UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 844

September Term, 2016

BRANDON MELTON

v.

STATE OF MARYLAND

Krauser, C. J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 3, 2017

Convicted of negligent driving and criminally negligent manslaughter by vehicle, following a bench trial in the Circuit Court for Dorchester County, Brandon Melton contends that the evidence was insufficient to support his conviction for manslaughter. We affirm.

On April 14, 2015, a pickup truck operated by Melton left the roadway and overturned into a drainage ditch. Cassidy Stinton, one of the five passengers in the truck, died as a result of the accident. Melton was charged with violating Md. Code (2002, 2012 Repl. Vol.), Criminal Law Article, § 2-210 (b), which provides that "a person may not cause the death of another as the result of the person's driving . . . a vehicle . . . in a criminally negligent manner. The statute further provides that:

> (c) 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.

"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, *cert. denied*, 438 Md. 143 (2014) (citation omitted). "The 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.'" *Anderson v. State*, 227 Md. App. 329, 346 (2016) (citations omitted) (emphasis

in original). Moreover, "[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 (citation omitted).

Viewing the evidence in the light most favorable to the State, as we must, we conclude that the evidence was sufficient to support the conviction. The State presented evidence that (1) while operating his vehicle on a public road, Melton removed himself from the driver's seat, climbed out of the open driver's side window of the moving vehicle, and sat, for a period of time, in the window opening of the door of the truck; (2) during that time, Melton did not have his hands on the steering wheel, and his feet were on the seat of the vehicle, instead of on the floor, near the brake pedal; (3) while Melton was in this position, the vehicle started to veer off the road, at which time Melton reentered the vehicle, but he was unable to regain control before the vehicle flipped over. Even though, as Melton contends, there was no conclusive proof as to how fast the vehicle was traveling when he relinquished control of it, or whether the "few drinks" he admitted to having consumed that evening, when questioned by the paramedic at the scene, contributed to the accident, the evidence presented at trial was nonetheless sufficient to establish that Melton should have been aware that his conduct created a "substantial and unjustifiable risk" of death to the

passengers in his vehicle, and that Melton's failure to perceive that risk was a "gross deviation from the standard of care that would be exercised by a reasonable person."[1]

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

[1] Melton suggests that the court "determined that his negligent driving *alone* made him criminally negligent" and that the court "failed to determine" that his conduct created a "substantial and unjustified risk of death." Not only does the transcript belie this assertion, but, even if the court did not express such a finding, in determining the sufficiency of the evidence, we are "measuring a verdict against the supporting evidence itself and not looking at what a judge might say in rendering the verdict." *Chisum v. State*, 227 Md. App. 118, 127 (2016)