Circuit Court for Anne Arundel County
Case No. C-02-CR-18-000480

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2469

September Term, 2019

JASON PATTON BAKER

v.

STATE OF MARYLAND

Kehoe,
Wells,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: July 20, 2021

A jury, in the Circuit Court for Anne Arundel County, convicted Jason Baker, appellant, of involuntary manslaughter, distribution of fentanyl, possession of fentanyl with intent to distribute, possession of fentanyl, and reckless endangerment. The court sentenced appellant to a total term of 20 years' imprisonment, with all but 15 years suspended. In this appeal, appellant presents two questions for our review:

1. Did the trial court err in prohibiting appellant from presenting evidence that the victim had committed suicide?

2. Did the trial court err in denying appellant's request for a postponement and in denying his request for a mistrial after the court ruled that appellant was precluded from presenting evidence that the victim had committed suicide?

For reasons to follow, we hold that the trial court did not err in precluding the disputed evidence or in denying appellant's request for a postponement or a mistrial. We, therefore, affirm the judgments of the circuit court.

BACKGROUND

On January 18, 2018, a 16-year-old male, J.K., was found dead in his bedroom. An autopsy was performed by the State's medical examiner, and the medical examiner determined the cause of death to be an overdose of Fentanyl, a synthetic opioid. It was later discovered that appellant had sold heroin laced with Fentanyl to J.K. just before his death. Appellant was ultimately arrested and charged with involuntary manslaughter and other offenses related to J.K.'s death.

Exclusion of Evidence Pertaining to Suicide

Prior to trial, appellant informed the State that he intended to call several expert witnesses, one of whom had prepared a report indicating that J.K. had ingested additional substances other than Fentanyl with the intent of doing himself harm. The State thereafter filed a motion asking the court to exclude that expert from testifying.

On the first day of trial, after jury selection but before opening statements, the trial court heard argument on the State's motion. The State argued that its sole theory of the case was that appellant had distributed heroin laced with Fentanyl, that the act was grossly negligent, and that the grossly negligent act caused J.K.'s death. The State asserted that, in order to prove that offense, *i.e.*, grossly negligent involuntary manslaughter, the State only needed to show that appellant's distribution of heroin laced with Fentanyl to J.K. was grossly negligent and that it was the actual and legal cause of J.K.'s death. The State argued, therefore, that any opinion by appellant's expert as to whether J.K. had intended to harm or kill himself when he took the heroin laced with Fentanyl was irrelevant and would only confuse the jury.

Defense counsel proffered that his expert, Dr. Michael Arnall, was going to testify "as to the cause of death and the manner of death." Defense counsel stated that the defense was going to provide evidence that "it was not the Fentanyl that caused the death" but rather that "there were other factors that caused the death." Regarding the evidence that J.K. may have been suicidal, defense counsel argued that the evidence was relevant to "foreseeability" because "you can't foresee suicide." Defense counsel argued that J.K.'s death was the result of "an intent to do self-harm," which was "the cause of death."

The trial court ultimately granted the State's motion and found that "what was in the victim's mind at the time [he] ingested the heroin" was not relevant. The court then clarified that the defense's expert, Dr. Arnall, could testify "as to other causes of death other than Fentanyl" but could not "opine as to the victim's intention or intent to commit suicide."

Motion for Postponement/Mistrial

Immediately after the trial court announced its ruling, defense counsel asked if he could "still argue suicide." The court denied the request, stating that its ruling – that the victim's conduct was irrelevant – applied to Dr. Arnall's testimony and to argument. Defense counsel then asked for a postponement on the grounds that the "entire defense strategy" was based on the argument that J.K. had committed suicide. Defense counsel also argued that the defense needed some time to investigate the possibility of an interlocutory appeal. Shortly thereafter, the court recessed for lunch, with the trial judge explaining that she would speak with the Administrative Judge about the postponement request.

When the proceedings resumed following the lunch break, defense counsel renewed his request for a postponement and added a request for a mistrial. Defense counsel argued that the trial court's ruling "completely obliterated the defense theory" and "fundamentally impacted" appellant's constitutional right to present a defense. The State opposed the mistrial request.

The trial court eventually denied the mistrial request. The court explained that its initial ruling was limited to the question of whether Dr. Arnall could testify regarding the victim's intent to commit suicide. The court stated that it was not until defense counsel asked if he could "argue suicide" that the court declared that it did not believe the argument was relevant. The court further stated that the defense should have known that its theory of suicide was "going to be an issue in this case" given the State's motion and the defense's clear knowledge of the relevant case law, which, according to the court, cast doubt on the relevance of a victim's state of mind when a defendant is charged with grossly negligent involuntary manslaughter.

After ruling on the mistrial request, the trial court recessed so that the parties could argue defense counsel's postponement request before the administrative judge. At that hearing, defense counsel argued that a postponement was necessary so that the defense counsel file an interlocutory appeal of the trial court's decision to preclude the defense from arguing that the victim had committed suicide. The administrative judge denied the request. Shortly thereafter, the trial resumed.

Trial

Throughout the ensuing trial, appellant attempted to present evidence and argument as to J.K.'s "suicidal behavior," but the trial court repeatedly thwarted those efforts, citing its prior ruling. Appellant was, however, permitted to present evidence, including two expert witnesses, in support of other defense theories. Those theories included that J.K.

may have procured the Fentanyl from an alternate source; that J.K.'s death was caused by something other than Fentanyl; and, that appellant would not have known that the heroin he sold to J.K. contained Fentanyl.

Appellant was ultimately convicted. Additional facts will be supplied below.

DISCUSSION

I.

Appellant contends that the trial court erred in prohibiting him from presenting evidence or argument that the victim, J.K., may have committed suicide. Appellant asserts that the defense's theory was that the actual cause of death was suicide and not the grossly negligent act of distributing heroin laced with Fentanyl. Appellant maintains that, by disallowing him to present evidence in support of that theory, the court violated his constitutional right to present a defense.

The State asserts that the trial court properly precluded appellant from presenting evidence of J.K.'s suicidal intent. The State argues that the sole factual question as to the charge of grossly negligent involuntary manslaughter was whether the substance that appellant sold to J.K. was the actual and legal cause of J.K.'s death. The State contends that J.K.'s mental state would not have resolved that question and was therefore irrelevant.

The right to present a defense, and the right to present evidence in support of that defense, is guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and by Article 21 of the Maryland Declaration of Rights. *Taneja v. State*, 231 Md. App. 1, 10 (2016). That right is circumscribed, however, by "two paramount rules of

evidence, embodied both in case law and in Maryland Rules 5-402 and 5-403." *Smith v. State*, 371 Md. 496, 504 (2002). The first rule is "that evidence that is not relevant to a material issue is inadmissible." *Id.*; *see also* Md. Rule 5-402. The second rule is that relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." *Id.*; *see also* Md. Rule 5-403. We review the trial court's decision under an abuse of discretion standard. *Muhammad v. State*, 177 Md. App. 188, 273-74 (2007).

"Involuntary manslaughter is the unintentional killing of a human being, irrespective of malice." *State v. Thomas*, 464 Md. 133, 152 (2019). Gross negligence involuntary manslaughter occurs when a defendant negligently does some act that results in death. *Id.* To convict a defendant of gross negligence involuntary manslaughter, the State must show: 1) that the defendant acted in a grossly negligent manner; and 2) that the defendant's grossly negligent act caused the victim's death. *Beckwitt v. State*, 249 Md. App. 333, 371 (2021). "In determining whether a defendant's actions constituted gross negligence, we must ask whether the accused's conduct, under the circumstances, amounted to a disregard of the consequences which might ensue and indifference to the rights of others, and so was a wanton and reckless disregard for human life." *State v. Albrecht*, 336 Md. 475, 500 (1994) (citations and quotations omitted). In determining whether the grossly negligent act caused the victim's death, we ask whether the defendant's gross negligence was "the proximate cause of the victim's death – meaning the (1) actual, but-for cause and (2) legal cause." *Thomas*, 464 Md. at 173.

In *State v. Thomas*, 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 negligent involuntary manslaughter. *Id.* at 180. In so holding, the Court cautioned that "a *per se* rule providing that all heroin distribution resulting in death constitutes gross negligence involuntary manslaughter is unwise and not in keeping with our precedent." *Id.* at 167. The Court explained, rather, that such a determination depends on "the inherent dangerousness of distributing heroin" and "the attendant environmental risk factors presented by each case." *Id.* Those attendant circumstances, according to the Court, include: the amount of heroin distributed; any subjective knowledge on the part of the defendant as to the possibility of an overdose; any objective circumstances suggesting that victim had an increased risk of an overdose; and, whether the defendant was a "systematic and sustained heroin distributor." *Id.* at 168-71.

As to whether the heroin distribution was the "actual" cause of the victim's death, the Court of Appeals held that "it is almost always sufficient that the result would not have happened in the absence of the conduct – or 'but for' the defendant's actions." *Id.* at 174 (citations and quotations omitted). The Court noted that "a defendant does not cease to be responsible for his otherwise criminal conduct because there were other conditions which contributed to the same result." *Id.* at 175 (citations and quotations omitted). That is, "[t]he State need not demonstrate that the heroin was independently sufficient to cause [the victim's] death, only that it was the but-for cause." *Id.* at 176.

Finally, as to whether the heroin distribution was the "legal" cause of the victim's death, the Court of Appeals explained that "[t]he concept of legal causation . . . turns largely upon the foreseeability of the consequence of the defendant's conduct." *Id.* at 178 (citations and quotations omitted). In other words, the harm must be "one which a reasonable man would foresee as being reasonably related to the acts of the defendant." *Id.* (citations and quotations omitted). Moreover, a defendant is not relieved of responsibility by intervening conduct that is reasonably foreseeable or by contributory negligence on the part of the victim. *Id.* at 179.

Turning back to the instant case, we hold that the trial court did not err in precluding appellant from arguing that the actual cause of J.K.'s death was suicide and not the grossly negligent act of distributing heroin laced with Fentanyl. Whether J.K. ingested the heroin laced with Fentanyl because he wanted to kill himself (or for some other reason) had no bearing on the material fact at issue, namely, whether appellant's grossly negligent act of distributing heroin laced with Fentanyl was the actual and legal cause of J.K.'s death. Even had appellant proven that J.K. had taken the heroin laced with Fentanyl to commit suicide, the fact remains that J.K. would not have died but for the heroin laced with Fentanyl distributed to him by appellant. *See id.* at 178 ("There is no evidence in the record that [the victim] could have died without the heroin, and this is enough to find but-for causation."). Evidence of J.K.'s possible suicide would similarly have had no impact on the fact that J.K.'s ingestion of the heroin laced with Fentanyl and his subsequent death was a foreseeable result of appellant's grossly negligent act. *See id.* at 179 ("Ingesting heroin is

a foreseeable result of its supply, and death a foreseeable consequence of its ingestion.") (internal citation omitted).

To be sure, an act of suicide may be considered an independent superseding act that, in the context of a wrongful death suit, "precludes imposing liability on a third party for the suicide of another." *Sindler v. Litman*, 166 Md. App. 90, 113 (2005). In certain circumstances, the suicide may be considered an "intervening cause" that breaks the connection between a defendant's negligence and the victim's injury. *Id.* at 115-16 (citing *State ex. rel. Schiller v. Hecht Co.*, 165 Md. 415, 421 (1933)). "But in order to excuse the defendant, this intervening cause must be either a superseding or a responsible cause." *Id.* at 116 (citations omitted). Moreover, the connection between the defendant's negligent act and the victim's death is not actually broken, and thus the defendant is not relieved of liability, "if the intervening event is one which might, in the natural and ordinary course of things, be anticipated as not entirely improbable, and the defendant's negligence is an essential link in the chain of causation." *Id.* (citations omitted).

Here, appellant has presented no argument or evidence to suggest that J.K.'s act of taking the heroin laced with Fentanyl to commit suicide was an "intervening cause." Although appellant may not have anticipated J.K.'s motives for taking the heroin laced with Fentanyl, a reasonable person would have known that the natural and probable consequences of distributing heroin laced with Fentanyl to J.K. was that J.K. would take the heroin laced with Fentanyl and possibly overdose. In other words, J.K.'s subjective intent in taking the heroin laced with Fentanyl did not break the chain of causation between

appellant's grossly negligent act of distributing heroin laced with Fentanyl and J.K.'s death. Thus, evidence of J.K.'s possible suicide was irrelevant.

Appellant relies on several out-of-state cases, none of which is persuasive. In *State v. Dorame*, 121 Ariz. 108 (1978), the Court of Appeals of Arizona held that the defendant's suicide note was admissible at his trial for vehicular manslaughter "to prove the accident was in reality a suicide attempt and that [the defendant] was therefore acting in reckless disregard for the life and safety of his life." *Id.* at 110. In *State v. Baldridge*, 857 S.W.2d 243 (Mo. App. 1993), the defense was permitted to argue that the victim, who died of a prescription drug overdose, had committed suicide where the State claimed that the defendant had actually fed the prescription drugs to the victim, causing her death. *Id.* at 246-48. In *Runyon v. Reid*, 510 P.2d 943 (Ok. 1973), the Supreme Court of Oklahoma held that the victim's intentional act of taking 60 prescription pills, an amount well in excess of the prescribed amount, was an "independent intervening cause" of the victim's death and thus relieved the pharmacist of civil liability, where there was no evidence that the victim's act of taking such a large number of pills was reasonably foreseeable. *Id.* at 947-51. In *People v. Morrison*, 95 A.D.2d 868 (N.Y. App. 1983), the defendant, on trial for second-degree murder, was permitted to argue that his wife had "suicidal tendencies" where the defendant claimed such evidence supported an affirmative defense that he had killed his wife "under the influence of extreme emotional disturbance." *Id.* at 869.

None of those cases is applicable here. The issue of suicide was relevant in *Baldridge* to show that the defendant intended to cause the accident that killed his wife. In

Dorame, the issue of suicide was relevant to counter the State's theory that the defendant had physically fed the victim the pills that caused her death. In *Morrison*, the defendant raised an affirmative defense of extreme emotional disturbance and argued that the victim's "suicidal tendencies" supported that defense. None of those issues was present in the instant case.

As for *Runyon*, although the facts of that case appear somewhat analogous to the facts presented here, the case is nevertheless distinguishable. There, the victim overdosed on a medication for which he had a prescription, and there was no evidence that the pharmacist who filled the prescription knew that the victim was going to take the medication in excess of the prescribed amount for the purpose of committing suicide. *Runyon*, 510 P.2d at 947-51. Here, by contrast, appellant was "knowingly engaged in the unregulated selling of a [drug] with no known medical benefit" and thus took "a large risk in distributing any amount above an exceedingly *de minimis* threshold." *Thomas*, 464 Md. at 167-69. And, as discussed, a reasonable person in appellant's position would have known that J.K. might, for whatever reason, consume the heroin laced with Fentanyl in some amount and consequently die of an overdose.

The State argues, and we agree, that *State v. Price*, 135 N.E.3d 1003 (Oh. 2019), *aff'd* 162 Ohio St.3d 609, is more analogous to the instant case and is thus more persuasive. There, the defendant sold drugs, including Fentanyl, to an individual who later died of a drug overdose. *Id.* at 1098-1101. The defendant was ultimately convicted of "corrupting another with drugs," which was a statutory offense that prohibited a person from

distributing to another a controlled substance that causes serious physical harm to the other person. *Id.* at 1106. On appeal, the defendant argued that the trial court had erred in precluding him from presenting the victim's medical records for the purposes of showing that the victim was suicidal and had taken the drugs to commit suicide, which constituted "an independent intervening cause of his death." *Id.* at 1112-13. The Eighth District Court of Appeals for the State of Ohio disagreed:

> We find that the trial court did not abuse its discretion because while the records may very well have shown that the victim was suicidal and attempted suicide by overdose recently, that evidence would not change the basic fact that the victim took the drugs furnished by [the defendant] and died as a result. Nor do the records alter [the medical examiner's] testimony that the victim died as the result of the drugs found in his system. By furnishing the victim with drugs, [the defendant] knew that there was a chance that the victim would overdose, and the victim's suicidal attempt the week prior was not a fact of consequence to the charges against [the defendant]. *See State v. Johnson*, 56 Ohio St.2d 35, 39, 381 N.E.2d 637 (1978) ("It is a fundamental principle that a person is presumed to intend the natural, reasonable and probable consequences of his voluntary acts.").

Id. at 1114.

In sum, we hold that evidence of J.K.'s possible suicide was not relevant to any material fact and likely would have confused the jury. Thus, the trial court did not err in precluding appellant from presenting evidence or argument as to that issue.

II.

Appellant next contends that the trial court erred in refusing his requests for a postponement and for a mistrial after the court ruled that he was precluded from presenting evidence or argument as to J.K.'s intent to commit suicide. Appellant asserts that the trial court "was clearly wrong that the defense had fair notice that its sole defense of suicide

was irrelevant." Appellant argues that the State's opposition to the defense, and the court's subsequent ruling, constituted good cause for a postponement because those actions "substantially changed" his defense after meaningful trial proceedings had begun.

The State counters that the trial court's decision was appropriate because appellant should have known "that the propriety of suicidal intent as a defense theory was contested." The State also argues that the trial court's ruling as to appellant's defense of suicidal intent did not prevent appellant from presenting other defense theories.

"We review the decision to deny a motion for a continuance for an abuse of discretion . . . and will reverse only in 'exceptional circumstances where there was prejudicial error.'" *Prince v. State*, 216 Md. App. 178, 203 (2014) (citing *Thanos v. Mitchell*, 220 Md. 389, 392 (1959)). We likewise "review the denial of a motion for mistrial for abuse of discretion and will reverse only where 'the prejudice to the defendant was so substantial that he was deprived of a fair trial.'" *Choate v. State*, 214 Md. App. 118, 133-34 (2013) (citing *Cooley v. State*, 385 Md. 165, 173 (2005)).

We hold that the trial court did not abuse its discretion in denying appellant's request for a continuance or in denying his request for a mistrial. Regardless of whether appellant had "fair notice" that his defense of suicidal intent was going to be challenged by the State at trial, the fact remains that the entirety of that defense was based on irrelevant and/or improper evidence that the court properly excluded. Thus, argument on that issue would have been inappropriate. *See Winston v. State*, 235 Md. App. 540, 573 (2018) ("[A]rguments of counsel are required to be confined to the issues in the cases on trial, the

evidence and fair and reasonable deductions, therefore, and to arguments of opposing counsel[.]") (citations omitted). Moreover, appellant's claim that his defense of suicidal intent was his *sole* defense is without merit. It is clear from the record that appellant had prepared multiple defenses and that he was permitted to present extensive evidence and argument in support of those defenses. We cannot say, therefore, that appellant was prejudiced by the court's denial of his requests for a postponement or a mistrial.

Appellant cites to several cases for the proposition that the State's opposition to the disputed evidence constituted a "trial by ambush" and resulted in appellant having to proceed to trial unprepared. Appellant's reliance on those cases is misplaced. In each of those cases, the "ambush" was instigated by the State to the detriment of the defendant, who was clearly unaware of and unprepared for the State's last-minute action. *See e.g. Morgan v. State*, 299 Md. 480 (1984) (where, two days before trial, the State informed the defense that it wanted to present multiple pieces of evidence that had not been previously disclosed in discovery); *Shepard v. State*, 108 So.2d 494 (Fl. App. 1959) (where, two days before trial, the State added a new charge); *Miller v. State*, 43 Okla. Crim 392 (1929) (where, following jury selection, the State informed the defense that it wanted to call a previously undisclosed witness). Here, by contrast, there was no "ambush." Appellant was the one who was attempting to introduce the disputed evidence, which, as discussed, was not relevant to any material issue. The State properly objected to that evidence, and the court properly precluded the evidence's admission. That appellant may have been unprepared for the court's proper, albeit adverse, evidentiary ruling does not constitute

grounds for a continuance or a mistrial, particularly where the record shows that appellant had prepared extensive evidence and argument in support of other defenses that he later presented at trial.

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