Circuit Court for Worcester County
Case No. 23-K-16-0039

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 27

September Term, 2021

ROBERT FRANKLIN SKINKLE

v.

STATE OF MARYLAND

Kehoe,
Zic,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: February 17, 2022

Following a bench trial in the Circuit Court for Worcester County, Robert Franklin Skinkle, appellant, was convicted of distribution of heroin, involuntary manslaughter, reckless endangerment, and possession of heroin. On July 12, 2016, the court sentenced appellant to a term of 16 years of incarceration for distribution of heroin, with all but ten years suspended, to be followed by two and a half years of supervised probation. For involuntary manslaughter, the court sentenced appellant to a concurrent term of 10 years, all suspended. The remaining convictions were merged for sentencing purposes.

On February 26, 2021, the post-conviction court granted appellant the right to file a belated appeal. Appellant presents one question for our review:

> Was the evidence legally insufficient to sustain Appellant's gross negligence involuntary manslaughter and reckless endangerment convictions?

For the reasons that follow, we shall reverse appellant's convictions for involuntary manslaughter and reckless endangerment and remand for resentencing on the remaining convictions.

BACKGROUND

The evidence at trial showed that, shortly before midnight on November 13, 2015, Christopher Taylor was found dead on the floor of his kitchen. Taylor's cause of death was officially determined to be "morphine intoxication."

The forensic investigation revealed that Taylor had a history of drug abuse, had reportedly purchased heroin shortly before his death, and was found with a syringe and

spoon in his pocket.[1] Based on that information, the assistant medical examiner who performed the autopsy concluded that the morphine detected in a sample of Taylor's blood was probably heroin. A urinalysis could have confirmed the presence of heroin in Taylor's system, but that test was not conducted because a urine sample could not be drawn.

A search of Taylor's cell phone records revealed a series of text messages between Taylor and appellant. The State introduced into evidence, without objection, a compilation of text messages between appellant and Taylor beginning on November 7, 2015, six days before Taylor's death. The pertinent messages are reproduced without alteration:

November 7, 2015

[Taylor]: What u doing, how u making out there, u got anything

[Appellant]: Na I wish i did n im doin ok n i like it so far
Wats up wit u

[Taylor]: Nothing just bored as fuck

[Taylor]: Ur not sick

[Appellant]: Im sick as fuck man

[Taylor]: Oh sorry, man, no way of gettin nothing

[Appellant]: Not on my end im broke as fuck man

[1] The syringe and metal spoon recovered from Taylor's pocket were submitted for testing. The laboratory analysis report was admitted into evidence as State's Exhibit 5, and the State asked the court to take note of the results. According to MDEC, State's Exhibit 5 was withdrawn. The contents of the report are not otherwise contained in the record.

[Taylor]: Gotcha

[Appellant]: Im trying to set up a date or sumthin

[Taylor]: Oh ok can u host there

[Appellant]: Yuppers

[Taylor]: Nice man

[Taylor]: Any prospects

[Appellant]: No not yet :(

[Taylor]: Oh ok

[Appellant]: Wat about u u got anything

[Taylor]: Fuck no, i can only get stuff from u remember

[Appellant]: I kno that n ur broke too huh babe

[Taylor]: 20 bucks to my name

[Appellant]: Damn bro u wanna pitch it if I can come up with anything

[Taylor]: I might be able to, just depends on how late it is, and like to get at least 3 out of it

[Appellant]: I got ya n ok lemme ccc wat i can do

[Taylor]: Ok

* * *

[Taylor] So any ideas

[Taylor]: U there

[Appellant]: Yea im sorry im tryin

[Taylor]: Thats ok bud I understand n starting to get late

November 9, 2015

[Appellant]: Wats up stranger

[Taylor]: Nadda wbu

[Taylor]: How goes in new place

[Appellant]: Its ok n not shit
Miss you

[Taylor]: U too man

[Appellant] Wyd

[Taylor]: Getting ready for bed

[Taylor]: Been stayin high

[Taylor]: ??

[Taylor]: Im going to bed ttyl man

[Appellant]: Oh ok well i wanna see u soon n I beem tryin

November 10, 2015

[Appellant]: Wats up babe

[Taylor]: Hey nothing here been asleep not feelin too good, whats up w u

[Appellant]: Nada i miss ya n y not feeling good

[Taylor]: Idk just chest tight n feelin kinda week

[Taylor]: U ok? Been getting high?

[Appellant]: Not really no I been sickost the time lately like I was sick day b4 yesterday n got shit yesterday n now sick again

November 12, 2015

[Appellant]: Hey I miss u is everything ok

[Taylor]: Miss u too bro, ya bf has been home thats all

[Appellant]: im tryin to stay hi ya but not all the time like im still u getting sic here n there

[Taylor]: I hear u

[Appellant]: Wat u up to babe

[Taylor]: Nothing here man just chillin bf home so can't do shit

[Taylor]: Would like to hook w u

[Appellant]: Im down we should do that asap ok lol

[Appellant]: Get hi as fuck n get naked

[Taylor]: Cant believe u be into that

[Appellant]: N now that my moms driving me around I can get a ride to get shit and get dropped off n skate home

[Taylor]: U wanna try that tomorrow night
Not sure wat I can get yet tho

[Appellant]: Yea I'm down jus lemme know

[Taylor]: Ok get home from work like 4:30

[Appellant]: Word that sounds good to me

[Taylor]: Be honest bro about really be into this, I didn't think u were, u have said that before, so i need you to be upfront bro, its me remember

[Appellant]: Yea dude i said im down to try n see wat happens

[Taylor]: Ok i gotcha

[Taylor]: Remember we know each other pretty well bro

[Appellant] I kno bro well i wanna try n see what happens

[Taylor]: Ok

November 13, 2015

[Appellant]: Wats up bro

[Taylor]: Hey bro

[Taylor]: U there?

[Appellant]: Yupp just got it

[Taylor]: Cool so whats up

[Appellant]: Nada babe n u

[Taylor]: Tryin to see wat I can come up with man, u got anything

[Taylor]: U there

[Appellant]: No I wish bro

[Taylor]: Fuck so we need 50

[Taylor]: Dude if I put out all that I want 5

[Appellant]: U home already

[Taylor]: So should i have everything in bathroom ready to go?

[Appellant]: Yuppers

[Taylor]: Ok btw u suck lol but iove you anyways n u owe me too
How long before ur here

[Appellant]: Ima b bout 20-25 mins

The investigation led police to identify appellant as the person believed to have provided heroin to Taylor on the date of his death. Appellant was arrested and voluntarily agreed to be interviewed by police. An audio recording and a transcript of the interview were admitted into evidence.

In his statement, appellant told police that he had known Taylor for about five months prior to his death. Appellant said, "[Taylor] was a good friend of mine and he cared so much about me and was always there for me if I needed somebody."

Appellant acknowledged that Taylor sent him a text message that said that he was looking for heroin. Appellant admitted that, on the day Taylor died, appellant purchased thirteen bags of heroin from a dealer and brought it to Taylor's house. Appellant kept eight bags and gave Taylor the remaining five bags. Appellant told Taylor that he was not "sure" that Taylor should use all five bags at once, because Taylor had only used four bags on previous occasions when they had used heroin together.

Appellant and Taylor proceeded to inject themselves with their share of the heroin at the same time. Shortly afterward, Taylor lost consciousness. Appellant attempted to revive Taylor by shaking him and splashing water on his face, but Taylor "wasn't responsive." Appellant used his phone to conduct an internet search on "recognizing opioid overdose," and he visited a website titled "help, my friend is overdosing in front of me."

Appellant left the house when he saw that Taylor was not breathing and had no pulse. He said that he did not attempt to seek help because he was "too upset" and he

"freaked out." Later that evening, Taylor's partner returned home from work, discovered Taylor's body, and called 911.

At the close of the evidence, the State argued that distributing the heroin to Taylor, "knowing that [he] was going to use the heroin, and understanding and being aware of the risk which heroin poses" was a "grossly negligent act."

The court expressed its findings on the record, stating first that appellant's statement and the police investigation constituted "sufficient evidence to make the determination that [appellant] sold the drugs and that, as a result of ingesting those drugs, Mr. Taylor died." The court continued:

> So the question now is that - - to prove manslaughter, one of the conditions is that the Defendant, conscious of the risk, acted in a grossly negligent manner, that is[,] in a manner that created a high degree of risk to human life. There's testimony provided by … Detective Wells that it is well-known in the drug community that, in fact, ingesting heroin creates the risk of a possible overdose and death. Even without that, as pointed out by the State, it's common knowledge. . . .
>
> In addition to that, [it was] expressed by [appellant] based on his statement that, in fact, he warned Mr. Taylor that maybe he shouldn't do five bags, maybe he should only do four, which shows his mens rea that, in fact, he knew the risk when Mr. Taylor ingested the heroin. So for that reason, I'll enter a finding of guilt as to all [four] counts.

THE STANDARD OF REVIEW

In a challenge to the sufficiency of the evidence to support a conviction resulting from a bench trial, we will not "set aside the judgment of the trial court on the evidence unless clearly erroneous[.]" Maryland Rule 8–131(c). "[T]he test is whether the evidence either shows directly or supports a rational inference of the facts to be proved, from

which the trier of fact could fairly be convinced, beyond a reasonable doubt, of the defendant's guilt of the offense charged." *Chisum v. State*, 227 Md. App. 118, 127 (2016) (quoting *Williams v. State*, 5 Md. App. 450, 459 (1969)). "In examining the record, we view the State's evidence, including all reasonable inferences to be drawn therefrom, in the light most favorable to the State." *Johnson v. State*, 245 Md. App 46, 57 (cleaned up), *cert. dismissed as improvidently granted*, 471 Md. 429 (2020).

ANALYSIS

"Involuntary manslaughter is the unintentional killing of a human being, irrespective of malice." *State v. Thomas*, 464 Md. 133, 152 (2019) (citing *State v. Albrecht*, 336 Md. 475, 499 (1994)). "'[A] conviction of manslaughter will not lie on a showing of simple negligence or misadventure or carelessness but must rather be predicated upon that degree of aggravated negligence which is termed 'gross' negligence.'" *Johnson*, 245 Md. App. at 58 (quoting *Albrecht*, 336 Md. at 499).[2]

"[W]hen determining whether an individual has acted with the requisite grossly negligent *mens rea* to be found guilty of involuntary manslaughter, the State must demonstrate wanton and reckless disregard for human life." *Thomas*, 464 Md. at 160. "In other words, the accused's conduct, under the circumstances, must manifest such a

[2] Maryland courts recognize two other varieties of involuntary manslaughter: unlawful act manslaughter, which is "doing some unlawful act endangering life but which does not amount to a felony" and "negligent omission to perform a legal duty." *Thomas*, 464 Md. at 152. Here, the State argued, and the court expressly found, that appellant was guilty of involuntary manslaughter based on gross negligence.

gross departure from what would be the conduct of an ordinary and prudent person so as to amount to a disregard of the consequences and an indifference to the rights of others." *State v. Pagotto*, 361 Md. 528, 548 (2000) (citing *Albrecht*, 336 Md. at 500).

A finding of gross negligence "also involves an assessment of whether an activity is more or less likely at any moment to bring harm to another, as determined by weighing the inherent dangerousness of the act and environmental risk factors."[3] *Thomas*, 464 Md. at 160-61 (internal citation and quotation marks omitted). "This weighing must amount to a 'high degree or risk to human life' – falling somewhere between the unreasonable risk of ordinary negligence and the very high degree of risk necessary for depraved-heart murder." *Id.* at 161 (citation omitted).

Appellant's conviction for reckless endangerment "turns on much of the same evidence" as the conviction for involuntary manslaughter. *State v. Morrison*, 470 Md. 86, 125 (2020). "Criminal recklessness is assessed by considering whether the conduct, 'viewed objectively, was so reckless as to constitute a gross departure from the standard of conduct that a law-abiding person would observe, and thereby create the substantial risk that the statute was designed to punish.'" *Id.* at 124–25 (quoting *Minor v. State*, 326 Md. 436, 443 (1992)).

[3] To obtain a conviction for gross negligence involuntary manslaughter, the State must also prove a "'causal connection between such gross negligence and death[.]'" *Taylor*, 464 Md. at 152 (quoting *Albrecht*, 336 Md. at 499). Appellant does not assert on appeal that the evidence was insufficient to establish causation.

Appellant's sole contention on appeal is that the evidence was insufficient to establish the element of mens rea necessary to sustain his convictions for gross negligence involuntary manslaughter and reckless endangerment. Specifically, he asserts that evidence that he was aware of the danger of heroin, yet provided it to Taylor, without more, does not support a finding that his conduct amounted to a wanton and reckless disregard for human life. The State maintains that evidence of appellant's "experience with heroin and his knowledge of the increased danger of the sale raised the risk level of the exchange" and was therefore sufficient to support a finding of gross negligence. Based on our review of the record, we agree with appellant that his convictions must be reversed.

In *State v. Thomas*, which was decided four years after appellant's trial and convictions, the Court of Appeals held that a defendant who distributes heroin to an individual who later dies of a heroin overdose may be convicted of gross negligence involuntary manslaughter. 464 Md at 180. In so holding, the Court declined to adopt "a per se rule providing that all heroin distribution resulting in death constitutes gross negligence involuntary manslaughter[.]" *Id*. at 167. Instead, the Court explained that the "inherent dangerousness of distributing heroin" must be considered along with "the attendant environmental risk factors" that the defendant, or an ordinarily prudent person under similar circumstances, knew or should have known. *Id*.

In affirming Thomas's conviction for involuntary manslaughter, the Court considered environmental factors, including whether the defendant was a "systematic and

sustained heroin distributor[,]" whether or not the defendant knew or should have known that the heroin was particularly potent or was mixed with other substances, and any circumstances suggesting that the victim was at increased risk of an overdose. *Id*. at 168-71. The Court noted that evidence that Thomas was a heroin abuser and regularly supplied others with heroin supported an inference that he was aware of the dangers of heroin. *Id*. at 170. In addition, evidence that the victim called Thomas 27 or 28 times in a span of twenty minutes and sent multiple text messages "imploring" Thomas to call him supported an inference that the victim was "desperately in need of heroin and might well ingest the entire four bags of heroin immediately." *Id.* at 169-70. The Court noted that the defendant nevertheless sold the victim four bags of a relatively new heroin product, which was "likely to be used at once," without knowing anything about the composition of the substance, the victim's tolerance for the drug, or what other substances the victim was taking. *Id.* at 171. The Court concluded that "[t]o knowingly distribute a dangerous, and sometimes lethal, substance without such information qualifies as 'a gross departure from what would be the conduct of an ordinarily careful and prudent person under the same circumstances[.]'" *Id.* at 171 (quoting *Albrecht*, 336 Md. at 500).

In *McCauley v. State*, this Court noted that the factors discussed in *Thomas*, that is, "the vulnerability of the buyer and the dealer's experience and knowledge . . . were not intended to be all-inclusive[,]" and that "environmental risk factors have to be assessed case-by-case and in context." 245 Md. App. 562, 573 (2020). We concluded that, under

the circumstances, the defendant's "knowledge of the high level of danger was sufficient" for a jury to make a finding of gross negligence. *Id.* at 573. We explained:

> The record in this case demonstrated that Ms. McCauley knew that the drugs she sold had caused multiple people, including herself, to overdose. She knew the actual and highly dangerous contents of the drugs she sold. In the past, she knowingly sold heroin containing fentanyl, a dangerous analog of heroin, and knew or should have known that she sold drugs containing carfentanil, a tranquilizer significantly more potent than Fentanyl used to sedate rhinos and other large animals. She knew the drugs she sold were so dangerous that she warned many of her buyers of their potency. Ms. McCauley's knowledge of the extreme dangerousness of the drugs she sold raised the risk level from her transaction with [the victim] to one in which a jury could find a reckless, wanton disregard for human life.

Id. at 573–74.

Appellant contends that the evidence introduced at his trial "stands in stark contrast" to the evidence in *Thomas* and *McCauley*. Appellant asserts that our decision should be guided instead by *Johnson*, *supra*, 245 Md. App. 46 (2020).

In *Johnson*, the defendant purchased heroin and split it with a friend. *Id.* at 49–50. The friend overdosed on his portion of the heroin, which turned out to also contain fentanyl, and died. *Id* at 50. We reversed the conviction for involuntary manslaughter, holding that the defendant's conduct "lack[ed] the risk factors that elevated the dealer's conduct in *Thomas*" to gross negligence. *Id.* at 61. We noted that, unlike the facts in *Thomas*, the defendant and the decedent were friends, the defendant was not a "systematic and sustained heroin distributor," and there was no evidence demonstrating that the defendant sold drugs at any other time." *Id.* at 61-62. We further noted that:

> [t]he record reveals no reason for [the defendant] to believe that [the decedent] was at a heightened risk or harm, beyond the risk inherent in the act of buying and using heroin. Nothing in the record suggest their meeting was unusual or contains any signs that [the decedent] was desperate. Instead, two friends split drugs after talking throughout the day about how they were going to acquire them.

Id. at 62.

We agree with appellant that the rationale for our holding in *Johnson* applies to the circumstances in this case. Although it could be inferred from the text messages that appellant had previously obtained heroin for Taylor, there was no evidence at trial demonstrating that such transactions happened "routinely," as the State claims, nor was there evidence that appellant ever sold drugs to anyone else. There was no evidence that the heroin appellant purchased and split with Taylor contained anything other than heroin or was particularly potent. There was no evidence that Taylor was desperate for heroin, that he had previously overdosed, or that he was otherwise at a "heightened risk of harm."

Viewed in the light most favorable to the State, the evidence demonstrated (1) that appellant knew of the dangers of heroin and (2) that he provided Taylor with five bags of heroin when, to appellant's knowledge, Taylor had used only four bags at one time. Without more, we cannot conclude that the evidence was sufficient, under *Thomas* and its

progeny, to sustain the convictions for gross negligence involuntary manslaughter and reckless endangerment.[4]

THE CONVICTIONS FOR INVOLUNTARY MANSLAUGHTER AND RECKLESS ENDANGERMENT ARE REVERSED. THE JUDGMENTS OF THE CIRCUIT COURT FOR WORCESTER COUNTY ARE OTHERWISE AFFIRMED. THIS CASE IS REMANDED FOR RESENTENCING ON THE REMAINING COUNTS.

COSTS TO BE PAID BY WORCESTER COUNTY.

[4] The State also contends that appellant's failure to summon medical assistance when he realized Taylor had taken an overdose of heroin "was a gross departure" from the standard of what a reasonable person would do under those circumstances and demonstrates an indifference to human life" and was sufficient to support the convictions for involuntary manslaughter and reckless endangerment. We are not persuaded.

A defendant cannot be convicted of reckless endangerment for failure to obtain emergency medical care for another unless the defendant is under a legal obligation to do so. *See State v. Kanavy*, 416 Md. 1, 12 (2010). Similarly, "[t]o convict a defendant of involuntary manslaughter by grossly negligent failure to perform a legal duty," one of the elements the State must prove is that "the victim's death was caused by the defendant's failure to perform a duty that the defendant had a legal obligation to perform." *Beckwitt v. State*, __ Md. __, No. 16, Sept. Term 2021, sl. op. at 34; 2022 WL 260176 at *17 (Jan. 28, 2022).

The State points to no facts and cites to no authority under which we could conclude that appellant had a legal duty to Taylor.