



5-1-2021

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Katherine Burgess

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Recommended Citation

Burgess, Katherine (2021) "Recent Developments: State v. Morrison," *University of Baltimore Law Forum*: Vol. 51 : No. 2 , Article 8.

Available at: <https://scholarworks.law.ubalt.edu/lf/vol51/iss2/8>

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RECENT DEVELOPMENT

STATE V. MORRISON: CO-SLEEPING WITH AN INFANT IS NOT INHERENTLY DANGEROUS CONDUCT TO SUSTAIN A CONVICTION FOR INVOLUNTARY MANSLAUGHTER OR RECKLESS ENDANGERMENT ABSENT SUFFICIENT EVIDENCE SHOWING GROSS NEGLIGENCE.

By: Katherine Burgess

The Court of Appeals of Maryland held that co-sleeping with an infant after consuming alcohol does not rise to the level of inherently dangerous conduct without a showing of gross negligence or evidence that such conduct was a gross departure from that expected from a reasonably prudent person. *State v. Morrison*, 470 Md. 86, 128, 233 A.3d 136, 161 (2020). In a review of the sufficiency of evidence, the Court of Appeals of Maryland held that the Court of Special Appeals of Maryland did not err in finding that the State failed to present evidence to support convictions for involuntary manslaughter and reckless endangerment. *Id.*

On the morning of September 2, 2013, Muriel Morrison (“Morrison”) awoke in the bed she shared with two of her daughters to discover that her four-month-old daughter “I.M.” was unresponsive. Shortly after, I.M. was transported to Johns Hopkins Hospital where she was pronounced dead upon arrival. The medical examiner concluded that the baby’s death was accidental and the most likely cause of death was ‘asphyxiation from probable overlay’ caused by Morrison sleeping on top of the infant.

The previous evening, Morrison put I.M. and her four-year-old daughter to sleep between 10 P.M. and 12 A.M., in a bed the three of them shared nightly. Once her children went to sleep, Morrison, an infrequent drinker, participated in a virtual “Mom’s night out” with friends and consumed four cups of beer over the course of several hours at her residence. At 2:30 A.M. on September 2, Morrison completed routine chores which included taking out the trash, locking her residence, changing I.M.’s diaper and ‘pumping’; after which she got into bed with her daughters. At some point during the night, the four-year-old woke up and observed her mom lying on top of I.M. She was unsuccessful in attempting to wake up Morrison. Morrison is the mother of seven children, all of whom she had practiced co-sleeping with during their younger years.

The Circuit Court of Baltimore City convicted Morrison of involuntary manslaughter, reckless endangerment, and neglect of a minor. Morrison appealed to the Court of Special Appeals of Maryland on the basis that the evidence was insufficient to support the convictions. The court agreed and

reversed the convictions for involuntary manslaughter and reckless endangerment. The State appealed and the Court of Appeals of Maryland granted a writ of certiorari.

The Court of Appeals of Maryland affirmed the judgment of the Court of Special Appeals holding that the State failed to present evidence sufficient to support a conviction for involuntary manslaughter or reckless endangerment. The court found that the evidence of Morrison's conduct did not rise to the level of gross negligence nor meet the statutory requirements of reckless endangerment.

The Court of Appeals of Maryland had to determine whether the evidence proffered by the State was sufficient to support convictions of involuntary manslaughter and reckless endangerment. *Morrison*, 470 Md. at 95, 233 A.3d at 141. In a review of the sufficiency of evidence to support a criminal conviction, the evidence is viewed in the light most favorable to the prosecution. *Id.* at 105, 233 A.3d at 147. The crux of the analysis was whether the evidence could convince any rational trier of fact beyond a reasonable doubt that the essential elements of the crime have been met. *Id.*

Under common law involuntary manslaughter is defined as an “unintentional killing of a human being, irrespective of malice.” *Morrison*, 440 Md. at 108, 233 A.3d at 149 (quoting *State v. Thomas*, 464 Md. 133, 152, 211 A.3d 274, 285 (2019) (citing *State v. Albrecht*, 336 Md. 475, 499, 649 A.2d 336 (1994))). To support a conviction of involuntary manslaughter on a theory of gross negligence, the State must prove that Morrison acted with a wanton or reckless disregard for human life and that such grossly negligent conduct caused I.M.’s death. *Morrison*, 440 Md. at 109, 233 A.3d at 149. The requisite *mens rea* for involuntary manslaughter requires the State to prove beyond a reasonable doubt that Morrison knew of the potential consequences of such conduct and acted indifferently to the outcome, that being I.M.’s death. *Id.* at 110, 233 A.3d at 150.

Reckless endangerment is a statutory crime that requires the prosecution to show that “1) the defendant engaged in conduct that created a substantial risk of death or serious physical injury to another; 2) that a reasonable person would not have engaged in that conduct; and 3) that the defendant acted recklessly.” *Morrison*, 440 Md. at 135, 233 A.3d at 165 (quoting *Hall v. State*, 448 Md. 318, 329, 139 A.3d 936, 942 (2016)). The court's review of the sufficiency of evidence is applied to both convictions because gross negligence involuntary manslaughter encompasses the elements of reckless endangerment. *Morrison*, 440 Md. at 135, 233 A.3d at 165.

The issue of a parent co-sleeping with an infant in its relation to gross negligence involuntary manslaughter is one of first impression for the court. *Morrison*, 440 Md. at 111, 233 A.3d at 151. The court must determine “whether a rational juror could have concluded beyond a reasonable doubt

that Morrison should have been aware of the risk involved with co-sleeping with her infant and [that she] was so seriously impaired as to disregard the risk.” *Id.* at 129, 233 A.3d at 162.

Here, the court found that co-sleeping with an infant is not an inherently dangerous activity nor one that poses a substantial risk of death or serious physical harm to a child. *Morrison*, 440 Md. at 115, 233 A.3d at 153. The court also concluded that co-sleeping with an infant is not a gross departure from what would be expected of an ordinarily prudent person. *Id.* at 116, 233 A.3d at 154. This assessment considers the environmental factors and surrounding circumstances. *Id.* at 119, 233 A.3d at 155. The court considered the absence of evidence that Morrison was seriously impaired or intoxicated, the lack of evidence that Morrison was aware of the potential risks of co-sleeping with an infant, and Morrison’s routine practice of co-sleeping with all her older children. *Id.* at 122-24, 233 A.3d at 157-59. Thus, the court found the evidence proffered by the State insufficient to support a conviction for gross negligence involuntary manslaughter and reckless endangerment. *Id.* at 128, 233 A.3d at 161.

The dissent stated that co-sleeping with an infant or consuming alcohol at home after putting a child to sleep is not inherently dangerous. *Morrison*, 470 Md. at 143-44, 233 A.3d at 170. However, the dissent opines that based on the State’s evidence, a rational juror could have found beyond a reasonable doubt that Morrison was grossly negligent in causing the death of I.M. *Id.* at 143, 233 A.3d at 169. This rationale was based on the conclusion that an ordinarily prudent person would be aware of the risks associated with substantial alcohol impairment and subsequently co-sleeping with an infant. *Id.* at 145, 233 A.3d at 170-71.

The Court of Appeals of Maryland held that co-sleeping with an infant that results in the infant’s death does not rise to the level of gross negligence to support involuntary manslaughter and reckless endangerment convictions. The court was diligent to separate truly negligent and reckless parents from those who are not. This holding elevates the burden on the prosecution in cases involving infant fatalities associated with co-sleeping. Co-sleeping is often a gender, socio-economic, and racially divided activity. A ruling in line with the dissent would disparately impact those who choose to or out of necessity co-sleep with their children, affecting mainly women of color and women of limited socio-economic means. However, the heightened standard of proving gross negligence will prevent an onslaught of prosecutions following such tragedies.