

COURT OF APPEALS OF MARYLAND

State v. DiGennaro, 415 Md. 551

3 A.3d 1201 (2010) · No. No. 5, Sept. Term, 2009 · Decided August 31, 2010

SUMMARY

The Maryland Court of Appeals held that the term "operating" in the manslaughter-by-vehicle statute is synonymous with the Transportation Article definitions of driving and operating. Because the defendant's grossly negligent conduct occurred after he stopped operating the vehicle—when he failed to remove or warn of gravel spilled onto a highway—his conviction for manslaughter by vehicle could not stand. The court affirmed the Court of Special Appeals, noting that the conduct might support common-law involuntary manslaughter, but that offense was not charged.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Murphy, J.; Bell, C.J.; Harrell, J.; Battaglia, J.; Greene, J.; Adkins, J.; Barbera, J.
JURISDICTION	Maryland
DECIDED	August 31, 2010
DOCKET	No. 5, Sept. Term, 2009
DISPOSITION	affirmed
PROCEDURAL POSTURE	The State petitioned for a writ of certiorari after the Court of Special Appeals reversed DiGennaro's conviction for manslaughter by vehicle.
STANDARD OF REVIEW	Because the case was tried without a jury, the appellate court reviewed the legal sufficiency of the evidence under Maryland Rule 8-131(c), including whether the proven conduct satisfied the statutory element of operating a vehicle.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	State of Maryland v. Kevin George DiGennaro

TOPICS

- statutory interpretation
- criminal procedure
- mens rea

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the term "operating" in Criminal Law § 2-209 is different from the terms "driving" and "controlling" in that statute.
2. Whether a driver's post-operation failure to remove debris, mark a hazard, or notify others of a roadway danger constitutes operating a motor vehicle for purposes of manslaughter by vehicle.
3. Whether DiGennaro could be convicted of manslaughter by vehicle when the death resulted from post-operation omissions rather than grossly negligent conduct occurring while he was actually operating the vehicle.

HOLDINGS

1. The term "operate" in Criminal Law § 2-209 is synonymous with the Transportation Article definitions of "drive" and "control" and therefore does not encompass post-operation remedial omissions.
2. DiGennaro could not be convicted of manslaughter by vehicle because the victim's death resulted from his failure to take post-operation remedial action, not from grossly negligent conduct while he was operating the vehicle.
3. A person may be convicted of common-law involuntary manslaughter when an unintentional death results from grossly negligent failure to perform a legal duty, provided the State proves the duty, causation, awareness of the duty, and awareness that failure to perform it created a high degree of risk to human life.

KEY QUOTATIONS

"We agree with the Court of Special Appeals that the term "operate" as used in CL § 2-209 is synonymous with the definitions of "drive" and "control" in the Transportation Article, and therefore hold that a defendant cannot be convicted of manslaughter by vehicle unless the victim died as a result of grossly negligent conduct that occurred while the defendant was actually operating a vehicle." (415 Md. at 558-559)

"In light of the State's theory of the case against Respondent, and the factual findings of the Circuit Court, the victim's death was not caused by Respondent's negligent operation of a vehicle, but rather by Respondent's failure to take appropriate post-operation remedial action as a result of what occurred while he had been operating the vehicle." (415 Md. at 559)

FACTUAL BACKGROUND

DiGennaro was driving a dump truck when he accidentally released approximately 3,480 pounds of gravel onto Route 136, creating several gravel concentrations extending approximately 800 feet. He stopped, observed some gravel, kicked some of it aside, and then drove to a quarry without removing the debris, adequately warning motorists, or promptly notifying the quarry of the danger. A vehicle subsequently skidded on the gravel and collided with an oncoming vehicle, killing a child. The trial court found that DiGennaro's post-spill failure to mark or remediate the hazard was grossly negligent and caused the death.

PROCEDURAL HISTORY

A Harford County grand jury indicted DiGennaro on six counts arising from a gravel spill from his dump truck and a fatal collision. After a bench trial, the Circuit Court for Harford County convicted him of manslaughter by vehicle and failing to remove highway debris, while acquitting him of the remaining charges. The Court of Special Appeals reversed the manslaughter-by-vehicle conviction, and the Court of Appeals of Maryland granted the State's petition for certiorari and affirmed.

DISPOSITION

affirmed

CASES CITED

- DiGennaro v. State, 182 Md. App. 624, 959 A.2d 105 (2008)
- State v. Thompson, 332 Md. 1, 629 A.2d 731 (1993)
- Lilly v. State, 212 Md. 436, 129 A.2d 839 (1957)
- Blackwell v. State, 34 Md. App. 547, 369 A.2d 153 (1977)
- State v. Gibson, 4 Md. App. 236, 242 A.2d 575 (1968)
- State v. Gibson, 254 Md. 399, 254 A.2d 691 (1969)
- Dishman v. State, 352 Md. 279, 721 A.2d 699 (1998)
- State v. Albrecht, 336 Md. 475, 649 A.2d 336 (1994)
- Cox v. State, 311 Md. 326, 534 A.2d 1333 (1988)
- Forbes v. State, 324 Md. 335, 597 A.2d 427 (1991)
- Harrison v. State, 382 Md. 477, 855 A.2d 1220 (2004)