Kramer*, 318 Md. 576 (1990); *see also Taylor v. State*, 83 Md. App. 399, 404 (1990) ("Speed, erratic driving, disregard of [a] red light, force of impact—all of these can be taken as evidence of wanton or reckless disregard of human life." (citations omitted)).

Viewed in a light most favorable to the State, the evidence at trial demonstrated that appellant drove around a "blind curve" at an extremely high rate of speed, lost control of his vehicle, crossed into the other lane of travel, and struck another vehicle that was driving in the other direction with enough force that it spun the vehicle completely around and killed its occupant. The speed limit on the road where appellant was driving was 50 mph. Moreover, just prior to the blind curve there was a warning sign recommending that drivers slow down to 30 mph. However, despite that fact: (1) a bicyclist observed appellant driving down the center of the road at around 80 mph approximately a quarter mile from the location where appellant struck the victim; (2) just before the accident the passenger in appellant's vehicle had asked appellant to slow down because she "didn't want to die today"; (3) data recovered from appellant's vehicle indicated that he had been driving at 83 mph 10 seconds before the accident, 76.9 mph 5 seconds before the accident, and 69 mph as he entered the blind curve; (4) there were no skid marks indicating that appellant had attempted to brake before entering the curve and striking the victim; (5) appellant admitted that he had been driving too fast when he entered the curve; (6) appellant admitted that he had been driving the vehicle, a rental car, like one of his own cars that was designed

for racing, even though the rental car was not designed to handle a curve at that speed; and (7) appellant had driven down the same stretch of road earlier in the day and thus, presumably should have been aware of the existence of the blind curve.[1] Under these circumstances, we are persuaded the State presented sufficient evidence that, because of his excessive speed, appellant had such a lack of control over his vehicle that he was likely to have brought harm to another. Consequently, the court did not err in finding that appellant acted with a reckless and wanton disregard for human life, and thus drove in a grossly negligent manner.

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

[1] Although not relied on by the court in rendering its verdict, there was also evidence indicating that appellant had cocaine in his bloodstream and had taken prescription amphetamines on the day of the accident that he stated, "just pumps me up, real energetic."