there was more than sufficient evidence for a reasonable jury to conclude that Beckwitt failed miserably in fulfilling the duty to provide Khafra a reasonably safe work environment.

Beckwitt's contention that he had no common law duty to install a smoke detector or to provide emergency exit in case of an accidental fire is nothing more than a distraction.[20] The installation of a smoke detector or having a designated emergency exit are but two measures that Beckwitt could have taken to establish a reasonably safe workplace. The evidence was sufficient to prove that Beckwitt failed in numerous ways to fulfill the duty to provide Khafra with a reasonably safe workplace, including by failing to provide reliable electricity for light and airflow in the workplace, by failing to provide a reliable method of communication, and by maintaining an excessive amount of debris and trash in the workplace. In other words, it is of no significance that Beckwitt claims he was not required to install a smoke detector or have an emergency exit as those are but two measures that could have been taken to establish a reasonably safe workplace, but were not, and Beckwitt's own conduct and other factors contributed to the risk of danger in the work setting.

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[20]Beckwitt contends that he did not have a duty to utilize specific fire safety measures, such as installing a smoke detector or providing emergency egress from an accidental fire. Beckwitt argues that there is no such duty under the common law. The State points out:

> Beckwitt was not charged with involuntary manslaughter because he failed to fulfill his legal duty to install a smoke detector. As the jury was instructed, the State's legal duty theory of involuntary manslaughter was based upon Beckwitt's failure to fulfill his common law duty to provide Khafra, his employee, with a reasonably safe place to work.

Similarly, Beckwitt's reliance on the 19th century case of Jones v. Granite Mills, 126 Mass. 84 (1878) for the proposition that the duty to provide a safe workplace does not include a duty to provide emergency egress from an accidental fire is not persuasive. In Jones, id. at 88-89, the Supreme Judicial Court of Massachusetts held that the owner of a mill could not be held liable for failing to ensure that employees escaped a fire where there was no evidence that the "failure to construct proper and additional means of exit from a mill in case of fire in any way contributed to the occurrence of the fire itself" or that the owner failed to take proper precautions. In other words, there was no evidence that the mill owner had been negligent. See id. at 89. The Court explained: "The master is not liable to the servant unless he has been negligent in something which he has contracted or undertaken with his servants to do, and he has not undertaken to protect him from the results of casualties not caused by him or beyond his control." Id. at 89 (citation omitted).

What Beckwitt fails to take into account is that, although language in Jones may say that there is no common law duty for an owner of a building to provide a particular manner of escape from a fire, the case stands for the larger principle that an employer who acts negligently in failing to take proper precautions or who negligently contributes to the occurrence of the fire may be liable. Under the theory discussed in Jones, Beckwitt's conduct in maintaining an unsafe work environment that prevented Khafra's escape from the fire could fairly be determined to be negligence. Jones does not conflict with the principle well established in Maryland law that an employer owes a general duty to an employee to provide a reasonably safe workplace.

We are more persuaded by the State's reliance on Commonwealth v. Godin, 371

N.E.2d 438, 441-42, 444 (Mass. 1977), a case involving a discussion of an employer's duty of reasonable care and the circumstances sufficient to demonstrate wanton or reckless conduct. In Godin, id. at 440, the president of a fireworks manufacturing company was convicted of manslaughter for the deaths of three employees that occurred as a result of an explosion at the company's manufacturing plant. The defendant appealed and the Supreme Judicial Court of Massachusetts affirmed the convictions. See id. The defendant argued that the indictments were insufficient because, as of the time of the explosion, no court decision held that an employer owed his employees a duty of reasonable care in the operation and maintenance of the workplace. See id. at 442.

The Supreme Judicial Court of Massachusetts concluded that involuntary manslaughter, a common law crime, "is an unlawful homicide unintentionally caused by an act which constitutes such a disregard of probable harmful consequences to another as to amount to wanton or reckless conduct." Id. (cleaned up). The Court determined that the indictments were legally sufficient, holding that "[a]n employer whose acts or omissions constitute a disregard for the probable harmful consequences and loss of life as to amount to wanton or reckless conduct is properly charged with manslaughter where a foreseeable death is caused thereby." Id. at 443.

The Court explained that there was evidence presented from which the jury could conclude that, prior to the explosion, the amount of fireworks stored in one of the buildings "had reached unprecedented levels; [] the defendant had been warned of the dangers posed by such accumulations; [] nothing was done to remedy the situation; and [] increments in such storage increased the risk of explosion and resulting harm[.]" Id. at 444. The Court

concluded that the "evidence, if believed, would warrant the jury in concluding that the defendant should have been aware and indeed was aware of the increased risk of harm and thus his failure to remedy the situation was the kind of conduct which constitutes wanton and reckless conduct." Id. The Court explained that "[r]ecklessness involves conscious creation of a substantial and unjustifiable risk" and, so long as "the defendant's conduct was reckless as far as the risk of explosion was concerned, he must then be held accountable for the probable consequences of such conduct." Id. (citations omitted). See also State v. Far W. Water & Sewer Inc., 228 P.3d 909, 927-29 (Ariz. Ct. App. 2010) (The Court of Appeals of Arizona held that the evidence was sufficient to support a corporation's convictions for negligent homicide where a jury could reasonably conclude that management was "aware of the substantial and unjustifiable risk of death or physical injury involved in working in" the sewage treatment plant and consciously disregarded that risk, and that management's conduct "constituted a gross deviation from the standard of care or conduct under a reasonable person standard[.]").

As in Godin, the evidence in this case was sufficient for a rational juror to conclude that Beckwitt should have been aware, and was in fact aware, of the risk of harm to Khafra posed by the deplorable conditions in the workplace, *i.e.*, the basement, and that his failure to remedy the conditions was conduct that demonstrated a wanton and reckless disregard for Khafra's safety. Beckwitt hired Khafra to live and work in a basement filled with trash and debris, with spotty electricity provided by a series of extension cords and power strips, and without a reliable manner for Khafra to contact him. The conditions in the basement made it difficult to move around. Testimony at trial established that Khafra would have

had to crawl through and climb over debris, including buckets and bags of cement, to get out of the basement. Beckwitt created unsafe conditions in the basement that made escape from a fire, or any other emergency for that matter, difficult if not impossible and allowed those conditions to exist while Khafra worked in the basement for weeks at a time. Moreover, Beckwitt's conduct on the day of the fire demonstrated a reckless and wanton disregard for Khafra's life. Based on all of the above, the jury could have concluded that Beckwitt violated his common law duty to provide a reasonably safe workplace with reckless indifference as to whether his actions or inactions endangered Khafra and that Beckwitt's failure to fulfill his duty constituted gross negligence. Cf. DiGennaro, 415 Md. at 564-65, 3 A.3d at 1208-09.

We are not convinced by Beckwitt's attempt to differentiate his conduct from that of other defendants convicted of manslaughter where death resulted from a fire. Beckwitt's conduct was as wanton and reckless as the conduct of defendants convicted of involuntary manslaughter in other cases. In Commonwealth v. Welansky, 55 N.E.2d 902, 904, 906-07 (Mass. 1944), the defendant owned and operated a nightclub where several of the emergency exits were locked or blocked and "[s]ome employees, and a great number of patrons, died in [a] fire" and others with burns and injuries from smoke died within a few days. Notably, the Supreme Judicial Court of Massachusetts stated that, to convict the defendant of manslaughter, the prosecution did not need to prove that the defendant caused the fire through wanton or reckless conduct, but instead that "[i]t was enough to prove that death resulted from his wanton or reckless disregard of the safety of patrons in the event of fire from any cause." Id. at 912. In Commonwealth v. Zhan Tang Huang, 25 N.E.3d

315, 318-19, 325, 327 (Mass. App. Ct. 2015), after tenants (a father and his two young sons) died as a result of a fire and another tenant (the mother) was severely injured in the fire, one of the landlords of an apartment building was convicted of three counts of manslaughter and four counts of wanton or reckless violation of the State building or fire code causing serious bodily injury or death, where the landlord violated numerous code provisions related to fire safety, routinely failed to respond to requests to repair or replace missing smoke detectors, and had been warned of the safety risk posed by not installing smoke detectors.

In People v. Ogg, 182 N.W.2d 570, 571-72 (Mich. Ct. App. 1970), a mother was convicted of involuntary manslaughter where she left her two young children unattended and locked in a windowless room and the children died from inhalation of carbon monoxide fumes from a fire. The Court of Appeals of Michigan held that the defendant's actions of putting her children, or at least "allowing them with her knowledge to be locked, in a small windowless upstairs room, without proper heat, light, food, clothing or bedding, and without means of escape, and, in reckless disregard of the consequences of such action, absenting herself from the home in pursuit of her own business," rose to the level of "culpable negligence." Id. at 575. Although Beckwitt's conduct was obviously different than that of the defendants in these cases, the evidence demonstrated that his failure to provide a reasonably safe workplace was done with reckless indifference as to whether his conduct endangered Khafra and that a reasonable person would have been aware of the substantial risk of danger that Khafra faced.

Turning to causation, we conclude that there was sufficient evidence of both actual

and legal causation. As to actual, but-for causation, the evidence was sufficient for the jury to have concluded that, but for Beckwitt's conduct, *i.e.*, having subjected Khafra to the dangerous conditions that existed in Beckwitt's basement, Khafra would not have died in the fire. The jury could have reasonably inferred that Khafra would have been able to escape the relatively minor fire but for the circumstance that the basement was full of trash and debris that impeded Khafra's ability to move freely about. The jury could also have reasonably inferred that but for Beckwitt's failure to promptly respond to the two electrical failures, Khafra would not have been trapped in the fire. As the Court of Special Appeals recognized, although Beckwitt "did not intentionally set the fire, his disregard for safety, including his refusal to recognize the implications of two electrical failures on the day of the fire, satisfy actual causation." Beckwitt, 249 Md. App. at 372, 245 A.3d at 224.

As to legal causation, we are persuaded that the State produced sufficient evidence demonstrating that Khafra's death was a reasonably foreseeable consequence of Beckwitt's conduct. A reasonable person would have been able to discern the risk of danger or harm to Khafra from the working conditions in the basement. Although the evidence demonstrated that the fire likely started as the result of a latent defect in an electrical outlet and that Beckwitt would not have been aware of the defect, it was entirely foreseeable that in a fire, or any other emergency that might occur in the basement, due to the numerous unsafe conditions that Beckwitt allowed to exist, Khafra's ability to escape would have been seriously impeded.

In sum, we hold that the evidence was sufficient to support Beckwitt's conviction for involuntary manslaughter under both a gross negligence theory and a legal duty theory.

As such, we, like the Court of Special Appeals, affirm the conviction. See id. at 373, 245 A.3d at 224.

III. Lesser-Included Offense

The Parties' Contentions

Beckwitt contends that legal duty involuntary manslaughter is a type of gross negligence involuntary manslaughter and a lesser-included offense of depraved heart murder. Beckwitt argues that although there was not a particularized verdict sheet, the substance of the State's closing argument leaves little doubt that the jury convicted him of "failure to perform a legal duty gross negligence manslaughter" (not "affirmative act gross negligence manslaughter") and depraved heart murder based on the allegation that he showed "extreme disregard" in breaching a legal duty in the workplace. Beckwitt also asserts that the jury was not properly instructed as to the elements of the legal duty theory of involuntary manslaughter, which led to his conviction of the offense. Although Beckwitt's contention contains different subparts, at bottom, it appears that he argues that legal duty involuntary manslaughter is a lesser-included offense of depraved heart murder, the jury instruction concerning the legal duty theory was flawed, and his conviction for involuntary manslaughter must be reversed.

The State responds that the jury instructions given by the circuit court and the State's closing argument conveyed to the jury that the gross negligence and legal duty theories are distinct theories of involuntary manslaughter, and only gross negligence involuntary manslaughter is a lesser-included offense of depraved heart murder. The State contends that Beckwitt's conviction for depraved heart murder was necessarily based on his

conviction for gross negligence involuntary manslaughter.

Analysis

As an initial matter, for two reasons, it is not necessary that we reach this issue. First, we have concluded that the evidence was sufficient to support Beckwitt's involuntary manslaughter conviction under both a gross negligence and a legal duty theory and next, as discussed below, we affirm the Court of Special Appeals's conclusion that the evidence was insufficient to sustain a conviction for depraved heart murder. Given these determinations, we need not address Beckwitt's contention that legal duty involuntary manslaughter is a type of gross negligence involuntary manslaughter and a lesser-included offense of depraved heart murder, or, for that matter, review the circuit court's instruction as to legal duty involuntary manslaughter.

In evaluating the sufficiency of the evidence, we have done just as Beckwitt urged and reviewed his challenge to the legal duty involuntary manslaughter conviction, set forth the elements of both the legal duty and gross negligence manslaughter theories (which are not the same), and determined that the evidence was sufficient to support a conviction under either theory. As discussed below, we affirm the Court of Special Appeals's reversal of Beckwitt's conviction for second-degree depraved heart murder, so it no longer matters whether or not legal duty involuntary manslaughter is a lesser-included offense of depraved heart murder. Nonetheless, to put to rest any lingering question about the integrity of Beckwitt's conviction for involuntary manslaughter, we will briefly address the issues of whether legal duty manslaughter is a lesser-included offense of depraved heart murder and whether the jury was led to believe that was the case, and review the challenge to the circuit

court's jury instruction on legal duty involuntary manslaughter.

Legal duty involuntary manslaughter is not a lesser-included offense of depraved heart murder. A key element of legal duty involuntary manslaughter is that the defendant had a legal duty to perform and failed to do so. The offense of depraved heart murder contains no such element. The pattern jury instruction for depraved heart murder sets forth the elements of the offense as follows:

> Second degree murder is the killing of another person while acting with an extreme disregard for human life. In order to convict the defendant of second degree murder, the State must prove:
>
> (1) that the defendant caused the death of (name);
>
> (2) that the defendant's conduct created a very high degree of risk to the life of (name); and
>
> (3) that the defendant, conscious of such risk, acted with extreme disregard of the life endangering consequences.

MPJI-Cr 4:17.8A. In short, legal duty involuntary manslaughter has an extra element—the existence of a legal duty imposed upon the defendant—that depraved heart murder does not and as such under the required elements test is not a lesser-included offense. See State v. Wilson, 471 Md. 136, 178-79, 240 A.3d 1140, 1164 (2020).[21]

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[21]In Wilson, 471 Md. at 178-79, 240 A.3d at 1164, we explained the required evidence test, stating:

> Under the required evidence test—also known as the same evidence test, Blockburger test, or elements test—Crime A is a lesser-included offense of Crime B where all of the elements of Crime A are included in Crime B, so that only Crime B contains a distinct element. In other words, neither Crime A nor Crime B is a lesser-included offense of the other where each crime contains an element that the other does not.

Gross negligence involuntary manslaughter is, however, a lesser-included offense of depraved heart murder. It is well-established that gross negligence involuntary manslaughter is a less culpable form of depraved heart murder. See Thomas, 464 Md. at 173 n.20, 211 A.3d at 298 n.20 ("[G]ross negligence involuntary manslaughter is a less culpable form of depraved-heart murder." (Citation omitted)); Dishman v. State, 352 Md. 279, 299, 721 A.2d 699, 708 (1998) ("While our cases have not drawn a precise line between depraved heart murder and involuntary manslaughter and we are not called upon to do so in this case, we observe that the difference is one of the degree of culpability.").[22]

In this case, the circuit court's jury instructions made clear that the gross negligence and legal duty theories of involuntary manslaughter are separate and distinct and that only gross negligence involuntary manslaughter is a lesser-included offense of depraved heart murder. The circuit court gave the Maryland Criminal Pattern Jury Instruction for second-

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(Citation omitted).

[22]We are aware that the Court of Special Appeals stated:

> Although depraved heart murder is often described in terms of being a more culpable manifestation of gross negligence involuntary manslaughter, we are aware of no authority that depraved heart murder may only arise from the grossly negligent modality of involuntary manslaughter. In other words, it seems possible that the negligent omission of a lawful duty variety of manslaughter could, in a proper case, be elevated to the more culpable crime of depraved heart murder.

Beckwitt, 249 Md. App. at 352 n.10, 245 A.3d at 212 n.10. The remarks by the Court of Special Appeals do not serve to convert the legal duty theory of involuntary manslaughter into a lesser-included offense of depraved heart murder. They are merely an acknowledgement *in dicta* that in some instances the same conduct may satisfy the elements of both offenses. While the offenses may have different elements, they are not mutually exclusive with respect to conviction.

degree depraved heart murder,[23] stating:

> The defendant is charged with a crime of depraved heart murder, this charge includes second degree depraved heart murder and involuntary manslaughter. Second degree depraved heart murder is the killing of another person while acting with an extreme disregard for human life.
>
> In order to convict the defendant of second degree depraved heart murder[,] the State must prove that the defendant cause[d] the death of Askia Khafra, that defendant's conduct created a very high degree of risk to the life of Askia Khafra and that the defendant conscious of such risk acted with extreme disregard of the life endangering consequences.

Immediately after that, the circuit court instructed the jury on the two theories of involuntary manslaughter at issue, stating:

> Involuntary manslaughter, there are two theories. The [d]efendant is charged with the crime of involuntary manslaughter.
>
> In order to convict the defendant of involuntary manslaughter[,] the State must prove that the defendant acted in a grossly negligent manner and that this grossly negligent conduct caused the death of Askia Khafra. Grossly negligent means that defendant, while aware of the risk, acted in a manner that created a high risk to and showed a reckless disregard for human life.[24] Or alternative theory, either B or C, if you find that Askia Khafra and the defendant had an employer/employee relationship the defendant has a legal duty to provide his employee with a reasonably safe place in which to work.
>
> In order to convict the defendant of involuntary manslaughter[,] the

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[23] See MPJI-Cr 4:17.8A.

[24] The pattern jury instruction on gross negligence involuntary manslaughter, MPJI-Cr 4:17.8B, provides:

> The defendant is charged with the crime of involuntary manslaughter. In order to convict the defendant of involuntary manslaughter, the State must prove:
>
> (1) that the defendant acted in a grossly negligent manner; and
>
> (2) that this grossly negligent conduct caused the death of (name).
>
> "Grossly negligent" means that the defendant, while aware of the risk, acted in a manner that created a high risk to, and showed a reckless disregard for, human life.

> State must prove that the victim, Askia Khafra, was employed by the defendant, that defendant failed to perform his legal duty, that the defendant's failure to perform the legal duty caused the death of the victim and that by failing to perform this legal duty defendant acted in a grossly negligent manner. Grossly negligent means that defendant, while aware of the risk, acted in a manner that created a high risk to and showed a reckless disregard for human life.

The depraved heart murder jury instruction given by the circuit court was the pattern jury instruction on the offense and as such contained language advising that in order to convict Beckwitt of second-degree depraved heart murder, among other things, the jury must find that the "defendant's conduct created a very high degree of risk to the life of Askia Khafra and that the defendant conscious of such risk acted with extreme disregard of the life endangering consequences." This language mirrored the jury instruction that the circuit court gave pertaining to the gross negligence theory of involuntary manslaughter, which referred to the defendant, while aware of the risk, acting in a manner that created a high risk to and showing a reckless disregard for human life. In contrast, the depraved heart murder jury instruction given by the circuit court included no mention of the legal duty theory of manslaughter. In other words, the circuit court did not instruct the jury that in order to convict Beckwitt of depraved heart murder, the jury must find that Beckwitt was Khafra's employer or that Beckwitt failed to fulfill a legal duty to provide Khafra with a reasonably safe workplace.

During closing argument, the prosecutor told the jury that depraved heart murder was a greater offense of gross negligence involuntary manslaughter. At the outset of the State's closing argument, the prosecutor stated:

> So, there are two crimes that you're going to be considering, depraved

> heart murder and involuntary manslaughter and there's two ways to get to involuntary manslaughter and either one of them is up to you. Depraved heart murder, as you heard, it involves and I'm not going to restate it out but the main difference is that it involves what's called a very high degree of risk to human life and extreme disregard for the risk taking behavior or for the life of others and the risk taking behavior.
>
> The main difference between that and one of the forms of involuntary manslaughter is the word very, very high degree of risk and involuntary manslaughter is high degree of risk, and the word extreme. Extreme disregard and involuntary manslaughter reckless disregard. So it's a matter of degrees between the depraved heart murder and one of those ways you can get to involuntary manslaughter.
>
> The other way to get to involuntary manslaughter is by finding that there was an employer/employee relationship between the defendant and the victim and that therefore he owed him a duty to keep the workplace safe and he acted with a high degree of risk and reckless disregard in breaching that duty.

The prosecutor's explanation of the offenses during closing argument was consistent with what the circuit court had essentially instructed—that gross negligence involuntary manslaughter is a lesser-included offense of a depraved heart murder.[25]

IV. Legal Duty Involuntary Manslaughter Jury Instruction

The Parties' Contentions

Beckwitt contends that a jury instruction on legal duty involuntary manslaughter

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[25]Beckwitt draws our attention to jury notes in the case, in which the jury asked for an example of second-degree depraved heart murder and the definition of "extreme disregard" and posits that, based on the jury notes, "the jury considered the lesser-included offenses first" meaning that the jury moved upward, first finding him guilty of legal duty involuntary manslaughter and then finding him guilty of depraved heart murder. The State points out that even if Beckwitt is correct that the jury considered the involuntary manslaughter first, he fails to explain why the jury would have considered the legal duty theory only and not both that and the gross negligence theory, especially where the circuit court instructed the jury on both theories. We agree with the State. Beckwitt's contention concerning the jury notes does not support a conclusion that the jury convicted him only of legal duty involuntary manslaughter and not gross negligence involuntary manslaughter.

must include that the State is required to prove that: (1) the defendant was aware of his obligation to perform a legal duty; (2) the defendant was aware that his failure to perform his legal duty would create a high degree of risk to human life; (3) the defendant consciously disregarded his legal duty; and (4) a reasonable employer in the defendant's position would not have disregarded his legal duty; and that the circuit court's failure to instruct the jury on these points constituted reversible error.

The State points out that Beckwitt did not request that the circuit court give the instruction on legal duty involuntary manslaughter that he now claims was reversible error for the court not to have given and argues that the issue is not preserved for appellate review. The State contends that, if this Court considers the merits of the issue, the Court should conclude that the circuit court's instruction on legal duty involuntary manslaughter was a correct statement of law.

Standard of Review

Generally, where a party fails to object to a trial court's refusal to give a requested instruction, the issue is not preserved for appellate review. See, e.g., Yates v. State, 429 Md. 112, 130, 55 A.3d 25, 36 (2012) ("In general, a party must object to the failure to give a particular instruction promptly after the instructions are delivered, stating the grounds for the objection." (Citation omitted)); Watts v. State, 457 Md. 419, 426, 179 A.3d 929, 933 (2018) ("This Court has consistently repeated that the failure to object to an instructional error prevents a party on appeal from raising the issue under Rule 4-325([f])." (Citations omitted)).

"We review a trial court's decision to propound or not propound a proposed jury instruction under an abuse of discretion standard." Lawrence v. State, 475 Md. 384, 397, 257 A.3d 588, 596 (2021) (citation omitted). "We review *de novo* whether a jury instruction was a correct statement of the law." State v. Elzey, 472 Md. 84, 107, 244 A.3d 1068, 1082 (2021) (citation omitted). This is so "because even in areas where a trial court has discretion, no discretion is afforded to trial courts to act upon an erroneous conclusion of law." Id. at 107, 244 A.3d at 1082 (cleaned up). Generally, jury instructions are reviewed as a whole to determine whether they fairly or accurately cover the issues and are generated by the evidence. See Derr v. State, 434 Md. 88, 133, 73 A.3d 254, 281 (2013) ("On review, jury instructions must be read together, and if, taken as a whole, they correctly state the law, are not misleading, and cover adequately the issues raised by the evidence, the defendant has not been prejudiced and reversal is inappropriate. Reversal is not required where the jury instructions, taken as a whole, sufficiently protected the defendant's rights and adequately covered the theory of the defense." (Citation omitted)).

Analysis

The contention that Beckwitt raises in this Court concerning the four points of law that he claims a jury must be instructed on with respect to legal duty involuntary manslaughter is not preserved for appellate review as he never asked the circuit court to instruct the jury on any of the four points. See Md. R. 4-325(f) ("No party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party

objects and the grounds of the objection.").[26] Even if the issue were preserved, we would conclude that the circuit court did not abuse its discretion in instructing the jury as to legal duty involuntary manslaughter because the instruction was a correct statement of law and covered the essential elements of the offense.

The record reflects that prior to trial Beckwitt filed written objections to the court's proposed jury instructions. Beckwitt argued that an instruction on legal duty involuntary manslaughter should not be given at all because he alleged that he was not charged with that theory of involuntary manslaughter. Beckwitt requested that, if the circuit court were to instruct the jury as to legal duty involuntary manslaughter, the circuit court instruct the jury on eleven points that he maintained were related to legal duty. In particular, Beckwitt requested the following instructions:

1. The mere happening of an injury does not impute a failure to comply with a legal duty.
2. One cannot be said to have failed to meet one's legal duty merely because he failed to provision against a happening that he could not reasonably be expected to foresee.
3. An employer is not an insurer of the employee's safety nor does he warrant the safety of the employee.
4. Where there is no evidence that an alleged defect could have been discovery [sic] by proper inspection, a sudden and unexpected event affords no inference of a breach of a legal duty on the part of the employer[.]
5. You may consider whether the employee was familiar with working conditions prior to the date of the event.
6. There is no breach of a legal duty where the alleged perilous working conditions were known both to the employer and the employee.
7. The legal duty of an employer arises from the employer's superior

[26]Effective July 1, 2021, Maryland Rule 4-325(e) was relettered as Maryland Rule 4-325(f) without change. See Court of Appeals of Maryland, Rules Order at 33 (Mar. 30, 2021), available at https://www.mdcourts.gov/sites/default/files/rules/order/ro206.pdf [https://perma.cc/7LUV-3ZVV].

knowledge of the working conditions from that of the employee.

8. An employer's duty exi[s]ts only when the dangerous circumstance is known to the employer and not known [to] the person injured.
9. An employer does not breach [a] legal duty for failure to warn of a defect not known to the employer.
10. An employer [] does not breach a legal duty when injury occurs that is entirely collater[]al to and not a probable consequence of the work for which the employee was hired.
11. There must be a causal connection between the alleged breach of a legal duty and the resulting injury.

None of the eleven points concern the matters that Beckwitt now claims the circuit court was required to instruct the jury on.

In addition, in his written objections, Beckwitt alleged that the circuit court's proposed jury instruction on legal duty involuntary manslaughter was "not a complete and fair statement of the law" and was misleading in that it advised the jury that "the State must prove that 'by failing to perform a legal obligation, the defendant acted in a grossly negligent manner.'" On brief, Beckwitt contends that, by making these allegations, he preserved for appellate review the issue that he raises. Regardless of Beckwitt's contention, the record reflects that he did not request, either before or during trial, that the circuit court instruct the jury on the points that he now claims were necessary.

Beckwitt argues nonetheless that his contention is preserved because he advised the circuit court that the proposed involuntary manslaughter instruction "omitted essential elements" and, as such, permitted the jury to convict him based solely on finding that he failed to perform a legal duty and the death of the victim. The problem with Beckwitt's contention, however, is that the purpose of the language in Maryland Rule 4-325(f)—prohibiting a party from raising on appeal an error on the trial court's part in giving or

failing to give an instruction "unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection"—"is to give the trial court an opportunity to correct its charge if it deems correction necessary." Sequeira v. State, 250 Md. App. 161, 196-97, 248 A.3d 1151, 1172 (2021) (cleaned up). Because Beckwitt's written objections to the legal duty involuntary manslaughter jury instruction did not include any of the four points he urges as error before us, the circuit court was deprived of the opportunity to consider the request and to correct the proposed instruction if required.

Beckwitt himself apparently recognizes that the issue is not preserved, requesting that, "[a]ssuming, *arguendo*, the issue was not preserved," we exercise our discretion to consider the matter by engaging in plain error review. As we stated in Newton v. State, 455 Md. 341, 364, 168 A.3d 1, 14 (2017), "[p]lain error review is reserved for those errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant of a fair trial." (Cleaned up). Before an appellate court can exercise its discretion to find plain error, the following four conditions must be satisfied:

> (1) there must be an error or defect—some sort of deviation from a legal rule—that has not been intentionally relinquished or abandoned, *i.e.*, affirmatively waived, by the appellant; (2) the legal error must be clear or obvious, rather than subject to reasonable dispute; (3) the error must have affected the appellant's substantial rights, which in the ordinary case means he must demonstrate that it affected the outcome of the [] proceedings; and (4) the error must seriously affect the fairness, integrity or public reputation of judicial proceedings.

Id. at 364, 168 A.3d at 14 (cleaned up). The circumstances of this case do not satisfy the conditions for plain error review, as for instance, any error regarding the instruction was

not clear and obvious but rather is subject to reasonable disagreement as can be seen from the arguments raised by the State on brief in this Court, urging that the legal duty involuntary manslaughter instruction was a correct statement of law.

Even though the issue is not preserved for appellate review nor a matter that qualifies for plain error review, we nonetheless address the matter and determine that the legal duty involuntary manslaughter jury instruction given by the circuit court was a correct statement of law. The circuit court instructed the jury that, to convict Beckwitt of legal duty involuntary manslaughter, the State was required to prove that Khafra was employed by Beckwitt, that Beckwitt failed to perform his legal duty to provide Khafra with a reasonably safe workplace, that Beckwitt's failure to perform the legal duty caused Khafra's death, and that Beckwitt acted in a grossly negligent manner by failing to perform his legal duty, meaning that Beckwitt, while aware of the risk, acted in a manner that created a high risk to and showed a reckless disregard for human life.

Beckwitt contends that the circuit court erred in not instructing the jury that the State was required to prove that he had knowledge of the duty owed to Khafra. However, our case law demonstrates that the State was required to prove that Beckwitt had knowledge of the facts that gave rise to the obligation to perform the duty, not that the State was required to prove that Beckwitt had knowledge of the statutory, common law, or constitutional basis for the creation of the duty. Cf. DiGennaro, 415 Md. at 564, 3 A.3d at 1208 (In stating that the defendant could have been convicted of legal duty involuntary manslaughter, we stated that a statute imposed on the defendant a duty to take appropriate remedial measures, not that the defendant had to be aware of the statute.).

In State v. Kanavy, 416 Md. 1, 4-5, 4 A.3d 991, 992-93 (2010), five defendants, who were employees of a juvenile detention facility, were each charged with reckless endangerment after a juvenile died at the facility while they were on duty and they failed to contact emergency services in a timely manner. The defendants filed motions to dismiss the indictments, arguing that the reckless endangerment statute does not proscribe the failure to act. See id. at 4, 4 A.3d at 993. The circuit court granted the motions and the Court of Special Appeals affirmed. See id. at 4, 4 A.3d at 993. We reversed and remanded the case for trial, concluding "that the conduct proscribed by the reckless endangerment statute includes the wilful failure to perform a legal duty." Id. at 5, 10-11, 4 A.3d at 993, 996. We explained that, to convict a defendant of reckless endangerment as charged in the indictment, the State would be required to prove beyond a reasonable doubt, among other things, that the defendant owed a duty to obtain emergency medical care for the juvenile and that the defendant "was aware of his obligation to perform that duty[.]" Id. at 12-13, 4 A.3d at 997. We stated that none of the defendants could be convicted of reckless endangerment based on force used against the juvenile, but evidence of injuries sustained by the juvenile would be admissible "for the limited purpose of establishing the [defendant]s' awareness of the duty to obtain emergency services for the deceased." Id. at 12 n.2, 4 A.3d at 997 n.2.

Applying the same analysis to this case, it is clear that the State was not required to prove that Beckwitt knew that as an employer he had a legal duty to provide an employee with a reasonably safe working environment. Rather, the State needed to prove that Beckwitt had knowledge of the employer-employee relationship and knowledge of the

dangerous conditions of Khafra's work environment that gave rise to the duty to correct or eliminate the unsafe conditions. If we were to conclude otherwise and require that a defendant have actual knowledge of the existence of a statutory or common law duty, we would, as the State points out, in essence hold that ignorance of the law is a defense.

Two of the other points raised by Beckwitt—that the circuit court needed to instruct the jury that the State was required to prove that he was aware that his failure to perform his legal duty would create a high degree of risk to human life, and that he consciously disregarded his legal duty—were covered by the circuit court's instruction. The circuit court instructed the jury that the State was required to prove that, in failing to perform his legal duty, the defendant acted in a grossly negligent manner, which the circuit court described as meaning that the "defendant, while aware of the risk, acted in a manner that created a high risk to and showed a reckless disregard for human life." The jury instruction given by the circuit court covered all of the essential elements of legal duty involuntary manslaughter and was a correct statement of the law.[27] In sum, the circuit court did not err in giving the legal duty involuntary manslaughter jury instruction.

V. Depraved Heart Murder

The Parties' Contentions

The State contends that the evidence was sufficient to support the conviction for second-degree depraved heart murder because the evidence established that Beckwitt's

[27]As to the fourth point, although Beckwitt contends that the circuit court was required to instruct that a reasonable employer in his position would not have disregarded his legal duty, this is not one of the elements of legal duty involuntary manslaughter. See DiGennaro, 415 Md. at 566, 3 A.3d at 1210.

conduct was reasonably likely or certain to result in death. The State asserts that in reviewing the sufficiency of the evidence, "the Court of Special Appeals overlooked or devalued a number of salient facts and failed to consider all of the facts cumulatively[,]" including the danger of the tunnels, and the conditions in the basement, which, according to the State, were inherently dangerous.

For his part, Beckwitt responds that the Court of Special Appeals was correct in concluding that depraved heart murder requires conduct that must be reasonably likely, if not certain, to cause death, and in determining that the evidence in this case was insufficient to satisfy that element of the offense. Beckwitt argues that none of his "conduct was inherently dangerous, let alone likely fatal, even in the totality." Beckwitt asserts that neither the tunnels, the hoarding conditions in the basement, nor the use of multiple extension cords, whether considered individually or cumulatively, were likely, or certain, at any moment to cause death.

Law

We have described depraved heart murder as "one of the unintentional murders that is punishable as murder because another element of blameworthiness fills the place of intent to kill." Robinson v. State, 307 Md. 738, 744, 517 A.2d 94, 97 (1986) (cleaned up). Depraved heart murder constitutes "the form of murder that establishes that the willful doing of a dangerous and reckless act with wanton indifference to the consequences and perils involved, is just as blameworthy, and just as worthy of punishment, when the harmful result ensues, as is the express intent to kill itself." Id. at 744, 517 A.2d at 97 (cleaned up). "The critical feature of depraved heart murder is that the act in question be committed

under circumstances manifesting extreme indifference to the value of human life." Id. at 745, 517 A.2d at 98 (cleaned up). We elaborated:

> A depraved heart murder is often described as a wanton and wilful killing. The term 'depraved heart' means something more than conduct amounting to a high or unreasonable risk to human life. The perpetrator must or reasonably should realize the risk his behavior has created to the extent that his conduct may be termed wilful. Moreover, the conduct must contain an element of viciousness or contemptuous disregard for the value of human life which conduct characterizes that behavior as wanton.

Id. at 745, 517 A.2d at 98 (cleaned up). Similarly, in DeBettencourt v. State, 48 Md. App. 522, 530, 428 A.2d 479, 484, cert. denied, 290 Md. 713 (1981), the Court of Special Appeals explained that depraved heart murder involves "the deliberate perpetration of a knowingly dangerous act with reckless and wanton unconcern and indifference as to whether anyone is harmed or not."

In In re Eric F., 116 Md. App. 509, 519, 698 A.2d 1121, 1126 (1997), the Court of Special Appeals reiterated that "[t]he essential element of depraved heart murder is that the act in question be committed under circumstances manifesting extreme indifference to the value of human life." (Cleaned up). Thus, the key question to consider "is whether the defendant engaged in conduct that created a very high risk of death or serious bodily injury to others." Id. at 519, 698 A.2d at 1126 (cleaned up). Depraved heart "murder may be perpetrated without the slightest trace of personal ill-will" and, instead, "the willful doing of a dangerous and reckless act with wanton indifference to the consequences and perils involved, is just as blameworthy, and just as worthy of punishment, when the harmful result ensues, as is the express intent to kill itself." Id. at 520, 698 A.2d at 1126 (cleaned up).

In Pagotto v. State, 127 Md. App. 271, 276, 732 A.2d 920, 923 (1999), aff'd, 361

Md. 528, 762 A.2d 97 (2000), the Honorable Charles E. Moylan Jr. stated that "[o]n the matrix of blameworthy states of mind that will support a verdict of either civil liability or criminal guilt on the part of an unquestioned homicidal agent, one of those mental states is" where the "agent causes an unintended death by carelessly or negligently doing some act lawful in itself." (Cleaned up). "At the bottom end of the culpability scale is mere civil liability for a wrongful death," *i.e.*, civil negligence, "where there may be uncontestable fault and perhaps heavy civil liability but still something less than criminality." Id. at 276, 732 A.2d at 923. Higher up on the "scale of blameworthy negligence are those more gross deviations from the standard of care used by an ordinary person where the negligent conduct can reasonably be said to manifest a wanton or reckless disregard of human life." Id. at 277, 732 A.2d at 923 (cleaned up). Such conduct constitutes gross negligence involuntary manslaughter. See id. at 277, 732 A.2d at 923. Finally, highest up on the scale of blameworthy negligence "are those acts of a life-endangering nature so reckless that they manifest a wanton indifference to human life. That level of blameworthiness constitutes second-degree murder of the depraved-heart variety." Id. at 277, 732 A.2d at 923.

As to the line distinguishing gross negligence involuntary manslaughter from second-degree depraved heart murder, Judge Moylan stated that "Maryland case law has yet provided no meaningful distinction. . . . As an abstract matter, however, we know that there is—somewhere—such a line. There must be or else there is no legally cognizable distinction between murder and manslaughter." Id. at 277, 732 A.2d at 923-24. Although the line between depraved heart murder and gross negligence involuntary manslaughter

may not be well defined, as the Court of Special Appeals in this case recognized, Maryland case law demonstrates that the line between the two offenses "appears to be as follows: depraved heart murder requires an extreme indifference to the value of human life, whereas gross negligence involuntary manslaughter requires only a wanton and reckless disregard for human life[.]" Beckwitt, 249 Md. App. at 355, 245 A.3d at 214 (cleaned up).

In Simpkins v. State, 88 Md. App. 607, 608-09, 619, 596 A.2d 655, 655-56, 661 (1991), cert. denied, 328 Md. 94, 612 A.2d 1316 (1992), the Court of Special Appeals affirmed the second-degree depraved heart murder convictions of a mother and father whose two-year-old child died of malnutrition and dehydration. The evidence showed that the child lived with her parents and her four-year-old sister, and that a houseguest who had been living with the family realized that he had not seen the child in more than a day, went into her bedroom, and discovered that she was not moving. See id. at 609, 596 A.2d at 656. According to the medical examiner, the child died of malnutrition and dehydration as she "had not been given food or drink for three to five days." Id. at 609, 596 A.2d at 656. Moreover, the child was discovered in a dirty diaper containing about three-quarters of a pound "of layered fecal material[,]" and the medical examiner believed that the diaper had not been changed in four to six days. Id. at 609, 596 A.2d at 656. Although the child was permitted to starve to death, the evidence demonstrated it was not due to the parents' inability to provide food, as the "refrigerator was crammed full of food, and they and [the older child] apparently ate quite well." Id. at 610, 596 A.2d at 656.

On appeal, the parents contended that the State had failed to prove that they acted, or failed to act, with malice. See id. at 611, 596 A.2d at 657. The Court of Special Appeals

recognized that "malice is the indispensable ingredient of murder; by its presence, homicide is murder; in its absence, homicide is manslaughter." Id. at 611, 596 A.2d at 657 (cleaned up). The Court of Special Appeals observed, though, that malice for depraved heart murder may be inferred from "the intent to do an act under circumstances manifesting extreme indifference to the value of human life[.]" Id. at 611, 596 A.2d at 657. The Court of Special Appeals noted that "[m]ost cases prosecuted under a 'depraved heart' theory involve affirmative conduct—firing a gun or driving a car or boat into a crowd, for example." Id. at 612, 596 A.2d at 657 (citations omitted). Nevertheless, "'depraved heart' murder has also been found in cases of malicious omission, including situations where a parent has maliciously allowed a small child to die of exposure or of malnutrition and dehydration." Id. at 612, 596 A.2d at 657. The Court of Special Appeals traced the history of depraved heart murder cases involving child exposure or starvation from the English common law to the present, including cases from courts in other jurisdictions. See id. at 612-19, 596 A.2d at 657-61. Applying the principles distilled from its historical review, the Court of Special Appeals concluded that the evidence in the case supported the finding of malice:

> Most of these cases—English and American—tend to be fact-specific. It is evident from all of them that mere neglect, despite its awful consequence, is not enough to establish malice and thus to support a conviction of murder. We believe, however, that . . . the court's finding of malice in this case is supported by the evidence. Where a young child, incapable of self-help, is knowingly, deliberately, and unnecessarily placed in confinement and left alone for up to five days without food, drink, or attention and death ensues from that lack, malice may be inferred. A rational trier of fact could reasonably find that death is at least a likely, if not a certain, consequence of such conduct, that any normal adult would understand and appreciate the likelihood of that consequence, and that the conduct is

> therefore willful and wanton, manifesting viciousness or contemptuous disregard for the value of human life[.]

Id. at 619-20, 596 A.2d at 661-62 (cleaned up).

In Maryland, convictions for depraved heart murder also have been affirmed in cases involving the use of weapons, intentional infliction of physical injury resulting in death, and leaving an incapacitated person unattended knowing that death would result. In Alston v. State, 101 Md. App. 47, 58-59, 643 A.2d 468, 473-74 (1994), aff'd, 339 Md. 306, 662 A.2d 247 (1995), the Court of Special Appeals held that the evidence was sufficient to support the defendant's conviction for second-degree depraved heart murder where a fifteen-year-old was fatally shot on a street during a gunfight. The Court of Special Appeals concluded "that for approximately ten men to engage in an extended firefight on an urban street in a residential neighborhood was conduct that created a very high degree of risk of death or serious bodily injury to others." Alston, 101 Md. App. at 58, 643 A.2d at 473. In Owens v. State, 170 Md. App. 35, 43, 103, 906 A.2d 989, 993, 1027 (2006), aff'd, 399 Md. 388, 924 A.2d 1072 (2007), the Court of Special Appeals held that the evidence was sufficient to support the defendant's conviction for second-degree depraved heart murder where the evidence established that the two-year-old victim, who was the defendant's stepson, had sustained "a tremendous amount of blunt force[,]" "causing rib fractures, bruising of both the lungs and thymus, and tearing of the liver[,]" that the "injurics could not have been inflicted by the victim's four-year-old brother[,]" and that the defendant "had sole custody of the victim during the time that the injuries were sustained."

In Eric F., 116 Md. App. at 511, 522, 698 A.2d at 1122, 1127, the Court of Special Appeals held that the evidence was sufficient to support a finding of a juvenile's involvement in a delinquent act which would have constituted second-degree depraved heart murder had the juvenile been an adult. In Eric F., id. at 511, 522, 698 A.2d at 1122, 1127, the juvenile, a teenager who had been drinking with a fifteen-year-old victim, dragged the victim, who was unconscious and only partially clothed, to the woods behind his house on a cold and rainy night, and left the victim to die of hypothermia. The Court of Special Appeals determined that the juvenile's indifference toward the victim was demonstrated by his placing the victim "outside in the cold, dragging her to the woods, and leaving her there in an unconscious state[,]" placing "her in a dangerous situation and, therefore, clearly indicat[ing] his total lack of regard for her well being, considering the dangerous state in which she was placed in the sub-freezing cold." Id. at 521, 698 A.2d at 1127. The Court of Special Appeals concluded that the evidence was sufficient to support a finding that the juvenile knew that his actions would lead to the victim's death, "and that he manifested an extreme indifference to the value of her life by leaving her in the cold, and failing to seek appropriate help." Id. at 522, 698 A.2d at 1127.

Analysis

We hold that the evidence was not sufficient to support Beckwitt's conviction for second-degree depraved heart murder because, as the Court of Special Appeals determined, Beckwitt's conduct, although demonstrating a reckless disregard for human life, was "not the type of conduct that [was] likely, if not certain, to cause death, and thus does not rise to the level of opprobrious conduct that depraved heart murder proscribes—conduct that is

so extreme in its disregard to human life that it may be deemed willful." Beckwitt, 249 Md. App. at 378, 245 A.3d at 227. Beckwitt's conduct—having Khafra dig tunnels underneath his home, in a basement with electrical power supplied by multiple extension cords and power strips and filled with trash and debris that would have severely impeded Khafra's escape in the event of any emergency—whether considered individually or cumulatively, did not constitute conduct that could be said to be reasonably likely, if not certain, to cause death and thus did not satisfy the malice element necessary for depraved heart murder.

As the Court of Special Appeals observed, the State conceded that, at trial, it did not present evidence that the tunnels were structurally unsafe. Id. at 377, 245 A.3d at 227. In other words, the tunnels were not structurally unsound, ready to collapse or cave in at a moment's notice. To be sure, the evidence demonstrated that during a power outage, it was dark, and the airflow was restricted. But, that circumstance by itself was not reasonably likely, if not certain, to cause death.

In addition, it is readily apparent that, although Beckwitt's basement was full of trash and debris, to the point that the hoarding conditions hampered escape from the basement in the event of an emergency, the conditions in the basement in and of themselves did not pose an imminent risk of death to Khafra. Similarly, that Beckwitt used multiple extension cords and power strips to provide electricity, and that he was aware of two power failures in the hours before the fire, does not constitute conduct reasonably likely, if not certain, to cause death. Even when all of the environmental factors and Beckwitt's actions are considered in the aggregate, we are not able to conclude that a rational trier of fact

could have found that Beckwitt's conduct demonstrated an extreme indifference to the value of human life or rose to the level such that it was reasonably likely, if not certain, to cause death.

The State takes issue with the Court of Special Appeals having pointed out that "other individuals, including Khafra, worked in the tunnels without incident[,]" Beckwitt, 249 Md. App. at 377, 245 A.3d at 227, and contends that the circumstance that others worked in the tunnels and did not die is irrelevant and does not mean that Beckwitt's conduct was not reasonably likely to cause death. The State relies on two out-of-state cases involving fatal traffic accidents in which depraved heart murder convictions were affirmed—State v. Fuller, 531 S.E.2d 861 (N.C. Ct. App. 2000) and State v. Doub, 95 P.3d 116 (Kan. Ct. App. 2004)—for the argument that, "[i]n both of those cases, the defendant could have managed to make it home without killing anyone[,]" but "[t]hat does not mean that their conduct was not reasonably likely to result in death[,]" especially "where the same high-risk behavior is repeated day after day[.]" We are unpersuaded by the State's reliance on those cases, as, unlike in this case, the defendants in Fuller and Doub engaged in numerous actions that, either individually, or cumulatively, were indeed likely to cause death.

In Fuller, 531 S.E.2d at 864, the Court of Appeals of North Carolina concluded that a charge of second-degree murder was properly submitted to the jury and that the defendant's conduct "manifest[ed] a mind utterly without regard for human life and social duty, supporting a finding of malice sufficient for a conviction of second-degree murder." (Citations omitted). The defendant, while driving drunk, led police on a 16.7-mile high-

speed chase that ended when he hit a truck, forcing it into oncoming traffic, killing both of the occupants. See id. at 863-64. The defendant engaged in several actions that were likely, if not certain, to cause death, including driving a vehicle with a blood-alcohol concentration of 0.15, running a stop sign, running a red light, speeding and passing stopped traffic at speed of 90-95 miles per hour, and leading police on a long high-speed chase. See id.

Similarly, in Doub, 95 P.3d at 117, the Court of Appeals of Kansas concluded that the evidence was sufficient to support the defendant's conviction for second-degree murder, where the defendant, while driving drunk, struck another car, ultimately resulting in a child's death, and left the scene. The defendant engaged in several actions that were likely, if not certain, to cause death, including driving after drinking, consuming more alcohol and using crack cocaine and then resuming driving, speeding and running into a vehicle, and failing to stop and render aid to the victims after the collision. See id. The Court determined that those facts, along with others, clearly demonstrated an extreme indifference to human life. See id. at 121.

By contrast, in this case, although Beckwitt's conduct demonstrated a wanton and reckless disregard for human life, it was not conduct that could be said to be likely, if not certain, to cause death, and is not conduct that satisfied the malice element of depraved heart murder. Beckwitt's conduct was reprehensible and demonstrated an indifference to the risk of danger to which Khafra was exposed and satisfied all the elements for both gross negligence and legal duty involuntary manslaughter but we cannot say that Beckwitt engaged in conduct from which a jury could reasonably conclude that death was a likely,

if not certain, result. In accord with the Court of Special Appeals, we hold that the evidence is insufficient to support Beckwitt's conviction for second-degree depraved heart murder.[28]

JUDGMENT OF THE COURT OF SPECIAL APPEALS AFFIRMED. 80% OF COSTS TO BE PAID BY PETITIONER/CROSS-RESPONDENT AND 20% OF COSTS TO BE PAID BY MONTGOMERY COUNTY.

[28]As a result of our affirmance, in accord with the mandate issued by the Court of Special Appeals, Beckwitt's conviction for depraved heart murder remains reversed and the case is remanded to the circuit court for sentencing on the conviction for involuntary manslaughter. See Beckwitt, 249 Md. App. at 346, 401-02, 245 A.3d at 209, 242.

APPENDIX
B

E-FILED
Court of Appeals
Suzanne C. Johnson,
Clerk of Court
3/25/2022 9:12 AM

DANIEL BECKWITT	*	IN THE
	*	COURT OF APPEALS
	*	OF MARYLAND
v.	*	COA-REG-0016-2021
	*	No. 16
STATE OF MARYLAND	*	September Term, 2021

ORDER

Upon consideration of Petitioner/Cross-Respondent's Motion for Reconsideration, and the Motion to File Motion for Reconsideration Exceeding Word Limit filed thereto, in the above-captioned case, it is this 25th day of March, 2022,

ORDERED, by the Court of Appeals of Maryland, that the Petitioner/Cross-Respondent's Motion for Reconsideration be, and it is hereby, DENIED.

6/7/21
Boswld

/s/ Joseph M. Getty
Chief Judge

*Judge Gould did not participate in the consideration of this matter.

APPENDIX

C

IN THE
COURT OF APPEALS
OF MARYLAND

No. 16

September Term, 2021

Daniel Beckwitt v. State of Maryland

MANDATE

Certiorari to the Court of Special Appeals (Circuit Court for Montgomery County)

On the 28th day of January, 2022 it was ordered and adjudged by the Court of Appeals:

Judgment of the Court of Special Appeals affirmed. 80% of costs to be paid by Petitioner/Cross-Respondent and 20% of costs to be paid by Montgomery County.
Opinion by Watts, J.

On the 25th day of March, 2022 it was ordered and adjudged by the Court of Appeals:

ORDERED, by the Court of Appeals of Maryland, that the Petitioner/Cross-Respondent's Motion for Reconsideration be, and it is hereby, DENIED.
*Judge Gould did not participate in the consideration of this matter.

See attached Statement of Costs.

APPENDIX
D

Exhibit 1

Diminution Credit Eligibility

Maryland Law Effective October 1, 2020

Offenses	Diminution Credit Eligibility
State Facilities	
First- or second-degree rape or sex offense against victim under 16	None
Repeat offender – third-degree sex offense against victim under 16	None
Violation of lifetime sexual offender supervision	None
Crime of violence[1]	5 days/month good conduct, 20 days/month total[2]
Volume drug dealer or drug distribution kingpin	5 days/month good conduct, 20 days/month total[2]
Sex offense requiring registration on Sex Offender Registry	10 days/month good conduct, 20 days/month total[2]
All other crimes	10 days/month good conduct, 30 days/month total[3]
Local Facilities	
First- or second-degree rape or sex offense against victim under 16	None
Repeat offender – third-degree sex offense against victim under 16	None
Violation of lifetime sexual offender supervision	None
Crime of violence	5 days/month good conduct, 15 days/month total[4]
Volume drug dealer or drug distribution kingpin	5 days/month good conduct, 15 days/month total[4]
All other crimes	10 days/month good conduct[5], 20 days/month total[4]

Note: Per § 7-501 of the Correctional Services Article, an inmate convicted of a violent crime[6] committed on or after October 1, 2009, is not eligible for conditional release until after the inmate becomes eligible for parole (basically, after having served one-half of the inmate's sentence).[7]

[1] As defined in Section 14-101 of the Criminal Law Article: abduction, first degree arson, kidnapping, voluntary manslaughter, mayhem, maiming, murder, rape, robbery, robbery with a dangerous weapon, carjacking, armed carjacking, first degree sexual offense, second degree sexual offense, use of a firearm in the commission of a felony except possession with intent to distribute a controlled dangerous substance or other crime of violence, first degree child abuse, sexual abuse of a minor (under certain circumstances), home invasion, felony sex trafficking, forced marriage, attempts to commit the foregoing offenses, continuing course of conduct with a child, first degree assault, and assault with intent to murder, rape, rob, or commit a first or second degree sexual offense.

[2] Total may include credits for work tasks (5 days maximum), education (5 days maximum), and special projects (10 days maximum) in addition to good conduct.

[3] Total may include credits for work tasks (5 days maximum), education (5 days maximum), and special projects (20 days maximum) in addition to good conduct.

[4] Total may include credits for industrial, agricultural, or administrative tasks or vocational or other educational or training courses (5 days maximum); and special selected work projects or other special programs (5 days maximum) in addition to good conduct.

[5] The good conduct deduction for presentence confinement is 5 days per month.

[6] "Violent crime" means a crime of violence as defined in CR § 14-101 or burglary in the first, second, or third degree.

[7] See Section 7-301(c) and (d) of the Correctional Services Article for further details regarding eligibility for parole after conviction of a violent crime.

Maryland Diminution Credit System

Annapolis, Maryland
December 2020

Maryland Diminution Credit System

Department of Legislative Services
Office of Policy Analysis
Annapolis, Maryland

December 2020

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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF POLICY ANALYSIS
MARYLAND GENERAL ASSEMBLY

Victoria L. Gruber
Executive Director

Ryan Bishop
Director

December 2020

The Honorable Bill Ferguson, President of the Senate
The Honorable Adrienne A. Jones, Speaker of the House of Delegates
Members of the Maryland General Assembly

Ladies and Gentlemen:

This report, *Maryland Diminution Credit System*, was prepared by the Department of Legislative Services, Office of Policy Analysis, in response to continuing legislative and public interest in the area of diminution of confinement credits that reduce the length of incarceration for the State's correctional population. The report discusses the overall system of diminution credits in the State and nationwide.

The report was written by Claire E. Rossmark, in consultation with the Department of Public Safety and Correctional Services, and reviewed by Shirleen M. E. Pilgrim.

We trust that this information will be of assistance to you.

Sincerely,

Victoria L. Gruber
Executive Director

Ryan Bishop
Director

CER/SMEP/msr

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Contents

Maryland Diminution Credit System

Generally

Generally, an inmate sentenced to the custody of the Division of Correction (DOC) is entitled to earn diminution of confinement credits to reduce the inmate's term of incarceration. Diminution credits are days of credit either granted or earned on a monthly basis. Inmates in State correctional facilities and local detention centers are eligible for diminution credits. Credits may be forfeited or restricted due to misbehavior in the institution. (Title 3, Subtitle 7 of the Correctional Services Article)

The following types of inmates may not earn diminution credits:

- an inmate serving a sentence for first- or second-degree rape or the former crimes of first- or second-degree sexual offense against a victim under age 16 (§ 3-702(b) of the Correctional Services Article);
- an inmate serving a sentence for a subsequent conviction of third-degree sexual offense against a victim under age 16 (§ 3-702(c) of the Correctional Services Article); and
- an inmate imprisoned for a lifetime sexual offender supervision violation. (§ 11-724(c) of the Criminal Procedure Article)

An inmate who serves a concurrent Maryland sentence in a foreign jurisdiction may be eligible for diminution credits but only from the date that the inmate is received into the physical custody of DOC. (§3-703 of the Correctional Services Article)

Term of Confinement

Diminution credits reduce the incarceration period, not the length of a sentence or term of confinement. Diminution credits are deducted from an inmate's "term of confinement," which is defined as:

(1) the length of the sentence, for a single sentence; or

(2) the period from the first day of the sentence that begins first through the last day of the sentence that ends last, for:

(i) concurrent sentences;

(ii) partially concurrent sentences;

(iii) consecutive sentences; or

(iv) a combination of concurrent and consecutive sentences. (§ 3-701 of the Correctional Services Article)

"Maximum expiration date" is the last day of the sentence ending last.

Types of Diminution Credits

Diminution credits are made for good conduct, work tasks, education, and special projects or programs. With the exception of good conduct credit, the various types of diminution credits are calculated from the first day of participation and on a prorated basis for any portion of a calendar month that applies. (§§ 3-705 through 3-707 of the Correctional Services Article)

Good Conduct Credit

Good conduct credit (sometimes referred to as "good time" credit) is advanced to an inmate at intake, subject to the inmate's future good behavior. These credits are calculated from the first day of commitment to the custody of the Commissioner of Correction through the maximum expiration date of the inmate's term of confinement. Good conduct credits are a behavioral incentive and a means of reducing prison overcrowding. *Stouffer v. Staton*, 152 Md.App. 586, 592 (2003). The awarding of diminution credits is automatic, not discretionary.

The rate at which diminution credits are awarded to an inmate is generally dependent on the date at which the sentence for which the inmate is serving was imposed.

- For sentences imposed before October 1, 1992, good conduct credit is awarded at the rate of 5 days per month regardless of the offense.

- For sentences imposed between October 1, 1992, and October 1, 2017, good conduct credits are awarded at the rate of 5 days per month if the inmate's term of confinement includes a sentence for a crime of violence (as defined in Criminal Law Article § 14-101[1])

[1] As of December 15, 2020, "crime of violence" includes abduction, first-degree arson, kidnapping, voluntary manslaughter, mayhem, maiming, murder, rape, robbery, robbery with a dangerous weapon, carjacking, armed carjacking, first-degree sexual offense, second-degree sexual offense, use of a firearm in the commission of a felony except possession with intent to distribute a controlled dangerous substance or other crime of violence, first-degree child abuse, sexual abuse of a minor (under certain circumstances), home invasion, felony sex trafficking, forced marriage, attempts to commit the foregoing offenses, continuing course of conduct with a child, first-degree assault, and assault with intent to murder, rape, rob, or commit a first- or second-degree sexual offense.