Circuit Court for Baltimore City
Case No. 116067023

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1933

September Term, 2016

QUINDELL SMITH

v.

STATE OF MARYLAND

Woodward, C.J.,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 7, 2017

*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.

A jury in the Circuit Court for Baltimore City convicted Quindell Smith, appellant, of fleeing and eluding, reckless driving, negligent driving, and failing to stop at a red light. The court sentenced appellant to one year in prison for fleeing and eluding and the following fines: $250 for reckless driving, $250 for negligent driving, and $100 for failing to stop at a red light. On appeal, appellant contends that the evidence was insufficient to sustain his conviction for fleeing and eluding, and that the court erred in imposing separate sentences for reckless driving and negligent driving. We conclude that there was sufficient evidence to sustain the conviction for fleeing and eluding. Additionally, we agree that the court should have merged appellant's sentence for negligent driving into the sentence for reckless driving. Accordingly, we vacate appellant's sentence for negligent driving and otherwise affirm.

BACKGROUND

Around 3:00 P.M. on February 11, 2016, Detective Steven Mahan was driving an unmarked black Ford Fusion in the O'Donnell Heights area of Baltimore with Detective Glenn Peters in the passenger seat.[1] Both detectives were in plain clothes and neither had a badge visible. Detective Mahan testified that he observed a 2007 Honda Accord, driven by appellant, following the vehicle in front of him "extremely" closely. At the intersection of Boston Street and O'Donnell Street, Detective Mahan initiated a traffic stop by turning on the emergency lights in his vehicle. Another unmarked police vehicle, driven by

[1] All law enforcement personnel in this case are members of the Baltimore City Police Department.

Detective Demario Harris and occupied by two other plainclothes detectives, with its emergency lights activated, blocked the intersection ahead of appellant.

In response, appellant reversed, striking Detective Mahan's car. Appellant then crossed the median and drove east on Interstate Drive. Detective Mahan pursued appellant. Appellant led police on a chase through city streets, in which appellant sped and failed to stop at numerous stop signs and red lights. During the pursuit, appellant and Detective Mahan struck each other, causing such severe damage to Detective Mahan's vehicle that he had to stop. Detective Harris and other officers continued the pursuit onto I-95 South, where appellant "blew through" the tollbooth to the Fort McHenry Tunnel. Appellant came to a stop at the southbound exit of the tunnel because his tires were flat. Appellant was then placed under arrest.

DISCUSSION

I. Sufficient Evidence

The State charged appellant with violating Maryland Code (1977, 2012 Repl. Vol.), Transportation Article ("Trans."), § 21-904(b), which provides: "If a police officer gives a visual or audible signal to stop and the police officer is in uniform, prominently displaying the police officer's badge or other insignia of office, a driver of a vehicle may not attempt to elude the police officer by" failing to stop. "Visual or audible signal" is defined as "includ[ing] a signal by hand, voice, emergency light or siren." Trans. § 21-904(a).

On appeal, appellant contends that there was insufficient evidence to support his conviction for fleeing and eluding. He asserts that the court recognized that the detectives that initiated the traffic stop and began the pursuit were not in uniform and were also not

in marked police vehicles. According to appellant, the police in the unmarked vehicles could not meet the statutory definition in Trans. § 21-904(b) to sustain a fleeing and eluding conviction. Instead, the circuit court permitted the jury to infer that the marked police cruisers that joined the pursuit were occupied by officers in uniform and had lights and sirens activated. Appellant contends that there was no testimony as to these facts. The State responds that this was a rational inference that supports the conviction for fleeing and eluding.

In reviewing the sufficiency of the evidence, we ask "whether, after reviewing 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." *Ross v. State*, 232 Md. App. 72, 81 (2017) (citing *Bible v. State*, 411 Md. 138, 156 (2009)). Furthermore, we "view[] not just the facts, but 'all rational inferences that arise from the evidence,' in the light most favorable to the" State. *Smith v. State*, 232 Md. App. 583, 594 (2017) (quoting *Abbott v. State*, 190 Md. App. 595, 616 (2010)). In this analysis, "[w]e give 'due regard to the [fact-finder's] findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.'" *Potts v. State*, 231 Md. App. 398, 415 (2016) (quoting *Harrison v. State*, 382 Md. 477, 487-88 (2004)). Whether a conviction is based on direct evidence, circumstantial evidence, or both does not affect our review. *Id.*

In this case, appellant contends that there was no testimony that the marked patrol cars that joined the pursuit had lights and sirens activated and, moreover, were occupied by uniformed officers. The detectives who testified, however, stated that the marked patrol

cars that joined the pursuit were "patrol units" occupied by "patrol officers" or "patrolmen." We agree with the State that the jury could rationally infer that patrol officers in marked police cruisers would be in police uniform. Furthermore, the jury could rationally infer that the cruisers joining the pursuit would have their lights and sirens activated, not only to provide a "visual or audible signal" to appellant, but also to alert bystanding motorists. We conclude, therefore, that there was sufficient evidence to sustain appellant's conviction for fleeing and eluding.

II. Reckless Driving and Negligent Driving

As noted above, the circuit court imposed separate sentences – a fine of $250 in each case – for both reckless driving and negligent driving. Reckless driving occurs where a person drives "[i]n wanton or willful disregard for the safety of persons or property;" or "[i]n a manner that indicates a wanton or willful disregard for the safety of persons or property." Trans. § 21-901.1(a). A driver commits negligent driving "if he drives a motor vehicle in a careless or imprudent manner that endangers any property or the life or person of any individual." Trans. § 21-901.1(b).

Appellant contends that the court erred in imposing separate sentences for reckless driving and negligent driving because negligent driving is a lesser-included offense of reckless driving. The State agrees. Indeed, in *Perry v. State*, 229 Md. App. 687, 715 (2016), *cert. dismissed*, 453 Md. 25 (2017), this Court observed that "negligent driving is a lesser included offense of reckless driving." In that case, we vacated the separate sentence for negligent driving, but affirmed the conviction for that offense. *Id.* at 715-16.

We concur with the parties that appellant's sentence for negligent driving should have merged with reckless driving. Accordingly, appellant's sentence for negligent driving is vacated. His conviction for that offense, however, is affirmed.

SENTENCE FOR NEGLIGENT DRIVING VACATED. JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY OTHERWISE AFFIRMED. COSTS TO BE PAID HALF BY APPELLANT AND HALF BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.