Circuit Court for Baltimore City
Case No. 119105009

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 969

September Term, 2020

WAYNE SCOTT

v.

STATE OF MARYLAND

Kehoe,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 5, 2021

Following a jury trial in the Circuit Court for Baltimore City, Wayne Scott, appellant, was convicted of manslaughter by vehicle, homicide by motor vehicle while impaired by a controlled dangerous substance (CDS), and driving while under the influence of CDS. On appeal, he contends that there was insufficient evidence to sustain his convictions. For the reasons that follow, we shall affirm.

BACKGROUND

Anita Smith testified that she was pumping gas at Joe's Garage on Wabash Avenue in Baltimore when she observed a vehicle being driven by appellant "flying" down the street. The vehicle approached a small curve in the road. However, instead of staying in the roadway, the vehicle "missed" the curve and then "jumped the curb" onto the grass. Appellant attempted to regain control of the car but was unsuccessful. Instead, his car went back onto the road and struck the victim, Brian Watts, who was crossing the street. The impact caused the victim to go "about 15 feet in the air" and resulted in his death.

Ms. Smith testified that the victim saw appellant's car coming and then "trotted up a little bit" but that the "car was moving too fast" for him to get out of the way. After striking the victim, appellant struck the rear of a parked car and came to a stop. A review of data obtained from the vehicle's electronic data recorder indicated that appellant was traveling at a minimum speed of 30-38 miles per hour at the time of the accident, although he could have been traveling even faster. The posted speed limit was 25 miles per hour.

Detective Rahim Williams responded to the scene and spoke with appellant, who was still in his vehicle. Appellant stated that he had "passed out" and when Detective Williams asked him for his car keys, appellant handed him a turkey baster and serving fork.

Detective Williams testified that he had previously worked in narcotics and believed appellant was under the influence of an illegal narcotic based on his "slurred speech, delayed response and [] outward physical appearance." A video from Detective Williams's body-worn camera, which recorded his interaction with appellant, was also introduced into evidence.

Because appellant was complaining of chest pain, he was taken to the hospital. Therefore, Detective Williams did not administer field sobriety tests. However, when officers spoke with appellant at the hospital, he was unable to speak coherently and kept falling asleep. A video of that interaction was also viewed by the jury. Appellant's hospital records indicated that he had not suffered any observable injures; however, a drug screen of his urine was presumptively positive for opiates. The police also obtained a sample of appellant's blood while he was at the hospital. Subsequent testing of that sample revealed the presence of fentanyl, a controlled dangerous substance.[1]

DISCUSSION

"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

[1] The police also interviewed appellant at his home approximately three weeks after the accident. During that interview he denied that he was speeding or that he saw the victim prior to hitting him. In the video, appellant's appearance and speech appear markedly different than in the videos from the night of the incident.

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).

In challenging the sufficiency of the evidence, appellant raises three interrelated issues. First, he contends that the State failed to prove that he was driving under the influence of CDS at the time of the accident because there was no evidence indicating the quantity of fentanyl in his blood or how it might have affected his driving. We disagree. A scientific test demonstrating the quantity of an intoxicating substance is not required to sustain a conviction for driving under the influence. *See State v. Werkheiser*, 299 Md. 529, 540 (1984) (noting that a conviction for driving under the influence "may be had without a chemical analysis on any competent evidence legally sufficient to establish the corpus delicti of the crimes and the criminal agency of the accused"). Rather, "intoxication can also be proven by other evidence from which the jury could infer that a defendant was

intoxicated, such as evidence of a defendant's demeanor at the time of the stop." *White v. State*, 142 Md. App. 535, 548 (2002). To be sure, the presence of fentanyl in appellant's blood did not definitively establish that he was under the influence of a narcotic at the time of the crash. However, there was ample other evidence supporting that conclusion, including appellant's slurred speech and delayed response time when interacting with Detective Williams; the fact that he gave Detective Williams a turkey baster when he was asked for his car keys; and his inability to talk or stay awake when interviewed by the police at the hospital. Appellant suggests that his behavior could have been due to the fact that he was "disoriented" following the accident. But the fact that there might have been other possible inferences that the jury could have made does not affect the sufficiency of the evidence. Rather, "[c]hoosing between competing inferences is classic grist for the jury mill." *Cerrato-Molina v. State*, 223 Md. App. 329, 337 (2015).

Relying on *Webber v. State*, 320 Md. 238 (1990), appellant alternatively asserts that even if he was intoxicated, there was insufficient evidence to sustain his conviction for homicide by motor vehicle because the State failed to prove that his negligence caused the victim's death. *Id*. at 247 (holding that "a causal relationship between the intoxicated driver's negligent operation of his motor vehicle and the death of another person is an essential element of the crime of homicide by motor vehicle while intoxicated"). However, *Webber* is inapposite. In *Webber*, the State presented no evidence that the appellant was driving negligently other that the fact that he was intoxicated. Rather, the evidence presented by the State indicated that the defendant was driving at a reasonable rate of speed and was in his own lane of travel at the time of the accident. Moreover, the State did not

introduce any evidence indicating that the pedestrian the defendant struck would have been visible in the roadway long enough for a person of normal reflexes to avoid striking her.

In this case, appellant was not only intoxicated, but also drove at an excessive rate of speed, causing him to fail to navigate a curve in the road, jump the curb, and lose control of his vehicle. Moreover, Ms. Smith testified that the victim saw appellant's vehicle before it struck him and tried to avoid it, but was unable to get out of the way because appellant "was moving too fast." Based on this evidence, the jury could reasonably conclude that appellant's negligent driving caused the victim's death.

Finally, appellant claims that there was insufficient evidence to sustain his conviction for manslaughter by vehicle because the State failed to prove that his actions rose to the level of gross negligence. *See* Crim. Law Art. § 2-209(b) ("A person may not cause the death of another as a result of a person's driving, operating, or controlling a vehicle . . . in a grossly negligent manner."). To establish gross negligence, the State was required to prove that appellant acted with "a wanton or reckless disregard for human life." *Plummer v. State*, 118 Md. App. 244, 252 (1997) (citation omitted).

Viewed in the light most favorable to the State, the evidence established that appellant drove his vehicle at an excessive rate of speed while under the influence of fentanyl, missed a curve in the road, jumped the curb, and then lost control of his vehicle. We are persuaded that this evidence, if believed by the jury, was sufficient to establish that appellant acted with a reckless and wanton disregard for human life, and thus drove in a grossly negligent manner. *See Cummings v. State*, 27 Md. App. 361 389 (1975) (finding sufficient evidence of gross negligence where the defendant was under the influence of

alcohol and, when trying to negotiate a curve while driving 10-15 miles over the speed limit, crossed the center line and struck another vehicle); *Abe v. State*, 230 Md. 439 (1963) (affirming a conviction for automobile manslaughter where the defendant was speeding and "had been drinking to an extent likely to affect his driving judgment"); *see also Blackwell v. State*, 34 Md. App. 547, 565 (1977)("When appellant voluntarily . . . drank himself into a state wherein his nervous system was numbed, adversely affecting his reflexes, coordination, discretion and judgment, to drive an automobile thereafter itself constituted a wanton or reckless disregard for human life.").

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.