Circuit Court for Anne Arundel County
Case No. C-02-CR-18-832

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2246

September Term, 2018

RICCI ROSE BRADDY

v.

STATE OF MARYLAND

Graeff,
Beachley,
Eyler, James R.,
(Senior Judge, Specially Assigned)
JJ.

Opinion by Eyler, James R., J.

Filed: September 6, 2019

After a bench trial in the Circuit Court for Anne Arundel County, Ricci Rose Braddy, appellant, was found guilty of possession of cocaine, possession of drug paraphernalia, and neglect of a minor. She was sentenced to suspended terms of 6 months' incarceration and placed on two years of probation for possession of cocaine and neglect of a minor. No sentence or fine was imposed for the possession of drug paraphernalia conviction. This timely appeal followed.

QUESTIONS PRESENTED

Appellant presents the following questions for our consideration:

> I. Was the evidence legally sufficient to sustain appellant's conviction for neglect of a minor?
>
> II. Was the evidence legally sufficient to sustain appellant's convictions for possession of a controlled dangerous substance and possession of drug paraphernalia?

For the reasons set forth below, we shall affirm.

FACTUAL BACKGROUND

On April 2, 2017, Anne Arundel County Police Officer Sean Dolan received a call from the manager of a High's convenience store on Annapolis Road who reported that a man and a woman were passed out in a vehicle parked in front of the store and a child was in the vehicle. Officer Dolan testified that he gave his phone number to businesses in his patrol area "because it's a quicker response time instead of going through the different channels of reporting 911, having to call dispatch." According to Officer Dolan, the call from the manager of the High's store was not an emergency, but he advised the manager to call 911 and then he responded to the High's store. While traveling to the store, Officer

Dolan reported the call by police radio. When he arrived at the High's store, Officer Dolan saw the manager standing outside pointing at a silver, four-door Toyota Camry. Officer Dolan approached the passenger side of the vehicle and observed a young child in the back seat, an adult male in the front passenger seat, and an adult female, later identified as appellant, in the driver's seat. He also observed a small glass pipe used for smoking cocaine, a black box, and a purple prescription bottle on appellant's lap. The car doors were locked, the windows were cracked open, the front seats were reclined slightly, and the two adults "appeared to be passed out." According to Officer Dolan, the child was about eight years old,[1] was not wearing a seat belt, and was "roaming around the backseat."

Officer Dolan "started banging on the passenger's side window," and after knocking "multiple times," appellant "poked her head up" and looked at him. Appellant then

[1] The exact age of the child was not established at trial. Throughout the course of the trial, the prosecutor, defense counsel, and the court referred to the child as being nine years old. During defense counsel's closing argument, however, the following exchange occurred:

> [DEFENSE COUNSEL]: Your Honor, the statutes on unattended minors say that a nine-year-old can be left unattended. That's the testimony that you have in this case. That a nine-year-old was –
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> THE COURT: Eight-year-old.
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> [DEFENSE COUNSEL]: -- left without supervision and the statute –
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> THE COURT: Eight-year-old.
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> [DEFENSE COUNSEL]: I'm sorry, an eight-year-old. Well, the statute still says an eight-year-old is covered by that statute without supervision. Eight-year-olds can be left without supervision under the criminal law in the state of Maryland.

attempted to take the items from her lap and place them in the space between her seat and the driver's side door. Officer Dolan ordered appellant not to move her hands, walked to the driver's side of the vehicle, pulled appellant out of the car, and placed her in handcuffs. In addition to the items that had been on appellant's lap, Officer Dolan recovered from the floor between the driver's seat and the driver's side door, a small green container containing a white rock substance that he suspected was cocaine. The purple prescription bottle that was recovered also contained a suspected controlled dangerous substance.

Officer Dolan collected the items he had observed and placed them in a designated area. Thereafter, another officer arrived and they woke up the male passenger, who was arrested for possession of "a large amount of crack cocaine" that was "found on his person." The child was eventually taken to his grandmother's house.

The parties stipulated that the substance in the purple prescription bottle was tested by a chemist and determined to be .07 grams of cocaine. The white rock substance in the green container was also tested by a chemist and found to be .02 grams of cocaine.

DISCUSSION

I.

Appellant contends that the evidence was not sufficient to sustain her conviction for neglect of a minor in violation of § 3-602.1 of the Criminal Law Article[2] because the State

[2] Section 3-602.1 of the Criminal Law Article provides, in relevant part:

(a) *Definitions.* –

* * *

(continued)

failed to prove, beyond a reasonable doubt, that her conduct created a substantial risk of harm for her child who was in the backseat of the car. Specifically, appellant argues that the evidence failed to show any risk to the child as a result of the condition of the car or any substantial risk of harm created by the child's possible access to cocaine. We disagree and explain.

A. Standard of Review

When an action has been tried without a jury, we review the case on both the law and the evidence. Md. Rule 8-131(c). The test of evidentiary sufficiency to support a conviction is the same in a jury trial and in a bench trial. *Chisum v. State*, 227 Md. App. 118, 131 (2016). The appropriate inquiry 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.'" *Titus v. State*, 423 Md. 548, 557 (2011)(quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Because the finder-of-fact is in the best position to choose among possible inferences that might be drawn from the facts, we "defer to any possible reasonable inferences the [trier-of-fact] could

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(5)(i) "Neglect" means the intentional failure to provide necessary assistance and resources for the physical needs or mental health 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.

(ii) "Neglect" does not include the failure to provide necessary assistance and resources for the physical needs or mental health of a minor when the failure is due solely to a lack of financial resources or homelessness.

(b) *Prohibition.* -- A parent, family member, household member, or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not neglect the minor.

have drawn from the admitted evidence and need not decide whether the [trier-of-fact] could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence." *Id.* at 557-58 (citations omitted).

"Weighing the credibility of witnesses and resolving any conflicts in the evidence are tasks proper for the fact finder." *State v. Smith*, 374 Md. 527, 533-34 (2003)(internal citations omitted). "We 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." *Id.* "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.'" *Painer v. State*, 157 Md. App. 1, 11 (2004)(citations omitted)(emphasis in original).

B. Substantial Risk of Harm to the Child

Appellant argues that, when evaluated objectively, the evidence failed to show, beyond a reasonable doubt, that her conduct created a substantial risk of harm to her child due to the condition of the car or the child's possible access to drugs. In support of her argument, appellant directs our attention to *Hall v. State*, 448 Md. 318 (2016). In that case, the defendant was charged with neglect of her three-year-old son for leaving him, over a two day period, under the supervision of his fourteen-year-old sister. *Hall*, 448 Md. at 321. The minor child, who had had a history of leaving the family home unattended, left the house unnoticed and was nearly struck by a passing truck while in the middle of a six lane roadway. *Id.* at 325-26.

The Court of Appeals held that the evidence was insufficient to sustain Hall's conviction for neglect of her three-year-old son. *Id.* The Court acknowledged that the child had a history of leaving the family home and was "admittedly, difficult to handle," but emphasized that the standard to be utilized was

> whether the parent intentionally failed to provide necessary assistance and resources for the physical needs of the child by acting in a manner that created substantial risk of harm to the child, measured by that which a reasonable person would have done in the circumstances.

Id. at 331.

The Court also expressed the standard of review as follows:

> In the present case, conviction for criminal child neglect requires that Ms. Hall's conduct – leaving her three-year-old son, A., in the care of his fourteen-year-old sister – created a 'substantial risk of harm' to A.'s physical health and that her conduct was such that a reasonable parent under the circumstances would not have engaged in.

Id. at 336.

In reversing Hall's conviction for neglect of a minor, the Court recognized that "statutorily a thirteen-year-old is deemed an appropriate caretaker for a child under eight years of age," and that "[t]he failure to realize an ideal level of supervisory attention of a child does not equate to acting with heedless indifference to the consequences[.]" *Id.* at 335-36.

In the instant case, appellant maintains that the car windows were cracked and there was no indication of overheating, that the car doors were locked, and that the child did not express that he was hungry or thirsty and did not cry. Further, citing § 5-801(a) of the

Family Law Article[3], appellant maintains that "even if the child was effectively alone in the car, as a consequence of [her] passing out . . ., [her] behavior was objectively reasonable" because there was no showing that being unsupervised in the car created a substantial risk of harm.

Appellant further argues that the State failed to establish a substantial risk of harm created by the child's possible access to the drugs that were found on her lap, on the floor of the car, and on the male passenger. In support of that argument, appellant points to the fact that Officer Dolan left the child in the car with the suspected drugs while appellant and the male passenger were arrested. Although appellant acknowledges that the trial judge could have inferred risk from Officer Dolan's testimony that he was "keeping an eye" on the child and did not believe he could access the drugs in the front seat area of the vehicle, she maintains that that inference could not support a finding, beyond a reasonable doubt, that there was a substantial risk of harm. Appellant suggests that the risk of leaving her child where he had access to cocaine created the same type of risk as a parent who fails to secure poisonous cleaning chemicals or prescription medications, and that neither conduct

[3] Section 5-801(a) of the Family Law Article provides:

> A person who is charged with the care of a child under the age of 8 years may not allow the child to be locked or confined in a dwelling, building, enclosure, or motor vehicle while the person charged is absent and the dwelling, building, enclosure, or motor vehicle is out of the sight of the person charged unless the person charged provides a reliable person at least 13 years old to remain with the child to protect the child.

rises to the level of criminal child neglect, but merely to a strong suspicion or mere probability of substantial risk. We are not persuaded.

Unlike *Hall*, where there was a statute permitting a 13-year-old to serve as a caregiver for a child under eight-years-old, there is no statute that deems it reasonable for a parent to leave a child effectively unsupervised in a small, confined area with illegal narcotics within reach. A substantial risk of harm was created by appellant's behavior because her child could have accessed and ingested cocaine. The likelihood of this happening was substantial because the child was confined inside the locked car and was roaming around the backseat with nothing to keep him from finding the cocaine and paraphernalia that were within open view in the front of the car. Moreover, it could be inferred from the evidence presented that the child had witnessed his mother ingest cocaine before she passed out. As a result, there was sufficient evidence from which a reasonable trier of fact could conclude that appellant's conduct constituted neglect of her minor child.

II.

Appellant contends that the evidence was not legally sufficient to sustain her convictions for possession of cocaine and possession of drug paraphernalia because she was entitled to immunity from prosecution under Maryland's Good Samaritan statute, § 1-210(c) of the Criminal Procedures Article, which provides, in relevant part as follows:

> (a) *In general*. – The act of seeking, providing, or assisting with the provision of medical assistance for another person who is experiencing a medical emergency after ingesting or using alcohol or drugs may be used as a mitigating factor in a criminal prosecution of:
>
> (1) the person who experienced the medical emergency; or
>
> (2) any person who sought, provided, or assisted in the provision of medical assistance.

* * *

> (c) *Immunity from prosecution. – Person ingesting or using*. – A person who reasonably believes that the person is experiencing a medical emergency after ingesting or using alcohol or drugs shall be immune from criminal arrest, charge, or prosecution for a violation of § 5-601, § 5-619, § 5-620, § 10-114, § 10-116, or § 10-117 of the Criminal Law Article if the evidence for the criminal arrest, charge, or prosecution was obtained solely as a result of the person seeking or receiving medical assistance.

Md. Code (2018 Repl. Vol.) , § 1-210(a) and (c) of the Criminal Procedure Article ("CP").

Although she acknowledges that there was no direct testimony that the call to Officer Dolan was for the purpose of seeking medical assistance, appellant argues that the circumstances indicate that that was the purpose of the call. She points to the fact that the store manager called Officer Dolan directly as an indication that the manager sought a more immediate response time than if she had called 911. Appellant also points out that, after receiving the call from the store manager, Officer Dolan advised her to call 911. In addition, Officer Dolan acknowledged that the initial call for assistance "could be a possible medical emergency." Relying on *Noble v. State*, 238 Md. App. 153 (2018), appellant also argues that she was entitled to immunity under CP § 1-210 despite not having made the call for assistance herself and despite the fact that the caller was not subject to prosecution. We disagree and explain.

In *Noble*, the defendant's girlfriend called 911 seeking medical assistance for the defendant, who was "unresponsive" and "thought to be in cardiac arrest." *Noble*, 238 Md. App. at 157. When paramedics responded, they found Noble unresponsive and suffering from respiratory depression. *Id.* They concluded that he was suffering from an opiate

overdose and administered Naloxone, after which Noble regained consciousness. *Id.* at 158.

At the time the 911 call was made, Noble was on probation. *Id.* at 157. Thereafter, he was charged with violating several conditions of his probation, including that he abstain totally from alcohol, illegal substances, and abusive use of any prescription drug, and that he not illegally possess, use, or sell any narcotic drug, controlled substance, counterfeit substance, or related paraphernalia. *Id.* at 157. Noble filed a motion to dismiss on the ground that he had immunity based on CP § 1-210(d), which provided then, as it does now:

> (d) *Other sanctions prohibited.* – A person who seeks, provides, or assists with the provision of medical assistance in accordance with subsection (b) or (c) of this section may not be sanctioned for a violation of a condition of pretrial release, probation, or parole if the evidence of the violation was obtained solely as a result of the person seeking, providing, or assisting with the provision of medical assistance.

The State opposed the motion to dismiss on the ground that Noble did not have immunity because his girlfriend, not him, had made the call to 911. *Id.* at 159. The trial court determined that Noble did not have immunity under the statute and, after a violation of probation hearing, found that he had violated the terms of his probation and sentenced him to 18 months of incarceration. *Id.* at 160.

On appeal, we held that Noble was immune from sanction under CP § 1-210 for a probation violation even though he was not the person who called 911, because the Maryland General Assembly "made the policy decision in CP § 1-210(c) to extend protections to overdose victims who passively receive medical assistance." *Id.* at 166. In reaching that conclusion, we recognized the legislative intent of the statute, stating:

> A review of the legislative history makes clear that CP § 1-210 was intended to address the opioid crisis within the State, and its purpose was to save lives by providing immunity from prosecution and other sanctions to encourage people to call for medical assistance when a person is believed to be suffering from an overdose. The statute reflects a shift in the legal system's approach to drug use, and it reflects the General Assembly's determination that encouraging persons to seek medical assistance to save lives was a higher priority than prosecuting those persons for certain, limited, crimes.

Id. at 167 (footnote omitted).

In the case at hand, there is no evidence that the manager of the High's convenience store believed that appellant was experiencing a drug-related medical emergency and needed medical assistance and there was no evidence that appellant received any medical assistance. The report to Officer Dolan was that there were two people passed out in a vehicle parked in front of the convenience store and a child was in the vehicle. On cross-examination, Officer Dolan clarified that as he responded to the scene, he was under the impression that two people were passed out in a vehicle and that there was a child in that vehicle. Officer Dolan specifically testified that the initial call was not an emergency. As we noted in *Noble*,

CP § 1-210 was enacted "to save lives by encouraging people to seek medical assistance in the event of a drug overdose." *Noble*, 238 Md. App. at 171. As there was no evidence that the store manager's call to Officer Dolan was based on a drug-related emergency, appellant was not entitled to immunity under CP § 1-210, and therefore, the evidence was

sufficient to sustain her convictions for possession of cocaine and possession of drug paraphernalia.

JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLEE.