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Note

STATE V. THOMAS: AN IMPROPER EXTENSION OF INVOLUNTARY MANSLAUGHTER TO COMBAT THE OPIOID EPIDEMIC

DANIEL P. MOONEY*

In *State v. Thomas*,¹ the Court of Appeals of Maryland considered whether Patrick Joseph Thomas's conviction for gross negligence involuntary manslaughter should be upheld based on evidence that Thomas sold heroin to a buyer who later overdosed on the supply.² The court upheld Thomas's conviction, holding sufficient evidence existed to satisfy both the gross negligence and causation prongs of gross negligence involuntary manslaughter.³ In reaching this conclusion, however, the court improperly relied on another State's precedent to reach its conclusion and failed to account for important facts that would have greatly affected its legal causation analysis.⁴ Further, the court did not consider Maryland's assisted suicide statute, which renders the court's decision illogical.⁵ Finally, the court went against the Maryland General Assembly's clear decision to prohibit the State of Maryland from prosecuting narcotics distributors for manslaughter.⁶ Therefore, the court erred in its analysis of both prongs of gross negligence involuntary manslaughter, wrongfully concluding that

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1. 464 Md. 133, 153, 211 A.3d 274, 285 (2019).
2. *Id.* at 153, 211 A.3d at 285.
3. *Id.* at 172, 211 A.3d at 297.
4. *See infra* Section IV.A.
5. *See infra* Section IV.B.
6. *See infra* Section IV.C.

Thomas exhibited gross negligence⁷ and was the legal cause of the buyer's death.⁸

I. THE CASE

In the early morning hours of June 26, 2015, Colton Lee Matrey contacted Patrick Joseph Thomas approximately thirty times in an attempt to engage in a drug transaction.⁹ Thomas eventually responded to Matrey's inquiries and sold Matrey four bags of heroin.¹⁰ A few hours later, Matrey was found deceased in his bathroom surrounded by "four empty, white wax paper bags stamped 'Banshee' in blue with a blue emblem" containing suspected heroin residue.¹¹ In addition, upon searching Matrey's bedroom, the police found a prescription pill bottle containing six fifty-milligram tramadol pills that Matrey allegedly stole from his mother.¹² Tramadol is an opioid analgesic that, similar to heroin, metabolizes into free morphine in the human body.¹³ The Office of the Chief Medical Examiner could only determine the cause instead of the manner of death, opining, "Colton Lee Matrey died of alcohol and narcotic (free morphine) intoxication. . . . Autopsy detected increased levels of alcohol and a drug (free morphine) in the heart blood of the deceased."¹⁴

Using Matrey's cell phone, detectives identified Thomas as the person who Matrey was contacting on the morning of his death.¹⁵ Acting on this information, officers executed a search and seizure warrant on Thomas's person and residence, resulting in the seizure of "[sixty] individual white wax paper bags . . . stamped ['Banshee'] in blue, with a blue emblem."¹⁶ Detectives then interviewed Thomas, at which point Thomas admitted to both using and selling heroin on a regular basis.¹⁷ Specifically, Thomas explained he personally used an average of twelve bags of heroin per day, broken down

7. *See infra* Section IV.A.

8. *See infra* Section IV.B.1.

9. *Thomas v. State*, 237 Md. App. 527, 530–31, 186 A.3d 857, 859 (2018), *rev'd*, 464 Md. 133, 211 A.3d 274 (2019).

10. *Id.* at 531, 186 A.3d at 859.

11. *Id.*, 186 A.3d at 859–60.

12. *Id.*, 186 A.3d at 860.

13. *Id.* at 531 nn.4–5, 186 A.3d at 860 nn. 4–5. "Analgesic" is defined as "an agent producing diminished sensation to pain without loss of consciousness; a drug that is used to relieve pain and produce analgesia." *Analgesic*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/analgesic> (last visited July 30, 2019).

14. *Thomas*, 237 Md. App. at 531, 186 A.3d at 860.

15. *State v. Thomas*, 464 Md. 133, 144, 211 A.3d 274, 280 (2019).

16. *Id.* at 145, 211 A.3d at 281.

17. *Id.* at 148, 211 A.3d at 283.

into three shots of four bags each.¹⁸ When asked about the details of June 26, Thomas admitted to selling Matrey four bags of heroin because he knew Matrey was a local heroin addict.¹⁹ Thomas, however, was shocked to hear of Matrey's death, claiming "[Matrey] couldn't have overdosed off what I sold him. I only sold him four bags."²⁰

Thomas was charged in the Circuit Court for Worcester County with heroin distribution, reckless endangerment, and involuntary manslaughter under theories of unlawful act manslaughter and grossly negligent manslaughter.²¹ He pleaded not guilty and was tried upon an agreed statement of facts before being convicted of all three counts.²² Thomas was then sentenced to twenty years for distribution to run concurrent to an additional ten years for manslaughter.²³ Thomas timely appealed the circuit court's decision, challenging the sufficiency of the evidence used to sustain his manslaughter conviction.²⁴

The Court of Special Appeals of Maryland considered Thomas's conviction under both the unlawful act and grossly negligent theories of involuntary manslaughter.²⁵ The court held Thomas was not liable for involuntary manslaughter under the unlawful act variant because "the State failed to establish a causal connection between Thomas's sale of heroin and

18. *Id.*

19. *Id.* at 149, 211 A.3d at 283.

20. *Id.* at 150, 211 A.3d at 283.

21. *Thomas v. State*, 237 Md. App. 527, 529–33, 186 A.3d 857, 859–61 (2018), *rev'd*, 464 Md. 133, 211 A.3d 274 (2019). Unlawful act manslaughter has three elements:

(1) that the defendant or another participating in the crime with the defendant committed or attempted to commit an eligible crime; (2) that the defendant or another participating in the crime killed the victim; and (3) that the act resulting in the death of the victim occurred during the commission, attempted commission, or the escape from the immediate scene of the eligible crime.

Id. at 533, 186 A.3d at 861 (quoting *Bowers v. State*, 227 Md. App. 310, 314 n.4, 133 A.3d 1254, 1257 n.4 (2016)). Further, "[t]he State must prove that the defendant's unlawful act was the legal cause of the victim's death." *Id.* at 535, 186 A.3d at 862.

Grossly negligent manslaughter "occurs when a defendant acts in a manner that is grossly negligent and causes the death of another," wherein the act is "so heedless and incautious as necessarily to be deemed unlawful and wanton, manifesting such a gross departure from what would be the conduct of an ordinarily careful and prudent person under the same circumstances so as to furnish evidence of an indifference to consequences." *Id.* at 536–37, 186 A.3d at 863 (quoting *State v. Albrecht*, 336 Md. 475, 500, 649 A.2d 336, 348 (1994)). In addition, "the defendant's gross negligence must be the proximate cause of the victim's death—meaning the (1) actual, but-for cause and (2) legal cause." *Thomas*, 464 Md. at 173, 211 A.3d at 297–98.

22. *Thomas*, 237 Md. App. at 530–31, 186 A.3d at 859. The Court of Appeals of Maryland terms this a "hybrid plea," wherein the ultimate facts are agreed upon by both parties, but "the ability to argue legal issues, as well as sufficiency," is maintained. *Thomas*, 464 Md. at 140, 211 A.3d at 278 (quoting *Bishop v. State*, 417 Md. 1, 22, 7 A.3d 1074, 1086–87 (2010)).

23. *Thomas*, 237 Md. App. at 531, 186 A.3d at 860.

24. *Id.* at 531–32, 186 A.3d at 860.

25. *Id.* at 532–33, 186 A.3d at 860–61.

Matrey's death."²⁶ In addition, the court held Thomas was not liable under the grossly negligent theory because (1) the State only established evidence of ordinary negligence as opposed to gross negligence, and (2) the State failed to satisfy the requirement that Thomas's "act be the legal—"but-for"—cause of [Matrey's] death."²⁷ As a result, the Court of Special Appeals reversed Thomas's manslaughter conviction.²⁸

The State of Maryland petitioned the Court of Appeals for writ of certiorari, arguing "that the evidence was sufficient to convict Thomas of grossly negligent involuntary manslaughter."²⁹ Notably, the State did not challenge the Court of Special Appeals' decision surrounding unlawful act involuntary manslaughter.³⁰ Thus, in granting certiorari, the Court of Appeals only considered "whether the evidence introduced in the trial court was sufficient to convict Thomas of gross negligence involuntary manslaughter."³¹

II. LEGAL BACKGROUND

Until the *State v. Thomas* decision, Maryland courts had never considered whether an individual can be convicted of gross negligence involuntary manslaughter for drug distribution.³² Thus, to understand *State v. Thomas*, one must understand involuntary manslaughter and the precedent surrounding the crime in Maryland.³³ Section II.A discusses Maryland's definition of involuntary manslaughter and the three varieties Maryland courts recognize.³⁴ Section II.B describes the development of the gross

26. *Id.* at 535–36, 186 A.3d at 862. The court explained Matrey injected himself with an amount of heroin that he chose at a different time and place from Thomas's heroin sale. *Id.* at 535, 186 A.3d at 862. In addition, Matrey used the heroin in combination with alcohol, which potentially intensified the heroin's effect. *Id.*

27. *Id.* at 536–37, 186 A.3d at 863. The court did not conduct an additional causation analysis, but instead referenced its conclusion under the unlawful act theory to show the causal chain was broken between Thomas's sale and Matrey's death. *Id.* at 537, 186 A.3d at 863.

28. *Id.* at 539, 186 A.3d at 864. The Court of Special Appeals did not address Thomas's distribution conviction because Thomas only challenged his manslaughter conviction. *Id.* at 530, 186 A.3d at 859.

29. *State v. Thomas*, 464 Md. 133, 153, 211 A.3d 274, 285 (2019).

30. *Id.*

31. *Id.* In addressing this question, the Court of Appeals accepted "the parties agreed 'ultimate facts' and 'simply appl[ied] the law to the facts agreed upon.'" *Id.* at 151–52, 211 A.3d at 285 (quoting *Taylor v. State*, 388 Md. 385, 396–97, 879 A.2d 1074, 1081 (2004)). Thus, the court asked "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* at 152, 211 A.3d at 285 (quoting *State v. Albrecht*, 336 Md. 475, 479, 649 A.2d 336, 338 (1994)).

32. *See infra* Section II.B.

33. *See infra* Sections II.A–II.D.

34. *See infra* Section II.A.

negligence standard in Maryland.³⁵ Section II.C defines the “actual” and “legal” causation prongs of involuntary manslaughter under Maryland law.³⁶ Finally, Section II.D analyzes other states’ applications of gross negligence involuntary manslaughter to cases involving drug distribution.³⁷

A. *Maryland’s Definition of Involuntary Manslaughter*

In Maryland, involuntary manslaughter is a common law felony that is not defined by statute.³⁸ Instead, it is “generally defined as an unintentional killing done without malice.”³⁹ The State recognizes three varieties of the crime, each of which is distinguished by the actions that cause the death, including: “(1) by doing some unlawful act endangering life but which does not amount to a felony, or (2) in negligently doing some act lawful in itself, or (3) by the negligent omission to perform a legal duty.”⁴⁰ The first two varieties of involuntary manslaughter are deemed “unlawful act” involuntary manslaughter and “gross negligence” involuntary manslaughter, respectively.⁴¹ *State v. Thomas* only concerns the second variety—gross negligence involuntary manslaughter.⁴² To support a conviction under this category, the defendant’s negligence must be “gross or criminal,” and there must be “[a] causal connection between such gross negligence and death.”⁴³ To determine if a defendant’s negligence is “gross,” the court asks “whether the [defendant’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.’”⁴⁴ In other words, the defendant’s act must “manifest[] such a gross departure from what would be the conduct of an ordinarily careful and prudent person under

35. *See infra* Section II.B.

36. *See infra* Section II.C.

37. *See infra* Section II.D.

38. *See State v. Albrecht*, 336 Md. 475, 499, 649 A.2d 336, 347 (1994) (analyzing involuntary manslaughter in the context of a police-involved shooting).

39. *Id.*; *see* MD. CODE ANN., CRIM. LAW § 2-207 (LexisNexis 2012) (providing the sentencing guidelines for “manslaughter,” but making no distinction between voluntary manslaughter and involuntary manslaughter).

40. *Albrecht*, 336 Md. at 499, 649 A.2d at 347 (quoting *Cox v. State*, 311 Md. 326, 331–32, 534 A.2d 1333, 1335–36 (1988)).

41. *See Mills v. State*, 13 Md. App. 196, 199–200, 282 A.2d 147, 149 (1971) (upholding a teenager’s conviction for involuntary manslaughter after determining the teenager was grossly negligent in bringing a loaded gun to a school dance where he accidentally shot and killed someone).

42. *See supra* Section I.

43. *Albrecht*, 336 Md. at 499, 649 A.2d at 348 (quoting *Mills*, 13 Md. App. at 199–200, 282 A.2d at 149); *see id.* (“[W]hether an accused’s conduct constituted gross negligence must be determined by the conduct itself and not by the resultant harm.” (quoting *Mills*, 13 Md. App. at 200, 282 A.2d at 149)).

44. *Id.* at 500, 649 A.2d at 348 (quoting *Duren v. State*, 203 Md. 584, 590, 102 A.2d 277, 280 (1954)).

the same circumstances so as to furnish evidence of an indifference to consequences.”⁴⁵ Further, to satisfy the causation prong, the State must prove both actual and legal causation.⁴⁶

B. Development of Maryland’s Gross Negligence Standard

In developing the gross negligence standard, Maryland courts, prior to *Thomas*, primarily addressed four contexts: (1) automobiles, (2) failure to perform a duty, (3) weapons, and (4) police officers.⁴⁷ As it currently stands, the caselaw does not reveal a bright line rule distinguishing gross negligence from ordinary negligence.⁴⁸ Instead, whether conduct is grossly negligent is a fact-dependent inquiry where courts are expected to look at the dangerousness of the person’s conduct alongside the relevant environmental factors.⁴⁹

1. Automobiles

The Maryland Criminal Law Article defines vehicular manslaughter as “caus[ing] the death of another as a result of the person’s driving, operating, or controlling a vehicle or vessel in a grossly negligent manner.”⁵⁰ The Court of Appeals, however, holds the “common law concept and meaning of gross negligence” is carried into the statute.⁵¹ Thus, in the context of vehicular manslaughter, Maryland courts apply the common law gross negligence standard, considering both the environment and the speed at which a driver is traveling in determining whether the driver exhibited gross negligence.⁵² For example, in *Duren v. State*,⁵³ the Court of Appeals upheld a driver’s conviction of vehicular manslaughter after determining the driver exhibited gross negligence by driving at approximately sixty miles per hour in a highly populated business and residential area.⁵⁴

45. *Id.*

46. *See infra* Section II.C.

47. *See infra* Sections II.B.1–4.

48. *See infra* Section II.B.4.

49. *Id.*

50. MD. CODE ANN., CRIM. LAW § 2-209(b) (LexisNexis 2012).

51. *Duren v. State*, 203 Md. 584, 588, 102 A.2d 277, 279 (1954) (citing *Hughes v. State*, 198 Md. 424, 431, 84 A.2d 419, 422 (1951)); *see supra* Section II.A.

52. *Duren*, 203 Md. at 591, 102 A.2d at 280.

53. 203 Md. 584, 102 A.2d 277 (1954).

54. *Duren*, 203 Md. at 594, 102 A.2d at 282; *see also* *State v. Kramer*, 318 Md. 576, 586–93, 569 A.2d 674, 679–82 (1990) (holding the evidence was legally sufficient for the jury to find a driver guilty of vehicular manslaughter after the driver passed another vehicle in a no-pass zone and struck an oncoming vehicle head on). *But see* *Johnson v. State*, 213 Md. 527, 534, 132 A.2d 853, 856 (1957) (holding there was insufficient evidence to conclude that the defendant was grossly negligent based on the normal speed of the driver’s vehicle and the relatively safe environment in which he was driving).

2. Failure to Perform a Duty

Gross negligence for failing to perform a duty arises in cases “where the defendant owed to a deceased person a specific legal duty, but failed to perform the same.”⁵⁵ If “death resulted to the deceased because of the nonperformance of the duty, (at least under circumstances where the failure to perform constituted gross and wanton negligence) the defendant is guilty of involuntary manslaughter.”⁵⁶ In *Palmer v. State*,⁵⁷ a mother failed to stop her boyfriend from brutally beating her infant child over a long period of time, eventually leading to the child’s death.⁵⁸ The Court of Appeals held that because the mother owed a duty to her child to keep the child alive, the mother’s actions of permitting and compelling the child to remain in a severely abusive environment⁵⁹ satisfied the gross negligence standard.⁶⁰

3. Weapons

Maryland courts categorize involuntary manslaughter by firearm as “plainly a grossly negligent act dangerous to life.”⁶¹ In *Mills v. State*,⁶² the Court of Special Appeals upheld a teenager’s conviction of gross negligence involuntary manslaughter after the teenager brought a loaded gun to a school dance and accidentally killed one of his friends.⁶³ The court considered factors such as the confined space in which the teenager furnished the firearm, the number of people present when the teenager produced the weapon, the teenager’s consumption of alcohol while inspecting the gun, and the teenager’s actions that caused the firearm to fall to the ground and discharge.⁶⁴ Factors such as these exemplify the fact-intensive analysis courts go through in determining whether a specific defendant acted in a grossly negligent manner.⁶⁵

55. *Palmer v. State*, 223 Md. 341, 343, 164 A.2d 467, 468–69 (1960) (citing *Craig v. State*, 220 Md. 590, 596, 155 A.2d 684, 688 (1959)).

56. *Id.*

57. 223 Md. 341, 164 A.2d 467 (1960).

58. *Id.* at 348, 164 A.2d at 471.

59. The court provides a detailed description of the abuse the mother’s boyfriend performed on the child for more than one month. *Id.* at 345–51, 164 A.2d at 469–73. He beat, whipped, and bit the child, which caused the child’s internal organs to fail and eventually led to her death. *Id.*

60. *Id.* at 351, 164 A.2d at 473.

61. *Mills v. State*, 13 Md. App. 196, 202, 282 A.2d 147, 150 (1971).

62. 13 Md. App. 196, 282 A.2d 147 (1971).

63. *Id.* at 202, 282 A.2d at 150.

64. *Id.* at 197, 282 A.2d at 147–48.

65. *See id.* at 201–02, 282 A.2d at 149–50 (providing examples of the factors courts consider when deciding whether an individual acted in a grossly negligent manner).

4. Police Officers

When Maryland courts consider gross negligence in the context of police officers, “the reasonableness of the conduct must be evaluated not from the perspective of a reasonable civilian but rather from the perspective of a reasonable police officer similarly situated.”⁶⁶ Other than this minor difference, a court’s analysis of the gross negligence standard in the context of police officers is identical to the analysis in cases surrounding civilians’ actions.⁶⁷ In *State v. Albrecht*,⁶⁸ an officer pointed his shotgun at an unarmed suspect in front of an occupied public park, racked the weapon, and fired it directly at the suspect, killing her instantly.⁶⁹ Based on these actions, the Court of Appeals held the police officer’s conduct met the gross negligence standard and reinstated the officer’s convictions of involuntary manslaughter and reckless endangerment.⁷⁰

As exemplified by the four categories above, determining gross negligence is entirely fact-dependent.⁷¹ Maryland courts consider the dangerousness of a defendant’s actions from the perspective of an ordinarily prudent person or law enforcement officer in combination with the relevant environmental factors to determine whether the defendant’s actions are “likely at any moment to bring harm to another.”⁷² In other words, the above-mentioned categories provide guidance for what Maryland courts consider in determining culpability, but the courts have not yet defined one bright-line rule for determining gross negligence.

C. The Causation Prong of Involuntary Manslaughter

To support a conviction for gross negligence involuntary manslaughter, “[a] causal connection between such gross negligence and death must

66. *State v. Albrecht*, 336 Md. 475, 501, 649 A.2d 336, 349 (1994) (citing *Albrecht v. State*, 97 Md. App. 630, 642, 632 A.2d 163, 169 (1993)).

67. *Id.* at 500, 649 A.2d at 348.

68. 336 Md. 475, 649 A.2d 336 (1994).

69. *Id.* at 505, 649 A.2d at 350–51.

70. *Id.* But see *State v. Pagotto*, 361 Md. 528, 554–55, 762 A.2d 97, 111 (2000) (distinguishing *Albrecht* and holding that an officer’s conduct in shooting a suspect as judged by a reasonable officer standard was not as unwarranted, unsafe, or likely to cause injury or death when compared to the officer in *Albrecht* because (1) the officer’s gun had no alterations, (2) there was no evidence the officer pointed his gun at the victim, (3) the officer did not put his finger immediately on the trigger, (4) the officer was dealing with a potentially dangerous individual, and (5) no one else was present during the officer’s interaction with the victim).

71. See *supra* Sections II.B.1–4.

72. *Johnson v. State*, 213 Md. 527, 533, 132 A.2d 853, 856 (1957); see, e.g., *Duren v. State*, 203 Md. 584, 588, 102 A.2d 277, 279 (1954) (upholding the defendant’s conviction for gross negligence involuntary manslaughter after determining the defendant’s actions of speeding through a highly populated area of a metropolitan city satisfied the gross negligence standard).

exist.”⁷³ This requires proving (1) actual causation, meaning “but for the antecedent[’s] conduct the result would not have occurred,”⁷⁴ and (2) legal causation, which “turns largely upon the foreseeability of the consequence of the defendant’s” conduct.⁷⁵

Maryland courts take a broad view of actual causation.⁷⁶ Explained simply, “[a]ctual causation may be examined in terms of the *Sine qua non*,” meaning the conduct in question must be an essential condition to the result that occurred.⁷⁷ The Court of Appeals recognizes that a defendant’s actions don’t have to be “the sole reason for the realization of the harm which has been sustained by the victim.”⁷⁸ In fact, a defendant’s actions can be deemed grossly negligent even when the victim engaged in the same grossly negligent conduct prior to his death.⁷⁹ Further, the defendant does not have to be the one who explicitly caused the death of the victim if the defendant “aided, abetted, and encouraged” another participant to engage in conduct that caused the victim’s death.⁸⁰

To prove legal causation, on the other hand, “[i]t is sufficient that the ultimate harm is one which a reasonable man would foresee as being reasonably related to the acts of the defendant.”⁸¹ In *Jackson v. State*,⁸² two armed robbers kidnapped two hostages at gunpoint.⁸³ Following a car chase with police, one of the hostages was accidentally shot and killed by a pursuing police officer.⁸⁴ The Court of Appeals held the robbers’ “acts themselves produced the intervening cause of [the hostage’s] death, and the result is not to be considered remote and was foreseeable,” despite neither

73. *Albrecht*, 336 Md. at 499, 649 A.2d at 348.

74. *Jackson v. State*, 286 Md. 430, 442, 408 A.2d 711, 718 (1979).

75. *Palmer v. State*, 223 Md. 341, 352, 164 A.2d 467, 474 (1960).

76. *See, e.g., id.* at 353, 164 A.2d at 474 (holding a defendant does not “cease to be responsible for his otherwise criminal conduct because there were other conditions which contributed to the same result”).

77. *Jackson*, 286 Md. at 442, 408 A.2d at 718; *see id.* at 431, 408 A.2d at 712 (holding “the accidental killing of a hostage by a law enforcement officer attempting to apprehend robbers fleeing from an unarmed robbery while holding the hostage at gunpoint constitutes murder in the first degree on the part of the robbers under the Maryland felony murder statute”).

78. *Id.*

79. *See Goldring v. State*, 103 Md. App. 728, 738–39, 654 A.2d 939, 943–44 (1995) (holding a defendant’s participation in a dangerous drag race in which the defendant’s coparticipant died was sufficient to convict the defendant of gross negligence involuntary manslaughter even though it was the coparticipant’s own actions that ultimately contributed to his death).

80. *Alston v. State*, 339 Md. 306, 321, 662 A.2d 247, 254 (1995); *see id.* at 307, 662 A.2d at 247 (upholding a defendant’s conviction of second-degree murder “where the victim was killed by a shot that was fired by a man against whom the [defendant] was engaged in a gun battle”).

81. *Jackson*, 286 Md. at 441, 408 A.2d at 718.

82. 286 Md. 430, 408 A.2d 711 (1979).

83. *Id.* at 433, 408 A.2d at 714.

84. *Id.* at 434, 408 A.2d at 714.

robber firing the fatal shot.⁸⁵ Thus, “it is not essential that the ultimate harm which resulted was [actually] foreseen or intended.”⁸⁶ In addition, reasonably foreseeable intervening conduct will not relieve a defendant of criminal culpability.⁸⁷

D. Other States’ Analyses of Involuntary Manslaughter in Cases Involving Drug Distribution

Until *State v. Thomas*, the issue of whether an individual can be convicted of gross negligence involuntary manslaughter for drug distribution had not been considered by Maryland courts.⁸⁸ Massachusetts and North Carolina courts, however, directly addressed this question, providing a framework for Maryland courts to consider the issue.⁸⁹

In *Commonwealth v. Catalina*,⁹⁰ the defendant sold a highly potent strain of heroin to a known addict who, in combination with alcohol, ingested the heroin on her own accord and overdosed.⁹¹ The Supreme Judicial Court of Massachusetts considered whether sufficient evidence existed to support an indictment for gross negligence involuntary manslaughter.⁹² The Supreme Judicial Court answered in the affirmative, stating “one can reasonably conclude that the consumption of heroin in unknown strength is dangerous to human life, and the administering of such a drug is inherently dangerous.”⁹³ In reaching its conclusion, the Supreme Judicial Court noted

85. *Id.* at 442, 408 A.2d at 718.

86. *State v. Albrecht*, 336 Md. 475, 499, 649 A.2d 336, 348 (1994); *see supra* Section II.B.4.

87. *See* *Minor v. State*, 326 Md. 436, 443–44, 605 A.2d 138, 141 (1992) (upholding a reckless endangerment conviction when the defendant, after drinking alcohol and taking drugs with the victim, handed the victim a loaded shotgun who shot himself because of encouragement by the defendant).

88. *See supra* Section II.B.

89. *See* *Commonwealth v. Catalina*, 556 N.E.2d 973, 975 (Mass. 1990) (addressing the issue of gross negligence involuntary manslaughter when the defendant sold a highly potent strain of heroin to a known addict who died after ingesting a “lethal dose” of the drug in combination with alcohol); *State v. Barnes*, 741 S.E.2d 457, 465 (N.C. Ct. App. 2013) (considering the necessary level of culpability for gross negligence involuntary manslaughter when the defendant, who admitted to nearly dying after using a specific type of methadone, sold the same type of methadone to an individual who later overdosed on it).

90. 556 N.E.2d 973 (Mass. 1990).

91. *Id.* at 975.

92. *Id.* at 979 (explaining “involuntary manslaughter includes an unlawful homicide unintentionally caused by wanton or reckless conduct,” wherein “[t]he essence of wanton or reckless conduct is intentional conduct, by way either of commission or of omission where there is a duty to act, which conduct involves a high degree of likelihood that substantial harm will result to another” (quoting *Commonwealth v. Welansky*, 55 N.E.2d 902, 910 (Mass. 1944))).

93. *Id.* at 980 (quoting *People v. Cruciani*, 334 N.Y.S.2d 515, 523 (N.Y. Co. Ct. 1972)); *see also* *Cruciani*, 334 N.Y.S.2d at 517, 524 (holding there was sufficient evidence presented to the grand jury to support an indictment for “criminally negligent homicide” after the defendant directly injected heroin into the victim’s arm, causing the victim’s eventual death).

that “[t]he defendant has not yet been tried on [his] charge, so we are not concerned with whether sufficient evidence exists to warrant a finding of his guilt beyond a reasonable doubt.”⁹⁴ Instead, the Supreme Judicial Court only considered “whether the information before the grand jury was adequate to establish [the defendant’s] identity and probable cause to arrest him for the crime charged.”⁹⁵ Therefore, in regard to its analysis of involuntary manslaughter stemming from drug distribution, the Supreme Judicial Court of Massachusetts only reached the issue of the defendant’s indictment, not the question of his guilt or innocence.⁹⁶

Similarly, in *State v. Barnes*,⁹⁷ a defendant in North Carolina sold a known addict methadone that the defendant himself almost overdosed on one month prior to the sale.⁹⁸ The Court of Appeals of North Carolina considered whether the defendant could be convicted of involuntary manslaughter for drug distribution.⁹⁹ Because the defendant sold the victim methadone that the defendant himself nearly overdosed from one month prior, even though no evidence was introduced to prove the defendant intended to kill the victim, the court held “[t]his evidence would support a finding . . . of involuntary manslaughter.”¹⁰⁰ Thus, in analyzing gross negligence involuntary manslaughter surrounding drug distribution, other state courts apply a gross negligence analysis similar to Maryland courts, wherein they reach their decisions by considering the defendant’s actions in light of the relevant environmental factors.¹⁰¹

As discussed above, involuntary manslaughter is a common law crime not defined by statute.¹⁰² It requires the State to prove numerous elements, including causation.¹⁰³ Until the *State v. Thomas* decision, Maryland courts had only analyzed involuntary manslaughter in the contexts of automobiles,

94. *Catalina*, 556 N.E.2d at 979.

95. *Id.*

96. *Id.* at 980.

97. 741 S.E.2d 457 (N.C. Ct. App. 2013).

98. *Id.* at 465.

99. *Id.* (explaining that “[i]n the context of involuntary manslaughter, ‘[c]ulpable negligence is such recklessness or carelessness, proximately resulting in injury or death, as imports a thoughtless disregard of consequences or a heedless indifference to the safety and rights of others’” (quoting *State v. Weston*, 159 S.E.2d 883, 886 (N.C. Ct. App. 1968))).

100. *Id.*

101. *See supra* notes 89, 92, 99 and accompanying text; *see also State v. Mauldin*, 529 P.2d 124, 126 (Kan. 1974) (upholding the trial court’s dismissal of felony murder charges where the defendant sold heroin to a person who later overdosed on it and died, explaining “the defendant’s only connection with the homicide was that he sold a quantity of heroin to the deceased who some time later, voluntarily and out of the presence of the defendant, injected himself with an overdose and died as a result”).

102. *See supra* Section II.A.

103. *See supra* Section II.C.

failing to perform a duty, weapons, and police officers.¹⁰⁴ Consequently, Maryland courts had never considered involuntary manslaughter in the context of drug distribution.¹⁰⁵ Other states, however, specifically Massachusetts and North Carolina, provided guidance for the Court of Appeals of Maryland to consider when analyzing involuntary manslaughter resulting from drug distribution.¹⁰⁶

III. THE COURT'S REASONING

In posing an issue of first impression, *State v. Thomas* required the Court of Appeals of Maryland to determine “whether the evidence introduced in the trial court was sufficient to convict Thomas of gross negligence involuntary manslaughter.”¹⁰⁷ Judge Adkins, writing for the majority, explained “there is sufficient evidence in the record to conclude that Thomas’s conduct was both the actual and legal cause of [Matrey’s] death.”¹⁰⁸ The court then concluded “that the record contained sufficient evidence of gross negligence to support a conviction for gross negligence manslaughter beyond a reasonable doubt.”¹⁰⁹ In reaching its conclusion, the court conducted a two-prong analysis to determine whether the facts of the case satisfied both the gross negligence and causation requirements of gross negligence involuntary manslaughter.¹¹⁰

The court held the State met the gross negligence requirement because the evidence in the record showed Thomas exhibited a wanton and reckless disregard for Matrey’s life, supporting a conviction for gross negligence involuntary manslaughter.¹¹¹ Specifically, the court reasoned the combination of the following factors satisfied the gross negligence requirement: (1) Thomas was knowingly selling heroin “in a region suffering from an epidemic of heroin and opioid abuse and deaths”; (2) Thomas was well-versed in the use of heroin and fully aware of the possibility of an overdose; (3) Thomas sold the heroin to Matrey “without knowing anything

104. *See supra* Section II.B.

105. *See supra* Section II.B.

106. *See supra* Section II.D.

107. *State v. Thomas*, 464 Md. 133, 153, 211 A.3d 274, 285 (2019).

108. *Id.* at 180, 211 A.3d at 301.

109. *Id.* at 172, 211 A.3d at 297.

110. *Id.* at 152–53, 211 A.3d at 285. The mens rea requirement of gross negligence involuntary manslaughter is gross negligence, which exists when a person exhibits a wanton and reckless disregard for human life. *See supra* note 21. To meet the causation requirement, “the defendant’s gross negligence must be the proximate cause of the victim’s death—meaning the (1) actual, but-for cause and (2) legal cause.” *Thomas*, 464 Md. at 174, 211 A.3d at 298. Actual cause is met when “the result would not have happened in the absence of the conduct,” and legal cause is met when the consequence of the defendant’s conduct is foreseeable. *Id.* at 174, 178, 211 A.3d at 298, 301.

111. *Id.* at 172, 211 A.3d at 297.

about the composition of the heroin he sold, about what other substances [Matrey] was taking or might have used that day, or about [Matrey's] tolerance given his age and recent incarceration"; and (4) "a reasonable person in Thomas'[s] place would have understood that [Matrey] was desperate for heroin and would have realized that increased the risk of the transaction."¹¹²

In addition to the gross negligence requirement, the court also held that the State met the causation prong, stating "there is sufficient evidence in the record to conclude that Thomas'[s] conduct was both the actual and legal cause of [Matrey's] death."¹¹³ The court reasoned that Thomas's actions were the actual, but-for cause of Matrey's death because "[w]ithout the heroin Thomas supplied, [Matrey] would not have died."¹¹⁴ Further, the court found Thomas's actions to be the legal cause of Matrey's death because "it was eminently foreseeable that [Matrey] would use the heroin that Thomas sold him and potentially die as a result."¹¹⁵

Thomas raised two arguments in defense as to why the evidence was insufficient to convict him of gross negligence involuntary manslaughter.¹¹⁶ First, Thomas argued "Maryland should not recognize gross negligence involuntary manslaughter when the defendant is accused of committing a *malum in se* offense, as opposed to a *malum prohibitum* offense."¹¹⁷ The court rejected this argument, explaining that the State has to prove the higher level of culpability in prosecuting gross negligence involuntary manslaughter regardless of whether the underlying offense is *malum in se* or *malum prohibitum*.¹¹⁸ Second, Thomas argued that the evidence introduced at trial is insufficient to find him guilty because it does not "show the requisite wanton disregard for human life necessary to constitute gross negligence."¹¹⁹ For the same four reasons the court relied on in holding Thomas met the gross negligence standard, the court rejected this second argument.¹²⁰ Notably, Thomas did not contest the State's arguments that the "causal chain" was not broken and that the Court of Special Appeals "incorrectly applied the same

112. *Id.* at 167–71, 211 A.3d at 294–96.

113. *Id.* at 180, 211 A.3d at 301.

114. *Id.* at 178, 211 A.3d at 300.

115. *Id.* at 179, 211 A.3d at 301.

116. *Id.* at 161–64, 211 A.3d at 290–92.

117. *Id.* at 161, 211 A.3d at 290. *Malum in se* is defined as a "crime or an act that is inherently immoral, such as murder, arson, or rape." *Id.* at 161 n.9, 211 A.3d at 290 n.9. *Malum prohibitum* is defined as an "act that is a crime merely because it is prohibited by statute, although the act itself is not necessarily immoral." *Id.* at 161 n.10, 211 A.3d at 290 n.10.

118. *Id.* at 163, 211 A.3d at 291.

119. *Id.* at 164, 211 A.3d at 292.

120. *See supra* note 112 and accompanying text.

causation analysis to both unlawful act and gross negligence manslaughter.”¹²¹

In her dissent, Judge Hotten concentrated on the causation issue, concluding the evidence presented in Thomas’s case was insufficient “to establish a relationship between the mere sale of heroin and the subsequent use and fatal overdose of the buyer.”¹²² First, Judge Hotten argued there was no “causal connection” between Thomas’s sale and Matrey’s use of the heroin because “[1] the consumption occurred outside of . . . Mr. Thomas’s presence, [2] at a different time, [3] in a different place from the completed sale, and [4] with no other involvement from Mr. Thomas.”¹²³ Second, Judge Hotten claimed the evidence does not show that the heroin, on its own, caused Matrey’s death, considering the fact that Matrey may have consumed alcohol in combination with heroin and tramadol, both of which convert into free morphine when metabolized in the human body.¹²⁴ Finally, Judge Hotten argued the majority wrongfully took the place of the Maryland General Assembly who unambiguously elected not to pass legislation criminalizing the conduct involved in Thomas’s case.¹²⁵

IV. ANALYSIS

In *State v. Thomas*, the Court of Appeals of Maryland upheld Thomas’s conviction of gross negligence involuntary manslaughter after deciding that both the gross negligence and causation prongs of the crime were satisfied.¹²⁶ The court’s holding as to gross negligence is incorrect because the court improperly relied on other states’ precedent, and the record did not include facts to show Thomas exhibited a “wanton and reckless disregard” for Matrey’s life.¹²⁷ Further, despite correctly finding Thomas’s actions to be the actual cause of Matrey’s death, the court erred in determining those actions to also be the legal cause of his death.¹²⁸ Specifically, the court did not satisfy the requisite standard of review because it did not consider

121. *Thomas*, 464 Md. at 172, 211 A.3d at 297.

122. *Id.* at 181, 211 A.3d at 302 (Hotten, J., dissenting).

123. *Id.* at 183–84, 211 A.3d at 304.

124. *Id.* at 184, 211 A.3d at 304; *see supra* notes 12–13 and accompanying text. Despite this fact, the majority never discussed how Matrey’s fatal overdose might have been affected by the addition of tramadol, which, to Judge Hotten, rendered the majority’s reasoning flawed. *Thomas*, 464 Md. at 184, 211 A.3d at 304 (Hotten, J., dissenting).

125. *Id.* at 188, 211 A.3d at 306. Judge Hotten explained that the General Assembly has consistently declined to enact a bill “that would deem the distribution of heroin, fentanyl, and other opioids, which resulted in the death of the user, a felony subject to up to 30 years imprisonment.” *Id.* at 186–87, 211 A.3d at 305–06.

126. *Id.* at 172, 180, 211 A.3d at 297, 301 (majority opinion).

127. *See infra* Section IV.A.

128. *See infra* Section IV.B.

additional facts in the record that, at the very least, would create reasonable doubt in the mind of every juror that legal causation was satisfied.¹²⁹ Finally, the court wrongfully modified existing law that the Maryland General Assembly explicitly denied changing in 2017.¹³⁰

A. *The Court Erred in Analyzing Gross Negligence Based on Another State's Precedent*

To uphold Thomas's conviction, the Court of Appeals improperly relied on *Commonwealth v. Catalina*, and, as a result, incorrectly determined Thomas satisfied the "wanton and reckless" requirement of gross negligence.¹³¹ The court, "[a]fter much consideration of precedent in Maryland and elsewhere," adopted the conclusion from *Catalina* that "the consumption of heroin in unknown strength is dangerous to human life, and the administering of such a drug is inherently dangerous."¹³² In its *Commonwealth v. Carrillo*¹³³ decision, however, the Supreme Judicial Court of Massachusetts admitted "this statement is dictum," meaning it is not now, nor has it ever been, the Supreme Judicial Court's view on the issue.¹³⁴

One of the major differences between *Commonwealth v. Carrillo* and *Commonwealth v. Catalina* is the burden of proof considered in each case.¹³⁵ In *Catalina*, the Supreme Judicial Court of Massachusetts only considered "whether the evidence before the grand jury supports the defendant's indictment for manslaughter."¹³⁶ *Carrillo*, on the other hand, "is the first case of involuntary manslaughter based on the transfer of drugs where [the Supreme Judicial Court] address[ed] the sufficiency of the evidence to

129. See *Thomas*, 464 Md. at 183–84, 211 A.3d at 304 (Hotten, J., dissenting) (arguing the majority's holding as to causation is incorrect because of the significant number of intervening events that occurred between Thomas's sale of heroin and Matrey's injection, as well as the presence of another opiate discovered at the scene of Matrey's death).

130. See *infra* Section IV.C.

131. *Thomas*, 464 Md. at 169–72, 211 A.3d at 295–97.

132. *Id.* at 169, 211 A.3d at 295 (quoting *Commonwealth v. Catalina*, 556 N.E.2d 973, 980 (Mass. 1990)).

133. 131 N.E.3d 812 (Mass. 2019).

134. *Id.* at 822–24 (Mass. 2019) (rejecting the general proposition that "the consumption of heroin in unknown strength is dangerous to human life, and the administering of such a drug is inherently dangerous," because in *Catalina*, unlike in *Carrillo*, "there was evidence that the defendant knew he was distributing a highly potent brand of heroin, that the deceased had a low tolerance for the drug and had overdosed in the past, that she could not handle a whole bag of this type of heroin, and that she needed to be warned not to 'do a whole one'" (quoting *Catalina*, 556 N.E.2d at 979–80)).

135. See *id.* at 821 (distinguishing *Commonwealth v. Catalina* because it considered the sufficiency of evidence under a probable cause standard instead of a reasonable doubt standard).

136. *Catalina*, 556 N.E.2d at 979 (emphasis added).

support a finding of proof *beyond a reasonable doubt*.”¹³⁷ In *Carrillo*, the defendant sold heroin to a known addict on two separate occasions over the course of several days.¹³⁸ After the first sale, the defendant and the buyer used the heroin together without incident.¹³⁹ Prior to the second sale a few days later, the buyer contacted the defendant via text, stating “that his ‘veins [were] crying’ and that he was hurting.”¹⁴⁰ The defendant replied, telling the buyer he knew the buyer was “hurtin but he will very soon be in the loving comforting arms of Miss H.”¹⁴¹ Following the defendant’s second sale to the buyer, police found the buyer deceased and determined he died from “acute heroin intoxication.”¹⁴² The Supreme Judicial Court of Massachusetts held “that the mere possibility that the transfer of heroin will result in an overdose does not suffice to meet the standard of wanton or reckless conduct.”¹⁴³ Accordingly, the Supreme Judicial Court overturned the defendant’s conviction of involuntary manslaughter, noting “the evidence was insufficient to support a finding beyond a reasonable doubt that the defendant knew, or that a reasonable person would have known, that there was a high degree of likelihood that [the buyer] would overdose from the use of that heroin.”¹⁴⁴

Despite being decided after *State v. Thomas*, the *Carrillo* decision is instructive as to how Maryland should treat gross negligence involuntary manslaughter stemming from drug distribution. The court in *Carrillo* considered numerous factors in reaching its decision.¹⁴⁵ First, “the heroin in question was not laced or tainted with fentanyl.”¹⁴⁶ Second, “the defendant purchased the same brand of heroin for his own personal use.”¹⁴⁷ Third, “there is no evidence that the defendant had any knowledge of any other drug or alcohol use by [the buyer] that could have increased the likelihood of an overdose.”¹⁴⁸ The Supreme Judicial Court also noted there was not “any

137. *Carrillo*, 131 N.E.3d at 821 (emphasis added); *see also* *Commonwealth v. Auditore*, 556 N.E.2d 980, 982–83 (Mass. 1990) (applying the probable cause standard in determining the evidence was sufficient to indict the defendant for involuntary manslaughter after the defendant distributed heroin to the victim who overdosed on the supply).

138. 131 N.E.3d at 817–18.

139. *Id.*

140. *Id.* at 818.

141. *Id.*

142. *Id.*

143. *Id.* at 816.

144. *Id.* at 828.

145. *Id.* at 819.

146. *Id.*

147. *Id.*

148. *Id.*

expert testimony regarding the relevant potency of [the] heroin” found in the buyer’s body.¹⁴⁹

Some of these same factors that acted as shields in *Carrillo*, however, were used as swords in *Thomas*.¹⁵⁰ The heroin Thomas sold Matrey was pure and was not laced with fentanyl.¹⁵¹ Thomas admitted to using heroin himself and explained to detectives that he normally uses four bags of the drug in a single shot.¹⁵² Further, there is no evidence that Thomas knew of other drug or alcohol use by Matrey on the night of his death, and the record does not provide any indication as to the potency of the heroin Thomas sold Matrey.¹⁵³ Unlike the *Carrillo* court’s use of such facts to argue against finding the defendant’s conduct “wanton and reckless,” the Court of Appeals of Maryland relied on these points in satisfying the gross negligence standard in *Thomas*.¹⁵⁴ The court concentrated on the fact that “Thomas sold heroin to a desperate young man” with knowledge of the drug’s dangers stemming from Thomas’s personal use.¹⁵⁵ The court also argued Thomas’s lack of knowledge about the composition of the heroin he sold to Matrey leaned in favor of finding “wanton and reckless” disregard for life.¹⁵⁶

Most notably, though, is the court’s reliance on death statistics in concluding Thomas knowingly sold heroin “in a region suffering from an epidemic of heroin and opioid abuse and deaths.”¹⁵⁷ The Court of Appeals noted, “In 2015, the year [Matrey] died, there were 1,259 deaths from alcohol and drugs in Maryland—86% of [which] were opioid-related.”¹⁵⁸ Importantly, what the Court of Appeals did not mention is that the Maryland Department of Health and Mental Hygiene defines “opioids” as including “heroin and prescription opioid drugs such as oxycodone, hydrocodone, hydromorphone, methadone, fentanyl, tramadol and codeine.”¹⁵⁹ Thomas’s

149. *Id.*

150. *See supra* note 112 and accompanying text.

151. *State v. Thomas*, 464 Md. 133, 147, 211 A.3d 274, 282 (2019).

152. *Id.* at 148, 211 A.3d at 283. Notably, Thomas sold Matrey four bags of heroin on the night of Matrey’s death. *Id.* at 149, 211 A.3d at 283.

153. *See id.* at 142–50, 211 A.3d at 279–84 (failing to provide any evidence of the potency of the heroin Thomas sold Matrey). According to Matrey’s autopsy, the Medical Examiner concluded Matrey “died of alcohol and narcotic (free morphine) intoxication.” *Id.* at 147, 211 A.3d at 282 (emphasis added).

154. *Id.* at 171–72, 211 A.3d at 296–97; *see supra* note 112 and accompanying text.

155. *Thomas*, 464 Md. at 171–72, 211 A.3d at 296–97.

156. *Id.* at 171, 211 A.3d at 296.

157. *Id.* at 167, 211 A.3d at 294.

158. *Id.* at 168, 211 A.3d at 294 (citing MD. DEP’T OF HEALTH AND MENTAL HYGIENE, DRUG- AND ALCOHOL-RELATED INTOXICATION DEATHS IN MARYLAND, 2015, at 5 (2016), https://bha.health.maryland.gov/OVERDOSE_PREVENTION/Documents/2015%20Annual%20Report_final.pdf [hereinafter MD. INTOXICATION DEATHS 2015]).

159. MD. INTOXICATION DEATHS 2015, *supra* note 158, at 3 (emphasis added).

case dealt with heroin, not other opioids, so the court should have only considered heroin-related deaths, which accounted for 59%, instead of 86%, of alcohol- and drug-related deaths in Maryland in 2015.¹⁶⁰ Further, of the heroin-related deaths in Maryland that year, 29% occurred in combination with fentanyl, 24% in combination with alcohol, 20% in combination with cocaine, and 13% in combination with prescription opioids.¹⁶¹ Thus, only 14% of all heroin-related deaths in Maryland in 2015 were attributed solely to heroin use.¹⁶²

The Court of Appeals also noted that in Worcester County—the jurisdiction in which Thomas was charged—eleven heroin-related deaths occurred in 2015.¹⁶³ The agreed statement of facts in Thomas’s case indicates what “Detective Johns, testifying as an expert in CDS investigations, would say at a trial—that Worcester County ‘has been consumed with heroin overdoses, some resulting in deaths, and that these overdoses have resulted in an acute awareness of the dangers of heroin.’”¹⁶⁴ Worcester County, however, only logged eleven heroin-related deaths in 2015, attributing to 1.5% of Maryland’s total heroin-related deaths that year.¹⁶⁵ Additionally, those eleven heroin-related deaths only accounted for approximately 1.7% of all deaths in Worcester County in 2015.¹⁶⁶ Thus, in a region allegedly “consumed with heroin overdoses,” heroin caused an extremely small percentage of the total number of Worcester County and Maryland deaths in 2015.¹⁶⁷

Importantly, the Supreme Judicial Court of Massachusetts conducted a similar analysis in *Commonwealth v. Carrillo*, concentrating on national instead of local statistics.¹⁶⁸ The Supreme Judicial Court noted that “in 2015, 81,326 emergency department visits occurred for ‘heroin-related poisonings’ in the United States, a year in which 12,989 individuals were reported to have

160. *Id.* at 15.

161. *Id.* at 5.

162. *Id.*

163. *Thomas*, 464 Md. at 168, 211 A.3d at 295 (citing MD. INTOXICATION DEATHS 2015, *supra* note 158, at 15). In 2015, Worcester County had a population of 51,540 people. DEP’T OF HEALTH AND MENTAL HYGIENE VITAL STATISTICS ADMIN., MARYLAND VITAL STATISTICS ANNUAL REPORT 2015, at 41 (2015), https://health.maryland.gov/vsa/Documents/Reports%20and%20Data/Annual%20Reports/2015annual_revised.pdf [hereinafter MD. VITAL STATISTICS 2015]. Of the 51,540 people in Worcester County, only 651 of them died in 2015. *Id.* at 148.

164. *Thomas*, 464 Md. at 168, 211 A.3d at 294.

165. MD. INTOXICATION DEATHS 2015, *supra* note 158, at 15.

166. *Id.*; see MD. VITAL STATISTICS 2015, *supra* note 163, at 148 (showing 651 total deaths in Worcester County in 2015).

167. *Thomas*, 464 Md. at 168, 211 A.3d at 294; see MD. INTOXICATION DEATHS 2015, *supra* note 158, at 15; MD. VITAL STATISTICS 2015, *supra* note 163, at 148.

168. 131 N.E.3d 812, 825 (Mass. 2019).

died from drug overdoses involving heroin.”¹⁶⁹ Based on these statistics, the Supreme Judicial Court assumed “that a reasonable person would know that the use of heroin of unknown strength is inherently dangerous and carries a significant *possibility* of overdose or death.”¹⁷⁰ After noting “the rate of overdose substantially exceeds the rate of death,” the Supreme Judicial Court still held one cannot “reasonably assume that all heroin of unknown strength carries a high probability that overdose will occur, *or that a reasonable person would know that to be true.*”¹⁷¹ Thus, in considering Thomas’s sale of heroin “in a region suffering from an epidemic of heroin opioid abuse and deaths,” the Court of Appeals of Maryland should have conducted a more accurate analysis of that region and the rest of the country, resulting in a conclusion similar to the Supreme Judicial Court’s holding in *Carrillo*.¹⁷²

It is true that Maryland and Massachusetts do not have identical definitions of “wanton and reckless” conduct in the context of involuntary manslaughter.¹⁷³ In Maryland, “wanton and reckless” conduct is “a gross departure from the conduct of an ordinarily prudent person, without regard to the consequences or the rights of others, *and likely to bring harm at any moment.*”¹⁷⁴ In Massachusetts, on the other hand, “wanton and reckless” conduct exists when it creates a “high degree of likelihood of death or grave bodily injury.”¹⁷⁵ Although not identical, conduct that is “likely to bring harm at any moment” is similar to conduct that creates a “high degree of likelihood of death or grave bodily injury” because death and grave bodily injury fall under the broad umbrella of the term “harm.”¹⁷⁶ The Court of Appeals of Maryland, in relying on *Catalina*, misconstrued the Supreme Judicial Court of Massachusetts’s view on whether an individual can be convicted of involuntary manslaughter for the distribution of heroin because *Catalina* only determined an individual can be indicted for that crime.¹⁷⁷ Therefore, based on this improper interpretation of Massachusetts precedent,

169. *Id.* (citing CTRS. FOR DISEASE CONTROL & PREVENTION: NAT’L CTR. FOR INJURY PREVENTION & CONTROL, 2018 ANNUAL SURVEILLANCE REPORT OF DRUG-RELATED RISKS AND OUTCOMES 19 (2018), <https://www.cdc.gov/drugoverdose/pdf/pubs/2018-cdc-drug-surveillance-report.pdf> [hereinafter CDC 2018 DRUG REPORT]).

170. *Id.*

171. *Id.* (emphasis added).

172. *State v. Thomas*, 464 Md. 133, 167, 211 A.3d 274, 294 (2019); *see Carrillo*, 131 N.E.3d at 825 (concluding that it is a “bridge too far” to suggest “a reasonable person would know that *any* use of heroin carries a high probability or substantial likelihood of overdose or death”).

173. *Thomas*, 464 Md. at 171, 211 A.3d at 296; *Carrillo*, 131 N.E.3d at 820.

174. *Thomas*, 464 Md. at 171, 211 A.3d at 296 (emphasis added).

175. *Carrillo*, 131 N.E.3d at 820.

176. *Thomas*, 464 Md. at 171, 211 A.3d at 296; *Carrillo*, 131 N.E.3d at 820. Harm is generally defined as “to damage or injure physically or mentally.” *Harm*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/harm> (last visited Mar. 29, 2020).

177. *See supra* notes 134–136 and accompanying text.

the court upheld Thomas's conviction by relying on factors that did not amount to the level of gross negligence necessary to convict under the gross negligence theory of involuntary manslaughter.¹⁷⁸

B. Thomas's Sale of Heroin to Matrey Was Not the Legal Cause of Matrey's Death

The Court of Appeals correctly found Thomas's actions to be the actual, but-for cause of Matrey's death after authorities found Matrey deceased in his bathroom surrounded by empty "Banshee" heroin bags.¹⁷⁹ In reaching this conclusion, the court properly relied on the Medical Examiner's report, which listed 6-Monoacetylmorphine as one of the substances found in Matrey's blood, indicating Matrey ingested heroin prior to his death.¹⁸⁰ Despite its correct analysis of actual causation, the court erred in holding Thomas's sale of heroin satisfied the legal causation prong of gross negligence involuntary manslaughter.¹⁸¹ Section IV.B.1 will discuss why the Court of Appeals' legal causation analysis is flawed based on the facts of Thomas's case.¹⁸² Then, Section IV.B.2 will discuss Maryland's assisted suicide statute and why it calls the court's legal causation analysis into question.¹⁸³

1. The Court of Appeals' Conclusion Regarding Legal Causation Is Incorrect Considering the Facts of Thomas's Case

Legal causation is satisfied when "the ultimate harm is one which a reasonable man would foresee as being reasonably related to the acts of the defendant."¹⁸⁴ Matrey's mother discovered Matrey's body inside of a locked

178. *See* *Thomas v. State*, 237 Md. App. 527, 538, 186 A.2d 857, 864 (2018) (holding the State only provided evidence of simple negligence, not gross negligence, when it relied on the following facts: "(1) that the amount of heroin contained in the four bags constituted a lethal dose; (2) that Thomas knew Matrey was an addict; (3) that Matrey was young and less experienced than Thomas; (4) that Thomas was aware of the dangers of heroin use; and (5) that the circumstances of the sale—in the middle of the night, after Matrey's multiple, frantic attempts to contact Thomas—were 'weird'"), *rev'd*, 464 Md. 133, 211 A.3d 274 (2019); *supra* notes 151–157 and accompanying text.

179. *See Thomas*, 464 Md. at 176–77, 211 A.3d at 299–300. "Banshee" is the strand of heroin Thomas sold Matrey on the night of Matrey's death. *Id.* at 150, 211 A.3d at 284.

180. *Id.* at 176, 211 A.3d at 299; ARUP LABS., DRUG PLASMA HALF-LIFE AND URINE DETECTION WINDOW (2019), <https://www.aruplab.com/files/resources/pain-management/DrugAnalytesPlasmaUrine.pdf> (providing a list of opioids and their respective drug plasma half-lives, indicating heroin is the only opioid that metabolizes into 6-Monoacetylmorphine in the body).

181. *See infra* Section IV.B.1.

182. *See infra* Section IV.B.1.

183. *See infra* Section IV.B.2.

184. *Thomas*, 464 Md. at 178, 211 A.3d at 301 (quoting *Jackson v. State*, 286 Md. 430, 441, 408 A.2d 711, 718 (1979)).

bathroom in her house three hours after Thomas sold Matrey heroin.¹⁸⁵ Given Matrey was discovered alone in a bathroom locked from the inside, it is impossible for Thomas to have injected Matrey with the heroin.¹⁸⁶ Further, the Medical Examiner determined Matrey “died of *alcohol and* narcotic (free morphine) intoxication,” meaning Matrey did not solely ingest heroin that night.¹⁸⁷ Thus, “Mr. Thomas’s sale of heroin was not ‘reasonably related’ to the fatal use of the substance by Mr. Matrey where the consumption occurred outside of [sic] Mr. Thomas’s presence, at a different time, in a different place from the completed sale,” and Matrey ingested alcohol in combination with the heroin.¹⁸⁸

Despite these facts, the Court of Appeals laid heavy emphasis on the “foreseeability of the consequence of the defendant’s conduct.”¹⁸⁹ In the cases the court relies on to support its reasoning, however, the defendants acted, or failed to act, in the presence of the victim during a continuous and on-going event.¹⁹⁰ Unlike those cases, Thomas was not present when Matrey injected the heroin, and the injection occurred at least one hour after Thomas and Matrey engaged in their transaction.¹⁹¹ More importantly, Matrey ingested heroin in combination with alcohol, which the court provides no evidence to suggest Thomas could have foreseen.¹⁹² Despite Thomas

185. *Id.* at 141, 211 A.3d at 278.

186. *Id.*

187. *Id.* at 147, 211 A.3d at 282 (emphasis added).

188. *Id.* at 183–84, 211 A.3d at 304 (Hotten, J., dissenting); see Editorial Staff, *Mixing Heroin & Alcohol*, ALCOHOL.ORG (Oct. 19, 2018), <https://www.alcohol.org/mixing-with/heroin/> (“Heroin overdose is . . . possible because using both [heroin and alcohol] together lowers the threshold at which an individual can overdose on either drug. Unpredictable side effects or drug interactions can occur when individuals use these drugs in combination.”); Jena Hilliard, *Alcohol and Heroin*, ALCOHOL REHAB GUIDE (May 19, 2019), <https://www.alcoholrehabguide.org/alcohol/drinking-drugs/heroin/> (“Combining [alcohol and heroin] raises the odds of a user having an adverse reaction, including a heightened risk of developing drug dependency, certain health complications, and a possibly fatal overdose.”).

189. *Thomas*, 464 Md. at 178, 211 A.3d at 301 (majority opinion) (quoting *Palmer v. State*, 223 Md. 341, 352, 164 A.2d 467, 472 (1960) (emphasis omitted)).

190. *Id.*; see *State v. Albrecht*, 336 Md. 475, 505, 649 A.2d 336, 350–51 (1994) (holding a police officer’s conduct satisfied the gross negligence standard after the officer pointed his shotgun at an unarmed suspect in front of an occupied public park, racked the weapon, and fired it directly at the suspect, killing her instantly); *Jackson v. State*, 286 Md. 430, 434, 408 A.2d 711, 714 (1979) (holding the actions of two robbers satisfied the gross negligence standard after they kidnapped two hostages at gun point and led the police on a car chase, during which an officer shot and accidentally killed one of the hostages); *Palmer*, 223 Md. at 351, 164 A.2d at 473 (finding a mother’s actions of permitting and compelling her child to remain in a severely abusive environment at the hands of the mother’s boyfriend satisfied the gross negligence standard).

191. See *Thomas*, 464 Md. at 143–44, 211 A.3d at 280 (noting Matrey’s girlfriend, who lived at Matrey’s mother’s house with Matrey, woke up at 1:00 A.M. and noticed Matrey, who met with Thomas around 12:00 A.M., was still not home).

192. *Id.* at 179, 211 A.3d at 301 (arguing “[i]ngesting heroin is a foreseeable result of its supply,” but providing no evidence that heroin is commonly combined with alcohol or that Matrey

admitting to being a user of heroin, he never indicated that he used heroin in combination with alcohol or other substances, or knew whether it was a common practice.¹⁹³ Thus, even if “it was eminently foreseeable that [Matrey] would use the heroin that Thomas sold him,” it was not foreseeable that Matrey would combine the heroin with alcohol.¹⁹⁴

To rebut the above argument regarding Matrey’s combination of heroin and alcohol, the court cited its decision in *Duren v. State*, arguing “contributory negligence is not a defense to involuntary manslaughter.”¹⁹⁵ The court’s reliance on *Duren* is flawed, however, because arguing against contributory negligence as a defense first requires the defendant to be determined grossly negligent.¹⁹⁶ That said, Thomas should not have been found grossly negligent in this case because the court wrongfully relied on dicta from the Supreme Judicial Court of Massachusetts in reaching its conclusion.¹⁹⁷ Additionally, the death in *Duren* was far more foreseeable than Matrey’s death in *Thomas*.¹⁹⁸ The court in *Duren* upheld the defendant’s conviction for vehicular manslaughter after the defendant struck and killed a pedestrian while traveling at a high rate of speed through a “heavily congested residential and business area” in Baltimore City.¹⁹⁹ Striking a pedestrian with a car in Baltimore City, though, where “[j]aywalking is perhaps the most committed crime and most ignored law on [the] books,” is statistically more likely than selling heroin to an individual who later used the drug in combination with another deadly substance.²⁰⁰

In addition to the issues of attenuation and foreseeability, the court severely misconstrued a major part of Thomas’s case that directly affects the

had ever combined heroin and alcohol in the past (quoting *Commonwealth v. Catalina*, 556 N.E.2d 973, 980 (1990)).

193. *Id.* at 148, 211 A.3d at 282.

194. *Id.* at 179, 211 A.3d at 301.

195. *Id.* (citing *Duren v. State*, 203 Md. 584, 593, 102 A.2d 277, 282 (1954)).

196. *See Duren*, 203 Md. at 593, 102 A.2d at 282 (“If the appellant was guilty of gross negligence, he cannot excuse his conduct and escape the consequences by showing that the deceased was guilty of contributory negligence.” (emphasis added)).

197. *See supra* Section IV.A.

198. *See Duren*, 203 Md. at 588–89, 102 A.2d at 279 (providing a description of the auto accident that caused the victim’s death).

199. *Id.* at 588–89, 594, 102 A.2d at 279, 282.

200. Peter Hermann, *Jaywalkers Can’t Abide Law of Common Sense*, BALTIMORE SUN (July 15, 2019), <https://www.baltimoresun.com/news/bs-xpm-2009-07-15-0907140047-story.html>. “Michael Klag, Dean of the Johns Hopkins Bloomberg School of Public Health, said at the time that 700 pedestrians are injured by cars in Baltimore every year.” Kevin Rector, *Baltimore Ranks 28th Nationally in Pedestrian Danger Study*, BALTIMORE SUN (May 20, 2014), <https://www.baltimoresun.com/maryland/baltimore-city/bs-md-pedestrian-safety-study-20140519-story.html>. That is over two times the number of heroin-related deaths that occurred in Baltimore City in 2015. *See MD. INTOXICATION DEATHS 2015*, *supra* note 158, at 15 (reporting 260 heroin-related deaths in 2015).

legal causation analysis under the requisite standard of review.²⁰¹ Upon searching Matrey's bedroom, police found a bottle containing tramadol pills that Matrey did not have a prescription for and that he "possibly had taken . . . from his mother."²⁰² This fact is vital because "both tramadol and heroin convert into free morphine when they are metabolized in the body."²⁰³ The Medical Examiner concluded that Matrey "died of alcohol and narcotic (free morphine) intoxication," but "[t]he manner of death could not be determined."²⁰⁴ This indicates it is "unclear whether Matrey also ingested tramadol, along with heroin and alcohol, and how that may have impacted his fatal overdose."²⁰⁵ Therefore, "[t]he evidence does not establish that the heroin was independently sufficient to cause Mr. Matrey's death," and "[t]he facts cannot sustain a finding of legal, but-for causation" because this would raise reasonable doubt in the mind of any rational trier of fact.²⁰⁶

2. *Thomas Could Not Be Convicted of Assisted Suicide and Therefore Should Not Be Convicted of Gross Negligence Involuntary Manslaughter*

Of interest to the legal causation analysis is Annotated Code of Maryland, Criminal Law Article, section 3-102 concerning assisted suicide.²⁰⁷ Under the *Thomas* decision, a defendant can be found guilty of gross negligence involuntary manslaughter for providing heroin to an individual who overdoses, but that same defendant cannot be found guilty of assisted suicide if the defendant provides that same heroin to an individual who purposefully uses it to take his own life.²⁰⁸ Maryland defines suicide as "the act or instance in which an individual *intentionally* takes the individual's

201. *State v. Thomas*, 464 Md. 133, 152, 211 A.3d 274, 285 (2019) (noting the standard of review is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt" (quoting *State v. Albrecht*, 336 Md. 475, 479, 649 A.2d 336, 338 (1994))).

202. *Id.* at 142, 211 A.3d at 279.

203. *Id.* at 184, 211 A.3d at 304 (Hotten, J., dissenting); *see supra* notes 12–13 and accompanying text.

204. *Thomas*, 464 Md. at 147, 211 A.3d at 282 (majority opinion) (emphasis added).

205. *Id.* at 184, 211 A.3d at 304 (Hotten, J., dissenting).

206. *Id.*

207. *See* MD. CODE ANN., CRIM. LAW § 3-102 (LexisNexis 2012) ("With the purpose of assisting another individual to commit or attempt to commit suicide, an individual may not: (1) by coercion, duress, or deception, knowingly cause another individual to commit suicide or attempt to commit suicide; (2) knowingly provide the physical means by which another individual commits or attempts to commit suicide with knowledge of that individual's intent to use the physical means to commit suicide; or (3) knowingly participate in a physical act by which another individual commits or attempts to commit suicide."); *see also* MODEL PENAL CODE § 210.5 (AM. LAW INST., Approved 2018) (providing an assisted suicide statute comparable to the Annotated Code of Maryland).

208. CRIM. LAW § 3-102.

own life.”²⁰⁹ To be convicted under this section, the defendant must knowingly “cause another individual to commit suicide,” “*provide the physical means by which another individual commits*” suicide, or “participate in a physical act by which another commits suicide.”²¹⁰ This section exposes the legal incongruity present in the court’s reasoning in *Thomas*: As long as a defendant does not have knowledge that another individual is going to commit suicide, that defendant can provide the individual with a “deadly” object or substance and not be found guilty under section 3-102 of the Criminal Law Article.²¹¹ In other words, Maryland recognizes two crimes— involuntary manslaughter and assisted suicide.²¹² The former results in a conviction when the defendant does not know the amount of a dangerous substance the victim is going to voluntarily ingest, and the latter results in an acquittal when a defendant does not know the amount of a dangerous substance the victim is going to voluntarily ingest to kill himself.²¹³

The Court of Appeals has never considered assisted suicide cases involving section 3-102 of the Criminal Law Article, but the court did consider an analogous issue in *Fister ex rel. Estate of Fister v. Allstate Life Ins. Co.*,²¹⁴ a civil case involving section 16-215 of the Maryland Insurance Article.²¹⁵ In *Fister*, the deceased had a life insurance policy that “excluded coverage in the event that the insured, Fister, commits ‘suicide.’”²¹⁶ Fister wanted to die, so she convinced her friend Goldman to assist her in committing suicide by helping Fister shoot herself in the head with a shotgun.²¹⁷ During the attempt, Fister tried pulling the trigger on her own using a string, but she failed.²¹⁸ Goldman then accidentally pulled the trigger, killing Fister immediately.²¹⁹ The court held, “Fister did not commit suicide because . . . [a] conscious, thinking human being, who was in no immediate danger or peril, made a choice to pull the trigger. As a result of that independent choice, Fister died.”²²⁰

209. *Id.* § 3-101(c) (emphasis added).

210. *Id.* § 3-102 (emphasis added).

211. *Id.*

212. *Id.*

213. *Id.*; see *supra* note 211 and accompanying text.

214. 366 Md. 201, 783 A.2d 194 (2001).

215. See MD. CODE ANN., INS. § 16-215(b)(1)(v) (LexisNexis 2017) (“[A] policy of life insurance may contain a provision that excludes or restricts coverage for . . . death that occurs within 2 years after the date of issue of the policy as a result of suicide while sane or insane.”).

216. 366 Md. at 206, 783 A.2d at 197.

217. *Id.*

218. *Id.* at 206–07, 783 A.2d at 197.

219. *Id.*

220. *Id.* at 213–14, 783 A.2d at 201.

The court's decision in *Fister*, despite discussing a civil matter, is helpful in considering assisted suicide in the criminal sphere.²²¹ *Thomas* differs from *Fister* in that Thomas did not “pull the trigger” that caused Matrey's death.²²² In combination with Thomas's lack of involvement surrounding Matrey's physical injection of heroin, Thomas could not have been convicted under Maryland's assisted suicide statute because (1) there is no evidence to suggest Matrey intended to kill himself²²³ and (2) even if that evidence existed, Thomas would not have had any knowledge of Matrey's intent.²²⁴ Despite nearly overdosing two-and-a-half years prior to his death, Matrey continued using heroin without any indication he intended to kill himself.²²⁵ Further, upon learning of Matrey's death, Thomas was shocked, claiming there was no way Matrey could have overdosed off of only four bags of heroin, which is the same amount Thomas normally injected for personal use.²²⁶ Thomas could not have been guilty in a case where Matrey, on his own accord, ingested the heroin in an attempt to kill himself. So, how is it just or logical to convict Thomas for Matrey's death when Matrey, on his own accord, ingested heroin, alcohol, and potentially tramadol on the night of his death?²²⁷ The answer to that question is simple—it's not.²²⁸

C. The Court Exceeded Its Authority by Wrongfully Ignoring the Maryland General Assembly and Modifying Existing Law

The role of the Court of Appeals “is to ascertain and effectuate the intent of the General Assembly, not undermine and contradict it.”²²⁹ Over the past several years, the Maryland General Assembly has explicitly declined to adopt bills “that would deem the distribution of heroin, fentanyl, and other opioids, which resulted in the death of the user, a felony subject to up to 30 years imprisonment.”²³⁰ Notably, the General Assembly passed Senate Bill 539 in 2017, which, in its original form, “prohibit[ed] a person from

221. *Id.*

222. *See* *State v. Thomas*, 464 Md. 133, 144, 211 A.3d 274, 280 (2019) (explaining Matrey was found dead in a locked bathroom inside of his mother's house).

223. *See id.* at 143, 211 A.3d at 279 (indicating that Matrey suffered from a heroin addiction and, despite a non-fatal heroin overdose in the past, Matrey continued using heroin to feed his addiction).

224. *See id.* at 150, 211 A.3d at 283 (discussing Thomas's interview with police, during which Thomas stated, “[Matrey] couldn't have overdosed off what I sold him. I only sold him four bags.”).

225. *Id.* at 143, 211 A.3d at 279.

226. *Id.* at 150, 211 A.3d at 283; *see supra* note 224.

227. *See supra* Section IV.B.2.

228. *Id.*; *see supra* note 188.

229. *Thomas*, 464 Md. at 187, 211 A.3d at 306 (Hotten, J., dissenting).

230. *Id.* at 186–87, 211 A.3d at 305–06 (citing S.B. 570, Leg., Reg. Sess. (Md. 2019); H.B. 1730, Leg., Reg. Sess. (Md. 2018); H.B. 612, Leg., Reg. Sess. (Md. 2017); S.B. 303, Leg., Reg. Sess. (Md. 2015)).

distributing certain opioids or opioid analogues, the use of which caus[ed] the death of another.”²³¹ Once signed into law by the Governor and codified under sections 5-602 and 5-608.1 of the Maryland Criminal Law Article, however, the bill was “amended beyond recognition.”²³²

In the bill’s final form, it merely “prohibit[ed] a person from . . . knowingly distributing a certain mixture of controlled dangerous substances.”²³³ In other words, “[t]he General Assembly has declined to pass a bill that would create a statutory offense for the distribution of heroin and other opioids, which result in the death of another, evidencing their intent to not criminalize such conduct as an independent murder-related conviction.”²³⁴ Therefore, “[b]y holding that the State, under the facts before us, may convict an individual of a murder-related offense for a death connected to the distribution of heroin, the [Court of Appeals] is stepping into the role of a policy-maker, an action in *direct contravention* of the General Assembly’s unambiguous election not to pass equivalent legislation criminalizing such conduct.”²³⁵

Beyond going against the General Assembly’s decision not to criminalize this type of conduct, the court’s decision to step into a policy-making role is problematic based on the significant evidence that, in general, “putting people in prison has little to no impact on crime.”²³⁶ This is particularly true for drug crimes because when people get locked up for these offenses, “there are many others desperate enough from poverty or addiction to replace [them].”²³⁷ Despite this, in *Thomas*, the State admitted in its brief that “[d]esperate to stem the tide of deaths, law enforcement officials in Maryland and across the country have begun charging heroin dealers with murder-related charges in an effort to reduce the availability of the drug. The prosecution in this case reflects those efforts.”²³⁸ The State, however, already

231. *Id.* at 187, 211 A.3d at 306 (first alteration in original) (quoting S.B. 539, Leg., Reg. Sess. (Md. 2017)).

232. *Id.*

233. *Id.* (alteration in original) (quoting MD. CODE ANN., CRIM. LAW §§ 5-602, 5-608.1 (LexisNexis 2012)).

234. *Id.* at 187–88, 211 A.3d at 306.

235. *Id.* at 188, 211 A.3d at 306 (emphasis added).

236. See Maneka Sinha, *More Prosecutions Won’t Make Baltimore Safer*, BALT. SUN (Nov. 5, 2019), <https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-1106-hogan-frosh-20191105-y42mp2y26fhz5leoyg7nd2wj34-story.html> (“Many of us tend to think that locking people up will reduce crime by pulling criminals off the street and deterring others from committing future crimes, but research on the impact of decades of tough-on-crime policies tells us this is wrong.” (citing DAVID ROODMAN, *THE IMPACTS OF INCARCERATION ON CRIME* (2017), https://www.openphilanthropy.org/files/Focus_Areas/Criminal_Justice_Reform/The_impacts_of_incarceration_on_crime_10.pdf)).

237. *Id.* (citing THE SENTENCING PROJECT, *CRIMINAL JUSTICE FACTS* (2019), <https://www.sentencingproject.org/criminal-justice-facts/>).

238. *Thomas*, 464 Md. at 186, 211 A.3d at 305 (Hotten, J., dissenting).

has an avenue to severely punish individuals who “distribute or dispense a controlled dangerous substance” under section 5-602 of the Maryland Criminal Law Article.²³⁹ If found guilty under section 5-602, the law allows the court to impose a maximum prison sentence of twenty years for the offense.²⁴⁰ In fact, that’s exactly what happened to Thomas who “was sentenced to a twenty-year term for distribution and a *concurrent 10-year term for manslaughter*.”²⁴¹ Thus, the Court of Appeals created precedent that is unlikely to have any impact on future crime in a case where the defendant already received a substantial sentence for heroin distribution.²⁴²

V. CONCLUSION

In *State v. Thomas*, the Court of Appeals of Maryland upheld Patrick Thomas’s conviction for gross negligence involuntary manslaughter after Thomas distributed heroin to Colton Matrey who later overdosed on the drug.²⁴³ The court incorrectly held Thomas exhibited “wanton and reckless” conduct sufficient to satisfy gross negligence.²⁴⁴ Despite correctly deciding the issue of actual causation, the court erred in finding the heroin Thomas sold Matrey to be the legal cause of Matrey’s death.²⁴⁵ Additionally, the court should have analyzed Maryland’s assisted suicide statute in rendering its decision because the elements of the crime call into question the logic of the court’s legal causation analysis.²⁴⁶ Finally, the Court of Appeals wrongfully took the place of the Maryland General Assembly in extending Maryland’s involuntary manslaughter precedent, especially in light of the General Assembly’s explicit denial to codify gross negligence involuntary manslaughter resulting from drug distribution in 2017.²⁴⁷

239. See MD. CODE ANN., CRIM. LAW § 5-602 (LexisNexis 2012) (criminalizing the distribution or dispensing of a controlled dangerous substance).

240. MD. STATE COMM’N ON CRIMINAL SENTENCING POLICY, SENTENCING GUIDELINES OFFENSE TABLE 9 (2019), <http://www.msccsp.org/Files/Guidelines/offensetable.pdf>.

241. *Thomas v. State*, 237 Md. App. 527, 531, 186 A.3d 857, 860 (2018), *rev’d*, 464 Md. 133, 211 A.3d 274 (2019).

242. *Id.*; Sinha, *supra* note 236.

243. *Thomas*, 464 Md. at 180, 211 A.3d at 301 (majority opinion).

244. See *supra* Section IV.A.

245. See *supra* Section IV.B.1.

246. See *supra* Section IV.B.2.

247. See *supra* Section IV.C.