COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

20-P-992

COMMONWEALTH

vs.

DANIELLE S. MASTRO.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

After a jury-waived trial, the defendant was convicted of manslaughter while operating a motor vehicle under the influence of intoxicating liquor (OUI manslaughter), G. L. c. 265, § 13 1/2, for the killing of the victim, Deborah Combra.[1] The defendant appeals, arguing that the evidence did not prove that

[1] The defendant pleaded guilty to operating a motor vehicle while under the influence of intoxicating liquor, G. L. c. 90, § 24L (1); leaving the scene of a collision after causing injury resulting in death, G. L. c. 90, § 24 (2) (a 1/2) (2); leaving the scene of a collision after causing personal injury, G. L. c. 24 (2) (a 1/2) (1); leaving the scene of a collision after causing property damage, G. L. c. 90, § 24 (2) (a); use of a motor vehicle without authority, G. L. c. 90, § 24 (2) (a); and operating a motor vehicle after license suspension, G. L. c. 90, § 23. On appeal, she challenges only the OUI manslaughter conviction.

her conduct was wanton or reckless, and she should instead have been convicted of negligent motor vehicle homicide.[2] We affirm.

Background. In the light most favorable to the Commonwealth, the trier of fact could have found as follows. Between 11:04 A.M. and 1:44 P.M. on October 3, 2017, the defendant repeatedly text-messaged her drug dealer seeking to buy drugs. Early that afternoon, she took her mother's gray Audi without permission and drove it, even though her license was suspended.

In Hanson at about 2 P.M., Sergeant Elisha Sullivan Durgin saw the Audi tailgating another car. Durgin drove behind the Audi with her cruiser's blue lights and siren activated. The Audi did not stop. Instead, the Audi passed the car in front of it, twice swerving toward that car as it did so. As she drove past, the Audi's driver raised her middle finger toward the other car.

After traveling about another two-tenths of a mile, the Audi pulled over. When Durgin got out of her cruiser, the Audi quickly drove off, reaching a speed of about seventy miles per hour. As it approached an intersection where traffic was

[2] The defendant was also charged with negligent motor vehicle homicide, G. L. c. 90, § 24G (a). After the judge pronounced the guilty finding for OUI manslaughter, the negligent motor vehicle homicide indictment was dismissed by agreement of the parties as subsumed in the OUI manslaughter conviction.

stopped at a stop sign, the Audi fish-tailed and then drove around the waiting traffic, veering across the yellow line into the opposite lane and narrowly missing an oncoming school bus.

In East Bridgewater, the Audi approached a construction zone, where police in reflective clothing were directing traffic. The Audi weaved back and forth trying to pass the cars in front of it. An officer raised his hands signaling for the Audi to stop. The Audi did not stop, and the officer had to jump out of its way to avoid being hit.

At 2:11 P.M., the defendant texted her drug dealer, "I'm in Brockton," and that she was on North Quincy Street.

In Brockton shortly before 2:15 P.M., the victim was driving a Chevrolet SUV northbound on North Quincy Street, chatting with a coworker who was the front-seat passenger. The victim activated her left turn signal and slowed down. The defendant drove up behind her in the Audi, going about forty-two miles per hour in a thirty mile per hour zone. The defendant's Audi rear-ended the victim's SUV, pushing it across the center line into oncoming traffic.

Coming toward the victim's SUV was a dump truck. Its driver slammed on the brakes, but could not avoid the collision. The victim's SUV and the dump truck collided head-on. The impact caused the victim's SUV to spin rapidly, hitting a telephone pole. The victim was thrown out of the SUV and died

on impact. As for the SUV passenger, her leg was broken. The dump truck had rolled over, causing injuries to the driver's back.

The defendant got out of the Audi and walked briskly away from the crash, then turned on to the first side street. At 2:16 P.M., investigating the Audi's driving in Hanson, Durgin telephoned a number associated with its registration; the defendant answered and identified herself as "Danielle," then hung up on Durgin. Brockton officers found the defendant walking on the side street. She told them she was "dope sick," and had last used drugs two days before. Asked about her involvement in the crash, she said, "I don't think I was paying attention," and, "I think I rear-ended somebody." She said that she was looking at her phone and was on her way to meet her dealer to "hook up."

To ambulance personnel, the defendant said that she was "shit-faced," she drank alcohol to deal with her drug addiction, she knew she should not have been driving, and she had come to Brockton to buy drugs. She asked, "[H]ow does a rear end accident kill a chick?" During hospital treatment, her blood was drawn; her blood alcohol level was between 0.136 and 0.137.

The defendant subsequently told police that she had been "dope sick" for a couple of days, had "stolen" her mother's Audi and borrowed $50 to buy drugs, and at the time of the crash she

was texting her drug dealer. She said, "The cops tried to stop me and I was like fuck that, I took off, lost them." She admitted, "[I] drank a shit ton of vodka today," and, "I was dope sick driving like a fucking idiot, shit-faced." Asked why she left the crash scene, the defendant replied that she wanted to get her drugs before dealing with the police.

In a subsequent recorded phone call, the defendant told her mother, "I gave not a fuck about anything or anyone and I just wanted to go," and, "I got pulled over in Hanson and took off and drove like an absolute fucking maniac."

Discussion. 1. Sufficiency of evidence of wanton or reckless conduct. The defendant argues that the evidence was insufficient to convict her of OUI manslaughter, because it did not prove that her conduct was wanton or reckless. We review the evidence "in the light most favorable to the [Commonwealth, to determine whether] any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt" (emphasis omitted). Commonwealth v. Ramos, 470 Mass. 740, 750 (2015), quoting Commonwealth v. Latimore, 378 Mass. 671, 677 (1979).

To prove that the defendant committed OUI manslaughter, G. L. c. 265, § 13 1/2, the Commonwealth was required to establish beyond a reasonable doubt that, while operating a motor vehicle under the influence of intoxicating liquor, she

committed manslaughter. See Commonwealth v. Guaman, 90 Mass. App. Ct. 36, 39 (2016). As in most OUI manslaughter cases, on these facts the crime required proof of involuntary manslaughter by wanton or reckless conduct.[3] Id. at 39-40. Wanton or reckless conduct is "intentional conduct, . . . which . . . involves a high degree of likelihood that substantial harm will result to another." Commonwealth v. Welansky, 316 Mass. 383, 399 (1944). The words "wanton" and "reckless" mean virtually the same thing in this context, although the word "wanton" may have a connotation of "arrogance or insolence or heartlessness" not present in the word "reckless." Id. at 398. The Commonwealth may prove wanton or reckless conduct under a subjective or objective standard: either that the defendant knew there was a grave danger to others and chose not to alter her conduct, or that "an ordinary normal [person] under the same circumstances would have realized the gravity of the danger." Guaman, supra at 40-41. See Commonwealth v. Hardy, 482 Mass. 416, 426 (2019) (recklessness "requires a conscious choice of action . . . with knowledge of the serious dangers to others involved" [citation omitted]).

[3] The defendant does not dispute that she operated the Audi while under the influence of intoxicating liquor, that her conduct caused the victim's death, or that her conduct was intentional, even if the victim's death was not.

The trial judge heard ample evidence to support a finding that the defendant drove the Audi in a wanton or reckless manner. As set forth above, evidence established that the defendant drove dangerously through three towns, speeding, tailgating, failing to stop for Durgin, nearly hitting a school bus in Hanson, and nearly hitting a police officer at the construction site in East Bridgewater, before rear-ending the victim's SUV in Brockton. Compare Commonwealth v. Moore, 92 Mass. App. Ct. 40, 45-46 (2017) (third prong malice established by defendant's leading police on high speed chase, driving erratically, and committing serious traffic violations). She was intoxicated. See Guaman, 90 Mass. App. Ct. at 41 ("[T]he trier of fact may properly consider the defendant's decision to drive while drunk as a factor towards proof of recklessness"). Indeed, by the defendant's own admissions, she was both reckless, as she said she was not paying attention to her driving, and wanton, as she said she did not care about the consequences of her driving and only wanted to connect with her drug dealer.

The defendant maintains that the grave danger was not apparent to her, and would not be to a reasonable person, because it "came from the improbable and disastrous timing of a heavily loaded truck traveling in the opposite direction at just the requisite time." The argument is unavailing. Proof of

involuntary manslaughter by wanton or reckless conduct does "not require[] specific foreseeability of the manner of harm or death." Commonwealth v. Power, 76 Mass. App. Ct. 398, 405 (2010). Courts "look at the conduct that caused the result to determine whether it was wanton or reckless, not the resultant harm." Hardy, 482 Mass. at 424. Moreover, on these facts, the judge had an ample basis to conclude that oncoming traffic was foreseeable.

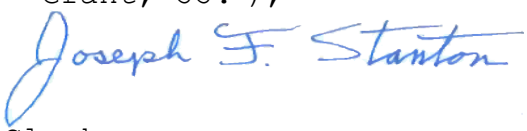
2. Evidence of defendant's driving in Hanson and East Bridgewater. The defendant further argues that the judge should not have considered testimony describing her dangerous driving in Hanson and East Bridgewater. She argues that that testimony was "nothing more . . . than propensity evidence" because it occurred in other towns "at least [three] miles away and was not part of the same continuing course of conduct." Because she did not object to that evidence at trial, we review its admission to determine if it posed a substantial risk of a miscarriage of justice. See Commonwealth v. Guastucci, 486 Mass. 22, 33 (2020). No such risk arose.

The defendant's aggressive and dangerous driving in Hanson and East Bridgewater about fifteen minutes before she rear-ended the victim's SUV in Brockton tended to prove issues including her intoxication, her recklessness, and her wantonness. Any prejudice caused by the admission of that evidence "flowed

directly from [its] properly probative effect to illustrate" the defendant's impaired operation of a motor vehicle. Commonwealth v. Gilman, 89 Mass. App. Ct. 752, 758 (2016). See Commonwealth v. Murungu, 450 Mass. 441, 448 (2008) (judge sitting as trier of fact is presumed to consider evidence for proper purpose). Contrast Commonwealth v. Grandison, 433 Mass. 135, 146-147 (2001) (defendant's subsequent conduct at police station not evidence of resisting arrest in alley).

Judgment on indictment charging violation of G. L. c. 265, § 13 1/2, affirmed.

By the Court (Milkey, Blake & Grant, JJ.[4]),



Clerk

Entered: February 3, 2022.

[4] The panelists are listed in order of seniority.