APPENDIX TO PETITION

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Circuit Court for Montgomery County
Case No. 133838C
Argued: December 7, 2021

IN THE COURT OF APPEALS

OF MARYLAND

No. 16

September Term, 2021

DANIEL BECKWITT
v.
STATE OF MARYLAND

Getty, C.J.
McDonald
Watts
Hotten
Booth
Biran
Adkins, Sally. (Senior Judge,
Specially Assigned),
JJ.

Opinion by Watts, J.

Filed: January 28, 2022

This case involves the tragic death of twenty-one-year-old Askia Khafra, who died in a fire while trying in vain to escape from the reprehensible conditions of his workplace in the basement of his employer Daniel Beckwitt's, Petitioner's/Cross-Respondent's, home. Following a trial in the Circuit Court for Montgomery County, a jury found Beckwitt guilty of second-degree depraved heart murder and involuntary manslaughter. The circuit court sentenced Beckwitt to twenty-one years' imprisonment, suspending all but nine years, with credit for sixty days of time served, for second-degree depraved heart murder, and merged the conviction for involuntary manslaughter for sentencing. Beckwitt appealed, and the Court of Special Appeals held that the evidence was sufficient to support the conviction for gross negligence involuntary manslaughter but insufficient to support the conviction for depraved heart murder. See Beckwitt v. State, 249 Md. App. 333, 346, 245 A.3d 201, 209 (2021).

Beckwitt filed a petition for a writ of *certiorari* raising four issues—whether the circuit court lacked subject matter jurisdiction to enter a conviction on involuntary manslaughter due to old English statutes concerning a lack of liability for accidental fires, whether the evidence was sufficient to support the conviction for involuntary manslaughter, whether legal duty involuntary manslaughter is a lesser-included offense of depraved heart murder, and whether the circuit court erred by failing to correctly instruct the jury on the elements of legal duty involuntary manslaughter. The State, Respondent/Cross-Petitioner, filed a conditional cross-petition, raising one issue—whether the evidence was sufficient to support

the conviction for second-degree depraved heart murder. We granted both the petition and conditional cross-petition.

We answer the questions raised as follows. To begin with, we reject Beckwitt's argument that, because the case involved an accidental house fire, certain old English statutes deprived the circuit court of subject matter jurisdiction. In actuality, the argument does not involve a question of subject matter jurisdiction and because Beckwitt failed to raise the issue in the circuit court, the matter is not preserved for appellate review. Were we to consider the issue, though, we would determine that the statutes on which Beckwitt relies do not preclude his prosecution or otherwise serve as a defense.

Next, we hold that the evidence was sufficient to support Beckwitt's conviction for involuntary manslaughter under both a gross negligence and failure to perform a legal duty theory of the offense. We hold that the evidence was sufficient to establish gross negligence involuntary manslaughter because Beckwitt's conduct, in causing Khafra to live and work in dangerous conditions, constituted a gross departure from that of an ordinarily careful and prudent person under the same circumstances and a disregard for the consequences which might ensue and so demonstrated a wanton and reckless disregard for Khafra's life. Beckwitt's conduct was likely to result in harm to Khafra at any moment and an ordinarily prudent person under similar circumstances would have been conscious of the risk to Khafra. The evidence was sufficient to establish legal duty involuntary manslaughter because the evidence demonstrated that Khafra was Beckwitt's employee and, as such,

Beckwitt had a duty to provide Khafra with a reasonably safe workplace, which he failed to do with reckless indifference as to the endangerment of Khafra and that failure constituted gross negligence.

In addition, we hold that there was sufficient evidence for the jury to conclude that Beckwitt's conduct was both the actual and legal cause of Khafra's death. Viewing the evidence in the light most favorable to the State, the evidence was sufficient for the jury to have found beyond a reasonable doubt the essential elements of involuntary manslaughter under both a gross negligence and legal duty theory.

Because we conclude that the evidence was sufficient to support Beckwitt's involuntary manslaughter conviction under both theories, we need not reach the issue of whether legal duty involuntary manslaughter is a lesser-included offense of depraved heart murder. Nonetheless, we determine that legal duty involuntary manslaughter is not a lesser-included offense of depraved heart murder, although gross negligence involuntary manslaughter is.

We conclude that Beckwitt's contention that the circuit court erred or abused its discretion by failing to instruct the jury as to all of the essential elements of legal duty involuntary manslaughter is not preserved for appellate review. If the issue were preserved, however, we would conclude that the circuit court did not abuse its discretion in giving the instruction because it constituted a correct statement of law and covered the essential elements of the offense.

Finally, in agreement with the Court of Special Appeals, we hold that the evidence was not sufficient to support Beckwitt's conviction for second-degree depraved heart murder because his conduct, although

demonstrating a wanton and reckless disregard for human life, was not the kind of conduct that was likely, if not certain, to have caused death, and thus did not constitute conduct that demonstrated an extreme indifference to the value of human life. Beckwitt's conduct—including having Khafra dig tunnels beneath his home while living and working in a basement with electrical power provided by multiple extension cords and power strips and that was filled with trash and debris which severely hampered Khafra's escape in the event of an emergency—whether considered individually or cumulatively, although demonstrating a reckless disregard for human life, did not constitute conduct that was reasonably likely, if not certain, to cause death. Accordingly, we affirm the judgment of the Court of Special Appeals.

BACKGROUND

This case involves uncommon and, indeed, bizarre facts which, in its reported opinion, the Court of Special Appeals set forth in a well-written, thorough, and detailed manner. See Beckwitt, 249 Md. App. at 347-51, 245 A.3d at 209-11. As there is no material dispute between the parties about the accuracy of the facts—although the parties certainly dispute whether the facts were sufficient to support Beckwitt's convictions—we adopt the facts as set forth by the Court of Special Appeals:

> This case involves the tragic death of Askia Khafra, a twenty-one-year-old who died while trying to escape a fire in [Beckwitt]'s basement. At the time of the fire, [Beckwitt] was twenty-six years old. The unfortunate series of events that brought

Khafra and [Beckwitt] together arose from Khafra's idea to create a smartphone application or "app" called Equity Shark. Khafra envisioned Equity Shark as streamlining the process for average people to invest in "starter companies" or small businesses that had not yet gone public and needed funding. Khafra expended considerable effort in developing the app. In furtherance of that goal, Khafra browsed internet chatrooms looking for investors. Khafra found his first investor—[Beckwitt]—in such a chatroom.

Khafra pitched his business idea to [Beckwitt], and explained that he was looking for approximately $5,000 to go to San Francisco to apply for a Thiel Fellowship.[1] According to the parties' briefs, [Beckwitt] invested approximately $10,000 for a 5% stake in Equity Shark.[2] Khafra and [Beckwitt] went on to develop a close friendship. Khafra apparently became fascinated with [Beckwitt] due to [Beckwitt]'s wealth and financial success. Khafra looked to [Beckwitt] as someone who could help him grow Equity Shark, not just financially, but by assisting with computer coding and other efforts needed to develop the app into a viable business. Unfortunately, Equity Shark never took off as planned, and Khafra was not accepted for the Thiel Fellowship.

In order to repay [Beckwitt]'s $10,000 investment, Khafra agreed to dig tunnels underneath [Beckwitt]'s house. [Beckwitt] had been building tunnels and an underground bunker beneath his home because he apparently feared a nuclear war with North Korea.

> Khafra was not the first person to dig tunnels for [Beckwitt]. Douglas Hart, who was approximately twenty years old at the time,[3] dug tunnels on several occasions from approximately October 2016 to April 2017. Logistically, Hart would drive his car to Maryland,[4] meet [Beckwitt] at a McDonald's, and then [Beckwitt] would require Hart to wear sunglasses with duct tape on them to obscure Hart's vision while [Beckwitt] drove the two to [Beckwitt]'s home. Despite the fact that [Beckwitt] actually lived in Maryland, he gave Hart the impression that they were going to Virginia. When Hart visited [Beckwitt] to dig tunnels, he typically stayed in the tunnels and basement area for approximately a month at a time and understood that he was not allowed into the rest of the house. Hart indicated that he was physically incapable of leaving the basement/tunnel area, and that although there was a door from the basement leading directly to the outside, that door was kept locked and [Beckwitt] always had the key. When Hart communicated to [Beckwitt] that he wanted to go outside for fresh air or to get food, however, [Beckwitt] would oblige him. Nevertheless, [Beckwitt] required Hart to wear the duct-taped sunglasses upon going outside to prevent Hart from learning the location of [Beckwitt]'s house.

[1]The transcript incorrectly refers to this as the "Peter Field Fellowship." The specifics of the Fellowship itself, however, such as the age limit, the requirement to drop out of school in order to attend, and the Fellowship's general purpose, persuade us that Khafra was pursuing a "Thiel Fellowship" rather than a "Field Fellowship." See Thiel Fellowship, FAQ, https://thielfellowship.org/faq/ (last visited Jan. 8, 2021).

In early 2017, Khafra began digging tunnels at [Beckwitt]'s home for $150 a day. [Beckwitt] typically picked Khafra up at Khafra's parents' house in the early morning hours, around 3:00 a.m., and like Hart, required Khafra to be blindfolded during the trip to [Beckwitt]'s house.[5] Khafra would dig underneath [Beckwitt]'s home approximately once a month to every two months, and would stay anywhere from a few days to a few weeks at a time.[6] During his stays, Khafra mostly remained in the bunker area in the tunnels. According to [Beckwitt]'s brief, "Khafra roamed freely in the basement and the tunnels, but he was not permitted to come up to the first or second floors of the residence." Rather than take showers, Khafra cleaned himself using disposable wipes. To relieve himself, Khafra would urinate and defecate in a bucket he kept in the tunnels. Every few days, Khafra and [Beckwitt] used a winch system to haul the bucket from the basement to the first floor, where [Beckwitt] himself would dispose of its contents in the first-floor bathroom. Because [Beckwitt] did not own a phone, Khafra could only communicate with [Beckwitt] from the basement and tunnels using Google apps such as Google Voice and V Chat.[7] [Beckwitt] used numerous extension cords and power strips to provide electricity to the tunnels. In his interviews with police,

[2]There appears to be some discrepancy regarding the total amount of [Beckwitt]'s investment, but that discrepancy is immaterial to the outcome of this appeal.

[3]Hart testified at the April 2019 trial that he was twenty-three years old. From this fact we extrapolate that he was approximately twenty years old when he began working in [Beckwitt]'s tunnels in October 2016.

[4]At trial, Hart indicated that he was living in New York.

[Beckwitt] intimated his familiarity with the failing power cords and having to reset the circuit breaker.

On September 3, 2017, Khafra went to [Beckwitt]'s home to resume work in the tunnels. A week later, while digging in the tunnels on September 10 at 2:32 a.m., Khafra messaged [Beckwitt] using Google Hangouts, stating "holy [s**t] bro there's no power down here." Approximately five minutes later, at 2:37 a.m., Khafra indicated that there was smoke in the basement. At 2:51 a.m., Khafra wrote again, stating that he no longer believed there was smoke in the basement, but that the lights had gone out and it was "pitch black down [there]" with no airflow. Khafra's message asked [Beckwitt] to "please try to fix when you see this."

[Beckwitt] did not see Khafra's messages until he woke up at approximately 9 a.m. At 9:27 a.m., [Beckwitt] wrote to Khafra that there had been a "pretty major electrical failure" and that [Beckwitt] was switching the power over to a different circuit. [Beckwitt] then went back to sleep, and awoke at approximately 3 p.m. [Beckwitt] went downstairs

[5]During a trip to [Beckwitt]'s home, Khafra learned that [Beckwitt] actually lived in Bethesda, Maryland.

[6]Khafra's father testified at trial that he recalled Khafra going to [Beckwitt]'s house in January, February, March, April, and September of 2017.

[7]"Google Voice" is a program that "gives you a phone number for calling, text messaging, and voicemail." https://play.google.com/store/apps/details?id=com.google.android.apps.googlevoice&=en_US & gl=US (last visited Jan. 8, 2021). "V Chat" is a private messenger service that allows users to "communicate instantly while avoiding [text messaging] fees[.]" https://play.google.com/store/apps/details?id=com.wVChat_9255903 (last visited Jan. 8, 2021).

from his second-floor bedroom to get something to eat, and at around 4 p.m., he heard a beeping sound coming from the carbon monoxide detector in the dining room. [Beckwitt] understood the beep to signify a loss of power, which he confirmed when he could no longer hear the refrigerator running. [Beckwitt] waited approximately twenty to thirty minutes, believing that the circuit breaker would reset itself. When the power failed to return, [Beckwitt] went to the basement to manually reset the breaker. [Beckwitt] did not see Khafra while in the basement resetting the breaker.

On his way up the stairs from the basement to the first floor, [Beckwitt] heard an explosion, which he believed to be either the refrigerator's compressor or the air conditioner. [Beckwitt] went to the kitchen to see if the refrigerator's compressor was working, and immediately saw smoke rising out of the kitchen floor. [Beckwitt] promptly headed back to the basement to tell Khafra that there was a fire, and that Khafra needed to get out. [Beckwitt] heard Khafra yell "yo dude," but he could not see him through all of the smoke. Fearing that he would not be able to take the basement stairs to the first floor, [Beckwitt] exited the basement by unlocking the basement door that led directly to the outside.[8] Because he did not have a cellular phone, and because it would have been dangerous to return to his second-floor bedroom to call 9-1-1 from his computer, [Beckwitt] began to yell for help. [Beckwitt]'s neighbors called 9-1-1.

Firefighters from Montgomery County Fire and Rescue Service responded to [Beckwitt]'s home at approximately 4:23 p.m. The firefighters struggled

> to navigate through [Beckwitt]'s home to extinguish the fire, however, because, as [Beckwitt] concedes, "[t]he home by all accounts was a hoarder's home." Put simply, [Beckwitt]'s home was filled with an extreme amount of debris, trash, and other objects that made navigation difficult. In fact, it took firefighters approximately a minute and a half to two minutes to traverse the short distance from the basement's side entrance to the fire. Firefighters extinguished the fire with two or three sprays of water lasting approximately fifteen to thirty seconds each. When the steam finally cleared, firefighters found Khafra's lifeless body in the middle of the basement.

Beckwitt, 249 Md. App. at 347-51, 245 A.3d at 209-11 (footnotes and some alterations in original).

We include additional facts below as necessary.

Opinion of the Court of Special Appeals

On January 28, 2021, the Court of Special Appeals affirmed Beckwitt's conviction for involuntary manslaughter, reversed the conviction for depraved heart murder, and remanded the case to the circuit court for sentencing on involuntary manslaughter. See Beckwitt, 249 Md. App. at 346, 245 A.3d at 209. The Court of Special Appeals concluded that Beckwitt's conduct, under the totality of the circumstances, was sufficient to establish gross negligence involuntary manslaughter. Id. at 362, 245

[8]Although he could not remember for certain, [Beckwitt] indicated that he "[thought he] had to" unlock the basement door to exit. [Beckwitt] could not recall whether the key was already in the door or whether he had it at the time, but told police it was "common" to keep the key in the door. original). We include additional facts below as necessary.

A.3d at 218. In reaching this conclusion, the Court of Special Appeals considered "the inherent dangerousness of [Beckwitt's] act[s], as judged by a reasonable person[,] combined with environmental risk factors, which, together, [made] the particular activity more or less likely at any moment to bring harm to another[.]" Id. at 362, 245 A.3d at 218 (cleaned up). The Court of Special Appeals determined that Beckwitt placed Khafra, who was not an experienced construction worker, in a dangerous situation by paying him to dig tunnels beneath his home with electricity provided by "extension cords and power strips with an apparent history of failing" and that Khafra could contact Beckwitt in case of an emergency only by messages sent through "Google apps" in the hope that Beckwitt would receive them. Id. at 363, 245 A.3d at 218.

The Court of Special Appeals noted that on the day of his death when Khafra believed he smelled smoke, his early morning messages went undetected for more than six hours until Beckwitt eventually woke up. See id. at 363, 245 A.3d at 218. The Court of Special Appeals indicated that Beckwitt deprived Khafra of exact knowledge of his whereabouts by blindfolding him in transit to the home, which left Khafra, who apparently had internet and phone service, without knowledge of his location to call for help. See id. at 363, 245 A.3d at 218-19. The Court of Special Appeals determined that "the amount of debris and detritus in" the basement contributed to the environmental risk factors and "elevated the danger by hampering Khafra's ability to escape in the event of an emergency." Id. at 363, 245 A.3d at 219.

The Court of Special Appeals pointed out that

Beckwitt's conduct on the day of the fire included that, upon seeing Khafra's messages at approximately 9 a.m. regarding a power outage and the possible odor of smoke, Beckwitt's sole response was to tell Khafra that there had been a "pretty major electrical failure," and to switch the power to another breaker. Id. at 364, 245 A.3d at 219. Later, after the carbon monoxide alarm started to beep, Beckwitt "waited approximately twenty to thirty minutes before finally resetting the circuit breaker despite the fact that the previous electrical failure had left Khafra in 'pitch black' darkness with no airflow." Id. at 364, 245 A.3d at 219. The Court of Special Appeals noted that "at no point in time did [Beckwitt] ask Khafra to leave the basement for precautionary reasons." Id. at 364, 245 A.3d at 219.

The Court of Special Appeals determined that the environmental risk factors and Beckwitt's conduct in relation to the risk factors, considered together, "sufficiently demonstrate[d] the requisite wanton and reckless disregard for Khafra's life necessary to support a conviction for gross negligence involuntary manslaughter." Id. at 364, 245 A.3d at 219. The Court of Special Appeals concluded that the State produced sufficient evidence of actual causation, because but for Beckwitt having "Khafra work in a dangerous environment, Khafra would not have died." Id. at 372, 245 A.3d at 224. The Court of Special Appeals determined that there was sufficient evidence of legal causation because, based on the facts, "it was foreseeable that a fire might occur in the basement, and if it did, Khafra's ability to safely escape would be severely restricted." Id. at 373, 245 A.3d at 224.

On the other hand, the Court of Special Appeals concluded that Beckwitt's "conduct, viewed in conjun-

ction with the surrounding circumstances, d[id] not satisfy the evidentiary standard required for depraved heart murder." Id. at 377, 245 A.3d at 227. From the Court of Special Appeals's perspective, Beckwitt's "conduct itself did not demonstrate an extreme disregard for human life reasonably likely to cause death." Id. at 377, 245 A.3d at 227 (emphasis omitted). The Court of Special Appeals explained:

> In our view, hiring someone to dig tunnels underneath a hoarder's home may demonstrate a reckless disregard for human life, but it is not the type of conduct that is 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 of human life that it may be deemed willful.

Id. at 378, 245 A.3d at 227.

The Court of Special Appeals concluded that it need not consider whether the evidence was sufficient to support a conviction for involuntary manslaughter under the failure to perform a legal duty theory because there was only one conviction for involuntary manslaughter, which the Court affirmed on the basis of gross negligence. See id. at 382 n.21, 245 A.3d at 230 n.21.[9]

Petition for a Writ of Certiorari and Conditional Cross-Petition

[9]In addition, the Court of Special Appeals concluded that the circuit court did not err with respect to other matters raised on appeal by Beckwitt, including, among other things, not giving jury instructions concerning assumption of the risk, knowledge of the conditions by the victim, and the element of causation, and not sustaining objections to alleged improper remarks by the prosecutor during closing argument. See Beckwitt, 249 Md. App. at 382-401, 245 A.3d at 230-41. These issues are not before us.

Beckwitt petitioned for a writ of certiorari, raising the following four issues:

1. As a matter of first impression, was the evidence legally sufficient to permit a rational trier of fact to find that Petitioner was guilty of involuntary manslaughter beyond a reasonable doubt for permitting his friend to work in a home with hoarding conditions accompanied by power outages?

2. As a matter of first impression, is legal duty manslaughter a type of gross negligence manslaughter that serves as a lesser included offense of depraved-heart murder, thereby requiring review of Petitioner's challenges to the legal duty manslaughter conviction?

3. Did the circuit court commit reversible error by failing to instruct the essential elements of legal duty manslaughter, for which there is no pattern jury instruction?

4. As a matter of first impression, did the circuit court lack subject matter jurisdiction to enter a conviction against an occupant of a home on a common law involuntary manslaughter charge resulting from an accidental housefire?

The State filed a conditional cross-petition, raising the following issue: "In an issue of first impression, does the line separating second-degree depraved heart murder and gross negligence manslaughter depend upon the likelihood of death and, if so, was the evidence sufficient in this case to support the jury's verdict of second-degree murder?" On June 22, 2021, we granted the petition and conditional cross-petition. See Beckwitt v. State, 474 Md. 720, 255 A.3d 1090 (2021).

DISCUSSION

I. Subject Matter Jurisdiction

The Parties' Contentions

Beckwitt's first contention is as unusual as the facts of the case. Beckwitt contends that a series of English statutes from the 1700s leading up to the enactment of the Fires Prevention (Metropolis) Act of 1774 prohibit today in Maryland a criminal prosecution "against someone in whose home a fire accidentally began." According to Beckwitt, the statutes were in existence as of July 4, 1776, and courts across the United States have incorporated them into their common law. Beckwitt contends that the statutes serve as a complete bar to any action arising from an accidental house fire, and, as such, divest the circuit court of subject matter jurisdiction over the prosecution of this case. Beckwitt urges this Court to determine that the old English statutes are a part of the common law of Maryland today, and that he is "entitled to any defense that was available by English statute that was incorporated into Maryland common law."

The State responds that the 300-year-old statutes to which Beckwitt refers do not prohibit his prosecution in this case and even if somehow the statues could be construed as having that effect, the issue is not one of subject matter jurisdiction. The State points out that a lack of subject matter jurisdiction occurs where jurisdiction is lacking in a fundamental sense, not where a trial court makes a ruling in violation of a statutory restriction on the court's authority or discretion. The State asserts that, because Beckwitt's contention about the English statutes does not involve an issue of subject matter jurisdiction, he was required to raise the issue in the circuit court and, because he failed to do so,

the contention is not preserved for appellate review. The State maintains that, even if the issue were preserved, Beckwitt has conceded that the preeminent authority on the topic has concluded that the Fires Prevention (Metropolis) Act of 1774 is not applicable in Maryland and contends that no other authority supports Beckwitt's contention. The State points out that, even if the Fires Prevention (Metropolis) Act of 1774 were somehow applicable today in Maryland, it would not prohibit the prosecution of this case because the *actus reus*[10] supporting the charges against Beckwitt involved the creation of dangerous circumstances preventing Khafra's escape from the fire-not causing the fire itself.

Standard of Review

It is well settled that a "lack of subject matter jurisdiction may be raised at any time, including initially on appeal" and "need not be raised by a party, but may be raised by a court *sua sponte*." Derry v. State, 358 Md. 325, 334, 748 A.2d 478, 482 (2000) (cleaned up). See also Md. R. 8-131(a) ("The issue[] of jurisdiction of the trial court over the subject matter ... may be raised in and decided by the appellate court whether or not raised in and decided by the trial court."). We review without deference questions of law involving statutory interpretation. See Gorge v. State, 386 Md. 600, 610, 873 A.2d 1171, 1177 (2005).

[10]Black's Law Dictionary defines "*actus reus*" as "[t]he wrongful deed that comprises the physical components of a crime and that generally must be coupled with mens rea to establish criminal liability; a forbidden act" and as "[t]he voluntary act or omission, the attendant circumstances, and the social harm caused by a criminal act, all of which make up the physical components of a crime." *Actus Reus*, Black's Law Dictionary (11th ed. 2019).

Analysis

In agreement with the State, we conclude that Beckwitt's contention concerning the English Fires Prevention (Metropolis) Act of 1774 and earlier statutes does not raise a question of subject matter jurisdiction. We are not persuaded by Beckwitt's argument that 300-year-old statutes deprived the circuit court of subject matter jurisdiction in this case.

Subject matter jurisdiction, also called fundamental jurisdiction, see Tshiwala v. State, 424 Md. 612, 621, 37 A.3d 308, 313 (2012), "is the court's ability to adjudicate a controversy of a particular kind[,]" John A. v. Bd. of Educ. for Howard Cty., 400 Md. 363, 388, 929 A.2d 136, 151 (2007) (citation omitted). "If by that law which defines the authority of the court, a judicial body is given the power to render a judgment over that class of cases within which a particular one falls, then its action cannot be assailed for want of subject matter jurisdiction." Tshiwala, 424 Md. at 621, 37 A.3d at 313 (cleaned up). We have expressly recognized the difference between a court lacking fundamental jurisdiction and improperly exercising jurisdiction, explaining that just "[b]ecause a court or judge is unauthorized to take particular action or is erroneously exercising jurisdiction, does not mean that the court or judge does not have basic subject matter jurisdiction." Id. at 621, 37 A.3d at 313. We have explained:

> Simply because a statutory provision directs a court to decide a case in a particular way, if certain circumstances are shown, does not create an issue going to the court's subject matter jurisdiction. There have been numerous cases in this Court involving the situation where a trial court has jurisdiction over the subject matter, but where a statute directs

> the court, under certain circumstances, to exercise its jurisdiction in a particular way, and the tribunal erroneously refuses to do so because [of] an error of statutory interpretation or an error of fact. In these situations, this Court has regularly held that the matter did not concern the subject matter jurisdiction of the trial court.

Id. at 622, 37 A.3d at 313-14 (cleaned up).

Maryland circuit courts are courts of general jurisdiction and have "full common-law and equity powers and jurisdiction in all civil and criminal cases within [their] county[.]" Md. Code Ann., Cts. & Jud. Proc. (1974, 2020 Repl. Vol.) ("CJ") § 1-501. In criminal cases, with certain exceptions, the circuit courts have exclusive original jurisdiction over felony offenses. See CJ §§ 4-302(a), 4-301(b). The Circuit Court for Montgomery County—the circuit court in this case—plainly had subject matter jurisdiction over Beckwitt's criminal case because it had the power to render a judgment with respect to the felony offenses with which Beckwitt was charged. See Powell v. State, 324 Md. 441, 446, 597 A.2d 479, 482 (1991) (The circuit courts "are courts of original jurisdiction, authorized to hear all actions and causes, other than those particularly prescribed by statute or constitutional provision for other fora." (Citations omitted)). Beckwitt's contention that old English statutes preclude his prosecution and provide a complete defense because, according to him, the charges are based on an accidental housefire is, in actuality, an argument that the 300-year-old statutes compel the circuit court to exercise its jurisdiction in a particular way, *i.e.*, that given the circumstances, permitting Beckwitt's prosecution was erroneous. Under Maryland law, it is clear that Beckwitt's prosecution for depraved

heart murder and involuntary manslaughter was not beyond the circuit court's subject matter jurisdiction.

Because the issue raised by Beckwitt does not constitute an issue of subject matter jurisdiction, Beckwitt was required to raise the issue in the circuit court to preserve the matter for appellate review. See Md. R. 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]"). On brief, in a footnote, Beckwitt indicates that the issue is preserved because, while moving for judgment of acquittal, his attorney challenged the circuit court's "ability to enter a conviction on a common law offense that was not cognizable[.]" In moving for judgment of acquittal, among many other things, Beckwitt's counsel stated:

> [I]f there was a common law duty to provide a safe, unobstructed egress from a single-family home, . . . that common law duty was abrogated by enactment of the Maryland State Fire Prevention Code, because the State Fire Prevention Code exempts single-family homes from its scope. That code is codified in COMAR 29.06.01. . . . Single-family homes are specifically exempted from the code, just as smoke detector statutes . . . . So it is legally not possible to provide a basis for these charges by not providing adequate egress from a single-family home because there is no statutory or common law duty.

With these remarks, Beckwitt's counsel did not mention any old English statutes upon which he now relies, or otherwise argue, as he does now, that the statutes precluded Beckwitt's prosecution.[11] A review of the record leads to the conclusion that Beckwitt's contention concerning the Fires Prevention (Metropo-

lis) Act of 1774 and any other English statute precluding his conviction in this case is not preserved for appellate review.

Even if we were to reach the merits, we would conclude that old English statutes did not preclude Beckwitt's prosecution or serve as a defense. In 1707, an English law was enacted which provided in pertinent part:

> That no Action, Suit, or Process whatsoever, shall be had, maintained, or prosecuted against any Person in whose House or Chamber any Fire shall, from and after the said first Day of May, accidentally begin, or any Recompence be made by such Person for any Damage suffered or occasioned thereby; any Law, Usage, or Custom to the contrary notwithstanding[.]

6 Ann., Ch. 31, § VI (1707) (italics omitted).[12] Eventually, the provision was codified as part of the Fires Prevention (Metropolis) Act of 1774, which stated that "no Action, Suit, or Process whatever, shall be had, maintained, or prosecuted, against any Person in

[11]We also note that Beckwitt did not raise the issue he now raises concerning the alleged lack of subject matter jurisdiction and applicability of old English statutes on brief in the Court of Special Appeals.

[12]Section III of the statute provided in pertinent part, however:

> That if any menial or other Servant or Servants, through Negligence or Carelessness, shall fire or cause to be fired any Dwelling-house, or Out-house or House, such Servant or Servants being thereof lawfully convicted by the Oath of one or more credible Witnesses made before two or more of her Majesty's Justices of the Peace, shall forfeit and pay the Sum of one hundred Pounds unto the Churchwardens of such Parish where such Fire shall happen, to [be] distributed amongst the Sufferers by such Fire[.]

6 Ann., Ch. 31, § III (1707).

whose House, Chamber, Stable, Barn, or other Building, or on whose Estate any Fire shall, after the said twenty-fourth Day of June, accidentally begin[.]" Fires Prevention (Metropolis) Act of 1774, 14 Geo. III, Ch. 78, § LXXXVI (italics omitted).

As the State points out, historically, there has been disagreement about the scope of liability for accidental fires and the Fires Prevention (Metropolis) Act of 1774. In Koos v. Roth, 652 P.2d 1255, 1263 (Or. 1982), the Supreme Court of Oregon discussed the status of the common law of England in 1843 with respect to fires, explaining that "[a]n early common law action for letting one's fire escape and injure his neighbor is traced to [a] 1401 report" and "applied equally to a fire set outdoors, for burning stubble in a field, as to fire in one's house." (Footnote omitted). The Court observed that in an 1894 law review article, "Wigmore treated this action as a form of absolute liability." Id. at 1264 & n.11 (footnote omitted). According to the Court, in a 1926 academic journal article, Winfield differed because a person would not have been "liable if he showed that the fire was the act of a stranger, or an act of God." Id. at 1264 & n.12 (cleaned up). In addition, although the Supreme Court of Oregon did not note this in Koos, in the 1894 law review article, Wigmore stated that, in 1712, "the responsibility for accidental fires in houses was abolished by the legislature." John H. Wigmore, *Responsibility for Tortious Acts: Its History — III*, 7 Harv. L. Rev. 441, 449 (1894) (footnotes omitted).

In a 1996 article in *The Journal of Legal Studies*, A.W. Brian Simpson discussed the "obscure" history of liability for fires, stating:

> During the eighteenth century a series of fire prevention statutes was passed; they include provi-

> sions dealing with fires which began "accidentally." In 1774 a comprehensive *Fires Prevention (Metropolis) Act* was passed; section 86 appears to assume that at common law there might be liability, possibly strict, for fires which escaped from premises but had not been deliberately kindled, but the provision is obscure. The underlying assumption seems to have been that fires which caused damage to neighbors would normally either have been deliberately kindled, and allowed by negligence to spread, or have begun through negligence, but that there might be situations where a fire was accidental in the sense that it had not spread through negligence. The Act of 1774 does not clearly indicate what the standard of liability was then supposed to be, perhaps for the reason I have explained. However, Blackstone in his *Commentaries* (1765-69) thought that the effect of the Act was to exonerate a householder from liability either for his own negligence or that of his servant. However, a servant responsible was made liable to a penalty, with imprisonment in default of payment. Since serious fires would commonly leave a potential defendant without means, tort actions may have had little value.
>
> A.W. Brian Simpson, *Coase v. Pigou Reexamined*, 25 J. Legal Stud. 53, 76-77 (1996) (footnotes omitted).

In spite of this history, Beckwitt argues that a person cannot be prosecuted in Maryland for any crime related to an accidental housefire, seemingly without regard to any circumstances surrounding the fire. Beckwitt's contention is flawed for any number of reasons. First, Beckwitt concedes that Kilty's Report of the Statutes, the preeminent authority on the topic, concluded that the Fires Prevention (Metropolis) Act of

1774 is not applicable in Maryland.[13] Specifically, on brief, Beckwitt acknowledges: "Candidly, the statutes relied upon by [him] have not been found applicable by Kilty." Although Beckwitt argues that this Court is not precluded from having a different view from Kilty's,[14]

[13]In 1811, pursuant to a resolution of the General Assembly, William Kilty, the Chancellor of Maryland, made a report to the body concerning the English statutes applicable to the people of Maryland. Kilty's English Statutes, 1811, Vol. 143, at 1, available at https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/ 000143/html/am143--1.html [https://perma.cc/R8VG-2F77]. According to the Archives of Maryland Online, the full title of the report is:

> A Report of All Such English Statutes as Existed at the Time of the First Emigration of the People of Maryland, and Which by Experience Have Been Found Applicable to Their Local and Other Circumstances; and of Such Others as Have Since Been Made in England or Great-Britain, and Have Been Introduced, Used and Practised, by the Courts of Law or Equity; and Also All Such Parts of the Same as May Be Proper to Be Introduced and Incorporated into the Body of the Statute Law of the State. Made According to the Directions of the Legislature, by William Kilty, Chancellor of Maryland. To Which Are Prefixed, an Introduction and Lists of the Statutes Which Had Not Been Found Applicable to the Circumstances of the People: with Full and Complete Indexes. Published under the Directions of the Governor and Council, Pursuant to a Resolution of the General Assembly.

Id. (some capitalization omitted). In State v. Magliano, 7 Md. App. 286, 293, 255 A.2d 470, 474 (1969), the Court of Special Appeals referred to Kilty's as "[t]he only evidence on th[e] subject" of which English statutes have been found to be applicable in Maryland.

[14]Beckwitt points to a footnote in Magliano, 7 Md. App. at 293 n.5, 255 A.2d at 474 n.5, in which the Court of Special Appeals stated: "That Kilty did not regard a statute as 'applicable' did not preclude a court from having a different view." Significantly, the Court of Special Appeals noted that one scholar had "found only two cases, however, in which Kilty's opinion was overruled[.]" Id. at 293 n.5, 255 A.2d at 474 n.5 (citations omitted).

we see no basis on which to diverge from the long-prevailing view that the Fires Prevention (Metropolis) Act of 1774 is not applicable in Maryland.

Even if the Fires Prevention (Metropolis) Act of 1774 were applicable in Maryland, it would not govern the outcome of this case. Beckwitt fails to appreciate that he was not convicted of second-degree depraved heart murder and involuntary manslaughter because an accidental fire occurred in the basement of his house. Rather, he was convicted because the evidence demonstrated that Beckwitt had created conditions in the basement that severely impeded Khafra's ability to report and escape from any potentially life-threatening situation, which manifested a reckless or wanton disregard for Khafra's life.

There is nothing novel about an individual being prosecuted and convicted for a death resulting from an accidental fire where the individual created conditions that caused the death. For instance, in Commonwealth v. Skufca, 321 A.2d 889, 891, 893-94 (Pa. 1974), the Supreme Court of Pennsylvania affirmed a defendant's conviction for involuntary manslaughter where the defendant locked her two young children in a room, without supervision, for several hours, and a fire started in the building. A visitor was prevented from rescuing the children due to the locked door, and the children died of smoke inhalation. See id. at 891, 893. In Johnson v. State, 801 S.E.2d 294, 295-96 (Ga. Ct. App. 2017), the Court of Appeals of Georgia affirmed a defendant's convictions for involuntary manslaughter where the defendant left three of her children alone in a room with a space heater and blocked the apartment's hallway with a sofa and access to the kitchen with a table, and the space heater caught fire

and two of the children died of smoke inhalation. In Commonwealth v. Levesque, 766 N.E.2d 50, 53 (Mass. 2002), the Supreme Judicial Court of Massachusetts concluded that evidence before the grand jury was sufficient to support the defendants' prosecution for manslaughter where the defendants accidentally started and failed to report a fire in a warehouse, which took the lives of six firefighters.

In the cases discussed above, the *actus reus* supporting the criminal charges was not the setting of a fire or that an accidental fire occurred. Rather, the *actus reus* was the creation of dangerous circumstances surrounding the fire, such as preventing young children from being rescued or starting and failing to report a fire thereby placing firefighters in danger. Such conduct supported criminal culpability. The same can be said of the conduct in this case, where Beckwitt arranged for Khafra to live and work in a basement with a faulty source of electrical power for the provision of light and ventilation and with no way for Khafra to immediately communicate with him in the event of an emergency and with the basement filled with trash and debris which severely impeded Khafra's ability to escape the basement in the event of an emergency. Beckwitt was not charged, tried, and convicted based on the circumstance that an accidental fire occurred in the basement of his house. Beckwitt was charged, tried, and convicted based on his conduct in creating dangerous conditions from which Khafra could not escape in the event of an emergency such as a fire. So, even if the Fires Prevention (Metropolis) Act of 1774 applied in Maryland, it would not preclude Beckwitt's prosecution or otherwise serve as a defense because the charges in this case were not based on

Khafra having lost his life in an accidental fire but rather on Beckwitt's conduct in subjecting Khafra, in wanton and reckless disregard for his life, to the dangerous conditions that caused his death.

II. Involuntary Manslaughter

The Parties' Contentions

Beckwitt contends that the evidence was insufficient to support a conviction for involuntary manslaughter under either a theory of gross negligence or a theory of legal duty. Beckwitt argues that the State failed to demonstrate that his conduct demonstrated a wanton and reckless disregard for human life, *i.e.*, that his conduct rose to the level of gross negligence. Beckwitt maintains that having a person work in a home with hoarding conditions and power outages is not likely to cause harm to the person, and that hoarding is not inherently dangerous conduct. Beckwitt asserts that there was no legal duty applicable to the circumstances of the case and that the jury instruction regarding the duty to provide a safe workplace failed to take into account that such a duty does not "encompass providing emergency egress in the event of an accidental fire" or "providing a smoke alarm." Beckwitt also argues that the State failed to provide sufficient evidence establishing both actual and legal causation.

The State responds that the involuntary manslaughter conviction can be reversed only if there was insufficient evidence under both the legal duty and gross negligence theories. The State maintains that Beckwitt's conduct demonstrated a reckless and wanton disregard for Khafra's life and was grossly negligent, and that Beckwitt failed to perform his legal duty to provide Khafra with a reasonably safe work environment, a duty which any employer owes to an employee.

The State contends that both legal and actual causation are satisfied as Khafra's death would not have occurred but for Beckwitt's conduct and his death was a reasonably foreseeable consequence of such conduct.

Standard of Review

In State v. Wilson, 471 Md. 136, 159, 240 A.3d 1140, 1153 (2020), we described the standard of review of the sufficiency of evidence as follows:

> In determining whether the evidence is legally sufficient, we examine the record solely to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. In examining the record, we view the State's evidence, including all reasonable inferences to be drawn therefrom, in the light most favorable to the State.

(Cleaned up). In reviewing the evidence, we consider "whether the verdict was supported by sufficient evidence, direct or circumstantial, which could convince a rational trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt." White v. State, 363 Md. 150, 162, 767 A.2d 855, 862 (2001) (citation omitted). "Circumstantial evidence may support a conviction if the circumstances, taken together, do not require the trier of fact to resort to speculation or conjecture, but circumstantial evidence which merely arouses suspicion or leaves room for conjecture is obviously insufficient." Smith v. State, 415 Md. 174, 185, 999 A.2d 986, 992 (2010) (cleaned up). "It must afford the basis for an inference of guilt beyond a reasonable doubt." Id. at 185, 999 A.2d at 992 (cleaned up).

Involuntary Manslaughter Generally

In Maryland, involuntary manslaughter is a common law felony generally defined as "the unintentional killing of a human being, irrespective of malice." State v. Thomas, 464 Md. 133, 152, 211 A.3d 274, 285 (2019) (citation omitted). There are three varieties or theories of involuntary manslaughter: "(1) unlawful act manslaughter—doing some unlawful act endangering life but which does not amount to a felony; (2) gross negligence manslaughter—negligently doing some act lawful in itself; and (3) the negligent omission to perform a legal duty." Id. at 152, 211 A.3d at 285 (cleaned up). For the latter two variations of involuntary manslaughter—gross negligence and negligent omission to perform legal duty—"the negligence must be criminally culpable[,] i.e., grossly negligent." Id. at 152, 211 A.3d at 285 (cleaned up).

In addition, the State must "demonstrate a causal connection between such gross negligence and death to support a conviction, although it is not essential that the ultimate harm which resulted was foreseen or intended." Id. at 152, 211 A.3d at 285 (cleaned up). The causal connection "includes actual, but-for causation and legal causation." Id. at 152, 211 A.3d at 285; see also id. at 173, 211 A.3d at 297-98 ("[T]he 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." (Cleaned up)). "[A]ctual cause, or cause-in-fact, concerns the threshold inquiry of whether [the] defendant's conduct actually produced an injury." McCauley v. State, 245 Md. App. 562, 575, 227 A.3d 656, 663 (2020) (cleaned up). "For conduct to be the actual cause of some result, it is almost always sufficient that the result would not have happened in the absence of the conduct—or 'but for' the defendant's

actions." Thomas, 464 Md. at 174, 211 A.3d at 298 (cleaned up).

As to actual causation in gross negligence involuntary manslaughter cases, in Thomas, we observed that on only a few occasions have Maryland cases "evaluated the actual, or but-for, cause of a given result[.]" Id. at 174-75, 211 A.3d at 298. We discussed one instance, stating:

> In one such case, the Court of Special Appeals determined that a mutual agreement to engage in grossly negligent conduct can be sufficient to find causation, even where the victim was, himself, engaged in the grossly negligent act. In *Goldring v. State*, 103 Md. App. 728, 730-31, 654 A.2d 939[, 940] (1995), two racers, Hall and Goldring, participated in a drag race on a two-lane country highway with a posted 45-mile-per-hour speed limit. During the race, Hall accidently struck the side of Goldring's vehicle and lost control of his car. *See id.* at 731, 654 A.2d [at 940]. Hall and two pedestrians were killed. *See id.* The court concluded that Goldring's conduct in competing in the drag race bore a sufficiently direct causal connection to Hall's death to support Goldring's conviction for involuntary manslaughter, and Goldring was convicted in the death of Hall and the two pedestrians. *See id.* at 738, 654 A.2d [at 944].

Thomas, 464 Md. at 175, 211 A.3d at 298-99. In Thomas, id. at 175, 211 A.3d at 299, we also discussed Palmer v. State, 223 Md. 341, 353, 164 A.2d 467, 474 (1960) —a case in which we stated "that a defendant does not 'cease to be responsible for his otherwise criminal conduct because there were other conditions which contributed to the same result.'" Specifically, we stated:

> In *Palmer*, we held a mother liable for gross negligence involuntary manslaughter when she failed to prevent her husband's savage beatings of her daughter. Significantly, the Court concluded that it was not necessary that the mother's grossly negligent conduct be the sole reason for her daughter's death. See *Palmer*, 223 Md. at 353, 164 A.2d [at 474]. Ultimately, her unwillingness to aid her child, which was her duty, resulted in the child's death and she, too, could be convicted of involuntary manslaughter. Thus, we took a broader view of actual cause, implicitly recognizing that the grossly negligent conduct need only be the but-for cause of the death, and not an independently sufficient cause of it.

Thomas, 464 Md. at 175, 211 A.3d at 299.

In Thomas, id. at 178, 211 A.3d at 301, we explained that "[t]he concept of legal causation is applicable in both criminal and tort law, and the analysis is parallel in many instances" and "turns largely upon the foreseeability of the consequences of the defendant's conduct." (Cleaned up). The State is not required to prove "that the ultimate harm which resulted was actually foreseen or intended." Id. at 178, 211 A.3d at 301 (cleaned up). Rather, "[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." Id. at 178, 211 A.3d at 301 (cleaned up).

Gross Negligence Involuntary Manslaughter

With respect to gross negligence involuntary manslaughter, the State must prove that the defendant's conduct that resulted in the victim's death, "under the circumstances, amounted to a disregard of the conseq-

uences which might ensue and indifference to the rights of others, and so was a wanton and reckless disregard for human life." State v. Albrecht, 336 Md. 475, 500, 649 A.2d 336, 348 (1994) (cleaned up). The defendant "must have committed acts so heedless and incautious as necessarily to be deemed unlawful and wanton[.]" Id. at 500, 649 A.2d at 348 (cleaned up). "The act must manifest 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 indifference to the consequences." Thomas, 464 Md. at 153, 211 A.3d at 286 (cleaned up). "Moreover, the defendant, or an ordinarily prudent person under similar circumstances, should be conscious of this risk." Id. at 154, 211 A.3d at 286 (citations omitted). In Thomas, id. at 160-61, 211 A.3d at 290, we explained that, in addition to the above considerations, determining whether an individual's conduct constitutes gross negligence

> also involves an assessment of whether an activity is more or less likely at any moment to bring harm to another, as determined by weighing the inherent dangerousness of the act and environmental risk factors. This weighing must amount to a high degree of risk to human life—falling somewhere between the unreasonable risk of ordinary negligence and the very high degree of risk necessary for depraved-heart murder.

(Cleaned up).

Whether a defendant's conduct rises to the level of gross negligence is a fact-specific inquiry and "[t]here is no scientific test or quantifiable probability of death that converts ordinary negligence to criminal gross negligence." Id. at 159, 211 A.3d at 289. Instead, "the

inherent dangerousness of the act engaged in, as judged by a reasonable person[,] . . . is combined with environmental risk factors, which, together, make the particular activity more or less likely at any moment to bring about harm to another." Id. at 159, 211 A.3d at 289 (cleaned up). The inquiry into gross negligence is not limited to an assessment of inherent dangerousness and environmental factors; "the defendant, or an ordinarily prudent person under similar circumstances, should be conscious of the risk to others." Id. at 167, 211 A.3d at 294 (citation omitted).

We have indicated that gross negligence involuntary manslaughter generally occurs "in four main contexts: automobiles, police officers, failure to perform a duty, and weapons." Id. at 154, 211 A.3d at 286. In Thomas, in considering "under what circumstances the dangers of heroin would justify holding a dealer liable for involuntary manslaughter for supplying the means by which his customer fatally overdoses[,]" we discussed cases involving automobiles, police officers, and weapons to "create a helpful tableau depicting how we assess a defendant's level of negligence." Id. at 139, 154, 211 A.3d at 277, 286.[15]

In the context of automobiles and gross negligence,[16] we observed that, in Duren v. State, 203 Md. 584,

[15]Although we recognized that involuntary manslaughter could involve a failure to perform a duty, in Thomas we did not discuss this line of cases.

[16]In Thomas, 464 Md. at 154, 211 A.3d at 286, although we recognized that a criminal statute for "manslaughter by vehicle"—defined "as causing the death of another by driving, operating, or controlling a vehicle in a grossly negligent manner"—"preempts any prosecution for such conduct as common law gross negligence manslaughter," the cases involving manslaughter by vehicle were relevant because they involve "the same common law concept and meaning of gross negligence[.]" (Cleaned up).

588-90, 102 A.2d 277, 279-80 (1954), a defendant's conduct constituted gross negligence where the defendant operated a vehicle in a reckless manner by speeding in a heavily congested residential and business area and struck and killed a pedestrian. See Thomas, 464 Md. at 154-55, 211 A.3d at 286-87. In State v. Kramer, 318 Md. 576, 586-89, 592-93, 569 A.2d 674, 679-82 (1990), we held that the evidence was sufficient to support a jury's finding that the defendant's conduct constituted gross negligence where the defendant while driving in a rural area passed vehicles in a no-pass zone going at least 75 miles per hour, while talking and joking with passengers, and hit an oncoming vehicle, killing an occupant. See Thomas, 464 Md. at 155-56, 211 A.3d at 287. By contrast, in Johnson v. State, 213 Md. 527, 529-30, 132 A.2d 853, 854, 856 (1957), we concluded that the evidence was not sufficient to support a conviction for manslaughter by vehicle where the defendant, who was driving in a non-residential area early in the morning, hit a curb, side-swiped a pole, and ended up in a plot of grass, causing a passenger to be ejected from the car and killed. See Thomas, 464 Md. at 156-57, 211 A.3d at 287-88. At trial, there was contradictory testimony about the speed at which the car had been going. See id. at 156, 211 A.3d at 287. Looking at environmental factors such as "the type of road traveled, the time of day, the traffic, the density and character of the neighborhood, and any safety precautions or warnings disregarded," we "determined that there was insufficient evidence to conclude that the defendant was grossly negligent." Id. at 156-57, 211 A.3d at 287-88 (citations omitted).

In Thomas, we also discussed gross negligence involuntary manslaughter cases involving negligent police

officer conduct that resulted in death. See id. at 157, 211 A.3d at 288. Although "such cases are evaluated under a heightened 'reasonable police officer under the circumstances' standard, rather than a reasonably prudent person standard[,]" we noted that the cases provided "guidance concerning the line between ordinary and gross negligence." Id. at 157, 211 A.3d at 288 (citation omitted). In Albrecht, 336 Md. at 478, 480-82, 649 A.2d 337-39, we held that the evidence was sufficient to support a conviction for gross negligence involuntary manslaughter where an officer removed a shotgun from his vehicle, racked the gun, leveled it at the victim, and, with his finger on the trigger, intended to swing the shotgun to aim it at another person, but instead the gun discharged, and the victim was killed. See Thomas, 464 Md. at 157-58, 211 A.3d at 288.

Lastly, in Thomas, we discussed Mills v. State, 13 Md. App. 196, 197, 282 A.2d 147, 147 (1971), a case in which a sixteen-year-old defendant took his father's gun with him to a school dance, then went into a bathroom with friends to look at the gun and drink liquor. See Thomas, 464 Md. at 159, 211 A.3d at 289. The defendant, who knew there was one bullet in the chamber, pointed the gun at his friend, who slapped the gun from the defendant's hand, causing it to hit the floor, discharge, and kill another boy. See id. at 159, 211 A.3d at 289. The Court of Special Appeals concluded "that the circumstances plainly demonstrated a grossly negligent act dangerous to life" and that "the friend's reaction when the gun was pointed in his direction was wholly predictable, and therefore not an independent supervening cause." Id. at 159, 211 A.3d at 289 (cleaned up).

After reviewing the cases discussed above, in

Thomas, we concluded that the defendant's conduct demonstrated a wanton and reckless disregard for human life and that the evidence was sufficient to support a conviction for gross negligence manslaughter. See id. at 171-72, 211 A.3d at 296-97. The agreed findings of fact in the case showed that the victim, a twenty-three-year-old man, died of a heroin overdose. See id. at 141, 147, 211 A.3d at 278-79, 282. The defendant, a heroin dealer and user, would consume twelve bags of heroin a day, using four bags for a single shot, and would travel to Delaware every two to three days to get his supply of heroin. See id. at 148, 211 A.3d at 283. The defendant had sold heroin to the victim a few times. See id. at 149, 211 A.3d at 283. In the hours before he was found dead in the early morning, the victim called the defendant approximately twenty-seven times over the course of twenty-two minutes and, during the same time span, the victim text messaged the defendant five times. See id. at 145, 169, 211 A.3d at 280-81, 295. This was unusual behavior because the defendant usually met the victim earlier in the day to sell him heroin. See id. at 149, 211 A.3d at 283. The defendant met with the victim and sold him four bags of heroin—the only time he sold heroin to the victim around midnight. See id. at 149, 211 A.3d at 283.

In Thomas, we considered "the inherent dangerousness of distributing heroin with the attendant environmental risk factors presented[,]" and observed that, according to the agreed statement of facts, anyone in the defendant's position—who was knowingly engaged in the unregulated selling of a controlled dangerous substance to customers in a region suffering from an epidemic of heroin and opioid abuse and deaths —"would understand the dangers of heroin, and its

propensity to harm physically, if not kill, individuals who are ingesting it." Id. at 167, 211 A.3d at 294 (cleaned up). We determined that it was "fair to infer that [the defendant] subjectively knew an overdose was possible based on his statement that [the victim] 'couldn't have overdosed off [the amount] I sold him.'" Id. at 168, 211 A.3d at 295 (last alteration in original). We concluded that "the consumption of heroin in unknown strength is dangerous to human life, and the administering of such a drug is inherently dangerous[,]" although "distribution, alone, does not always amount to gross negligence." Id. at 169, 211 A.3d at 295 (cleaned up).

We noted that the defendant was a "systematic and sustained heroin distributor[,]" who also abused heroin himself, not an "infrequent or inexperienced provider." Id. at 170, 211 A.3d at 295. From this, we stated that it could be inferred that the defendant "was aware of the risk to life posed by consistent heroin abuse, cognizant of its ill-effects, and, yet, continued to sell the drug notwithstanding its danger." Id. at 170, 211 A.3d at 296 (citations omitted). We concluded that the defendant's conduct constituted a wanton and reckless disregard for human life and that the evidence was sufficient to support the defendant's conviction for gross negligence manslaughter beyond a reasonable doubt. See id. at 171-72, 211 A.3d at 296-97.

As to causation, we concluded that the defendant's conduct—selling four bags of heroin to the victim, who consumed them—was sufficient to establish actual, but-for causation, stating: "There is no evidence in the record that [the victim] could have died without the heroin, and this is enough to find but-for causation." Id. at 178, 211 A.3d at 300 (citation omitted). We also

concluded that there was sufficient evidence of legal causation. See id. at 180, 211 A.3d at 301. We explained that the State was not required to prove "that the four bags of heroin were the only reason [the victim] overdosed and died." Id. at 180, 211 A.3d at 301. We stated that "[r]ather, there must be sufficient evidence in the record to determine that [the victim] would not have died but for the heroin and that his death was a foreseeable consequence of [the defendant] selling him the four bags of heroin[,]" which the State had established. Id. at 180, 211 A.3d at 301.

In State v. Morrison, 470 Md. 86, 94-95, 233 A.3d 136, 141 (2020), this Court held that the evidence was not sufficient to support a mother's convictions for gross negligence involuntary manslaughter and reckless endangerment where a mother co-slept with her four-month-old infant and her four-year-old daughter, after an evening of drinking beer with friends virtually, and the infant died as a result of asphyxia from probable overlay. 470 Md. at 94-95, 233 A.3d at 141. We concluded that the mother did not engage in inherently dangerous conduct and we observed that the State did not introduce evidence that the mother was aware of the risks associated with co-sleeping "or that a reasonable person under the circumstances would have appreciated those risks." Id. at 115, 233 A.3d at 153. Although the evidence showed that the mother had consumed alcohol, there was insufficient evidence to support a finding that she was intoxicated or impaired on the night her infant died. See id. at 121, 233 A.3d at 157. In sum, we concluded that "there was insufficient evidence of gross negligence—wanton and reckless disregard for human life— "and that "the conviction for involuntary manslaughter was properly reversed." Id.

at 124, 233 A.3d at 158.

Legal Duty Involuntary Manslaughter

In Maryland, it is a longstanding principle that an employer owes an employee the duty to provide a reasonably safe place to work. See, e.g., Athas v. Hill, 300 Md. 133, 139, 476 A.2d 710, 713 (1984) ("Among the nondelegable duties which the employer owed his employees was the duty to provide a safe place to work[.]" (Citations omitted)).

In State v. DiGennaro, 415 Md. 551, 564-65, 3 A.3d 1201, 1208-09 (2010), this Court discussed whether a defendant could have been convicted of involuntary manslaughter under a legal duty theory where the victim's death was not caused by the defendant's negligent operation of a vehicle, but rather by the failure to clear a roadway of debris that fell from his dump truck. The Court of Special Appeals had reversed the defendant's conviction for manslaughter by vehicle and we affirmed, holding that the definition of the term "operating" in the manslaughter by vehicle statute is synonymous with the definitions of "drive" and "operate" in the Transportation Article, such "that a defendant cannot be convicted of manslaughter by vehicle unless the victim died as a result of grossly negligent conduct that occurred while the defendant was actually operating a vehicle." Id. at 553-54, 563-64, 3 A.3d at 1202, 1208. Although the defendant had not been charged with legal duty involuntary manslaughter, we discussed whether he could have been convicted of the offense. See id. at 564-67, 3 A.3d at 1208-10. We stated:

> To convict a defendant of involuntary manslaughter by grossly negligent failure to perform a legal duty, the State must prove beyond a reasonable doubt

that (1) the victim's death was caused by the defendant's failure to perform a duty that the defendant had a legal obligation to perform, and (2) the defendant acted in a grossly negligent manner because the defendant (a) was aware of his or her obligation to perform that duty, and (b) was aware that his or her failure to perform that duty would create a high degree of risk to human life.

DiGennaro, 415 Md. at 566, 3 A.3d at 1210 (citations omitted).

We explained that the defendant could have been convicted of legal duty involuntary manslaughter if the State proved beyond a reasonable doubt that:

(1) even though his operation of the vehicle was neither reckless nor negligent, as a result of what occurred while he had been operating that vehicle, [the statute] imposed upon him a duty to take appropriate remedial measures on behalf of other users of the highway; (2) he failed to perform that duty with reckless indifference to the issue of whether his inaction was endangering other users of [the road]; and (3) under the circumstances, that failure constituted gross negligence.

Id. at 564-65, 3 A.3d at 1208-09 (footnotes omitted).

Analysis

We hold that the evidence was sufficient to support Beckwitt's conviction for involuntary manslaughter under either a gross negligence or legal duty theory.[17] In assessing the sufficiency of the evidence to support a conviction for gross negligence involuntary manslaughter, we must determine whether Beckwitt acted with the *mens rea* necessary to establish gross negligence,

i.e., whether he acted with wanton and reckless disregard for Khafra's life. This involves a determination as to whether Beckwitt's conduct departed from that of an ordinarily careful and prudent person and demonstrated a disregard of the consequences to Khafra. It also requires an assessment of whether Beckwitt's conduct was likely to bring harm at any moment, *i.e.*, whether the inherent dangerousness of the conduct combined with environmental risk factors together made the conduct more or less likely at any moment to result in harm to Khafra. See Thomas, 464 Md. at 160-61, 211 A.3d at 290.

Applying this framework, we conclude that the evidence was sufficient to establish gross negligence involuntary manslaughter because Beckwitt's conduct constituted a departure from the conduct that any reasonable person would have taken under the circumstances and demonstrated a disregard of the consequences to Khafra. On multiple levels, Beckwitt's conduct constituted a departure from the conduct that a reasonable person would have engaged in under similar circumstances. No reasonable person would have required Khafra to live and work in a basement with a faulty supply of electricity for light and airflow and without a reliable way for Khafra to contact him. No reasonable person would have maintained the abhorrent conditions that existed in the basement with debris and trash blocking Khafra's route out in the

[17]In this case, the jury was instructed on both the gross negligence and failure to perform a legal duty type of involuntary manslaughter. The verdict sheet did not contain a separate question requiring the jury to choose between the two theories or otherwise differentiate between the two theories. When the jury returned its verdict, it returned a general verdict of guilty as to involuntary manslaughter.

event of an emergency. And no reasonable person would have reacted as casually as Beckwitt did on the day of the fire upon learning of the two power outages in the basement.

Beckwitt's conduct was likely to bring harm to Khafra at any moment and an ordinarily prudent person under similar circumstances would have been conscious of the risk to Khafra. See Thomas, 464 Md. at 160-61, 211 A.3d at 290. Beckwitt's conduct, accompanied by other circumstances, presented a risk of danger to Khafra. Specifically, the combination of Beckwitt's conduct and environmental risk factors that he created in the basement produced a substantial risk of harm to Khafra—namely, that he would not be able to escape from the basement in the event of a fire or any other emergency. Beckwitt hired Khafra, a young man with no construction experience, to live underground for weeks at a time and dig tunnels beneath his home in conditions that could only be described as extraordinarily unsafe, *i.e.*, dangerous. Electricity to the tunnels was provided by multiple extension cords and power strips that had a history of failing and making the circuit breaker trip. In response to power outages, Beckwitt would switch the power to a different circuit or wait, believing that the circuit breaker might reset itself, and replace extension cords rather than make any meaningful improvement to the electricity source. A loss of electricity would result in a loss of both light and ventilation in the tunnels. The failure to provide reliable electricity alone constituted conduct on Beckwitt's part that created a dangerous condition and an environmental risk factor that made it likely that working in the basement could result in harm to Khafra at any moment and created a risk that any reasona-

ble person would have been aware of. An ordinarily prudent person would know that causing someone to live and work in a basement in which there could be power outages that result in a lack of light and airflow would create circumstances, *i.e.*, risk factors, that could prevent the person from escaping the basement in the event of an emergency.

The evidence showed that Beckwitt engaged in conduct that increased the risk of harm by causing Khafra to work in the basement with no reliable way to contact him in the event that he was injured or needed to leave the basement in an emergency. Beckwitt did not have a cell phone or landline telephone and Khafra could reach him only through an internet messaging app. The unreliability of this method of communication was demonstrated when in the early morning hours on September 10, 2017, the power first went out, and Khafra messaged Beckwitt stating that there was no power and that there was smoke in the basement; Beckwitt did not see the messages until over six hours later when he woke up.

Compounding the risk was the circumstance that Khafra did not know his exact location if he needed to call for assistance in an emergency. Beckwitt took deliberate steps to conceal the location of his house. The evidence at trial showed that Beckwitt actively sought to hide his address from Khafra and Hart, another person whom Beckwitt hired to dig in his basement. In transit to the home, Beckwitt required Hart to wear sunglasses with duct tape on them and he required Khafra to be blindfolded, all to obstruct Hart's and Khafra's vision when Beckwitt drove them to the house. Although Khafra eventually learned that Beckwitt lived in Bethesda, Beckwitt had nevertheless

attempted to conceal the fact. And although Khafra learned that the house was in Bethesda, he did not know— and could not know—his exact location because Beckwitt used a virtual private network such that, had Khafra tried to use his cell phone's location services while connected to Beckwitt's network, it would have appeared as if Khafra were in Virginia.

These circumstances obviously would have impeded Khafra's ability to call for help in the event of an emergency and are circumstances that an ordinarily prudent person would have known presented a risk of harm. Adding to the dangerous conditions and environmental risk factors created by Beckwitt, the basement was filled with a large amount of trash, construction debris, and other items. Indeed, the basement was so full of trash and debris that it took over twenty firefighters, working eight- to ten-hour days, several weeks to clear it out. The detritus in the basement was piled six to seven feet tall, creating a wall of materials on either side of narrow pathways, which themselves were obstructed with items. To move around in the basement, a person was required to squeeze through the pathways, sometimes crawling, pushing, and moving debris to proceed, and walking on trash that was piled approximately one-and-a-half to two feet high. The situation in the tunnels (the area in the basement in which Khafra would dig) was so dangerous that a fire investigator, Lieutenant Erin Wirth of Montgomery County Fire Rescue, a witness for the State, testified that she responded to the scene the day after Khafra's death and was equipped with a mask that covered her entire face, an air line to oxygen tanks outside the house, a small oxygen tank on her person, and a safety harness, but she refused to crawl to the end of the tunnels because

she did not feel it was safe to do so.[18] According to Daniel Maxwell, a fire origin and cause investigator for NEFCO Fire Investigations, who testified as an expert witness for the State, escape from the fire in the basement would have been very difficult given the trash and debris in the basement. Maxwell testified that people escaping a fire "instinctive[ly]" get close to the floor to get below the "layer of hot air and gases." Maxwell testified that getting down and crawling through Beckwitt's basement would have been difficult, though, because Khafra would have had "to crawl over all the debris, all the buckets and the bags of cement and all the other" items in the basement. Based on Lieutenant Wirth's and Maxwell's testimony, any rational trier of fact could have concluded that, given the amount of debris in the basement, Khafra's ability to move through the basement was impeded to the point that he ran out of time to escape the fire. In other words, a rational trier of fact could have determined that Beckwitt created conditions in the basement that prevented Khafra's ability to get out.

We are wholly unpersuaded by Beckwitt's contention that "Khafra's mode of egress was reasonable under the circumstances" and that "Khafra was not prevented from escaping the basement[,]" but rather was simply "slowed down by the hoarding conditions." (Cleaned up). Based on the evidence, the jury reasonably could have concluded that the conditions that Beckwitt maintained in the basement impeded Khafra's escape to the extent that Khafra was unable

[18]Lieutenant Wirth testified that the conditions were unsafe for her to go to the end of the tunnels "[n]ot just because of shoring and dirt and all of that, but also the water that had come down from the firefighting."

to get out of the basement during the fire. In evaluating the sufficiency of the evidence, our duty is to "examine the record solely to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Wilson, 471 Md. at 159, 240 A.3d at 1153 (cleaned up). "We defer to any possible reasonable inferences the jury could have drawn from the admitted evidence and need not decide whether the jury could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence." Fuentes v. State, 454 Md. 296, 308, 164 A.3d 265, 272 (2017) (citations omitted).

In this case, on top of all of the other circumstances, the evidence demonstrated that living conditions in the basement were atrocious and that, while in the basement, Khafra was entirely reliant on Beckwitt for food, basic hygiene, and escape. There were no toilet facilities. Khafra urinated and defecated in a bucket that Beckwitt emptied every few days. Khafra cleaned himself using disposable wipes. On the day of the fire, Khafra was found dead in the tunnels, wearing no clothes.

In addition to the hazardous conditions he established in the basement, Beckwitt's conduct on the day of the fire demonstrated an indifference to or disregard of the consequences that might befall Khafra as a result of the power outages. Khafra messaged Beckwitt early in the morning on September 10, 2017, beginning at 2:32 a.m., alerting him to a power outage, at 2:37 a.m., advising of smoke in the tunnels, and at 2:51 a.m. about the darkness and lack of airflow. Beckwitt did not see the messages until he woke up over six hours later, at approximately 9:00 a.m. After Beckwitt awoke and finally saw Khafra's three messages, despite the conte-

nt of the messages, he did not respond until 9:27 a.m., almost a half hour later. At that time, instead of checking on Khafra or getting Khafra out of the basement right away, Beckwitt responded by simply telling Khafra that there had been a "pretty major electrical failure" and that his solution was to "switch[] it all over to a different circuit." Beckwitt then went back to sleep for over five hours. Later that day, at around 4:00 p.m., Beckwitt heard the carbon monoxide alarm beep. Beckwitt understood the beeping sound to be an indication of another loss of power, which was confirmed when he did not hear the refrigerator running anymore. Despite there being another loss of power and knowing from Khafra's earlier messages that the previous power outage had resulted in Khafra being in the dark with no airflow, Beckwitt waited twenty to thirty minutes before going to investigate the outage and reset the circuit breaker in the basement. As Beckwitt was leaving the basement, he heard an explosion, saw smoke, and became aware that the fire had started.

From the evidence produced at trial, the jury reasonably could have concluded that on the day of the fire when Beckwitt finally went to the basement to reset the circuit breaker as a result of the second power outage, he knew the following: Khafra was alone in the basement with trash and debris obstructing his ability to get out; electrical power to the basement was supplied by a series of extension cords and power strips and was unreliable; there had been two power outages in the span of just over twelve hours, one of which he himself described as a "pretty major electrical failure"; Khafra had thought he smelled smoke in the basement during the night; and, Khafra had been without electrical power in the morning and had told him that there

was no airflow or light in the basement. Yet, despite knowing all of this, Beckwitt did not take any steps to have Khafra leave the basement earlier in the day before the fire and did not respond promptly to the second power outage that immediately preceded the fire. Beckwitt's conduct on the day of the fire and overall conduct in creating unsafe conditions in the basement placed Khafra in a position in which he would have been at a high risk of harm during a fire or other emergency. The evidence was sufficient to demonstrate that Beckwitt possessed enough information to be aware of the risk of harm to Khafra and that on the day of the fire, he disregarded the risk or, at the very least, was indifferent to it. An ordinarily prudent person would have been aware of the risk of harm to Khafra under the circumstances.

In this case, with certainty, viewing the evidence in the light most favorable to the State, any rational juror could have concluded beyond a reasonable doubt, based on evidence of the dangerous conditions that Beckwitt created in the basement and his disregard for Khafra's safety on the day of the fire, that his "conduct amounted to a wanton and reckless disregard for human life—a gross departure from the conduct of an ordinarily prudent person, without regard to the consequences or the rights of others, and [was] likely to bring harm at any moment." Thomas, 464 Md. at 171, 211 A.3d at 296 (cleaned up). Beckwitt not only departed from conduct that a reasonable person would have taken under similar circumstances but also demonstrated both a disregard of the consequences which might ensue and an indifference to Khafra's well-being, and so evinced a wanton and reckless disregard for Khafra's life. In sum, the evidence was sufficient for a

rational trier of fact to find that Beckwitt's conduct was grossly negligent.

Because we conclude that the evidence was sufficient to support Beckwitt's conviction for involuntary manslaughter under a gross negligence theory, we need not necessarily consider whether the evidence was also sufficient to support a conviction under the legal duty theory of involuntary manslaughter.[19] To dispel any remaining question concerning the sufficiency of the evidence for Beckwitt's conviction for involuntary manslaughter, however, we address the issue and determine that the evidence was sufficient for the jury to have found beyond a reasonable doubt that Beckwitt failed to fulfill the legal duty to provide Khafra with a reasonably safe work environment and that the failure to do so was grossly negligent. To be sure, no Maryland case has directly addressed whether an employer may be convicted of involuntary manslaughter under a legal duty theory. Maryland law is clear, though, that employers have a common law duty to provide employees with a reasonably safe work environment. See Athas,

[19]In Griffin v. United States, 502 U.S. 46, 47, 49 (1991), in considering "whether, in a federal prosecution, a general guilty verdict on a multiple-object conspiracy charge must be set aside if the evidence is inadequate to support conviction as to one of the objects[,]" the Supreme Court stated that it was a well-settled rule of criminal procedure "that a general jury verdict was valid so long as it was legally supportable on one of the submitted grounds[.]" The Supreme Court further stated:

> It is one thing to negate a verdict that, while supported by evidence, may have been based on an erroneous view of the law; it is another to do so merely on the chance—remote, it seems to us—that the jury convicted on a ground that was not supported by adequate evidence when there existed alternative grounds for which evidence was insufficient.

Id. at 59-60 (cleaned up).

300 Md. at 139, 476 A.2d at 713. The evidence was sufficient to support a conviction for legal duty involuntary manslaughter as long as the State proved beyond a reasonable doubt that Beckwitt was Khafra's employer, that Beckwitt failed to fulfill the duty to provide a reasonably safe workplace with reckless indifference as to whether his inaction endangered Khafra, and that, under the circumstances involved, the failure constituted gross negligence. Cf. DiGennaro, 415 Md. at 564-65, 3 A.3d at 1208-09.

In this case, the evidence was sufficient for the jury to conclude that Beckwitt was Khafra's employer. Beckwitt paid Khafra $150 per day to live in the basement and dig tunnels. As such, in accord with Maryland law, as his employer, Beckwitt owed Khafra the duty of providing a reasonably safe work environment. Based on the evidence concerning the conditions that Beckwitt created and allowed to persist in the basement, 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.

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,

[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.

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 reck-

less 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 detect-

ors, 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]

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 involu-

[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.

ntary 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-degree depraved heart murder,[23] stating:

> The defendant is charged with a crime of depraved heart murder, this charge includes second degree

(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.

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

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

[24]The pattern jury instruction on gross negligence involuntary manslaughter, MPJICr 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.

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 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 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.

[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.

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 instruct-

ions 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 knowledge of the working conditions from that of the employee.

[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].

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 defend-ant 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 manslau-

ghter 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 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.

[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.

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 "injuries 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 juve-

nile'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.

Circuit Court for Montgomery County
Case No. 133838C

REPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 794

September Term, 2019

DANIEL BECKWITT

v.

STATE OF MARYLAND

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*Meredith,
Kehoe,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: January 28, 2021

*Meredith, J., now retired, participated in the hearing and conference of this case while an active member of the Court. He participated in the adoption of this opinion after being recalled pursuant to Maryland Constitution, Article IV, Section 3A.

Following a trial that spanned over two weeks, a jury in the Circuit Court for Montgomery County found appellant, Daniel Beckwitt, guilty of second-degree depraved heart murder and involuntary manslaughter. The court sentenced appellant to twenty-one years' imprisonment, suspending all but nine, for depraved heart murder, and merged the conviction for involuntary manslaughter. Appellant timely appealed and presents the following four issues for our review:

> 1. Was the evidence legally sufficient to sustain [appellant's] convictions for depraved heart murder and involuntary manslaughter?
> 2. Did the trial court err by giving flawed jury instructions on murder and manslaughter?
> 3. Did the prosecutor's repeated improper remarks during closing and rebuttal closing arguments result in reversible error?
> 4. Did the suppression court err in denying [appellant's] request for a hearing pursuant to Franks v. Delaware[1]?

We hold that the evidence was legally sufficient to sustain appellant's conviction for gross negligence involuntary manslaughter, but was insufficient to sustain the depraved heart murder conviction. We reject appellant's remaining allegations of error. We shall therefore reverse appellant's conviction for depraved heart murder and remand for sentencing on the previously merged involuntary manslaughter conviction.

FACTUAL AND PROCEDURAL BACKGROUND

This case involves the tragic death of Askia Khafra, a twenty-one-year-old who died while trying to escape a fire in appellant's basement. At the time of the fire,

[1]Franks v. Delaware, 438 U.S. 154 (1978).

appellant was twenty-six years old. The unfortunate series of events that brought Khafra and appellant together arose from Khafra's idea to create a smartphone application or "app" called Equity Shark. Khafra envisioned Equity Shark as streamlining the process for average people to invest in "starter companies" or small businesses that had not yet gone public and needed funding. Khafra expended considerable effort in developing the app. In furtherance of that goal, Khafra browsed internet chatrooms looking for investors. Khafra found his first investor—appellant—in such a chatroom.

Khafra pitched his business idea to appellant, and explained that he was looking for approximately $5,000 to go to San Francisco to apply for a Thiel Fellowship.[2] According to the parties' briefs, appellant invested approximately $10,000 for a 5% stake in Equity Shark.[3] Khafra and appellant went on to develop a close friendship. Khafra apparently became fascinated with appellant due to appellant's wealth and financial success. Khafra looked to appellant as someone who could help him grow Equity Shark, not just financially, but by assisting with computer coding and other efforts needed to develop the app into a viable business. Unfortunately, Equity Shark never took off as planned, and Khafra was not accepted for the Thiel Fellowship.

[2]The transcript incorrectly refers to this as the "Peter Field Fellowship." The specifics of the Fellowship itself, however, such as the age limit, the requirement to drop out of school in order to attend, and the Fellowship's general purpose, persuade us that Khafra was pursuing a "Thiel Fellowship" rather than a "Field Fellowship." See Thiel Fellowship, FAQ, https://thielfellowship.org/faq/ (last visited Jan. 8, 2021).

[3]There appears to be some discrepancy regarding the total amount of appellant's investment, but that discrepancy is immaterial to the outcome of this appeal.

In order to repay appellant's $10,000 investment, Khafra agreed to dig tunnels underneath appellant's house. Appellant had been building tunnels and an underground bunker beneath his home because he apparently feared a nuclear war with North Korea.

Khafra was not the first person to dig tunnels for appellant. Douglas Hart, who was approximately twenty years old at the time,[4] dug tunnels on several occasions from approximately October 2016 to April 2017. Logistically, Hart would drive his car to Maryland,[5] meet appellant at a McDonald's, and then appellant would require Hart to wear sunglasses with duct tape on them to obscure Hart's vision while appellant drove the two to appellant's home. Despite the fact that appellant actually lived in Maryland, he gave Hart the impression that they were going to Virginia. When Hart visited appellant to dig tunnels, he typically stayed in the tunnels and basement area for approximately a month at a time and understood that he was not allowed into the rest of the house. Hart indicated that he was physically incapable of leaving the basement/tunnel area, and that although there was a door from the basement leading directly to the outside, that door was kept locked and appellant always had the key. When Hart communicated to appellant that he wanted to go outside for fresh air or to get food, however, appellant would oblige him. Nevertheless, appellant required Hart to wear the duct-taped sunglasses upon going outside to prevent Hart from learning the location of appellant's house.

[4]Hart testified at the April 2019 trial that he was twenty-three years old. From this fact we extrapolate that he was approximately twenty years old when he began working in appellant's tunnels in October 2016.

[5]At trial, Hart indicated that he was living in New York.

In early 2017, Khafra began digging tunnels at appellant's home for $150 a day. Appellant typically picked Khafra up at Khafra's parents' house in the early morning hours, around 3:00 a.m., and like Hart, required Khafra to be blindfolded during the trip to appellant's house.[6] Khafra would dig underneath appellant's home approximately once a month to every two months, and would stay anywhere from a few days to a few weeks at a time.[7] During his stays, Khafra mostly remained in the bunker area in the tunnels. According to appellant's brief, "Khafra roamed freely in the basement and the tunnels, but he was not permitted to come up to the first or second floors of the residence." Rather than take showers, Khafra cleaned himself using disposable wipes. To relieve himself, Khafra would urinate and defecate in a bucket he kept in the tunnels. Every few days, Khafra and appellant used a winch system to haul the bucket from the basement to the first floor, where appellant himself would dispose of its contents in the first-floor bathroom. Because appellant did not own a phone, Khafra could only communicate with appellant from the basement and tunnels using Google apps such as Google Voice and V Chat.[8] Appellant used numerous

[6]During a trip to appellant's home, Khafra learned that appellant actually lived in Bethesda, Maryland.

[7]Khafra's father testified at trial that he recalled Khafra going to appellant's house in January, February, March, April, and September of 2017.

[8]"Google Voice" is a program that "gives you a phone number for calling, text messaging, and voicemail." https://play.google.com/store/apps/details?id=com.google.android.apps.googlevoice&hl= en_US&gl=US (last visited Jan. 8, 2021). "V Chat" is a private messenger service that allows users to "communicate instantly while avoiding [text messaging] fees[.]" https://play.google.com/store/apps/details?id=com.wVChat_9255903 (last visited Jan. 8, 2021).

extension cords and power strips to provide electricity to the tunnels. In his interviews with police, appellant intimated his familiarity with the failing power cords and having to reset the circuit breaker.

On September 3, 2017, Khafra went to appellant's home to resume work in the tunnels. A week later, while digging in the tunnels on September 10 at 2:32 a.m., Khafra messaged appellant using Google Hangouts, stating "holy [s**t] bro there's no power down here." Approximately five minutes later, at 2:37 a.m., Khafra indicated that there was smoke in the basement. At 2:51 a.m., Khafra wrote again, stating that he no longer believed there was smoke in the basement, but that the lights had gone out and it was "pitch black down [there]" with no airflow. Khafra's message asked appellant to "please try to fix when you see this."

Appellant did not see Khafra's messages until he woke up at approximately 9 a.m. At 9:27 a.m., appellant wrote to Khafra that there had been a "pretty major electrical failure" and that appellant was switching the power over to a different circuit. Appellant then went back to sleep, and awoke at approximately 3 p.m. Appellant went downstairs from his second-floor bedroom to get something to eat, and at around 4 p.m., he heard a beeping sound coming from the carbon monoxide detector in the dining room. Appellant understood the beep to signify a loss of power, which he confirmed when he could no longer hear the refrigerator running. Appellant waited approximately twenty to thirty minutes, believing that the circuit breaker would reset itself. When the power failed to return, appellant went to the basement to manually reset the breaker. Appellant did not see Khafra while in the basement resetting the breaker.

On his way up the stairs from the basement to the first floor, appellant heard an explosion, which he believed to be either the refrigerator's compressor or the air conditioner. Appellant went to the kitchen to see if the refrigerator's compressor was working, and immediately saw smoke rising out of the kitchen floor. Appellant promptly headed back to the basement to tell Khafra that there was a fire, and that Khafra needed to get out. Appellant heard Khafra yell "yo dude," but he could not see him through all of the smoke. Fearing that he would not be able to take the basement stairs to the first floor, appellant exited the basement by unlocking the basement door that led directly to the outside.[9] Because he did not have a cellular phone, and because it would have been dangerous to return to his second-floor bedroom to call 9-1-1 from his computer, appellant began to yell for help. Appellant's neighbors called 9-1-1.

Firefighters from Montgomery County Fire and Rescue Service responded to appellant's home at approximately 4:23 p.m. The firefighters struggled to navigate through appellant's home to extinguish the fire, however, because, as appellant concedes, "[t]he home by all accounts was a hoarder's home." Put simply, appellant's home was filled with an extreme amount of debris, trash, and other objects that made navigation difficult. In fact, it took firefighters approximately a minute and a half to two minutes to traverse the short distance from the basement's side entrance to the fire. Firefighters extinguished the fire

[9]Although he could not remember for certain, appellant indicated that he "[thought he] had to" unlock the basement door to exit. Appellant could not recall whether the key was already in the door or whether he had it at the time, but told police it was "common" to keep the key in the door.

with two or three sprays of water lasting approximately fifteen to thirty seconds each. When the steam finally cleared, firefighters found Khafra's lifeless body in the middle of the basement.

DISCUSSION

I. SUFFICIENCY OF THE EVIDENCE

Appellant first argues that the evidence was insufficient to sustain his convictions for depraved heart murder and involuntary manslaughter because his conduct was not, as a matter of law, sufficient to meet the elements of those crimes.

> When reviewing a criminal conviction for sufficiency of the evidence, [w]e will consider the evidence adduced at trial sufficient if, 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 crimes beyond a reasonable doubt.

State v. Coleman, 423 Md. 666, 672 (2011) (internal quotation marks omitted) (quoting *Facon v. State*, 375 Md. 435, 454 (2003)). Our task, then, is to determine whether any rational trier of fact, after viewing the entire record in a light most favorable to the State, could have found, beyond a reasonable doubt, the essential elements for depraved heart murder and involuntary manslaughter.

A. *A Primer on Depraved Heart Murder and Gross Negligence Involuntary Manslaughter*

We begin with an examination of the rather murky legal landscape of depraved heart murder and involuntary manslaughter. Depraved heart murder has been described as "one of the 'unintentional murders' . . .

that is punishable as murder because another element of blameworthiness fills the place of intent to kill." *Alston v. State*, 101 Md. App. 47, 56 (1994) (quoting *Robinson v. State*, 307 Md. 738, 744 (1986)). "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.* (quoting *Robinson*, 307 Md. at 745). As to involuntary manslaughter, the Court of Appeals has recognized three varieties: (1) unlawful act manslaughter, which is "doing some unlawful act endangering life but which does not amount to a felony"; (2) gross negligence manslaughter, which is "negligently doing some act lawful in itself"; and (3) "the negligent omission to perform a legal duty." *State v. Thomas*, 464 Md. 133, 152 (2019) (first quoting *State v. Albrecht*, 336 Md. 475, 499 (1994); and then quoting *Mills v. State*, 13 Md. App. 196, 200 (1971)).

It is well-settled that the "gross negligence" theory of involuntary manslaughter is a less culpable form of depraved heart murder. *Id.* at 173 n.20 (citing Judge Charles E. Moylan, Jr., *Criminal Homicide Law* § 12.1, at 223 (2002)); *Dishman v. State*, 352 Md. 279, 299 (1998) (stating that the difference between depraved heart murder and gross negligence involuntary manslaughter "is one of the degree of culpability"); *see also* Judge Charles E. Moylan, Jr., *Criminal Homicide Law* § 12.1, at 223 (2002) (stating that "gross negligence manslaughter is the junior varsity manifestation of depraved-heart murder").[10] To understand the elements of the crimes of depraved heart murder and involuntary manslaughter, we look to Judge Moylan for guidance. In *Pagotto v. State*, Judge Moylan explained,

On 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 that in which the homicidal agent causes an unintended death by carelessly or negligently doing some act lawful in itself.

127 Md. App. 271, 276 (1999) (internal quotation marks omitted) (quoting *Dishman*, 352 Md. at 291), *aff'd* 361 Md. 528 (2000). The bottom of the negligence "matrix" represents the least culpable form of homicide —civil negligence. *Id.* Civil negligence may give rise to "heavy civil liability," but such negligence is "still something less than criminality." *Id.*

Moving up the scale of blameworthy negligence, the next culpable level "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 (quoting *Dishman*, 352 Md. at 291). Such conduct constitutes gross negligence involuntary manslaughter. *Id.*

Finally, the most culpable conduct on the negligence scale are "those acts of a life-endangering nature so reckless that they manifest a wanton indifference to human life." *Id.* Such conduct constitutes second-degree depraved heart murder. *Id.* Regardless of the degree of reprehensible negligence,

[10]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.

however, the standard is an objective one: the conduct must "[manifest] 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." *Albrecht*, 336 Md. at 500. Additionally, the State must prove a causal connection between the negligence and the death. *Id.* at 499 (quoting *Mills*, 13 Md. App. at 200); *see also Thomas*, 464 Md. at 152. "This includes actual, but-for causation and legal causation." *Thomas*, 464 Md. At 152.

Regarding the line of demarcation between depraved heart murder and gross negligence involuntary manslaughter, Judge Moylan has noted that,

> Definitionally, the Maryland case law has yet provided no meaningful distinction between those last two levels of culpability. "[O]ur cases have not drawn a precise line between depraved heart murder and involuntary manslaughter." *Dishman v. State*, 352 Md. at 299, 721 A.2d 699. 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.

Pagotto, 127 Md. App. at 277. We agree with and shall explore Judge Moylan's astute observation on this subject.

In *In re Eric F.*, this Court defined the indispensable component of depraved heart murder, stating, "The 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*.'" 116 Md. App. 509, 519 (1997) (emphasis added) (quoting *Robinson*, 307 Md. at 745). We explained,

> The question is whether the defendant engaged in conduct that created a *very high risk of death or serious bodily injury to others.* The murder may be perpetrated without the slightest trace of personal ill-will. 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 519-20 (emphasis added) (internal citations and quotation marks omitted).

As to gross negligence involuntary manslaughter, the Court of Appeals has stated,

> In determining whether a defendant's actions constituted gross negligence, we must ask whether the accused's conduct, under the circumstances, amounted to a disregard of the consequences which might ensue and indifference to the rights of others, and so was *a wanton and reckless disregard for human life.* Stated otherwise, the accused must have committed acts 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. It is only conduct which rises to this degree of gross negligence upon which a conviction of involuntary manslaughter can be predicated.

Albrecht, 336 Md. at 500 (emphasis added) (internal citations and quotation marks omitted).

The line between depraved heart murder and gross

negligence involuntary manslaughter, then, appears to be as follows: depraved heart murder requires an "extreme indifference to the value of human life," *In re Eric F.*, 116 Md. App. at 519 (quoting *Robinson*, 307 Md. at 738), whereas gross negligence involuntary manslaughter requires only "a wanton and reckless disregard for human life," *Albrecht*, 336 Md. at 500 (quoting *Duren v. State*, 203 Md. 584, 590 (1954)).

In his book *Criminal Homicide Law*, Judge Moylan suggests that part of the reason Maryland courts have struggled to distinguish between these two degrees of criminal negligence is because when appellate courts first recognized gross negligence involuntary manslaughter in the 1950s, judges did not anticipate that Maryland would proceed to recognize the more reprehensible crime of depraved heart murder thirty years later. Judge Charles E. Moylan, *Criminal Homicide Law* § 12.4, at 226-27 (2002). "When the time came to describe the *mens rea* of depraved-heart murder, the opinion writers discovered to their chagrin that the store of 'juicy' and lurid adjectives had been profligately exhausted by the rhetorical excesses of earlier opinion writers in the manslaughter cases." *Id.* At 227.

As we shall explain, despite the cloudy line of demarcation between the two criminally culpable levels of negligence, we conclude that appellant's conduct satisfies the criteria for gross negligence involuntary manslaughter, but falls short of what is required for depraved heart murder.

B. Appellant's Conduct Demonstrated Wanton and Reckless Disregard for Khafra's Life (Involuntary Manslaughter)

Gross negligence involuntary manslaughter generally occurs in four contexts: automobiles, police officers,

failure to perform a duty, and weapons. *Thomas*, 464 Md. at 154. In *Thomas*, however, the Court of Appeals posed a unique question: "[U]nder what circumstances the dangers of heroin would justify holding a dealer liable for involuntary manslaughter for supplying the means by which his customer fatally overdoses." *Id.* at 139. In an effort to resolve that question, the *Thomas* Court considered cases involving automobiles, police officers, and weapons to "create a helpful tableau" to guide its analysis. *Id.* At 154.

Thomas began by discussing automobile cases. An easily identified form of gross negligence occurs where a driver operates a vehicle in a reckless manner, such as by gratuitously speeding in a heavily congested residential area, and strikes and kills a pedestrian.[11] *Id.* at 154-55 (citing *Duren*, 203 Md. at 588-89). In *Duren*, the State produced evidence that the defendant was driving in a "heavily congested residential and business area" of Baltimore City at 7:00 p.m. at a speed of at least 60 miles per hour—approximately 30 miles per hour above the speed limit. 203 Md. at 588-89. Notably, after Duren's vehicle skidded approximately 72 to 89 feet, it struck the victim with such force as to hurl him into the air and onto "the trunk of a car a number of feet away." *Id.* at 589. The evidence there sufficiently manifested "a wanton and reckless disregard for human life." *Id.* at 590.

Likewise, in *State v. Kramer*, 318 Md. 576 (1990), the evidence was sufficient to support a conviction for

[11]The Thomas Court recognized that a criminal statute for "manslaughter by vehicle" preempts prosecution for common law gross negligence manslaughter, but noted that the cases concerning that statutory offense were still relevant in analyzing "gross negligence" in this context. *Thomas*, 464 Md. at 154.

gross negligence manslaughter by vehicle. There, on a rural two-lane road, Kramer attempted to pass another vehicle in a no-pass zone, striking an oncoming vehicle while driving at least 75 miles per hour. *Id.* at 586-89. The facts also showed that Kramer was distracted while performing this maneuver. *Id.* at 589. Under such circumstances, "the evidence was legally sufficient for the jury to find on Kramer's part a wanton and reckless disregard of the rights and lives of others and so a state of mind amounting to criminal indifference to consequences." *Id.* At 593.

In *Johnson v. State*, however, the Court found that the circumstances were insufficient to support a conviction for gross negligence vehicular manslaughter. 213 Md. 527, 533-34 (1957). The evidence showed that Johnson was driving on a one-way, four lane highway in a non-residential area with "very light" traffic. *Id.* at 533. Additionally, there was contradictory evidence of Johnson's speed. *Id.* at 530. Relying on *Duren*, the Court focused on "whether, by reason of the speed in the environment, there was a lessening of the control of the vehicle to the point where such lack of effective control [was] likely at any moment to bring harm to another." *Id.* at 532-33. The Court concluded that Johnson's conduct did not amount "to a wanton or reckless disregard of the rights and lives of others." *Id.* At 534.

The *Thomas* Court then turned to gross negligence involuntary manslaughter cases involving police officers. 464 Md. at 157. Notably, where a police officer is involved in negligent conduct resulting in death, the officer is held to a "heightened 'reasonable police officer under the circumstances' standard, rather than a reasonably prudent person standard." *Id.* at 157 (quoting *Albrecht*, 336 Md. at 487).

In *Albrecht*, Officer Albrecht was one of two officers responding to a reported stabbing. 336 Md. at 479. The suspect apparently left the scene in a vehicle driven by Rebecca Garnett. *Id.* The two officers eventually arrived at a townhouse complex where they spotted the suspect's vehicle, with the suspect and Garnett standing near the vehicle in the parking lot. *Id.* at 479-80. Officer Albrecht removed his shotgun from his cruiser and yelled at the suspect and Garnett because he believed they were going to attempt to escape. *Id.* at 480-81. Officer Albrecht then "'racked' the shotgun into its final stage of firing capability[,]" and aimed it directly at Garnett. *Id.* at 481. With his finger on the trigger, Officer Albrecht intended to turn and aim his gun at the suspect, but the weapon discharged, killing Garnett. *Id.* at 481-82. According to Albrecht's own testimony, at the time he fired, "he did not believe that [Garnett] posed any danger to him or to any other person[.]" *Id.* at 504. A fellow officer testified that "Garnett had 'done nothing' to warrant having a shotgun racked and aimed at her." *Id.* In upholding Officer Albrecht's conviction for gross negligence involuntary manslaughter, the Court of Appeals stated that Officer Albrecht manifested a wanton and reckless disregard for human life in "drawing and racking a shotgun fitted with a bandolier and bringing it to bear, *with his finger on the trigger*, on an unarmed individual who did not present a threat to the officer or to any third parties, in a situation where nearby bystanders were exposed to danger." *Id.* At 505.

Lastly, the *Thomas* Court looked to *Mills v. State*, 13 Md. App. 196 (1971), a weapons case, to help map the contours of gross negligence involuntary manslaughter. 464 Md. at 159. In *Mills*, a sixteen-year-old boy

took his father's pistol to a dance, then went into a bathroom with some friends to drink liquor. 13 Md. App. at 197. Mills, aware that there was a bullet in the chamber, pointed it at another boy, who slapped the gun out of Mills's hand, causing it to discharge and kill another boy. *Id.* at 198-99. In sustaining Mills's conviction for gross negligence involuntary manslaughter, this Court stated that "the introduction of the loaded weapon into a small room among five youths drinking liquor from a bottle, and the handling of the weapon by a person unfamiliar with its operation, including its loading and unloading, is plainly a grossly negligent act dangerous to life . . . ." *Id.* at 202.

With this "tableau" of cases in mind, the *Thomas* Court then considered whether the unique facts present there—the dangers of a specific heroin sale—constituted the wanton and reckless disregard for human life necessary to sustain Thomas's conviction.

In *Thomas*, the agreed findings of fact showed that the victim, twenty-three-year-old Colton Matrey, died of a heroin overdose.[12] 464 Md. at 147. Thomas, a heroin dealer and user himself, would typically consume twelve bags of heroin a day, using four bags for a single shot. *Id.* at 148. Prior to Matrey's death, Thomas had sold heroin to Matrey "[a] few times." *Id.* at 149. Just hours before he was found dead in the early morning of June 26, 2015, Matrey called Thomas approximately twenty-seven times in a twenty-two-minute span. *Id.* at 145. This was unusual because Matrey typically called Thomas earlier in the day to

[12]Thomas entered a "hybrid plea," wherein Thomas agreed to the ultimate facts of the case, but maintained the ability to argue legal issues and evidentiary sufficiency on appeal. *Thomas*, 464 Md. at 140.

purchase heroin. *Id.* at 149. Thomas sold Matrey four bags of heroin. *Id.* Thomas later told police that he believed Matrey was nineteen years old. *Id.* at 150.

After discussing numerous gross negligence involuntary manslaughter cases, including those mentioned above, the Court of Appeals provided the following guidance for determining the sufficiency of evidence for gross negligence involuntary manslaughter:

> there is no scientific test or quantifiable probability of death that converts ordinary negligence to criminal gross negligence. Rather, the inherent dangerousness of the act engaged in, as judged by a reasonable person . . . is combined with environmental risk factors, which, together, make the particular activity more or less "likely at any moment to bring harm to another."

Id. at 159 (quoting *Johnson*, 213 Md. at 533). The Court echoed the standard established in earlier cases:

> In sum, when determining whether an individual has acted with the requisite grossly negligent mens rea to be found guilty of involuntary manslaughter, the State must demonstrate wanton and reckless disregard for human life. This requires a gross departure from the conduct of an ordinarily careful and prudent person and a disregard or indifference to the rights of others. It also involves an assessment of whether an activity is more or less likely at any moment to bring harm to another, as determined by weighing the inherent dangerousness of the act and environmental risk factors.

Id. at 160-61 (internal citations and quotation marks omitted).

In examining the inherent dangerousness of distri-

buting heroin and its attendant environmental risk factors, the Court of Appeals noted that Thomas knowingly engaged in selling heroin, a drug with the propensity to harm or possibly kill those who ingest it. *Id.* at 167. The Court next noted that Worcester County, where Matrey died, "ha[d] been consumed with heroin overdoses, some resulting in deaths, and that these overdoses [had] resulted in an acute awareness of the dangers of heroin." *Id.* at 168. Additionally, the Court found it "fair to infer that Thomas subjectively knew an overdose was possible based on his statement that [Matrey] 'couldn't have overdosed **off [the amount] I sold him.**'" *Id.*

The Court also noted the increased risk based on the unusualness of the transaction. *Id.* at 169. Namely, Thomas knew that Matrey was young, had been in prison, and called Thomas either 27 or 28 times in a twenty-two-minute span in addition to sending multiple text messages, and that the transaction occurred unusually late in the evening. *Id.* Additionally, because of Thomas's familiarity with heroin—his experience as a seasoned dealer coupled with his own personal use—the Court of Appeals inferred that Thomas was aware of the risks posed by heroin abuse yet "continued to sell the drug notwithstanding its danger." *Id.* at 170.

In concluding that the evidence was sufficient to support Thomas's conviction for gross negligence involuntary manslaughter, the Court held that

> Thomas sold heroin to a desperate young man, knowing that the consumption of heroin could be deadly. He had extensive experience with heroin—distributing it widely, in a manner sure to net a profit, and with such frequency that he travelled across state lines two to three times a week to

> procure it—and was knowledgeable of its dangers. Yet, he either willfully failed to obtain the necessary information to help reduce the risks of his behavior, or he was indifferent to mitigating these risks. Either way, his conduct posed a high degree of risk to those with whom he interacted.

Id. at 171-72.

Recently, the Court of Appeals issued an opinion discussing the sufficiency of the evidence for gross negligence involuntary manslaughter where a mother accidentally suffocated her infant child while co-sleeping.[13] *State v. Morrison*, 470 Md. 86 (2020). In reversing the mother's conviction for involuntary manslaughter, the Court held that the mother did not engage in inherently dangerous conduct, *id.* 115, and that, although the evidence showed that the mother had consumed alcohol, she was not intoxicated or impaired at the time she smothered the infant, *id.* at 121-22.[14]

Against this legal backdrop, we return to the

[13]"The term 'co-sleeping' is most commonly used to describe a situation where a caregiver sleeps on the 'same sleep surface as an infant[.]'" *Morrison*, 470 Md. at 95 n.2.

[14]On two occasions, the Court noted that the mother was not actually aware that cosleeping could be deadly. *Morrison*, 460 Md. at 104, 115 (stating that "there was no suggestion that she was aware that co-sleeping could be deadly, even if risky[,]" and "the State did not introduce evidence that Ms. Morrison was aware of the risks of co-sleeping, or that a reasonable person under the circumstances would have appreciated those risks"). This seems to signal that, where factually applicable, a subjective standard could inform, if not supplant, the objective one. In other words, where the evidence shows that the person actually understood the danger of her conduct, the State may not need to show that an ordinarily prudent person would have appreciated the danger. In the instant case, because there is no evidence that appellant actually appreciated the dangerousness of his conduct, we rely on the objective test defined in the caselaw.

instant case. In analyzing the sufficiency of evidence for appellant's gross negligence involuntary manslaughter conviction, we shall consider "the inherent dangerousness of the act engaged in, as judged by a reasonable person . . . combined with environmental risk factors, which, together,make the particular activity more or less 'likely at any moment to bring harm to another.'" *Thomas*, 464 Md. at 159 (quoting *Johnson*, 213 Md. at 533). Employing that standard, we conclude that appellant's conduct, under the totality of circumstances, was sufficient to establish gross negligence involuntary manslaughter.

Appellant placed Khafra, who was not an experienced construction worker, in a dangerous situation by paying Khafra $150 a day to dig tunnels underneath his home. The only way Khafra could contact appellant in case of an emergency was to send appellant messages through Google apps and hope appellant received them. Electricity to the tunnels was provided by various extension cords and power strips with an apparent history of failing, and in response to power outages, appellant would switch breakers and replace extension cords. When the power first went out on September 10, 2017, and Khafra believed he smelled smoke, his early morning messages went unnoticed for more than six hours until appellant finally woke up.

Compounding Khafra's helplessness while in the tunnels was the fact that appellant actively sought to conceal his home's location. The State produced evidence that appellant went to great lengths to conceal his address from both Khafra and Hart, requiring them to wear goggles or sunglasses that obstructed their vision while appellant drove them to his home. Although Khafra eventually learned that

appellant's home was in Bethesda, appellant actively sought to hide this fact. This secrecy elevated the danger in that, although Khafra apparently had internet and phone service, not knowing his exact location created an additional obstacle to him calling for and receiving emergency assistance.[15]

Contributing to the environmental risk factors here was the amount of debris and detritus in appellant's basement. These conditions elevated the danger by hampering Khafra's ability to escape in the event of an emergency. According to the State's Fire Cause investigator, escape from this particular fire would have been very difficult due to the debris in the basement. The investigator opined that individuals attempting to escape a fire instinctively get low to the ground to avoid the layer of hot air and gases caused by the fire. Doing so in appellant's basement, however, would have been "very, very difficult" "[b]ecause [Khafra would] have to crawl over all the debris, all the buckets and the bags of cement and all the other [debris in the basement]." Moreover, even if Khafra were able to navigate through the debris, Mr. Hart testified that the basement doors were typically locked, a situation that, if believed by the jury, would have further hampered Khafra's escape efforts.

Finally, appellant's conduct on the day of the fire, when coupled with the dangerous environmental factors listed above, demonstrated his wanton and reckless disregard for Khafra's life. When appellant saw Khafra's messages at approximately 9 a.m.

[15]Appellant used a virtual private network so that, had Khafra attempted to use his phone's location services while connected to appellant's network, it would have appeared to Khafra that he was in Virginia.

regarding a power outage and the possible odor of smoke, appellant's only response was to tell Khafra that there had been a "pretty major electrical failure," and to manually switch power over to another breaker. When the carbon monoxide alarm began to beep that afternoon, indicating another loss of power, appellant waited approximately twenty to thirty minutes before finally resetting the circuit breaker despite the fact that the previous electrical failure had left Khafra in "pitch black" darkness with no airflow. Despite the electrical failures, and Khafra's helplessness under the circumstances, at no point in time did appellant ask Khafra to leave the basement for precautionary reasons. In our view, the "environmental risk factors" and appellant's conduct related to those risk factors, taken together, sufficiently demonstrate the requisite wanton and reckless disregard for Khafra's life necessary to support a conviction for gross negligence involuntary manslaughter.

Although none of the Maryland cases cited above neatly align with the unique facts present here, our conclusion is bolstered by two out-of-state decisions: *Noakes v. Commonwealth*, 699 S.E.2d 284 (Va. 2010), and *People v. Luo*, 224 Cal. Rptr. 3d 526 (Cal. Ct. App. 2017).

In *Noakes*, the Supreme Court of Virginia was tasked with determining whether there was sufficient evidence to support Noakes's conviction for involuntary manslaughter. 669 S.E.3d at 286. There, Noakes, an in-home child-care provider, had been caring for Noah Colassaco for approximately three weeks. *Id.* For those three weeks, Noakes "had experienced difficulty in getting Noah to lie down and sleep during 'nap time.'" *Id.* "Around noon on the day in question, Noakes put Noah

and another toddler she was caring for in their cribs for an afternoon nap. The cribs were located in an upstairs, 'loft' bedroom that was only partially visible from Noakes' bedroom." *Id.* (footnote omitted). The cribs themselves, however, were not visible from Noakes's bedroom. *Id.* When Noakes left him, Noah was standing in his crib and crying. *Id.*

Approximately a half an hour later, when Noakes returned to check on Noah, he was still standing in his crib and crying. *Id.* We refer to the court's description of Noakes's efforts to get Noah to sleep:

> Knowing that when Noah stood in his crib, his chin was above the crib's sides, and also that Noah would fall asleep if he were lying or sitting in the crib instead of standing, Noakes decided to place a make-shift covering over the crib to prevent Noah from standing. After removing Noah from his crib, Noakes placed a thirty-three and one-quarter pound, collapsed "dog crate," which ran the length of the crib but was substantially narrower, on top of the crib. Noakes reasoned that the crate's weight would prevent Noah from standing up in the crib.
>
> Noakes tested the stability of her contraption by shaking the crib with the crate on top to determine if the crate could fall into the crib and injure Noah. Satisfied that the crate could not fall into the crib, Noakes removed the crate, put Noah back into the crib, and placed a fabric-covered piece of approximately one-inch thick cardboard on top of the crib. The cardboard was added, in part, to cushion the force of any impact between Noah's head and the crate if Noah attempted to stand. Although the cardboard would cover the entirety of the crib's top, Noakes positioned it so the cardboard extended out

> over the front of the crib, where Noah often stood, thus leaving a small "gap" in the rear between the crib's side and the cardboard. Noakes then placed the dog crate on top of the cardboard, toward the front side of the crib, where it covered a little more than one-half of the crib's width. Noakes examined the covering to ensure that Noah would not be able to reach into the dog crate and injure his fingers.

Id. at 286-87.

After observing Noah and detecting no problems, Noakes left the loft area. *Id.* at 287. Sometime before 1:00 p.m., however, Noakes returned when she heard a noise from the loft and observed Noah sitting in his crib with his face pressed against the crib's front mesh. *Id.* Noakes then placed a toy in front of the crib to obstruct Noah's view, believing that he would eventually get bored and finally go to sleep. *Id.* Noakes returned again at approximately 3:15 p.m. to wake another toddler from his nap, but did not check on Noah. *Id.* About forty-five minutes later, Noakes returned to wake Noah but found him unconscious. *Id.*

> He was standing with his chin resting on the side of the crib, one or both of his hands gripping the crib's side, and his head and neck wedged between the cardboard and the crib. His lips were blue and his skin was cold to Noakes' touch. Noakes surmised that Noah had attempted to stand, had pushed up against the cardboard causing the dog crate to slide a few inches thereby creating a space between the covering on the top of the crib and the crib's wall.

Id. Despite Noakes's efforts and those of emergency personnel, Noah was pronounced dead. *Id.* Noah died as a result of "[a]sphyxia due to mechanical compression of neck." *Id.*

Following a bench trial, Noakes was convicted of involuntary manslaughter. *Id.* On appeal to Virginia's Supreme Court, Noakes argued that the evidence was insufficient to sustain her conviction as a matter of law because her actions did not constitute criminal negligence, and because she could not have anticipated Noah's unforeseeable acts. *Id.* at 288.

At the outset, we note the similarities between Maryland's and Virginia's standards for gross negligence involuntary manslaughter. Virginia law requires that "the lawful act must have been done in a way so grossly negligent and culpable as to indicate an indifference to consequences or an absence of decent regard for human life." *Id.* (quoting *Kirk v. Commonwealth*, 44 S.E.2d 409, 413 (Va. 1947)). Applying this standard, the Supreme Court of Virginia upheld Noakes's conviction for involuntary manslaughter, concluding that her conduct demonstrated a reckless disregard for Noah's life:

> Upon review of the evidence, we conclude that Noakes' conduct in placing cardboard and a thirty-three and one-quarter pound, collapsed dog crate atop Noah's crib and failing to visually check on him for about three hours was wanton and willful, "showing a reckless or indifferent disregard of [Noah's rights], under circumstances [that made] it not improbable that injury [would] be occasioned, and [Noakes] is charged with the knowledge of[] the probable result of [her] acts." Noakes knew that Noah would attempt to stand in his crib and also that when doing so, Noah's head and chin rose above the height of the crib's sides. While she obviously took steps to prevent the crate's falling upon Noah and his reaching into the crate, Noakes

> should have known that a toddler, used to standing but constrained against his will, might attempt to free himself, thereby dislodging the makeshift covering and sustaining serious injury. The measures that Noakes undertook to prevent the crate from falling upon Noah demonstrate her actual knowledge of the inherent danger of the contraption she placed atop the crib. And, because Noakes knew that she had placed Noah in an inherently dangerous situation that could cause serious injury, she certainly should not have left Noah unattended for approximately three hours.

Id. at 289 (internal citation omitted).

Noakes's actions, though well-meaning, were inherently dangerous. She created a make-shift apparatus designed to prevent Noah from standing up, but with the capacity to apply over thirty pounds of weight against any part of his body that managed to lift the cardboard. Additionally, Noakes left Noah, who was essentially helpless, unattended for three hours. Under these circumstances, the Court concluded that Noakes demonstrated a wanton and reckless disregard for Noah's life.

The other out-of-state case that provides useful guidance is *Luo*, 224 Cal. Rptr. 3d 526. There, "[a]fter an unsupported excavation at a construction site caved in and killed a worker, a jury convicted defendant Dan Luo of involuntary manslaughter" and other related crimes. *Id.* at 531. Luo, who was neither a licensed realtor nor a licensed general contractor, worked as an assistant for Richard Liu, who was both a real estate agent and licensed general contractor. *Id.*

In April 2010, Liu sold a real estate parcel, and agreed to construct a home on the property. *Id.* Luo

was tasked with overseeing construction and dealing with the property owner and contractors. *Id.* at 532. In January 2012, because Liu had failed to pay his contractor for work on the property, the workers walked off the jobsite. *Id.* at 532. "At that time, the hallway excavation [a deep cut made into a hill on the property] still had the 12-foot high, unsupported dirt wall with an overhanging ledge, and there were numerous unresolved issues with the construction." *Id.* Unable to find a licensed contractor to replace the one who had walked off the job, Luo instead hired a union carpenter. *Id.* The carpenter never considered himself responsible for the safety of the jobsite, and Luo "did not put in place any job safety plan nor did he meet with the workers to discuss safety." *Id.*

In late January 2012, a city inspector came to the jobsite and handed Luo a "Stop Work Notice" which explicitly stated: "DO NOT PROCEED[¶] with this job until the above has been approved for correction by the building and safety department." *Id.* Luo "did not tell any of the workers about the notice and he did not direct anyone to stop work. Instead, he told the workers that the city wanted benching cut into the hill above the wall. . . . [Luo] never sought approval from the city to continue the construction." *Id.* at 532-33. Two days after issuance of the Stop Work Notice, Luo "specifically instructed the workers to work in the excavation area." *Id.* at 533. The next morning, "the excavation wall collapsed," killing a worker. *Id.* Following his conviction for involuntary manslaughter and other related charges, Luo appealed to the California Court of Appeal. *Id.*

On appeal, Luo argued that there was insufficient evidence to support his conviction for involuntary

manslaughter. *Id.* In rejecting Luo's argument, the California appellate court first identified its standard for gross negligence involuntary manslaughter:

> Criminal negligence is defined as conduct that is such a departure from what would be the conduct of an ordinarily prudent or careful [person] under the same circumstances as to be incompatible with a proper regard for human life, or, in other words, a disregard of human life or an indifference to [the] consequences.

Id. at 533-34 (internal quotation marks omitted) (quoting *People v. Penny*, 285 P.2d 926 (Cal. 1955)).[16]

Applying this standard, the California Court of Appeal readily concluded that the evidence was sufficient to support Luo's conviction:

> The prosecution presented evidence that defendant was in a supervisory position at the construction site, took no action to enhance the safety of the workplace, violated several applicable safety regulations, did not inform the workers that he had been ordered by the city to stop work due to a dangerous condition, and directed the victim to work in the dangerous area even after receiving the Stop Work Notice. The evidence was sufficient for a rational jury to conclude that defendant committed involuntary manslaughter by performing a lawful act that might produce death, without due caution or circumspection.

Id. at 535.

We recognize that sufficiency of evidence cases in the gross negligence involuntary manslaughter arena

[16]We note that this standard resembles Maryland's standard for gross negligence involuntary manslaughter.

are inherently fact-specific, and, to that extent, their persuasiveness is limited. Nevertheless, both *Noakes* and *Luo* provide examples of analogous conduct that appellate courts found sufficiently demonstrated a reckless disregard for human life to support an involuntary manslaughter conviction. Although not an infant, Khafra, like Noah, was essentially trapped in an unsafe situation of the defendant's making—appellant created the tunnels just as Noakes created the crib apparatus. Similarly, both Noakes and appellant were solely responsible for their respective victims' safety—Noakes was the only adult close enough to respond to any emergency concerning Noah, and appellant was the only person who even knew where Khafra was while Khafra was underground digging in the tunnels. In short, both Noakes and appellant created unsafe conditions for their respective victims: Noakes created an apparatus designed to be heavier than anything Noah could lift, and placed it above his head; appellant invited Khafra to dig tunnels in a secret location beneath appellant's home where there were power outages, and where mounds of garbage and debris, and possibly locked doors, impeded escape in the event of an emergency.

Turning to *Luo*, we note that appellant, like Luo, was in a supervisory position at a "construction" site and disregarded the safety implications despite obvious danger warnings. Although we acknowledge that Luo disregarded a government-issued Stop Work Notice that instructed him to cease operations, appellant disregarded the significance of Khafra's precarious and dependent position in the tunnels, the occurrence of two electrical failures within a twenty-four-hour period, and the obstacles Khafra faced in the

event of an emergency. In summary, although we recognize the fact-specific nature of Noakes and Luo, they support our conclusion that appellant's conduct was sufficient for a 28 jury to find him guilty of gross negligence involuntary manslaughter.

C. The State Produced Sufficient Evidence to Establish Causation

In addition to challenging whether his conduct demonstrated a wanton and reckless disregard for human life, appellant also challenges whether the evidence was sufficient to support the causation element of gross negligence involuntary manslaughter. Appellant correctly notes that "A causal connection between . . . gross negligence and death must exist to support a conviction[.]" *Thomas*, 464 Md. at 173 (quoting *Albrecht*, 336 Md. at 499). Specifically, "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." *Id.* (citing *Jackson v. State*, 286 Md. 430, 442-43 (1979)).

Regarding actual causation,

> Maryland gross negligence manslaughter cases have evaluated the actual, or but-for, cause of a given result on only a few occasions. In one such case, the Court of Special Appeals determined that a mutual agreement to engage in grossly negligent conduct can be sufficient to find causation, even where the victim was, himself, engaged in the grossly negligent act.

Id. at 174-75. The Court of Appeals has stated that

> a defendant does not 'cease to be responsible for his otherwise criminal conduct because there were

> other conditions which contributed to the same result.' In [*Palmer v. State*, 223 Md. 341, 353 (1960)], we held a mother liable for gross negligence involuntary manslaughter when she failed to prevent her husband's savage beatings of her daughter. Significantly, the Court concluded that it was not necessary that the mother's grossly negligent conduct be the sole reason for her daughter's death. See *Palmer*, 223 Md. at 353, 164 A.2d 467. Ultimately, her unwillingness to aid her child, which was her duty, resulted in the child's death and she, too, could be convicted of involuntary manslaughter. Thus, we took a broader view of actual cause, implicitly recognizing that the grossly negligent conduct need only be the but-for cause of the death, and not an independently sufficient cause of it.

Thomas, 464 Md. at 175 (citation omitted).

In *Thomas*, the victim consumed heroin that he had purchased from Thomas. *Id.* at 176-77. In holding that selling four bags of heroin was sufficient evidence of but-for causation, the Court of Appeals stated, "There is no evidence in the record that [the victim] could have died without the heroin, and this is enough to find but-for causation." *Id.* at 178 (citing *United States v. Alvarado*, 816 F.3d 242, 244 (4th Cir. 2016)).

Applying but-for causation to the instant case, we readily conclude that there was sufficient evidence of actual causation. Appellant hired Khafra to dig tunnels below his basement. When a relatively minor fire broke out, the fact that appellant's basement was covered in debris and garbage hampered Khafra's ability to escape the fire. Although appellant 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. In short, but-for appellant arranging to have Khafra work in a dangerous environment, Khafra would not have died.

Having established actual causation, we now turn to legal causation. "The concept of legal causation 'is applicable in both criminal and tort law, and the analysis is parallel in many instances.' Moreover, it 'turns largely upon the **foreseeability** of the consequence of the defendant's' conduct." *Id.* (emphasis in original) (internal citations omitted) (first quoting *Paroline v. United States*, 572 U.S. 434, 444 (2014); and then quoting *Palmer*, 223 Md. at 352). The State need not show that the ultimate harm was actually foreseen; "[i]t is sufficient that the ultimate harm is one which a reasonable [person] would foresee as being reasonably related to the acts of the defendant." *Id.* (quoting *Jackson*, 286 Md. At 441).

The facts in this case are sufficient to support a finding that appellant's conduct was the legal cause of Khafra's death. Although the evidence demonstrated that appellant could not have observed the latent defect in the electrical outlet that ultimately caused the fatal fire, two separate electrical failures, one of which appellant himself described as "major," occurred the day Khafra died. Additionally, the hoarder conditions in appellant's home dangerously hampered Khafra's ability to escape in the event of a fire emergency. Based on these facts, it was foreseeable that a fire might occur in the basement, and if it did, Khafra's ability to safely escape would be severely restricted. Accordingly, the evidence sufficiently demonstrated legal causation.

In sum, we hold that the evidence was sufficient to

prove all elements of gross negligence involuntary manslaughter, and affirm appellant's conviction for that crime. We next turn to whether this evidence rises to the level of an extreme indifference to human life—the evidentiary standard for depraved heart murder.

D. Depraved Heart Murder

In *Criminal Homicide Law*, Judge Moylan presciently anticipated the challenge we now face:

> The mens rea of depraved-heart murder is described:
>
> > that the defendant, conscious of such risk, acted with extreme disregard of the life-endangering consequences.
>
> The mens rea of gross negligence manslaughter is described:
>
> > that the defendant, conscious of the risk, acted in a grossly negligent manner, that is, in a manner that created a high degree of risk to human life.
>
> It is hard to drive a wedge between those two. The problem, not yet arisen, will be excruciatingly difficult when a trial court, confronted with a motion for a judgment of acquittal, or an appellate court, confronted with a question of the legal sufficiency of the evidence to support a conviction, is called upon to explain in intelligible terms how the State has successfully met its burden of production as to gross negligence manslaughter but has failed to meet its burden of production as to depraved-heart murder. What, as a matter of law, is the element that separates murder from manslaughter?

Judge Charles E. Moylan, *Criminal Homicide Law* §

12.5, at 228 (2002).

To answer Judge Moylan's question, we look to *Simpkins v. State*, 88 Md. App. 607 (1991), *cert. denied*, 328 Md. 94 (1992), which provides useful guidance for determining whether grossly negligent conduct rises to the level of murder. There, following a bench trial, a mother and father were convicted of second-degree depraved heart murder for the starvation, "or, as the medical examiner testified, malnutrition and dehydration[,]" of their two-year-old daughter Brandy. *Id.* at 608, 611. The facts showed that "Brandy lived with her parents and her four[-]year-old sister, Heather. A houseguest, John Monte, had been living with the family for just under two weeks." *Id.* at 609. Although Mr. Monte normally slept on a mat in Brandy's room, "for the two nights prior to her death he had slept downstairs." *Id.* After realizing that he had not seen Brandy in several days, Mr. Monte went to her bedroom and discovered that she was not moving. *Id.* According to the medical examiner, Brandy died of malnutrition and dehydration as she "had not been given food or drink for three to five days." *Id.* Brandy was discovered wearing a diaper with approximately three-quarters of a pound of fecal matter, and it appeared her diaper had not been changed in four to six days. *Id.* Apparently, "death had occurred more than 24 hours before its discovery." *Id.* Although Brandy starved to death, "it was not because of [her parents'] inability to provide food. Their kitchen refrigerator was crammed full of food, and they and Heather apparently ate quite well." *Id.* at 610.

On appeal, the parents challenged their convictions, arguing that the State failed to prove the malice element of depraved heart murder. *Id.* at 611. We

observed that "[m]alice is the indispensable ingredient of murder; by its presence, homicide is murder; in its absence, homicide is manslaughter." *Id.* (quoting *Blackwell v. State*, 34 Md. App. 547, 552, *cert. denied* 280 Md. 728 (1997)). Nevertheless, we noted that malice may be inferred from "the intent to do an act under circumstances manifesting extreme indifference to the value of human life (depraved heart)[.]" *Id.* (quoting *Ross v. State*, 308 Md. 337, 340 (1987)). At the parents' trial, the prosecutor proceeded on the depraved heart murder theory, "and it was upon that theory that the convictions rested." *Id.*

In analyzing whether the evidence was sufficient to support the parents' convictions for depraved heart murder, then Chief Judge Wilner noted that

> 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 611-12 (quoting *Robinson*, 307 Md. at 745). The Court recognized that, although depraved heart murder cases typically involved affirmative acts, "'depraved heart' murder has also been found in cases of malicious omission[.]" *Id.* at 612.

Chief Judge Wilner proceeded to trace the history of depraved heart murder cases involving child neglect from English common law through the present, including decisions from other state courts. *Id.* at 612-20.

Extracting a universal principle from the cases, he stated,

> 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, by applying the rules enunciated in *Robinson v. State*, *supra*, 307 Md. 738, 517 A.2d 94, 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 620 (emphasis added) (quoting R. Gilbert & C. Moylan, *Maryland Criminal Law: Practice and Procedure* § 1.6-3 21 (1983)). We distill an essential component of depraved heart murder: the negligent conduct must be reasonably likely, if not certain, to cause death, for the evidence to sufficiently support the "malice" element required for depraved heart murder.[17] Because leaving a two-year-old alone for up to five days without food or water is reasonably likely, if not certain, to cause death, the Court found the evidence sufficient to support the parents' convictions for depraved heart murder. *Id.* at 620-21.

Although other opinions affirming convictions for depraved heart murder have not explicitly referenced this "likelihood or certainty of death" test, application of this test would support the depraved heart murder convictions affirmed in those cases. *See Robinson*, 307 Md. at 743 (allowing prosecution to proceed on depraved heart murder charge where evidence showed that defendant specifically lacked the intent to kill, but did intend to assault with intent to disable by shooting victim during an altercation); *In re Eric F.*, 116 Md. App. at 521-22 (holding that evidence was sufficient to support conviction for second-degree depraved heart murder where teenage defendant left teenage victim, who was severely intoxicated, outside in freezing weather and knew that "if [he did not] go back and get her she [was] probably going to freeze to death"); *Alston*, 101 Md. App. at 58 (upholding conviction for depraved heart murder where ten men engaged in an extended gunfight "on an urban street in a residential neighborhood" and the evidence revealed that various persons "were still sitting out on the front steps of rowhouses" when the shooting started).

Applying the "likelihood or certainty of death" test to the instant case, we conclude that appellant's

[17]We note that malice is similarly inferred based on the reasonable likelihood of death in other murder contexts. For example, second-degree murder of the intent to cause grievous bodily harm variety requires the intent "to cause such severe harm that death would be the likely result, not merely a possible result." *Thornton v. State*, 397 Md. 704, 730 (2007). Similarly, in the felony murder context, "[I]f the felonious conduct, under all of the circumstances, *made death a foreseeable consequence*, it is reasonable for the law to infer from the commission of the felony under those circumstances the malice that qualifies the homicide as murder." *State v. Jones*, 451 Md. 680, 699 (2017) (emphasis added) (quoting *Fisher v. State*, 367 Md. 218, 262 (2001)).

conduct, viewed in conjunction with the surrounding circumstances, does not satisfy the evidentiary standard required for depraved heart murder. Although Khafra dug tunnels underneath appellant's home, the State did not present evidence that the tunnels themselves were structurally unsafe, a point the State conceded in rebuttal argument. Thus, Khafra's presence in the tunnels in and of itself was not likely to cause death. To be sure, appellant's basement was cluttered with trash and detritus, but these conditions were not inherently dangerous in that they posed an imminent risk of death to Khafra. Rather, the hoarding conditions exacerbated any potential danger because, in an emergency, Khafra's escape path would be severely restricted. Nor was appellant's use of multiple electrical extension cords, despite their apparent history of failing, reasonably likely to cause death. Indeed, other individuals, including Khafra, worked in the tunnels without incident. Finally, appellant's conduct itself did not demonstrate an extreme disregard for human life *reasonably likely to cause death.*

To be sure, appellant intentionally concealed the tunnels' location from Khafra, and apathetically responded to electrical failures on the day of the fire, but we cannot conclude that appellant realized—or reasonably should have realized—that his conduct was "likely, if not certain" to cause death. *Simpkins*, 88 Md. App. at 611-12. Accordingly, appellant's conduct falls short of the willfulness necessary to satisfy the malice element of depraved heart murder. *Id.* at 611. Leaving a two-year-old child unattended for up to five days without food or water shows an extreme disregard for human life that is reasonably likely, if not certain, to

cause the child's death. *Id.* at 620. Intentionally leaving a severely intoxicated teenager unattended in freezing conditions demonstrates an extreme disregard for human life that is reasonably likely, if not certain, to cause death. *In re Eric F.*, 116 Md. App. 521. In our view, hiring someone to dig tunnels underneath a hoarder's home may demonstrate a reckless disregard for human life, but it is not the type of conduct that is 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 of human life that it may be deemed willful. Accordingly, we hold that the evidence is insufficient to support appellant's conviction for depraved heart murder.

E. The Jury's Finding that Appellant's Conduct was Sufficiently Extreme to Support a Depraved Heart Murder Conviction Inherently Supports Appellant's Conviction for Gross Negligence Involuntary Manslaughter

We address a final point on this subject that is unique to this case. The verdict sheet did not differentiate between the two theories of involuntary manslaughter presented to the jury here: gross negligence, and failure to perform a legal duty.[18] Rather, the jury simply returned a general verdict of guilty as to involuntary manslaughter. Despite the court's decision not to separately identify both modalities on the verdict sheet, on this record— where the jury convicted appellant of second-degree depraved heart murder—we are able to affirm appellant's conviction for gross negligence involuntary manslaughter without deciding whether the evidence was sufficient to support failure to perfo-

rm a legal duty involuntary manslaughter. We explain.

It is well-settled in Maryland that, where the evidence is insufficient to support a conviction for a greater offense, an appellate court may reverse that conviction, but still affirm a conviction for a lesser included offense. In *Brooks v. State*, 314 Md. 585, 586-87 (1989), the State charged Brooks with multiple offenses, including robbery with a dangerous or deadly weapon, and simple or common law robbery. The jury convicted Brooks of armed robbery, but pursuant to the trial court's instructions, did not return a verdict on the common law robbery charge. *Id.* at 587 n.2. Because he performed the robbery with a toy gun, the Court of Appeals held that the evidence was insufficient to support Brooks's conviction for armed robbery. *Id.* at 600-01. Rather than remand for a new trial, however, the Court of Appeals simply "direct[ed] that the judgment in the trial court be vacated, that a verdict of guilty of robbery be entered, and that Brooks then be sentenced on the robbery conviction." *Id.* at 601. In doing so, the Court noted that, "when there is insufficient evidence to convict of a greater offense, [an] appellate court may reverse [the] conviction and enter judgment on a lesser-included offense." *Id.* (citing *United States v. Dickinson*, 706 F.2d 88, 92-93 (2d Cir. 1983)). Indeed, in certain circumstances, an appellate court may reverse a conviction for a greater offense, but direct a judgment of conviction for a lesser-included offense, even where the lesser offense is uncharged. *See Hobby v. State*, 436 Md. 526, 530, 553-54 (2014) (vacating conviction for theft of property valued in excess of $100,000, but directing trial court

[18]As noted above, there are three separate theories of involuntary manslaughter: unlawful act, gross negligence, and failure to perform a legal duty. *Thomas*, 464 Md. at 152.

to enter a guilty verdict for theft of property having a value of at least $10,000, but less than $100,000, despite that crime never being specifically charged).

As noted above, the gross negligence theory of involuntary manslaughter is simply a less culpable form of depraved heart murder. *Thomas*, 464 Md. at 173 n.20. By convicting appellant of second-degree depraved heart murder, the jury found that appellant demonstrated an "extreme disregard for human life." Thus, the jury necessarily found that appellant's conduct satisfied the lesser "reckless disregard for human life" required for gross negligence involuntary manslaughter. *See Pagotto*, 127 Md. App. at 277. Although we have determined that the evidence was insufficient to support a conviction for the greater offense, we nevertheless shall affirm appellant's conviction for the lesser offense— gross negligence involuntary manslaughter. *Brooks*, 314 Md. at 601.

Appellant challenges the notion that we can rely on the conviction for second-degree depraved heart murder to sustain the conviction for gross negligence involuntary manslaughter. He argues that, during closing argument, the State blurred the line between failure to perform a legal duty involuntary manslaughter and extreme negligence second-degree depraved heart murder. Because of this allegedly improper closing argument, appellant claims that the jury may have found him guilty of second-degree depraved heart murder based on a theory of failure to perform a legal duty. Under appellant's theory, it would be inappropriate to affirm the conviction for gross negligence involuntary manslaughter based on the jury's conviction for second-degree depraved heart murder.[19]

The fatal flaw in appellant's argument is that the trial court instructed the jury regarding second-degree depraved heart murder as the most egregious form of criminal negligence. The court instructed the jury pursuant to Maryland Criminal Pattern Jury Instruction § 4:17.8:

> 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.

[19]We reject appellant's characterization of the State's closing argument as asserting that appellant's failure to perform a legal duty should be considered for both his involuntary manslaughter and depraved heart murder counts. We acknowledge that on a single occasion, the prosecutor referenced the employer/employee relationship (failure to perform a legal duty) when telling the jury, "These are all the things that the State believes show . . . that the defendant engaged in, in order to be liable for depraved heart murder or involuntary manslaughter." Nevertheless, the thrust of the prosecutor's closing argument clearly established a line of demarcation between failure to perform a legal duty involuntary manslaughter and extreme negligence second-degree depraved heart murder. After reminding the jury that second-degree depraved heart murder required them to find an extreme disregard for human life, the State clearly explained that *only gross negligence involuntary manslaughter and second-degree depraved heart murder were similar*, stating:

> The main difference between [second-degree depraved heart murder] 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.*

(Emphasis added).

> In order to convict the defendant of second[-]degree depraved heart murder the State must prove that the defendant caused 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.

The court's instruction tracked the theory of second-degree depraved heart murder as an extreme disregard for human life. Absent in this instruction is any reference to the "failure to perform a legal duty" modality of involuntary manslaughter, which, at a minimum would require a definition of "legal duty" as an element of the offense. Although we acknowledge the possibility that failure to perform a legal duty involuntary manslaughter could, in a proper case, elevate to depraved heart murder, the jury here was never provided with such an instruction.[20] Accordingly, although we reverse the conviction for second-degree depraved heart murder, we affirm the conviction for involuntary manslaughter under a theory of gross negligence.

[20]See n.10, supra.

II. JURY INSTRUCTIONS

Appellant next argues that we must vacate his convictions due to trial court error regarding jury instructions. Specifically, appellant raises two[21] issues regarding the jury instructions provided: 1) the trial court failed to instruct the jury regarding assumption of the risk and 2) the trial court failed to instruct on the element of causation. We reject each argument in turn.

We have stated the following regarding the standard of review of a trial court's jury instructions:

> We review a trial court's decision to give or refuse a jury instruction under the abuse of discretion standard. Upon the request of any party, a trial court is required to "instruct the jury as to the applicable law and extent to which the instructions are binding." "[I]n evaluating the propriety of a trial court's refusal to give a requested instruction, we must determine whether the requested instruction was a correct statement of the law; whether it was applicable under the facts of the case; and whether it was fairly covered in the instructions actually given."

Nicholson v. State, 239 Md. App. 228, 239 (2018) (internal citations omitted). This deferential standard shall guide our consideration of the instructions provided.

A. Instruction Regarding Assumption of Risk and Knowledge of Conditions by Victim

Appellant alleges that the court should have given jury instructions regarding "assumption of the risk" and "knowledge of the conditions by [the victim]." We summarily reject appellant's argument because the Court of Appeals has made clear that the victim's negligence is irrelevant in determining the guilt of a

[21]Although he raises three additional arguments in his brief regarding erroneous jury instructions concerning the failure to perform a legal duty modality of involuntary manslaughter, we need not address those arguments because, as explained above, we are able to conclude that the jury found all of the requisite elements of gross negligence involuntary manslaughter. Because the jury convicted appellant of a sole count for involuntary manslaughter, which we affirm on the basis of gross negligence, we need not determine the validity of the other potential theory for involuntary manslaughter (failure to perform a legal duty).

defendant in this context. In *Duren*, the Court stated:

> 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. Necessarily, the criminal negligence must have produced the death if the accused is to be guilty of manslaughter. If, however, that criminal negligence is found to be a direct and proximate cause of the death, the guilty one is not relieved from responsibility by the fact that the negligence of the other may have concurred in producing the result.

203 Md. at 593; *see also Thomas*, 464 Md. at 179 ("contributory negligence is not a defense to involuntary manslaughter"). The trial court properly rejected appellant's proposed instructions concerning "assumption of the risk" and the victim's "knowledge of the conditions."

B. Instruction Regarding Causation

Appellant further argues that the trial court erred by failing to give a jury instruction regarding causation. The court provided the pattern jury instructions for depraved heart murder and gross negligence involuntary manslaughter, neither of which specifically define "causation." Notably, the Court of Appeals recently placed its imprimatur on the pattern instruction for gross negligence involuntary manslaughter regarding causation. *Thomas*, 464 Md. at 173 n.20 (noting that the pattern instructions correctly recognize the different causation standards required for gross negligence involuntary manslaughter and unlawful act involuntary manslaughter). We reiterate the accepted principle that "a trial court is strongly encouraged to use the pattern jury instructions." *Johnson v.*

State, 223 Md. App. 128, 152 (2015). In light of *Thomas*, we see no error in the court's use of the pattern jury instructions and its refusal to give a separate causation instruction.

III. PROSECUTOR'S CLOSING AND REBUTTAL ARGUMENTS

Appellant's third claim of error stems from alleged improper prosecutorial remarks during closing and rebuttal argument. According to appellant, during closing and rebuttal, the prosecutor: 1) violated the "golden rule," 2) provided inappropriate examples of reckless behavior by alluding to the acts of driving blindfolded down the highway and an employer locking factory workers inside a building, 3) improperly commented on Maryland law, 4) provided an inappropriate example of a drunk driver killing a passenger, and 5) wrongfully compared Khafra to a domestic violence victim. He independently asserts that the cumulative effect of these errors warrants reversal.

Regarding closing arguments, the Court of Appeals has stated, "we grant attorneys, including prosecutors, a great deal of leeway in making closing arguments. 'The prosecutor is allowed liberal freedom of speech and may make any comment that is warranted by the evidence or inferences reasonably drawn therefrom.'" *Whack v. State*, 433 Md. 728, 742 (2013) (quoting *Spain v. State*, 386 Md. 145, 152 (2005)). This leeway, however, is not unlimited. *Id.*

> Whether a reversal of a conviction based upon improper closing argument is warranted "depends on the facts in each case." Generally, the trial court is in the best position to determine whether counsel has stepped outside the bounds of propriety during

> closing argument. "As such, we do not disturb the trial judge's judgment in that regard unless there is a clear abuse of discretion that likely injured a party." In deciding whether there was an abuse of discretion, we examine whether the jury was actually or likely misled or otherwise "influenced to the prejudice of the accused" by the State's comments. Only where there has been "prejudice to the defendant" will we reverse a conviction.

Id. at 742-43 (internal citations omitted). Further, and particularly relevant in this case, "Where an objection to opening or closing argument is sustained, we agree that there is nothing for this Court to review unless a request for specific relief, such as a motion for a mistrial, to strike, or for further cautionary instruction is made." *Hairston* v. State, 68 Md. App. 230, 236 (1986) (citing *Blandon* v. State, 60 Md. App. 582, 586 (1984)). With these standards in mind, we turn to appellant's allegations of error.

A. The "Golden Rule" Argument

Appellant's first allegation concerns an alleged "golden rule" argument. "A 'golden rule' argument is one in which a litigant asks the jury to place themselves in the shoes of the victim, or in which an attorney appeals to the jury's own interests[.]" *Lee v. State*, 405 Md. 148, 171 (2008) (internal citations omitted). In his brief, appellant writes, "Improperly appealing to abandonment and objectivity, the prosecutor told the jury what it and the jury would do [if] similarly situated to Khafra." First, we disagree that the prosecutor made a "golden rule" argument during closing argument. But even if the prosecutor's comment could be construed as a "golden rule" argument, appellant's

counsel objected, and the court instructed the State to rephrase her argument, which appellant's counsel apparently accepted. Accordingly, we perceive no reversible error.

Lawson v. State presents an example of a "golden rule" argument. 389 Md. 570 (2005). There, the State accused Lawson of sexually abusing a minor child. *Id.* at 575-77. During closing argument, the prosecutor told the jury:

> I want you to put yourself in the shoes if you have an eight-year-old niece, seven-year-old niece, or you have an eight-year-old daughter, seven-year-old daughter, a cousin, a close family friend, and this child comes to you and says that someone that you know sexually molested them. What would go through your minds?
>
> Well, I would urge you to think about certain things. One, motive, What is the motive here? Have you heard any motive? Did the defense give you a motive as to why [the victim] would be lying?[] [Emphasis added].

Id. at 579. The *Lawson* Court noted that, "When a jury is asked to place themselves in the shoes of the victim, the attorney improperly appeals to their prejudices and asks them to abandon their neutral fact[-]finding role." *Id.* at 594.

Appellant here complains that the State made a "golden rule" argument during the following colloquy:

> [THE STATE]: And once again, I went to try and unplug the faulty power strip and it started working again, how about that? Is that a breach of his duty as an employer, I'll just unplug and plug it back in; but why I put it here is even [sic] the defen-

dant is in charge of doing things like oh there's a faulty power strip, it's the defendant who fixes things, it's the defendant who fixes the circuit breaker and that is normal, those things are normal, the food thing is over the top but when you're in someone else's house, you and I we would never go if the lights went out if the host is there we would never go to the breaker panel and start –
[APPELLANT'S COUNSEL]: Objection.
THE COURT: Why don't you approach?
(Bench conference follows:)
THE COURT: Okay, basis?
[APPELLANT'S COUNSEL]: Golden rule, you don't ask the jury to put themselves in your position or in their position with respect to matters that are pertinent to the case.
THE COURT: Okay.
[THE STATE]: I'll rephrase.
THE COURT: Yes, and I think that was intended, I think it's just in argument. All right.
[APPELLANT'S COUNSEL]: Okay.
(Bench conference concluded.)
THE COURT: Rephrase it.
[THE STATE]: So I will rephrase. A person at a friend's house would never venture to the breaker panel to start flipping breakers to figure out the electricity. That is normal. That is something that is in the control and it's expected to be in the control of the homeowner and especially in the control of the employer.

(Emphasis added).

In our view, the prosecutor's statement here did not constitute a "golden rule" argument. Whereas in *Lawson* the prosecutor told the jury to imagine their

own family member being the victim of a sexual assault, here the prosecutor seemed to be simply commenting on social mores: a guest in a home does not typically tamper with the circuit breaker. In this sense, the State did not ask the jury to put itself in the place of the victim; the State simply relayed an understood social norm by using the first and second-person perspectives.

Even if this statement could somehow be construed as a "golden rule" argument, appellant's argument would still fail. After appellant objected and informed the court that the State had made a "golden rule" argument, the State rephrased its argument, clarifying that the comment was more about "normal" behavior than about putting the jury in the shoes of the victim. By accepting the State's rephrasing and not requesting any further action by the court, appellant waived any complaint concerning the State's purported "golden rule" argument. *Hairston*, 68 Md. App. at 236.

B. Examples of Driving Blindfolded and Locking Factory Workers in a Building

Appellant next takes issue with the trial court's treatment of two examples of reckless behavior the State made in closing argument. According to appellant's brief, the examples not only assumed facts not in evidence, but asked the jury to draw improper analogies that were inaccurate portrayals of gross negligence manslaughter and depraved heart murder. As we shall explain, appellant failed to timely object to one of the examples. Additionally, the court sustained appellant's objection regarding the locked-in factory workers and issued an instruction, at appellant's request, regarding references made in that example. Accordingly, these arguments are waived. We explain.

The State proffered the examples at issue during the following colloquy:

> [THE STATE]: The State does not need to prove that, there's no arson charge, we don't need to prove an intent. So here's an example let's say there's two guys who are, let's assume they're young, immature and stupid and highly reckless and [they] say wouldn't it be really fun and funny to drive down the highway blindfolded and see how well we could do, because I think I know this highway so well I think I know the exits and I'll [bet] you on it.
>
> I'll [bet] you I'll get to the exit at the right time and so one of them is blind folded and they drive down the highway and they're on 270 and they crash and kill a family in another car. They, the driver is responsible for the death of that family even though let's say afterwards he feels terrible, he feels stupid and he's going to carry it with him the rest of his life.
>
> There's criminal liability for crimes you don't intend and it's up to you to decide was that a very high degree of recklessness or just a high degree. It's up to you to decide those things. Was it very high or high? Was it extreme disregard for human life or reckless disregard? That's your job. So there's an example of what could either be depraved heart murder or involuntary manslaughter. So then what's this employer/employee relationship one that could get you to involuntary manslaughter?
>
> Well, so, let's say there are workers in a factory and they're a bunch of smokers and the employers are sick and tired of them cutting out when they should be working, cutting out the doors and smoking. So they decide to lock all the doors so that no one can

take an unapproved smoke break and then there's a fire and everyone's trapped inside because all the doors are locked. There is a breach of the employer/employee relationship because you have to keep a 48 workplace safe and safety in a workplace requires a fire escape and those people weren't allowed or weren't able to get out due to the employer.

[APPELLANT'S COUNSEL]: Your Honor, I object.

THE COURT: Approach.

(Bench conference follows:)

[APPELLANT'S COUNSEL]: Counsel cannot argue that a fire escape is required in a workplace. That's saying that, she's arguing the law. The Court has precluded us from having specific examples to this jury or guidance with this jury as to what a safe work environment is. She has told them that you have to have a fire escape at the workplace. There's no, nothing in this record that says that. I also object to these examples.

She's giving basically unlawful act manslaughter examples. I don't think that giving examples, factual examples of other incidences is appropriate but in particular if it goes to trying to indicate what the standards are for a safe work place, that's what the Court has precluded me from doing and I object to the State doing it.

THE COURT: Okay, so as to the fire escape, I sustain that objection as to the fire escape. As to whether or not there's any escape it's just argument so I'll allow that but as to require a fire escape, sustained okay.

[THE STATE]: I'll make it clear that I'm arguing that.

[APPELLANT'S COUNSEL]: *Well, I want the Court to sustain the objection in front of the jury and tell them to disregard any reference to what is required with respect to a fire escape.*

THE COURT: Okay. (Bench conference concluded.)

THE COURT: *Sustained as to the use of the term and any requirement as to fire escapes.*

(Emphasis added).

We first note that appellant failed to articulate any complaint to the trial court regarding the driving blindfolded example. Aside from stating, "I also object to these examples[,]" appellant never specifically disputed the propriety of the driving blindfolded example, thereby depriving the court of the opportunity to rule on that issue. Any argument pertaining to this example is waived. *See* Maryland Rule 8-131(a).

Turning to the example of the factory workers, we note that the court sustained appellant's objection, and advised the jury that appellant's objection was "Sustained as to the use of the term and any requirement as to fire escapes." As noted above, "Where an objection to opening or closing argument is *sustained*, we agree that there is nothing for this Court to review unless a request for specific relief, such as a motion for a mistrial, to strike, or for further cautionary instruction is made." *Hairston*, 68 Md. App. at 236. Here, consistent with appellant's request, the court sustained the objection and informed the jury that the State's comments regarding fire escapes were stricken. Appellant did not further object to the court's actions or request any additional relief. Accordingly, there is nothing for us to review. *Id.*

C. Prosecutor's Allegedly Improper Comment on Maryland Law

Appellant next takes issue with the prosecutor's remark in closing that, "[T]he law says in Maryland, it's okay for two people to be jointly reckless and still have liability on the one that doesn't die." The totality of appellant's appellate argument on this issue consists of two sentences:

> Beckwitt's counsel objected and moved to strike, and the trial court sustained the objection and struck "[a]s to, as to the case law," but not as to the remaining phrase. The State persisted with more improprieties.

(Internal citations omitted). Again, we reject appellant's argument because the objection was sustained, leaving nothing for us to review.

During the State's rebuttal, the following occurred:

> [THE STATE]: Because the law says in Maryland, it's okay for two people to be jointly reckless and still have liability on the one that doesn't die.
> [APPELLANT'S COUNSEL]: Objection.
> THE COURT: Sustained.
> [APPELLANT'S COUNSEL]: Move to strike.
> THE COURT: As to, as to the case law. Correct. Sustained. Stricken.

In our view, the trial court likely assumed that appellant was satisfied with its ruling absent any further request for relief. Under *Hairston*, "there is nothing for this Court to review." 68 Md. App. at 236. We further note that appellant has not cited any caselaw to support his claim that the prosecutor's remark was substantively incorrect.

D. Drunk Driving Example

Appellant's fourth argument concerns the following exchange that occurred during the State's rebuttal

argument:

> [THE STATE]: You know this, let me give you some examples. A drunk driver, let's say there's two people at a bar, two friends at a bar. They're drinking together. They're drinking together excessively. And someone is way -- there's one person who's way excessive. The friend of the person who went way excessive drinking really needs a ride home and it's raining out and for whatever reason needs to get home right away.
>
> So, they make a stupid decision to get in a car and accept a ride home from the way drunk driver. And the drunk driver crashes as a result of being drunk and kills the person who made the stupid decision. We still hold the drunk driver responsible. Why? Because it's not about who the victim is and whether they made a stupid decision. It's not about who the defendant is and whether he's different or not. None of that is what it's about. It's about the conduct. Society has an interest in stopping that conduct.
> [APPELLANT'S COUNSEL]: Objection.
> THE COURT: Sustained.
> [APPELLANT'S COUNSEL]: Move to strike.
> THE COURT: Move to strike.

Here, the court clearly sustained appellant's objection. Although we acknowledge that the court's response to appellant's motion to strike was imprecise, we are persuaded that the jury reasonably understood that the court granted appellant's motion to strike. In any event, appellant sought no further relief. Like appellant's previous arguments, he failed to preserve this issue for our review. *Hairston*, 68 Md. App. at 236.

E. Domestic Violence Example

Appellant's fifth allegation of closing argument error concerns the State's comparison of Khafra to a domestic violence victim. During the State's rebuttal, the following occurred:

> [THE STATE]: It's about the conduct. It is not about who the people are. And I'll give you another example because the Defense went on about how Askia wasn't dependent. He was making a choice for sure. But he was making a choice to be dependent. To be dependent. And that was his choice, but it doesn't change the fact that when he was there, he was dependent. And he chose to go there, but that doesn't mean we forget about what the defendant's conduct was.
>
> And I'll give you an example. Think about domestic violence. How many times do you see the victim returning? Returning to the person abusing them? They're independent. They're adults. And we know domestic violence has affected people at all income levels. They may be independent financially. Why do they still go back? It's, it's a complex answer. Why did Askia go? It's a complex answer. For when that victim –
>
> [APPELLANT'S COUNSEL]: Objection, Your Honor.
>
> THE COURT: Overruled.
>
> [THE STATE]: When that victim returns to the house and let's say in a violent rage the abuser is throwing things around and the victim gets killed, it's the conduct –
>
> [APPELLANT'S COUNSEL]: Your Honor, I object to this. Can we approach?
>
> THE COURT: Sure. (Bench conference follows:)
>
> [APPELLANT'S COUNSEL]: You know, I was

precluded from going into issues such as assumption of risk and contributory negligence and all of this kind of stuff and now counsel is going exactly into that area and talking about victims not being held accountable for assuming the risk or whatever this argument is. And I think it is improper to be making these comparisons in this case for those reasons.

THE COURT: Okay, well I -- it's, it's a little bit of a fair comment because we went into issues of him making independent decisions and going back and doing this and that. But I'm going to suggest that you move on.

[APPELLANT'S COUNSEL]: Well, Your Honor –

[THE STATE]: I'm doing it because he said -- he was saying there was no dependence because he was making independent decisions.

THE COURT: I understand that. I understand that. But I think we've gotten a little far afield. So, move on.

[APPELLANT'S COUNSEL]: And, Your Honor, with respect to some of these arguments that counsel has made regarding, excuse me, society has an interest in preventing misconduct –

THE COURT: And that was sustained. It was stricken.

[APPELLANT'S COUNSEL]: I understand. But I'd ask the Court to issue a curative instruction to the jury to indicate that these comments of counsel are about legal standards or about what society's interest are [sic] to be in the verdict in this case are inappropriate comments and the jury should disregard them and they should resolve this case based on the facts that are here in this courtroom and this courtroom only.

THE COURT: Okay. I'll, I'll give an instruction that they're to determine the facts in the law that I have given them. I think it's going to be difficult for them at this point in time to parse out since we passed that, and we've gone about a minute or two as to what comments we're talking about. So - -
[APPELLANT'S COUNSEL]: Well, the Court sustained my objection to move to strike.
THE COURT: And I did all of that.
[APPELLANT'S COUNSEL]: It's not too late for (unintelligible).
THE COURT: Well, at this point in time given the fact that we've now moved onto different arguments, I'm not going to highlight it. I think that's inappropriate. But I will tell them that they're to base their verdict based upon the facts and law of this case. All right?

Appellant's counsel then requested a mistrial, which the trial court denied. When the parties returned from the bench conference, the trial court told the jury, "Okay. So, just so you know this, this case is decided on the facts of this case and the law that I have given you. Go ahead counsel."

Appellant argues that by comparing Khafra to the victim in a domestic violence case, the State "appealed to the jury's fears and prejudices about victims of domestic violence, which prosecutors are repeatedly admonished by the appellate courts not to do." Appellant further alleges that the trial court erred in that it never sustained his objection to this comparison.

Initially, we note that in denying appellant's motion for a mistrial, the trial court considered the State's argument to be "fair comment" because appellant's counsel had portrayed Khafra as an independent

decision-maker during appellant's closing argument. Indeed, it would be fair to characterize the thrust of defense counsel's closing argument as underscoring Khafra's independence. Appellant's counsel told the jury: "This kid wasn't dependent on anybody. This was an intelligent kid who was responsible for his own decisions and made decisions after calculating, after thinking, after weighing what he wanted to do." Appellant's counsel also emphasized Khafra's independence by telling the jury that Khafra disregarded his father's advice not to work in the tunnels, and that he willingly returned to work for appellant while aware of the hoarding conditions.

In any event, the caselaw confirms that any error was harmless. In *Spain*, the Court of Appeals explained that, "When assessing whether reversible error occurs when improper statements are made during closing argument, a reviewing court may consider several factors, including the severity of the remarks, the measures taken to cure any potential prejudice, and the weight of the evidence against the accused." 386 Md. at 159 (citing *United States v. Melendez*, 57 F.3d 238, 241 (2d. Cir. 1995)). There, during closing argument in a trial for drug distribution, the prosecutor told the jury that it would have to weigh the credibility of the officer's testimony in the case, as well as that of a defense witness. *Id.* at 151. The prosecutor, however, told the jury that the officer would have to have engaged in "a lot of lying, in a lot of deception and a conspiracy of his own to come in here and tell you that what happened was not true. He would have to risk everything he has worked for. He would have to perjure himself on the stand." *Id.*

Recognizing that a trial court errs when it allows a

prosecutor to vouch for the credibility of a witness, the Court of Appeals nevertheless held the error harmless. *Id.* at 154. The Court observed that the prosecutor's reference to the officer suffering adverse consequences by lying was "an isolated event that did not pervade the entire trial." *Id.* at 159. The Court further noted

> the likely diminution of prejudice from the prosecutor's comments as a result of the trial judge's contemporaneous reminder that they were only an attorney's argument, not evidence, as well as the pertinent instructions that the trial judge gave to the jury before sending it to deliberate. In response to the objection by defense counsel, the trial judge stated, "Okay, well the jury understand[s] that this of course is closing argument, and that they will [consider the statements to be] lawyers' arguments. Overruled."

Id.

> Although the trial court did not explicitly sustain the objection, the court reminded the jury that the prosecutor's statements only should be considered as argument, not evidence. By emphasizing the argumentative nature of closing arguments contemporaneously with the improper comments, the judge took some effort to eliminate the jury's potential confusion about what it just heard and therefore ameliorated any prejudice to the accused.

Id. at 159-60.

The Court found it particularly important that, before jury deliberations began, the trial court provided Maryland Criminal Pattern Jury Instruction § 3:10 "that emphasized the argumentative nature of closing arguments, and explicitly instructed the jurors as to relevant factors to consider and their roles as the sole judges of the credibility of the witnesses presented at

trial." *Id.* at 160.

Finally, the Court considered the impact of the improper comment in light of the weight of the evidence against the accused. *Id.* at 161. The Court found "this factor, however, to be of somewhat less weight in this case. Although the record contain[ed] adequate evidence of Spain's guilt to support the convictions under a sufficiency analysis, [the Court could not] say that the evidence of Spain's guilt [was] truly overwhelming." *Id.* Nevertheless, the Court found that the improper remarks were not severe, that their impact was minimal, and that the court's instruction mitigated any prejudice. *Id.*

We find *Spain* instructive. Here, even if we were to assume that the prosecutor's comparison of Khafra to a domestic violence victim improperly appealed to the jury's fears and prejudices, any error was harmless. First, as in *Spain*, the prosecutor's comparison did not pervade the entire trial. *Id.* at 159. Rather, appellant only cites to this single instance in rebuttal argument as an example of the prosecutor comparing Khafra to a domestic violence victim. To provide context, we note that the State's closing and rebuttal argument spanned approximately sixty transcript pages. Next, similar to *Spain*, the trial court here provided an implicit reminder that closing arguments were neither evidence nor the controlling law, telling the jurors: "Okay. So, just so you know this, this case is decided on the facts of this case and the law that I have given you. Go ahead counsel." *Id.* Although in *Spain* the instruction was contemporaneous, here the trial court, acknowledging that appellant's objection appeared to relate back to even earlier comments in rebuttal, decided not to re-highlight any objectionable language.

That determination was properly within the court's discretion.

Additionally, before jury deliberations began, the court provided Maryland Criminal Pattern Jury Instructions § 2:00 regarding the binding nature of the instructions, and § 3:00 regarding what constitutes evidence. The court instructed the jury that "The instructions that I give about the law are binding upon you. In other words, you must apply the law as I explain it in arriving at your verdict. . . . You are the ones to decide the facts and apply the law to those facts." The court also instructed the jury, "Opening statements and closing arguments of the lawyers are not evidence[. T]hey are intended only to help you understand the evidence and apply it to the law." The court correctly instructed the jurors that they were to apply the law as the court explained it, and that the only purpose of closing arguments was to help them understand the evidence and apply it to the law provided by the court. As in Spain, these instructions mitigated any prejudice to appellant. *Id.* At 160.

Finally, we consider the weight of evidence of appellant's guilt. *Id.* at 161. We shall not attempt to recount all of the evidence, but we note that much of it was essentially undisputed. Although the jury concluded that appellant's conduct constituted an extreme disregard for human life, we have determined that the evidence was legally insufficient to support a conviction for depraved heart murder. And while the evidence was sufficient to support appellant's conviction for gross negligence involuntary manslaughter, "we cannot say that the evidence of [appellant's] guilt is truly overwhelming." *Id.* As in Spain, "[w]e find this factor, however, to be of somewhat less weight in this case." *Id.*

Thus, as in Spain, the prosecutor's single improper remark over the course of a trial that spanned over two weeks, where the court properly instructed the jury regarding the law and the function of closing argument, persuades us that appellant did not suffer undue prejudice as a result of the allegedly improper comment during closing argument. *Id.*

F. Cumulative Effect of Improper Comments

Finally, appellant argues that although each statement alone could constitute reversible error, their cumulative effect also constitutes reversible error. We reject this argument because, as stated above, there was only one potential error emanating from closing argument—not sustaining appellant's objection to comparing Khafra to a domestic violence victim. Although we have concluded that any error in this regard was harmless, even if we were to assume error on this point, a single error, by definition, cannot be "cumulative."

IV. FRANKS HEARING

Appellant's final argument is that the circuit court erred in denying his request for a Franks hearing. According to appellant, Detective Beverley Then of the Montgomery County Department of Police made false and misleading statements in her search warrant affidavit, which improperly formed the probable cause necessary to obtain a search and seizure warrant authorizing the search of appellant's home. We need not recount Detective Then's alleged misrepresentations as they are immaterial to our resolution of this issue. At a *Franks* hearing a defendant is given the opportunity to attack the veracity of an affiant's statements regarding a search warrant affidavit. *Thompson v. State*, 245 Md. App. 450, 463-64 (2020).

"Again and again, it has been stressed that a Franks hearing is a rare and extraordinary exception 1) that must be expressly requested and 2) that will not be indulged unless rigorous threshold requirements have been satisfied." *Fitzgerald v. State*, 153 Md. App. 601, 642 (2003). These "rigorous threshold requirements" are widely accepted:

> To mandate an evidentiary hearing, the challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross examine. There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof. They should point out specifically the portion of the warrant affidavit that is claimed to be false; and they should be accompanied by a statement of supporting reasons. Affidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained. Allegations of negligence or innocent mistake are insufficient. The deliberate falsity or reckless disregard whose impeachment is permitted today is only that of the affiant, not of any nongovernmental informant.

Id. at 643-44 (emphasis removed) (quoting *Franks*, 438 U.S. at 171).

In his brief, appellant baldly asserts, "Any evidence obtained from the execution of the September 11, 2017 warrant should have been excluded, or alternatively, this case should be remanded to conduct a full *Franks* hearing." But even assuming *arguendo* that appellant was entitled to a *Franks* hearing and that, based on a *Franks* violation, the court should have suppressed the evidence seized from his home, we cannot grant

appellant's requested relief because appellant has utterly failed to identify a single piece of evidence seized from his home that was admitted against him at trial. It is not our obligation to comb through the record to determine whether evidence obtained as a result of the search warrant was admitted at trial. *See Rollins v. Capital Plaza Assocs., L.P.*, 181 Md. App. 188, 201 (2008) (stating that "[w]e cannot be expected to delve through the record to unearth factual support favorable to [the] appellant (quoting *von Lusch v. State*, 31 Md. App. 271, 282 (1976), *rev'd on other grounds* 279 Md. 255 (1977))). Nor is it our obligation to engage in the daunting task presented by this voluminous record of determining whether any such evidence may have been obtained from a source independent of the search warrant.

On review, we apply the longstanding principle that improperly admitted evidence must be prejudicial to warrant reversible error. *See* Maryland Rule 5-103(a) (stating generally that "Error may not be predicated upon a ruling that admits or excludes evidence unless the party is prejudiced by the ruling"). "[P]rejudice is not presumed 'when the jury considers evidence admitted by the trial court which is later determined to have been erroneously admitted.'" *Merritt v. State*, 367 Md. 17, 33 (2001) (citing State *Deposit v. Billman*, 321 Md. 3, 16 (1990)). Rather, it is well settled in Maryland that we will review prejudice through the lens of harmless error:

> when an appellant, in a criminal case, establishes error, unless a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict, such error cannot

be deemed 'harmless' and a reversal is mandated.

Dorsey v. State, 276 Md. 638, 659 (1976). Furthermore,

> In a criminal jury trial, the jury is the trier of fact. For this reason, it is responsible for weighing the evidence and rendering the final verdict. Therefore, any factor that relates to the jury's perspective of the case necessarily is a significant factor in the harmless error analysis. Thus, harmless error factors must be considered with a focus on the effect of erroneously admitted, or excluded, evidence on the jury.

Dionas v. State, 436 Md. 97, 109 (2013) (emphasis added).

Because appellant has failed to identify a single piece of evidence admitted at his trial that he claims should have been suppressed due to Detective Then's alleged misrepresentations, it is impossible for us to engage in a harmless error analysis to determine if the admission of such evidence constituted reversible error. We therefore reject appellant's argument based on alleged *Franks* violations.

JUDGMENT OF CONVICTION FOR DEPRAVED HEART MURDER REVERSED. CONVICTION FOR INVOLUNTARY MANSLAUGHTER AFFIRMED. CASE REMANDED TO CIRCUIT COURT FOR MONTGOMERY COUNTY FOR SENTENCING ON INVOLUNTARY MANSLAUGHTER CONVICTION. COSTS TO BE DIVIDED EQUALLY BETWEEN APPELLANT AND MONTGOMERY COUNTY.

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

STATE OF MARYLAND	
v.	Criminal No. 133838C
DANIEL BECKWITT,	
Defendant.	

JURY TRIAL

Rockville, Maryland April 17, 2019

DEPOSITION SERVICES, INC.
12321 Middlebrook Road, Suite 210
Germantown, Maryland 20874
(301) 881-3344

EXCERPTED FROM PAGES 5-37

MR. BONSIB: So, Your Honor, at this time, on behalf of the defendant, we would make a motion for judgment of acquittal as to both counts of the indictment on the basis that the State has made, failed to make a prima facie case as to each and every element required in, with respect to each count. The State has failed to produce evidence sufficient to establish the mens rea and the actus rea required for each and every element of the offenses.

In setting the legal framework for how we go forward in making this analysis, I think it is important to note that we are charged, we are not just charged with depraved heart second degree murder, and involuntary manslaughter, but we are charged with two offenses that also have been narrowed in terms of the proof by the particulars that the State has filed in this case. So they have created an evidentiary framework within which the jury must consider the evidence.

Now, not to restate the obvious, but just to make my argument complete, as we know, the involuntary manslaughter charge requires that the State show that the defendant, while aware of the risk, acted in a manner that created a high degree of risk and showed a reckless disregard for human life. Now in this -- I'll turn this off. In this case, some of the operative and important elements of this, you know, are the issues that he must be aware of the risk, he must have acted in a manner that created a high degree of risk, and he must have shown a reckless disregard for human life.

When we get to the higher level of depraved heart second degree murder, the Court recognizes that it is increased, and that one must have, quote, acted with

extreme disregard of life. And not only acted with extreme disregard of life, but were conscious of a risk when they did so.

So, when we look at cases like Dishman v. State at 352 Md. 275, and we look at the seminal case on depraved heart, Robinson v. State at 307 Md. 738, Simpkins at 88 Md.App. 607, and they talk about the elements in this high degree of risk for depraved heart second degree murder, they really have what the equate to almost the same mental state as one that is the non-premeditated intent to kill. Or I think maybe more accurately, they describe it as more akin to the intent on a second degree murder of intent to inflict grievous bodily harm.

So these cases really, both are for involuntary manslaughter and also for depraved heart, have implicit in them not just conduct that occurred, but a requirement of a certain consciousness and awareness of potential consequences, and the disregard of those consequences. And in the context of this case, I think it is also important to remember that the State has noted that this is an accidental death.

And the evidence, I'm sorry, an accidental fire, and that the evidence is undisputed that the fire occurred as the result of a latent electrical defect, something that was not either objectively or subjectively reasonable for a person in Mr. Beckwitt's position to expect or to be aware of.

So the State, in conceding that this was an accidental fire, has conceded there is no affirmative act on the part of the defendant that caused that accidental fire to occur, and their theory then becomes that somehow, at least as I understand it, somehow he had to have an awareness, a consciousness that the,

that he was doing something, something else that created a situation so risky that he affirmatively took action. That created a situation that was so, such a high degree of risk that with respect to what happened, that that was reasonably foreseeable. It just isn't the –

THE COURT: Can't it be an omission as well under Albrecht

MR. BONSIB: It –

THE COURT: Judge Raker says it can be a commission or an omission, correct?

MR. BONSIB: Right. The omission cases we see are more in the area of like child abuse death. They have failed to provide

THE COURT: Doesn't he have a duty as a –

MR. BONSIB: No.

THE COURT: As an employer-employee under the common law? And aren't these common law crimes?

MR. BONSIB: These are common law crimes. There is no evidence that there is any common law duty in this case for him to do anything in this situation.

THE COURT: Well, there is a duty by an employer to have safe working conditions.

MR. BONSIB: Where is that?

THE COURT: There's lots of cases.

MR. BONSIB: Where is the unsafe working condition in this case?

THE COURT: Egress and ingress. Couldn't the jury find that the egress and ingress in this case was unsafe, and as an employer, he had a duty to make it safe?

MR. BONSIB: In this case, he was not an owner of the premises. He was essentially an occupant of the premises. He had an individual who was fully aware of

the circumstances under which he was being present there. So, the issue in this case, even if there were a common law duty of some sort, it doesn't rise to the level that is required for second degree depraved heart murder. There was nothing in this case that suggests that there was such a high risk of danger. And the problem here is, we put together, if you will, the issue of the tunnels, with the issue of the basement, with the issue of the latent defect, and they all kind of blended together.

Now, if the tunnel had collapsed, you know, it might be a different situation. But the tunnel has nothing to do with how the fire started. This was a latent defect, not something that would have been obvious to anybody. And you can't say that the egress path in this case was somehow affected by that because we know the decedent made it all the way to the area of the fire. There is no evidence at all except speculation evidence, that somehow his ability to make egress from the tunnels was affected by the condition of the house. There is nothing in this record to show that is a fact. There is no inference that can be drawn that that was a fact because he, in fact, made it to the area of the fire.. So the State wants to put forth a theory that somehow getting from the tunnel area to the area where he died was somehow, the path was somehow affected by the hoarding conditions that were present. But there is no evidence that that had anything to do at all with his movement. It's pure speculation. He in fact got to the area of the fire. So how do you suggest, how do you prove, even with all of the inferences in the favor of the State, that that egress situation was affected by the hoarding conditions that were not the product of anything, the evidence shows

the defendant was responsible for. He lived in his parents' home.

THE COURT: Well, there's some evidence that there were new things in there. There was cement. There was a cement mixer, there was gasoline that he indicated he stored, he brought in and out. There was those kinds of things.

MR. BONSIB: But they had –

THE COURT: And they appeared new. And they appeared new.

MR. BONSIB: They have nothing to do with the ability of the decedent to get from the tunnels to the area of the door that went outside. Nothing. They were all on the other side of the fire. They had nothing to do with that. And the evidence is, even though it was a bit cluttered, once he would have gotten to the that doorway area, there was a straight, short, shot, 15 feet, 20 feet outside to go outside. So there is no evidence that those items impacted in any way, in any way egress, because the decedent never made it there. He never made it to those things.

THE COURT: And perhaps the jury could find that the reason he never made it there was because of the extra-ordinary amount of time it took him to get from point A to point B.

MR. BONSIB: There is no evidence of that.

THE COURT: Well, there is evidence that it took the firefighters, and they indicated that when they were walking back there and they first discovered it, that it took them extraordinary effort in their suits, okay, and we all know the evidence is that he was naked. It took extraordinary effort to do that, and it took a long time. And so isn't this about time?

MR. BONSIB: Well, Your Honor, no. I mean, in a

theoretical world, if you had evidence to support the fact that it took him, you know, 10 minutes to get from the tunnel to the area where he was found, but you don't. You don't have any evidence in this record as to what the conditions of the pathway from once he's up the hole, from that place until where he was found, no evidence of anything that suggests that his path was impeded in any way that was material. What we do have is evidence that he had traveled that path at least 10 times.

THE COURT: But the evidence is that he has traveled that path 10 times, but we don't know whether or not, one, that path has changed, two, whether or not he was blindfolded or not blindfolded. Okay? There is a change, there is a change in the testimony in this case in terms of the jury could believe, the jury can believe all, part, or none of the testimony. They can pick and choose from what they wanted to, correct?

MR. BONSIB: No. No. Not -- well, the jury, once you give it to them.

THE COURT: Right.

MR. BONSIB: But to get to them, there is a threshold.

THE COURT: Right. I understand.

MR. BONSIB: And the Court can't, when the Court makes its analysis and says the State is entitled to all reasonable inferences, it doesn't mean the State is entitled to all speculation.

THE COURT: I understand that.

MR. BONSIB: There has got to be evidence based on the record. And there is no evidence in this record to establish that he was impeded in any way. It is pure speculation. There is no evidence that that pathway prevented him from getting to the location where he died in any way or with any amount of time that was

critical or different than it would have been on any other occasion.

There is no evidence in this record. It's speculation. He got there. We know he got there very, very quickly because of the record that shows that less than a couple of minutes from when he last had a communication with Mr. Beckwitt to where the yo dude conversation occurred. So there is no evidence that he was impeded in any way. As Mr. Maxwell said, a blind man can find his way out if he knows the path. And in this case, we have somebody who wasn't blind. We had somebody who was intelligent, athletic, experienced and educated traveler of that path, and there is no evidence in this record to the contrary. No evidence.

And to the extent that there was a cluttered condition, that cluttered condition, in the context of somebody who was an experienced traveler, who ultimately died as the result of an accidental fire as a result of a latent defect, those facts do not put Mr. Beckwitt in a position where when Mr. Khafra was working in that tunnel or present in that tunnel, that he had reached this position where anyone could say he had a high, a recognition of this extreme, high level of risk. It just, it doesn't fit within, you know, that, that character.

Now, what the State has done in their particulars is identify a couple of areas where they say the situation supports these, these counts. And they are –

THE COURT: And when was the Bill of Particulars filed? Do you have a docket entry? A date? Anyone?

MR. BONSIB: I don't, but I can have a copy, but I can let the Court –

THE COURT: No. I can just get, just –

MR. BONSIB: Let me see if I have a –
THE COURT: Maybe the State can tell me.
MR. BONSIB: Yeah, I have a copy. It says it was filed on October 9th.
THE COURT: Okay, thank you. Okay, I have it. Thank you.
MR. BONSIB: So the first allegation is that the defendant created an underground tunnel in his home with no smoke detector for which he prioritized secrecy over safety. Now, where in the world does the State get to the position where they can say that that allegation alleges criminal conduct?

Let's assume that was the only particulars they provided. The Court couldn't take that and give that to the jury because there is no evidence of any requirement, first of all, that you'd have a smoke detector in an underground tunnel. They made this, you know, all due respect, they made this up as a standard. And by particularizing something that isn't a crime, by particularizing something that even if it occurred is not a crime, they put the Court in a position here of having to decide can you even tell a jury this?

Can you even send these particulars to the jury? And I submit that you cannot. But there is no evidence in this case that this constitutes anything to support either one of these charges. And in fact, the evidence is there was a CO detector in the home.
THE COURT: Upstairs.
MR. BONSIB: Well, but if you want to look for a standard or a duty, where do they get this from? They can't just pull out of plain air and say, okay, you're supposed to have a smoke detector in an underground tunnel, and if you don't, that somehow is an act that supports these charges. There is no evidence in this

case to support that there is any requirement for that at all. And in fact, it's a tunnel. It's earth. We don't even know if you can burn down there.

But, you know, regardless, there is nothing in this record, and there is nothing elsewhere that suggests that this is an allegation they can make that constitutes a basis for a criminal charge. So the Court, in terms of how it addresses the motion for judgment of acquittal, and maybe this comes up again in terms of instructions, regardless of which way the Court rules on this issue, you can't tell the jury that if he didn't have a smoke detector, that he's, that's a factor they can consider in supporting a verdict for either one of these charges because, you know, you could say he didn't have a refrigerator down there. He didn't have a shovel. Can they do that? No, they can't, because none of those things constitute criminal conduct. And by alleging that it does, and then failing to prove that it's required, this doesn't count. The Court had to disregard this. And the Court has to conclude that they have failed to prove this particularization as something that supports that charge. So that's number one.

Number two, they allege that by having Askia Khafra spend extended periods of time working in the tunnel, that that was a problem where the only viable exit was lengthy and in the basement portion restricted by debris and unsafe hoarding conditions. Well, let's break this down. What does it mean by having Khafra spend there? There is some implication of a compulsion. The evidence in this case is clear, is that he was a willing and repeated, a participant in this. So, he was present, there is no question. He was there for extend-ed periods of time. No question. That's not a crime. That's not a violation of any standard or

duty. That was a voluntary act on his part.

Where the only viable exit to the outside was lengthy. Well, that's simply not true. First of all, nobody has told us what the length was, the total length. But in any event, we know that from the hole to the area where the fire, was a matter of 20, 30, 35 feet, something like that. Hardly a lengthy area. And we know that the tunnel area was not lengthy. So, but what is lengthy? For Your Honor, as I indicated when we were down in the other courtroom, if somebody had been seated in the back corner of that courtroom and had to walk out of that courtroom, you would have had to follow, essentially, the same length of time. So lengthy is vague. It is indefinite. It doesn't set any standard. It can't set a standard for criminal conduct.

So, and then it says it was restricted by debris and unsafe hoarding conditions. Well, there were hoarding conditions that were present. There is no evidence that at the time Mr. Khafra made his way to the area of his death that his movement was restricted by debris. Debris present? Perhaps. Hoarding conditions in the basement? Yes. No evidence in this record that he was restricted in his movement. He was a 5-10, 150-pound young man, and the evidence is the path-ways were two to three feet, depending on what you're talking about, what time, and there is no evidence that his movement was restricted or slowed down. What we have is a bunch of pictures of the condition of the basement after the fire, after timber had fallen, after whatever movements were made by the firefighting process. But again, we know he made it to where he made it because he made it there. And he was literally two feet to the side of a direct path out of the residence, a pathway that was not impacted by the fire. Had he

moved two feet to his right, gone through that doorway, he would have been directly outside, and there would have been nothing that would have kept him from leaving.

So, again, they haven't proven anything here. I get it. It's a bizarre case. There's a lot of things that people think maybe this could have happened. But maybe or speculation isn't evidence. And the evidence is absence of evidence. And in fact, the logical inference is he was not restricted because he was where he was promptly after the fire and the smoke were detected, which suggests he had both the ability and in fact was able to get to that particular location. So that one, they have no evidence on.

Then, we get to their third allegation. By failing to respond reasonably to warnings of potential fire risk, what does that mean? All of the evidence here is that as soon as he became aware of the smoke that immediately preceded the fire, he went down to try to find out where Mr. Khafra was and to rescue him. Where is there any, where is there a scintilla, a scintilla of evidence that he failed to reasonably respond? How can they put that before the jury and allege that that's the basis for criminal conduct?

And then, perhaps the most, with all due respect to counsel, ludicrous allegation here is that he failed to exercise reasonable efforts within his power to assist Mr. Khafra in escaping the fire from the home once he became aware of it. And again, there is not a scintilla of evidence that he failed to do that. By the contrary, the firefighters, the videos, every-thing that has been produced showed that not only did he try to rescue his friend, but he was held back or told not to go back in to rescue his friend.

So where do we end up at the end of these particulars? We end up with only one thing that the State is able to speculate about as to which there is no evidence, and that is whether somehow or another the hoarding conditions and debris made it impossible for Mr. Khafra to escape, despite the fact that he was within two feet of escaping. On an evidentiary basis, even granting that the State has every conceivable inference in their favor, the evidence doesn't support any of those particulars, and nothing else has been particularized as a basis for these two charges.

Then we get into the issue of causation. This was a latent defect. This was a fire that caused a death. It was not Mr. Beckwitt that caused the fire. It was an old home with deteriorating pieces inside of an outlet. That's conceded. And that it smoked, if it smoked, and it caused a fire. Whether the smoke preceded the fire, whether it was part of the fire really is somewhat immaterial because it sounds like it all happened at a very quick, quick time during the course of this process. So throughout the course of this, there is this situation where Mr. Beckwitt is living in his parents' home, talked about how his parents had come on occasion to, his father, to visit the home.

He's not the homeowner. He's not the property owner. He doesn't have a, an ownership interest in the property. He's a kid living in his parents' house. So his responsibility, his familiarity with living in a hoarding condition is not some-thing that advances the State's position in this case in any material way. So where does the State get a legal, statutory, or common law duty in this case that Mr. Beckwitt has to this individual? Well, the answer is they have none.

The Court suggests that there is an

employer/employee duty. Put that one aside for the moment. There is nothing in this record to suggest that there is any statutory duty, that there is any common law duty, that as a child in his parents' home, that he had any duty at all with respect to Mr. Khafra. And Mr. Khafra, remember, as we see, was a, was an educated person who was present in this premises. This was not somebody who was unable to leave. This was not somebody who was restricted by any force or threat or any other way to leave, and in fact could and did leave on many occasions. He went there despite his father's request that he not.

So we know that he was there on his own. The testimony was he was fascinated by the tunnel system. How do you assess responsibility to Mr. Beckwitt for Mr. Khafra's presence in that situation. The short answer is you cannot, and you cannot assess that Mr. Beckwitt, a causal relation-ship between a latent fire, a latent defect that causes a fire that ends up in the death of Mr. Khafra two feet from a path to, to leave.

The Court's indulgence for a moment.

To the extent that the Court talks about this in terms of an employee-employer relationship, the working conditions that were present were ones that were not latent or unknown to Mr. Khafra. So when he comes back, repeatedly, when he wants to come back, when he asks, I don't know if we had evidence that he asked to come back. But when he wants, when he comes back, he assumes the knowledge and the risk and the responsibility –

THE COURT: There is no assumption of risk in criminal manslaughter. That might be a civil suit, but there is no assumption of risk.

MR. BONSIB: This is in the context of the Court

suggesting that there is an employee-employer relationship in that context.
THE COURT: Okay.
MR. BONSIB: It's only in that context. I agree, assumption of the risk, contributory negligence, that doesn't apply in criminal context.
THE COURT: Right.
MR. BONSIB: But in this context, and we've got to remember, we're talking about the defendant having to have a high level of awareness of the conscious, of the –
THE COURT: Isn't that a reasonable man standard according to Perkins?
MR. BONSIB: No. It's not a reasonable –
THE COURT: Okay.
MR. BONSIB: Well, I guess it's a reasonable, what would a reasonable man believe is a high level of risk –
THE COURT: Correct.
MR. BONSIB: -- with respect to the situation. An objective –
THE COURT: Right. Right.
MR. BONSIB: And I'm not sure if it's totally objective. There certainly is a reasonable man standard, but because the mens rea here is one where the defendant has to have the awareness of it, it also has a subjective component to it. And subjectively, there is no way that Mr. Beckwitt had any reason to believe that fire was a high level of risk in a home that he had lived in for many, many, many years. That's the high level of risk.

Was there a high level of risk that there would be a fire and that Mr. Khafra would be unable to escape? There is nothing in this evidence to suggest that he has a conscious awareness or should have had a conscious awareness that a latent defect would cause a fire any more than the outlet under Your Honor's –

THE COURT: Bench.
MR. BONSIB: Bench. Thank you. Lost the word there for a minute.
THE COURT: It happens to me all the time.
MR. BONSIB: All right. You know, so I mean, it's a bizarre case. And because it's so bizarre, it clouds, I think, sometimes the ability to, for me to articulate analytically, but I'm trying to, what is really the critical evidence in this case. We have a wall plug that nobody believed had any reason to believe was going to catch fire. And if you don't have any reason to believe it's going to catch fire, then you have no reason to believe that anything is going to be pertinent with respect to egress or access in that location, particularly when it's been going on for, for such a long period of time.

We're not talking weeks. We're talking months after months after months. So how does that rise to the level required under either depraved heart, but, or of involuntary, but particularly depraved heart. How do you get to depraved heart, which essentially has this functional equivalent of intent to inflict grievous bodily harm, mental state. It just, this is so grossly overcharged, when we get to the depraved heart second degree murder, because by all accounts they were friends. They socialized together. They talked together. There is nothing in this record to suggest either by act or omission that he was putting his friend in a position where he had a conscious awareness that he was going to put him in risk of death or serious, serious injury.

As I indicated, there is no evidence that the defendant had any legal responsibility for those premises and for being present on those premises at

other than, in any way different than Mr. Khafra.

So, Your Honor, there are, you know, with respect to the issue of egress, with respect to the issue of access, with respect to the issue of the absence of a smoke detector, there is no statutory standard for this, for a private home, for a personal residence. To the extent that there has been any legislation in this area under COMAR that incorporated any fire safety codes that deal with these kinds of issues, and there is no evidence in the record of this.

But to the extent that there is, it does not apply to somebody in Mr. Beckwitt's position. Mr. Beckwitt was neither a landlord, nor was he a property owner. To the extent that there has been legislation in this area to discuss these standards, it has preempted any common law. And to the extent that it has preempted any common law, what it has provided is that any responsibility in these areas lands on a landlord or a property owner, not anybody else. So he does not meet that statutory, or part of it.

And so, what we're left with is really no legal, no statutory, no common law standards -- the Court's indulgence. The Court's indulgence for a moment.

THE COURT: Sure.

MR. BONSIB: There's a lot to argue here, Your Honor. I just, I want to make sure I'm not missing anything.

THE COURT: Sure, sure.

MR. BONSIB: You know, the other things that exist in this case, Your Honor, is that when you're looking at mens rea, and that's really an important part of this when you're talking about what they talk about, about the consciousness of risk. And I can't emphasize enough that when we're dealing with a non-intent type of crime, what the Court substitutes for the lack of

intent is this suggestion that there's got to be a consciousness of the risk from a high risk to one that represents an extreme disregard of life. And so you look at things like the efforts to rescue Mr. Khafra, the friendship there. I mean, everything in this case suggests that he had no intent, no purpose, no conduct that was designed to consciously put Mr. Khafra in extreme disregard of his safety.

THE COURT: Counsel, but in Perkins, it says you don't have to have an awareness.

MR. BONSIB: It doesn't what?

THE COURT: You don't have to have an awareness. It says, some have urged that awareness should be a requisite for criminal negligence, but that is not the position taken by the common law. Whether negligence is criminal or ordinary depends not upon the element of awareness but on the degree of negligence. So then it goes on to say, if harm has resulted from failure to use care which the ordinary, reasonable person would have employed under the circumstances, it has resulted from negligence. And then it goes on and on. But it doesn't say no doubt the element of awareness may be considered by the jury in determining whether there has been a gross deviation from the standard of care, but it may be found to be gross without the element of awareness.

MR. BONSIB: Your Honor –

THE COURT: And I'm quoting from Perkins.

MR. BONSIB: Well, let me, if I may, quote from Robinson v. State, which also quotes from Perkins. And it says a depraved heart murder is often described as a wanton and willful 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 willful. Moreover, the conduct must contain an element of viciousness or contemptuous disregard for the value of human life which conduct characterizes the behavior as wanton.

THE COURT: It says reasonably should, and reasonably should is an objective standard.

MR. BONSIB: Well reasonably may be an objective standard, but the standard –

THE COURT: Well, I understand the standard.

MR. BONSIB: -- as much, it's not a –

THE COURT: But he doesn't, he doesn't have to repeat, he does not have to -- it's whether or not your ordinary man or a reasonable man would have understood the danger. Not whether or not this particular, it's not, it's not like intent. It's not. It's a different standard, is it not?

MR. BONSIB: No. Reasonableness, the reasonable man standard for determining or for assessing whether the risk is extreme is a two-part test. Now, the unreasonable person, we throw out the window. A reasonable person walking into Mr. Beckwitt's basement is not going to have a high, is not going to consider that there could be an accidental fire, and that the conditions constitute extreme disregard for life when those conditions have been prevalent, and there have been no issues, and there has been somebody coming and going throughout the course of many months.

A reasonable person may say what the heck is going on here. A reasonable person may not want to live in those conditions. But a reasonable person would not think that there is going to be an accidental fire,

and that the conditions in that situation are going to end up doing something, when in fact, in this situation, Mr. Khafra made it to the fire. I don't know how we get beyond that.

I mean, all this stuff about time and distance and things is belied by the facts of this case. The facts of this case are, he is the one who smelled smoke. He is the one that made it to the area of the fire. He is the one who missed the exit by two feet. And we have no evidence in this record to suggest that the conditions in this basement had anything to do with his ability to make egress. It's all pure speculation.

THE COURT: Anything additional?

MR. BONSIB: Just a couple of other things. Your Honor, this is a little technical, but I want to read this into the record.

THE COURT: Sure.

MR. BONSIB: Because I think it is important that I cite the chapter and verse here. I want to note that if there was a common law duty to provide a safe, unobstructed egress from a single-family home, that was, that common law duty was abrogated by enactment of the Maryland State Fire Prevent-ion Code, because the State Fire Prevention Code exempts singlefamily homes from its scope. That code is codified in COMAR 29.06.01. And in 06 of that section, it incorporates the NFPAI Fire Code, the life safety code, the international business code, again, things that can be found in COMAR 05.02.01.02-1. These provisions are part of the state fire code and relate to unobstructed egress that talk about the duty to have egress in certain types of facilities.

However, COMAR 29.06.01.03(d) states that it does not apply to buildings used as dwelling houses for not

more than two people. That under Salvador v. Cunningham analysis, the provisions of the fire code abrogate any common law duty to provide means of egress or emergency exits in single family homes as the egress duties relating to the other buildings are statutorily codified by incorporation by reference to NFPA 101. Single-family homes are specifically exempted from the code, just as smoke detector statutes in Salvador v. Cunningham were noted similarly. So it is legally not possible to provide a basis for these charges by not providing adequate egress from a single-family home because there is no statutory or common law duty.

So, Your Honor, there is one other checklist of my notes, and I'm just trying to remember where I put it here. Oh, here it is.

THE COURT: Yes, because we promised this jury 10 o'clock.

MR. BONSIB: I know, I know. But, this is a weird case.

THE COURT: I understand that. And, but, I'm just, if you have some additional argument, that's fine.

MR. BONSIB: I'm just looking through my checklist. Thank you, Your Honor. That's it.

THE COURT: I'll hear from you.

MS. AYRES: Thank you, Your Honor. I want to start with the causation, because I think counsel focused a lot, and I'll try to be efficient and brief, focused a lot on the fact that the fire wasn't caused by the defendant. And I think that that is not material, and I think the case of Alston v. State makes that clear. And it doesn't, and that was a case where there was a shoot-out, and there was no evidence that it was the defendant's bullet that shot the victim or that the defendant, and

the defendant clearly wasn't intending to shoot the victim. He was engaging in a shoot-out, and the victim happened to get killed because of the shoot-out.
THE COURT: I'm familiar with the case.
MS. AYRES: So it's similar here that it doesn't have to be the defendant, the fire doesn't have to be caused by the defendant which killed him. It's that the defendant engaged in a situation that was inherently dangerous where but for engaging in that behavior, in bringing the victim over and having him dig tunnels in his basement, but for engaging in that behavior, the victim would be alive.

And, and I think consciousness of the risk doesn't mean consciousness that a fire could break out because fire, in our society, is always a risk. It is considered a risk in that, in this building right now, even though we have no awareness that there could be a fire happening, but that's why we have smoke detectors and fire escapes. We don't only make the smoke detectors and fire escapes the precautions for fire once we realize there is a latent defect. We always, in all of society, we assume that fire could always break out, unbeknownst to us, and that's why we have emergency exits, and that's why we take precautions, and that's why those things are required in a public building like this. And so the conduct here that is so reckless and so grossly negligent is that, and I would submit it rises to that level of, of one being aghast, is that he brings, he brings in the dead of night, he brings somebody to his house, blindfolded so that they wouldn't know where they're going. He brings them and puts them, has them go into a basement. And I say has because a normal person wouldn't spend the night, eat, sleep, and poop in a hole underneath a basement. So, it's because he's

engaging in this employee-employer relationship where he wants his tunnels dug, that this person is doing that, because a reasonable person wouldn't otherwise do that.

And he puts him there, and he is told the night before the fire, or the very early morning hours of the fire, I smell smoke in the basement. There are no lights. And there is no airflow. And there is a never-mind about the smoke, but he doesn't know of any of this until six hours later.

He sits on that, or he is unavailable in any kind of an emergency for six hours. And only then does he respond. And when he responds, he himself says major electrical failure. And then says I switched it all over to another circuit. And I think a reasonable juror could find that that is grossly negligent considering knowing where the person is, in a hole in the, underneath the basement, with all of the hoarding conditions in the basement on top of the hole, you know there is a major electrical failure.

You know there's been smoke. It doesn't matter that the person said never mind. It's complete pitch darkness, and there's no airflow. And he says instead of, all right, we've got to get out and check this out, major electrical failure, switch-ed it over. A reasonable juror could find that's basically keep working. And then he says, he is then aware that the electricity goes out at 4:00 p.m. The 9-1-1 call is at 4:23 p.m. He says about 4:00 p.m. he realizes, or give or take, the electricity goes out, and he sits on it for 20 to 30 minutes, in his word. He just sits on it and surfs the Internet and doesn't go down and check anything out when he knows there was a major electrical failure earlier on.

And he sits on that. And at 4:17, the victim says I definitely smell smoke down here. And not until 4:23 is there a 9-1-1 call. So under all of those circumstances, and considering that he brought the victim, that's, this is the act, he brought the victim into his home into, and had him go into a hole where the egress was completely obstructed in case of a fire, and a fire is always a risk. And despite all of these warnings, he basically, in layman's terms, blew them off. He blew off the warnings. It doesn't matter that he's not the technical owner of the home. He's the primary resident, and he is the sole reason the victim is there, because he picked him up and got him to this house for an employment relationship, to dig his tunnels underneath the basement. But for the victim being picked up by the defendant, digging in that unique place, and obstructed by all of the egress, he would have been alive. Obstructed by the debris that, that blocked the egress.

And I think this is a case about time. Maxwell said he was about two seconds from the door. And Maxwell said he was definitely slowed down by all the debris from the tunnel to the door by at least two seconds. Had that debris not been there, and a reasonable juror could even see from the map, had that debris not been there, it should take you only about two seconds from the hole to the door to get out. So a reasonable juror could find that bringing, that bringing the victim over in those, knowing what those hoarding conditions were, and bringing him into those hoarding conditions was an extreme risk to human life because fire is always a risk in our society. We consider it always a risk. Any reasonable person knows fire is always a risk, and that's why you cannot have conditions that

block doors this way.

THE COURT: So as far as the common law felony in this case, and the depraved heart, if there is quantitatively not culpability, that's really what the difference between the two, the two charges are. And so, quoting Dishman, a manslaughter case is not drawing a precise line between depraved heart and involuntary manslaughter, that depraved heart requires a very high degree of risk, of life, and involuntary manslaughter is a grossly negligent manner that constitutes a high risk to human life. It's the weight to be given that particular element, not, and that probably is exclusively the prerogative of the fact-finder in this case.

I, first of all, am going to find that there is a duty. There are a number of cases. There is both, there's cases in criminal negligence outside the state that I have found that indicate that a breach of the statutory duty of employer-employee can lead to criminal negligence. And those cases are Hastings v. Steve Mechalske and State v. Far West Water and Sewer, and it was –

MR. BONSIB: Your Honor, could we ask you to give us those cites –

THE COURT: Sure. 336 Md. 663 has to do with the employer-employee relationship duty. That's a workmen's comp, but I'll get back to that. The out-of-state ones are, although they didn't find the employer-employee issue, they didn't find that, State of Arizona v. Far West Water and Sewer, and People of the State of Michigan v. Patrick Hechstos (phonetic sp.).

So, in this case, I'm going to find that the State of Maryland still has a, the finding, it goes back, and, I decided to go back before the imposition of workmen's

comp, and I found State v. Wilson, a Baltimore and O.R. v. Wilson, which is 117 Md. 198, which is a 1912 that basically started, we don't use this language anymore, but talked about the master-servant. And they say a master must provide his servants with a reasonably safe place in which to work. Okay? So I'm going to find that's a duty.

And even as recently as 2012 in Georgia-Pacific -- and that cite is, I'm sorry, 117 Md. 198. Georgia-Pacific, LLC v. Ferrara, that was a products liability case. And citing, in that case, it talks about in the employer-employee context, an employer owes a duty to its employees to furnish a safe place to work. And they're cited in that case a -- and that's on, oh, I don't know what the page is on this because it's printed out from Westlaw. But they cite Lane v. -- I messed this up. Lane v. Bethlehem Steel Corporation, 107 Md. 269, a 1995. The line depends on whether an employee suffers harm in an environment under the employer's control. And in this particular case, I'm going to find, even though, I mean, he could lease the property. Even though he's not the owner, I feel it's under his control. He's the one who has the keys. He's the one who has access. He's the one who restricts access. He's the one that locks it up at night, that does everything else. He clearly does some maintenance and changes. So he has control. And so in this particular case, and in Albrech, we learn that the act of omission and commission in Maryland in voluntary manslaughter and common law felony generally defined as an unintentional killing done without malice in negligently doing some act, lawful, or by the negligent omission to perform a legal duty.

And so since it's a quantification, okay, in this case,

a jury could find that in this particular case, okay, that, and there's no specific intent. And I don't, I'm going to find that, I'm going to, in Perkins, as I noted before, I think it's a gross deviation from the standard of care that a reasonable person would observe in an act or situation.

And I believe that there is evidence in this case that a jury could find that he was working under conditions that were not safe in the sense that even under their analysis, and even under their limited bill of particulars, that in this particular case, that the circumstances under which he was working, that if a fire broke out, and there is testimony from Firefighter Maxwell that it was very difficult to make ingress or egress around that corner. He talked about that he had to climb over things. It was difficult. There were things that snared you.

And so, in this case where he knew that this person was sleeping down there, did not have another exit. There is no evidence of another exit that was viable, and he knew that that was the only exit that he had, he was aware that there were bars on the windows, that there were, the only exit that he had would be circuitous at best. And I'm going to find that a jury could find that in this particular case, that he breached that standard of care, and that it was, in fact, of a high, very high risk. And therefore, I'm going to deny your motion for judgment of acquittal.

EXCERPTED FROM PAGE 227

√ Digitally signed by Mary Rettig

DIGITALLY SIGNED CERTIFICATE

DEPOSITION SERVICES, INC. hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings in the Circuit Court for Montgomery County in the matter of:

Criminal No. 133838

STATE OF MARYLAND

v.

DANIEL BECKWITT

By:

/s/
MARY RETTIG
Transcriber

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

STATE OF MARYLAND	
v.	Criminal No. 133838C
DANIEL BECKWITT,	
Defendant.	

MOTIONS HEARING

Rockville, Maryland April 18, 2019

DEPOSITION SERVICES, INC.
12321 Middlebrook Road, Suite 210
Germantown, Maryland 20874
(301) 881-3344

EXCERPTED FROM PAGES 132-147

MR. BONSIB: Okay. So, with that, is the Court prepared to hear our renewed Motion for –

THE COURT: Yes.

MR. BONSIB: Okay. So, Your Honor, just so, you know, the record is clear, this motion is being made prior to the formal admission of all evidence, but the Court has indicated you will deem it to have been made –

THE COURT: Right.

MR. BONSIB: -- at the appropriate time after the close of all of the evidence. And so, at this time, we would renew our Motion for Judgment of Acquittal, noting that at this stage, the standard is different. The State no longer is entitled to all inferences in its favor, but rather, the standard is whether a reasonable considering the evidence in this case could find beyond a reasonable doubt that the State has proved each and every element of the two charges of this indictment. And so, we believe that has not happened. We specifically adopt and incorporate the arguments we made at the end of the State's case and I assume the Court will deem those to be adopted without me having to restate each and all of them.

THE COURT: Correct.

MR. BONSIB: I think part of what I would note is that when the Court denied our Motion for Judgment of Acquittal at the end of the State's case, the Court denied it, finding that there was a common law duty in this case and, as I at least interpreted it, that common law duty was one that allowed the State to go forward on a theory espoused in their bill of particulars that there was essentially an unsafe environment and relating to the egress path and, and related stuff.

I don't believe that the Court specifically addressed the remainder of our argument about the other three subject matters in the particulars. And I don't want to leave the record silent on that because if we're going to the jury and the particulars are all viable, then we need an instruction that is drafted to address that. I have prepared a proposed instruction that is based upon the Court's ruling at the end of the Motion for Judgment of Acquittal at the end of the State's case. It basically is the one that relates to the Court's position that Mr. Beckwitt had a duty as an employer to provide a safe environment. But there were three other things, including an allegation that there had to be a smoke detector. That he had a duty to take action after there was some notice of, of a potential fire. And then, a duty to rescue Mr. Khafra from the area of the fire. I don't think that any of those, any of those matters are proper as a predicate for the jury finding against Mr. Beckwitt in this case. But I don't want to leave that issue silent on the record. And if the Court believes otherwise, then we have to fashion a jury instruction that limits the jury to what conduct they are allowed to base the verdict on. And it becomes, I think, important because while the jury can, can look at a lot of pieces of evidence, at the end of the day, the evaluation of that evidence has got to be directed to and limited to the specific conduct that is described in the bill of particulars. And I should also note that whatever the Court's ruling is, we want to make it clear that our instructions are going to be drafted based upon the Court's ruling at the end of the State's case and whatever the Court rules at the end of this case. And by drafting instructions in that fashion, we do not abandon, give up or in any way walk away from our

arguments as to what we think the Court should do with respect to the granting of our Motion for Judgment of Acquittal and the insufficiency of the evidence as to each of the four prongs of allegations. I think it's four. And the bill of particulars.

So, I guess, initially, I think the Court needs to address our position about how the jury gets, if they get, instructions that limit the conduct that can be, that the verdict can be based on as limited by the State's bill of particulars. We, Judge, are also in a situation where I think that the duty the Court found is a duty that is based upon a negligence standard. In this case, the evidence, we would submit, is insufficient, we believe, to even prove negligence, but to the extent that it proves anything, it only proves simple negligence. And simple negligence is not sufficient in this case to carry the State forward with respect to either of these counts. So, if, arguendo, there is a common law duty here, and Mr. Beckwitt is deemed to have violated that by, in a negligent manner, that still is not sufficient to go forward and we don't believe that whatever the evidence is, it can be evaluated and, and determined to be anything more than, than simple negligence.

We also believe that with respect to the issue of the duty, that one must look to the scope of the employment. And in this case, there's no indication that the time of the operative events here that Mr. Khafra was operating within the scope of whatever this employment situation would be. And so, we believe that if that is the case, then we don't even get to the issue of him being in a situation where there is a duty pursuant to a common law employer/employee, you know, relationship. So, when we get beyond that,

then there's a couple of other issues.
THE COURT: Okay. So.
MR. BONSIB: You want me to wait until that –
THE COURT: No. Go ahead. No. Go, I'll hear the entire argument. I apologize. Go ahead.
MR. BONSIB: Okay. All right. So, there is also a requirement that the conduct of the defendant, assuming it meets the other standards of proof, that that conduct bears a direct and substantial relationship, causal relationship to what caused the death of Mr. Khafra. We believe, in this case, that the evidence does not so establish that. When, in this case, the defect was a latent defect not known to either Mr. Khafra, not known to Mr. Beckwitt and he had no reason to suspect it or to anticipate or in any way believe that the position that Mr. Khafra was in was going to be jeopardized or threatened by the potential existence of this latent defect. In addition, when it comes to the conduct in this case, while these are non-intent type crimes, there still is a requisite mens rea that requires, particularly with respect to depraved heart, but perhaps to a lesser extent with respect to gross negligence, that the defendant have a conscious awareness of the risks. And that mens rea is negated in this case by the conduct established in this record by showing what efforts Mr. Beckwitt took to try to save his friend and try to rescue him from this situation.

So, I also believe and will probably get into the, we will get into this more when we get into the jury instruction issues. When we're relying upon this common law duty, I believe we also incorporate into that not only the fact that that is simply a negligence standard basis duty that doesn't relate to when you're charged with these higher levels of negligence. But it

also permits the, the use, although, you know, I recognize that in criminal cases, generally speaking, neither contributory negligence nor assumption of the risks is permitted as defenses in this case. Particularly with respect to assumption of risks, we believe that that is an appropriate factor for the Court to consider in ruling on these motions when the evidence is that Mr. Khafra was fully aware of and conscious of the circumstances into; into which he went. And the evidence shows that. And, therefore, when the Court evaluates whether the duty was somehow, the duty that the Court has alleged Mr. Beckwitt had to Mr. Khafra, that there's this intervening cause, which is Mr. Khafra's, knowing and willing assumption of whatever risk was associated with him having been in the tunnels on each and all of these occasions.

I don't know what that is. Court's indulgence for a moment.

THE COURT: Yes.

MR. BONSIB: So, in, in summary, Your Honor, the standard is different now. We believe that based upon all of this evidence, that there is insufficient evidence for all of the reasons that we have mentioned to meet the standard that the State must meet at this, at this juncture.

THE COURT: Okay. As previous, having ruled, I think that a jury could find that given the circumstances, and let me address, first of all, the bill of particulars, and then I'll ask the State to, well, first of all, with respect to the State, tell me how it is in the bill of particulars that the defendant failed to exercise reasonable efforts within his power to assist in escaping the fire from his home once the defendant became aware of it at all. Why is it that you –

MS. AYRES: So, I think there's, there's one factor that goes towards that.
THE COURT: Okay.
MS. AYRES: And it's, I think it's unreasonable to tell the victim to, and it, this is in the statement of the defendant, to go towards a window. And that's what he said he did in one of his interviews with Michelle Smith. That in his efforts to tell him to leave, he said go to a window. And so, that, I, I would say that's one thing that he did. Other than that, I wouldn't be arguing anything else.
MR. BONSIB: And, Your Honor, I'm not sure we remember hearing that. Is that –
MS. AYRES: That's in the first interview with Michelle Smith.
THE COURT: Let me look at my notes.
MS. AYRES: I can even give you a timing for it.
MR. BONSIB: Okay.
THE COURT: That might be good.
MR. BONSIB: But even if it does, well.
THE COURT: Okay.
MR. BONSIB: We can see first if it exists.
THE COURT: Okay.
MS. AYRES: So –
MR. BONSIB: I don't think you can find that.
MR. BONSIB: I think the language we have is that, I imagine he was trying to get out of the window.
MS. AYRES: It's at, it's not. I've listened to it so many times. It's, I don't, and it's several, he says it several times in that interview. I don't actually have that folder with me.
MR. BONSIB: Could have, but they're saying that he was instructed to.
MS. AYRES: Oh, I have it. Here it is. Okay. So, it is at,

at 52:20. But this is in the original non-redacted version. But it would be around there. I think, oh, I wrote it down. It's 50 minutes and 45 seconds on the exhibit. He says to Michelle Smith, I said, you gotta get out. Windows over there. I was trying to help him with evacuation routes. And then, again, it's in, it's actually in the second hospital video as well. And at 28:20, 28 minutes and 20 seconds, in the second hospital interview. He says he could have gone through this window well. If he made it to the finished part, he would have been fine. At 29:01, he says this whole area was a clear run, or actually, that's, so, it's he could have gone through this window well.

THE COURT: But did –

MS. AYRES: He could go out the window well. I've done it before. He probably just incapacitated. He hit, he got hit with smoke real fast. The window well is the easy to get out of and a lot of egress points. So that goes towards his statement in the first interview that he was actually telling, he thought that Askia could have gotten out of the window well. And he was telling him to do so.

THE COURT: Okay.

MS. AYRES: Just seeing if it's in here again. And he says it again in the second hospital video at one hour and 31 minutes and 10 seconds. He says that, you know, he could have gone through the windows. There were, there were so many actions. So, I think telling Askia that he could have gone through the windows is an unreasonable effort to rescue him.

THE COURT: Okay.

MR. BONSIB: How is that in any way not an effort to assist his friend if he thinks he can escape through the windows? I mean I don't see how that supports in any

way that allegation. To the contrary, it controverts it. Assuming that the, I mean I don't, I'd have to go back and listen to what it says, but assuming, arguendo, that he's saying try to get out of the window. It shows he's exercising what he believes to be, are reasonable efforts to try to assist him in escaping. Unless they're trying to say he was just totally making it up, knowing he wasn't going to be able to get out and it was going to be –

MR. BONSIB: There's just no way that that's a reasonable inference.

MS. AYRES: It's a, it's unreasonable that he wouldn't have been aware in his own house that his windows are not viable exits. And he's, so he is, it, he is telling somebody to get out. Go, it's like saying, you know, oh, there's, there's an emergency. Go through that wall. Right there. I mean it, we've heard testimony from plenty witnesses that none of those windows down there were viable exits. And for the defendant to have this as his home, that he's working in and having someone, or living in and having someone working in there and telling them to go through a totally non-viable exit to escape a fire is unreasonable. And the State should be able to, to, I opened on that and I should be able to argue that to the jury.

THE COURT: Okay.

MR. BONSIB: Well, there's, there's no, there's no evidence that Mr. Beckwitt didn't reasonably believe that or, you know, may have gone out that way himself on other occasions. So.

THE COURT: Okay. Well, the question is whether or not he should, he's in control, the argument, whether you like it or not, is he's in control of his premises. He's an employer. He should know whether or not there's

issues with regards to his own premises. And at that point in time, if he's giving him information that he does or does not know to be correct, okay. That's what they're arguing. You're free to argue that he never, he wouldn't make that information if he didn't truly, I mean I don't think he didn't want him to get out. You're free to argue that. But I think they're free to say that listen, he didn't even, he doesn't even, he's hiring somebody. He doesn't make the ingress or egress that's appropriate, doesn't make sure that there is viable exits that exist in this location. Okay. And, therefore, because there is no viable exit, it's not a safe place to work.

MR. BONSIB: So, when we go to the jury –

THE COURT: Or doesn't, doesn't verify, I should say, but –

MR. BONSIB: So, if, if, if that is, if, if Your Honor's ruling is correct, and the jury is told they can base a verdict on this. And the jury goes back and they conclude all of the other particulars are not proven, what the Court's ruling will mean is if they find that this one statement was made as the State suggested it was made that he can be convicted of both counts based on that one statement.

THE COURT: No, I'm not saying that. But it can be a consideration of many things. If bill of particulars is, one of the reckless acts that created this gross negligence, and it can be more than one. It can be a perfect storm. Right?

MR. BONSIB: It can, it can be more than one. The problem is it can also be one. And if the one is this one, we got a big problem here because that is telling the jury that that simple statement, by itself, in the absence of anything else, is sufficient for them to find,

number one, he was engaged in wrongful conduct. And number two, it supports guilty verdicts.
THE COURT: Well –
MS. AYRES: I would just say it's a part of the negligent conduct that he's alleged to have committed. And telling someone to run out the window that is blocked when it's your house and you're telling them that, is grossly, at the least, grossly negligent conduct.
THE COURT: So, within this statement here is where the path to the only viable exit to outside was lengthened. That allows you to argue the windows in that context. With regards to failing to exercise reasonable efforts within his power to assist Askia Khafra in escaping from the home –
MS. AYRES: If I can argue the window, if Your Honor will let me argue the windows in, in –
THE COURT: Well, I think it does.
MS. AYRES: Okay.
THE COURT: It's easy to open. That's a viable path. It's viable –
MR. AYRES: Then, then, then you can strike that final sentence.
THE COURT: Okay.
MR. BONSIB: And if, I have no, no problem with this evidence being considered by the jury in its overall evaluation, but in terms of the specific conduct on which they can base their verdict –
THE COURT: No, I understand.
MR. BONSIB: Okay.
THE COURT: I understand. And they are willing to make the argument with regards to the other arguments and not with regards to failing to exercise reasonable efforts within the path. Okay.
MR. BONSIB: Okay.

THE COURT: All right. Okay. So, as I was ruling –
MR. BONSIB: Well, and that applies to all of the other particulars. That these will be evidentiary matters that they argue to try to prove the, the, sort of the central one which is the one that talks about the lengthy access –
THE COURT: Yes. They can argue, they can argue what, they can argue the boards in the windows. They can argue the bars on the windows. They can argue the, the length and duration of the path. They can argue the clutter. They can argue whatever they want to. That's a safe working condition that is, or omission of a safe working condition. And I think they set it forth where they said spent extended periods of time where the path to the only viable exit was outside was lengthy and in the basement portion of the path, reduced, unsafe hoarding conditions. Okay.
MR. BONSIB: As long –
THE COURT: And by failing to reasonably respond to warnings of potential fires. I think they're free to argue that. But as to that one, your concern--
MR. BONSIB: What was the last –
THE COURT: Your concern was State alleges defendant failed to exercise reasonable efforts. Correct?
MR. BONSIB: Well, my concern is to all of the particulars –
THE COURT: Okay.
MR. BONSIB: -- except for the one that alleges that, but –
THE COURT: Okay. And I'll address those.
MR. BONSIB: Okay.
THE COURT: Okay.
MS. AYRES: So, I just want to be clear. So, I can argue that statements regarding the windows being a part of

the path?
THE COURT: See, part of the knowledge as to viable exits and his knowledge as to creating an unsafe working condition.
MR. BONSIB: Right.
MS. AYRES: Yes. But what the defendant said to him. Yes. Okay.
THE COURT: Right. So, as to the other one, as to the other ones, I'll make my findings. As to, I think where is a common law just like in Palmer, I think you gave me. And that was a statutory, but I believe, based upon the cases that I have which are Wilson, which I've quoted before and I'll rely on the same, and the Georgia Pacific that there is a common law duty for an employer to have a safe working environment. And within that, I'm going to find that the fact that there is no smoke detector could be, could be a breach of that duty. And, therefore, it's relevant. That having him spend extended periods of time working in the tunnel when he might be sleeping and those things, and, I think that they could argue that that was an unsafe working condition, especially, they wrote, where the path to only viable exit to outside was lengthy and in the basement portion, restricted by debris and unsafe hoarding conditions. And by failing to reasonable respond to warnings of potential fire risks. With regard to that, there's evidence, whether it's to believe or not believe, that when he opened the panel it sparked. Okay. There is that in evidence. In addition, there is in evidence that he smelled smoke and that there was a substantial period of time in between. So, those are things that they can argue in evidence that as it was a breach or an omission, okay. It doesn't necessarily even have to be an act. It's an omission, under Albrecht, of

his duty or what he's required to do. As to an awareness, the element of awareness may be considered by a jury in determining whether the gross deviation of the standard, but there doesn't have to be an actual awareness. It's a reasonable man standard. And that's, and the cases, and I'm citing from Perkins, I cited before and I believe it's a reasonable man standard. It's what a reasonable man would know was dangerous. And as to the level with regards to depraved heart and gross negligence and voluntary manslaughter, it's a matter of degree. And it's a matter of weight. And I'm going to find that that's exclusively within the province of the jury to determine whether or not this act or omission, whatever you want to call it, is very high degree of risk or a grossly negligent manner or omission that created a high risk to human life. And I am going to leave that up to the jury. So, I'm going to deny your motion.

EXCERPTED FROM PAGE 175

√ Digitally signed by Amy Loverde

DIGITALLY SIGNED CERTIFICATE

DEPOSITION SERVICES, INC. hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings in the Circuit Court for Montgomery County in the matter of:

Criminal No. 133838

STATE OF MARYLAND

v.

DANIEL BECKWITT

By:

/s/

Amy Loverde

Transcriber

E-FILED
Court of Appeals
Suzanne C. Johnson,
Clerk of Court
3/25/22 9:12AM

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

/s/ Joseph M. Getty
Chief Judge

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

E-FILED
Court of Appeals
Suzanne C. Johnson,
Clerk of Court
3/25/22 9:12AM

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 the 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 is hereby, DENIED.

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

U.S.C.A. Const. Amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S.C.A. Const. Amend. XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in

any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State. Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability. Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void. Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

U.S.C.A. Const. Art. VI, Cl. 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the

Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

MD Constitution, Declaration of Rights, Art. 5

(a)(1) That the Inhabitants of Maryland are entitled to the Common Law of England, and the trial by Jury, according to the course of that Law, and to the benefit of such of the English statutes as existed on the Fourth day of July, seventeen hundred and seventy-six; and which, by experience, have been found applicable to their local and other circumstances, and have been introduced, used and practiced by the Courts of Law or Equity; and also of all Acts of Assembly in force on the first day of June, eighteen hundred and sixty-seven; except such as may have since expired, or may be inconsistent with the provisions of this Constitution; subject, nevertheless, to the revision of, and amendment or repeal by, the Legislature of this State. And the Inhabitants of Maryland are also entitled to all property derived to them from, or under the Charter granted by His Majesty Charles the First to Caecilius Calvert, Baron of Baltimore. (2) Legislation may be enacted that limits the right to trial by jury in civil proceedings to those proceedings in which the amount in controversy exceeds $15,000.

(b) The parties to any civil proceeding in which the right to a jury trial is preserved are entitled to a trial by jury of at least 6 jurors.

(c) That notwithstanding the Common Law of England, nothing in this Constitution prohibits trial by jury of less than 12 jurors in any civil proceeding in which the right to a jury trial is preserved.

Effective: December 1, 2010

6 Anne, Chapter 31 § VI (1707)

And be it further enacted by the Authority aforesaid, That no Action, Suit, or Process whatsoever, shall be had, maintained, or prosecuted against any Person in whose House or Chamber any Fire Shall, from and after the said first Day of May, accidentally begin, or any Recompence be made by such Person for any Damage suffered or occasioned thereby; any Law, Usage, or Custom to the contrary notwithstanding: And if any Action shall be brought for any Thing done in pursuance of this Act, the Defendant may plead the General Issue, and give this Act in Evidence; and in case the Plaintiff become non-suit or discontinue his Action or Suit, or if a Verdict pass against him, the Defendant shall recover Treble Costs.

10 Anne, Chapter 14, § 1 (1711)

WHEREAS divers temporary Laws, which by Experience have been found useful and beneficial, are expired and near expiring, therefore for reviving and continuing the same, Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the Same, That the Clause herein after-mentioned in the Act made in the sixth Year of her present Majesty's Reign, intituled, An Act for the better preventing Mischiefs that may happen by Fire, videlicet; And be it further enacted by the Authority aforesaid aforesaid, That no Action, Suit or Process whatsoever, shall be had, maintained, or prosecuted against any Person in whose House or Chamber any Fire shall, from and after the said first Day of May, accidentally begin, or any Recompence be made by

such Person for any Damage suffered or occasioned thereby; any Law, Usage, or Custom to the contrary notwithstanding: And if any Action shall be brought for any Thing done in pursuance of this Act, the Defendant may plead the General Issue, and give this Act in Evidence; and in case the Plaintiff become non-suit or discontinue his Action or Suit, or if a Verdict pass against him, the Defendant shall recover Treble Costs: Which Clause being made temporary, and being expired, shall be, and are hereby revived and made perpetual.

12 George III, Chapter 73, § XXXVII (1772)

And be it further enacted by the Authority aforesaid, That no Action, Suit, or Process whatever, shall be had, maintained, or prosecuted against any person in whose House or Chamber any Fire shall, from and after the said Twenty-fourth Day of June, One thousand seven hundred and seventy-two, accidentally begin, nor shall any Recompence be made by such Person for any Damage suffered or occasioned thereby; any Law, Usage, or Custom to the Contrary notwithstanding: And in such Case, it any Action shall he brought, the Defendant may plead the General issue, and give this Act, and the Special Matter in Evidence, at any Trial thereof to be had; and in case the Plaintiff shall become nonsuited, or discontinue his Action or Suit, or if a Verdict shall pass against him, the Defendant shall recover Treble Costs: Provided that nothing in this Act contained shall extend to defeat or make void any Contract or Agreement made between Landlord and Tenant.

14 George III, Chapter 78, § LXXXVI

And be it further enacted by the Authority aforesaid,

That no Action, Suit, or Process whatever, shall be had, maintained, or prosecuted, against any Person in whose House, Chamber, Stable, Barn, or other Building, or on whore Estate any Fire shall, after the said twenty-fourth Day of June, accidentally begin, nor shall any Recompence be made by such Person for any Damage suffered thereby; any Law, Usage, or Custom, to the contrary notwithstanding: And in such Case, if any Action be brought, the Defendant may plead the General Issue, and give this Act, and the special Matter in Evidence, at any Trial thereupon to be had; and in case the Plaintiff become nonsuited, or discontinue his Action or Suit, or if a Verdict pass against him, the Defendant shall recover Treble Colts; provided that no Contract or Agreement made between Landlord and Tenant shall be hereby defeated, or made void.

MD. Code Ann., Public Safety § 6-206
State Fire Prevention Code

(a)(1)(i) To protect life and property from the hazards of fire and explosion, the Commission shall adopt comprehensive regulations as a State Fire Prevention Code.

(ii) The State Fire Prevention Code shall comply with standard safe practice as embodied in widely recognized standards of good practice for fire prevention and fire protection.

(iii) The State Fire Prevention Code has the force and effect of law in the political subdivisions of the State.

(2)(i) Except as provided in subparagraph (ii) of this paragraph, the regulations adopted under this subsection do not apply to existing installations, plants, or equipment.

(ii) If the Commission determines that an installation, plant, or equipment is a hazard so inimicable to the public safety as to require correction, the regulations adopted under this subsection apply to the installation, plant, or equipment.

Fee schedule

(b)(1) The Commission shall adopt regulations to establish and administer a fee schedule for:

(i) reviewing building plans to ensure compliance with the State Fire Prevention Code; and

(ii) conducting inspections in accordance with Subtitle 3 of this title.

(2) The Commission shall review the fee schedule annually to ensure that the money collected at least covers the costs of administering plan review and conducting inspections.

(3) This subsection does not limit the authority of a local authority to establish a fee schedule for plan review and inspections conducted by the local authority.

Hearings

(c)(1) Before adopting a regulation, the Commission shall hold at least one public hearing on the proposed regulation.

(2)(i) The Commission shall publish notice of the hearing at least 15 days before the hearing in a newspaper of general circulation in the State.

(ii) At the same time, the Commission shall send a copy of the notice to each person who has filed a request for notification with the Commission.

(iii) The notice shall contain the time, place, and subject of the hearing and the place and times to examine the proposed regulation.

More stringent law governs

(d)(1) The State Fire Prevention Code establishes the minimum requirements to protect life and property from the hazards of fire and explosion.

(2) If a State or local law or regulation is more stringent than the State Fire Prevention Code, the more stringent law or regulation governs if the more stringent law or regulation is:

(i) not inconsistent with the State Fire Prevention Code; and

(ii) not contrary to recognized standards and good engineering practices.

(3) If there is a question whether a State or local law or regulation governs, the decision of the Commission determines:

(i) which law or regulation governs; and

(ii) whether State and local officials have complied with the State Fire Prevention Code.

Copies of State Fire Prevention Code

(e) The Commission shall make available for public information a copy of the State Fire Prevention Code, and any amendments to the State Fire Prevention Code, in each county courthouse in the State.

Added by Acts 2003, c. 5, § 2, eff. Oct. 1, 2003.

Effective to September 30, 2017.

MD. Code Ann., Public Safety § 6-601

Violation of title or regulation

(a) A person may not knowingly violate this title or a regulation adopted by the Commission.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 10 days or a fine not exceeding $1,000 or both.

Added by Acts 2003, c. 5, § 2, eff. Oct. 1, 2003.

MD. Code Ann., Public Safety § 9-106
Enforcement of smoke alarm requirements

(a) Enforcement. -- Smoke alarm requirements shall be enforced by the State Fire Marshal, a county or municipal fire marshal, a fire chief, the Baltimore City Fire Department, or any other designated authority having jurisdiction.

(b) Responsibility of building permit applicant. --

(1) The building permit applicant is responsible for the proper installation of required smoke alarms in residential occupancies constructed on or after July 1, 2013.

(2) If a building permit is not required, the general contractor shall bear the responsibility described in paragraph (1) of this subsection.

(c) Responsibility of landlord or property owner. -- The landlord or property owner is responsible for the installation, repair, maintenance, and replacement of smoke alarms required by this subtitle.

(d) Removal or tampering with smoke alarms prohibited. -- Occupants of a residential occupancy may not remove or tamper with a required smoke alarm or otherwise render the smoke alarm inoperative.

(e) Occupant responsible for testing; notification of failure or malfunction. --

(1) Testing of smoke alarms is the responsibility of the occupant of the residential unit.

(2)(i) A tenant shall notify the landlord in writing of the failure or malfunction of a required smoke alarm.

(ii) The written notification required under subparagraph (i) of this paragraph shall be delivered by certified mail, return receipt requested to the landlord, or by hand delivery to the landlord or the landlord's agent, at the address used for the payment

of rent.

(iii) If the delivery of the notification is made by hand as described in subparagraph (ii) of this paragraph, the landlord or the landlord's agent shall provide to the tenant a written receipt for the delivery.

(iv) The landlord shall provide written acknowledgment of the notification and shall repair or replace the smoke alarm within 5 calendar days after the notification.

(f) Use of battery operated smoke alarms. --

(1) If a residential unit does not contain alternating current (AC) primary electric power, battery operated smoke alarms or smoke alarm operation on an approved alternate source of power may be permitted.

(2) Battery operated smoke alarms shall be sealed, tamper resistant units incorporating a silence/hush button and using long-life batteries.

(g) Smoke alarm combined with carbon monoxide alarm. -- A smoke alarm may be combined with a carbon monoxide alarm if the device complies with:

(1) this subtitle;

(2) Title 12 of this article; and

(3) Underwriters Laboratories (UL) Standards 217 and 2034.

Added by Acts 2013, c. 594, § 1, eff. July 1, 2013.

Effective to October 1, 2018.

Code of Maryland Regulations (COMAR) Title 29

DEPARTMENT OF STATE POLICE

Subtitle 06 FIRE PREVENTION COMMISSION

Chapter 01 Fire Prevention Code

Authority Public Safety Article, §§6-206 and 6-501, Annotated Code of Maryland

.01 Title.

This chapter shall be known and may be cited as the .State Fire Prevention Code.

Regulations .01 adopted effective August 6, 2001 (28:15 Md. R. 1400)

.03 Application and Scope

A. This chapter applies to both new and existing buildings and conditions. In various sections there are specific provisions for existing buildings that may differ from those for new buildings. Unless otherwise noted, this chapter does not apply to facilities, equipment, structures, or installations that were existing or approved for construction or installation before the effective date of this chapter, except in those cases in which it is determined by the authority having jurisdiction (AHJ) that the existing situation constitutes a hazard so inimical to the public welfare and safety as to require correction. The requirements for existing buildings and conditions may be modified if their application clearly would be impractical in the judgment of the AHJ, but only if it is clearly evident that a reasonable degree of safety is provided. The State Fire Marshal or the legally appointed designee has the authority to make a determination of the applicability of this chapter to any building or condition in it, subject to the right of appeal to the State Fire Prevention Commission as prescribed in COMAR 29.06.02. B. Repealed. C. The provisions of this chapter do not apply in Baltimore City except to those buildings and conditions specifically prescribed in Public Safety Article, Title 6, Subtitle 4, Annotated Code of Maryland. D. The provisions of this chapter do not apply to buildings used solely as dwelling houses for not more than two families as prescribed in Public

Safety Article, Title 6, Subtitle 3, Annotated Code of Maryland.

Regulations .03 adopted effective August 6, 2001 (28:15 Md. R. 1400)

Regulation .03B repealed effective January 1, 2010 (36:25 Md. R. 1956)

.06 Incorporation by Reference

A. In this chapter, the following documents are incorporated by reference, with the amendments specified in this chapter. Tentative interim amendments and supplements to these documents and to the codes and standards referenced in these documents are not included as part of this chapter unless specifically adopted by this chapter.

B. Documents Incorporated.

(1) NFPA 1 Fire Code (2015 Edition).

(2) NFPA 101 Life Safety Code (2015 Edition).

(3) International Building Code as incorporated by reference by the Maryland Building Performance Standards, which can be found under COMBAR 05.02.01.02-1.

C. Incorporation by Reference Locations. The documents incorporated by reference in §B of this regulation are available for inspection in State depository libraries.

Regulations .06 adopted effective August 6, 2001 (28:15 Md. R. 1400)

Regulation .06B, C amended effective January 1, 2010 (36:25 Md. R. 1956); January 1, 2013 (39:23 Md. R. 1533)

Regulation .06 amended effective 42:23 Md. R. 1436, eff.1/1/2016

Effective to October 7, 2019

NFPA 1 Fire Code (2015 ed.)
Chapter 4 General Requirements

§ 4.4 Fundamental Requirements

§ 4.4.3 Means of Egress

§ 4.4.3.1 Unobstructed Egress

§ 4.4.3.1.1 In every occupied building or structure, means of egress from all parts of the building shall be maintained free and unobstructed.

§ 4.4.3.1.2 No lock or fastening shall be permitted that prevents free escape from the inside of any building other than in health care occupancies and detention and correctional occupancies where staff are continually on duty and effective provisions are made to remove occupants in case of fire or other emergency.

§ 4.4.3.1.3 Means of egress shall be accessible to the extent necessary to ensure reasonable safety for occupants having impaired mobility.

§ 4.4.3.2 Awareness of Egress System

§ 4.4.3.2.1 Every exit shall be clearly visible, or the route to reach every exit shall be conspicuously indicated.

§ 4.4.3.2.2 Each means of egress, in its entirety, shall be arranged or marked so that the way to a place of safety is indicated in a clear manner.

§ 4.4.3.2.3 Lighting Illumination of means of egress shall be provided. [See 5.3.4(10).]

§ 4.4.4* Occupant Notification In every building or structure of such size, arrangement, or occupancy that a fire itself could not provide adequate occupant warning, fire alarm systems shall be provided where necessary to warn occupants of the existence of fire.

Chapter 11 Building Services

§ 11.1 Electrical Fire Safety

§ 11.1.1 General

Section 11.1 shall apply to permanent and temporary electrical appliances, equipment, fixtures, and wiring.

§ 11.1.2 Permanent Wiring, Fixtures, and Equipment

§ 11.1.2.1 All new electrical wiring, fixtures, appliances and equipment shall be installed in accordance with NFPA 70, *National Electrical Code.*

§ 11.1.2.2 Unless determined to present an imminent danger, existing electrical wiring, fixtures, appliances, and equipment shall be permitted to be maintained in accordance with the edition of NFPA 70, *National Electrical Code,* in effect at the time of the installation.

§ 11.1.2.3 Permanent wiring abandoned in place shall be tagged or otherwise identified at its termination and junction points as "Abandoned in Place" or removed from all accessible areas and insulated from contact with other live electrical wiring or devices.

§ 11.1.3 Multiplug Adapters

§ 11.1.3.1 Multiplug adapters, such as multiplug extension cords, cube adapters, strip plugs, and other devices, shall be listed and used in accordance with their listing.

§ 11.1.3.2 Multiplug adapters shall not be used as a substitute for permanent wiring or receptacles.

§ 11.1.4 Relocatable Power Taps

§ 11.1.4.1 Relocatable power taps shall be of the polarized or grounded type with overcurrent protection and shall be list.

§ 11.1.4.2 The relocatable power taps shall be directly connected to a permanently installed receptacle.

§ 11.1.4.3 Relocatable power tap cords shall not extend through walls, ceilings, or floors; under doors or floor coverings; or be subject to environmental or physical damage.

§ 11.1.5 Extension Cords

§ 11.1.5.1 Extension cords shall be plugged directly into an approved receptacle, power tap, or multiplug adapter and shall, except for approved multiplug extension cords, serve only one portable appliance.
§ 11.1.5.2* The ampacity of the extension cords shall not be less than the rated capacity of the portable appliance supplied by the cord.
§ 11.1.5.3 The extension cords shall be maintained in good condition without splices, deterioration, or damage.
§ 11.1.5.4 Extension cords shall be grounded when servicing grounded portable appliances.
§ 11.1.5.5 Extension cords and flexible cords shall not be affixed to structures; extend through walls, ceilings, or floors, or under doors or floor coverings; or be subject to environmental or physical damage.
§ 11.1.5.6 Extension cords shall not be used as a substitute for permanent wiring.

MONTGOMERY COUNTY MARYLAND CODE
Code of Montgomery County Regulations (COMCOR)
Chapter 22. FIRE SAFETY CODE - REGULATIONS
§ 22-40. Exits and means of egress in buildings generally.
(d) In other than individual dwelling units no person shall place, store or keep, or permit to be placed, stored or kept any materials the presence or burning of which would obstruct or render hazardous an exit.
Adopted by Resolution 17-1270 of the Montgomery County Council, Effective November 25, 2014

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

STATE OF MARYLAND :
v. : CRIMINAL NUMBER:
DANIEL BECKWIT : 133838C
DEFENDANT :

INDICTMENT

COUNT ONE: MURDER IN THE SECOND DEGREE

The Grand Jurors of the State of Maryland, for the body of Montgomery County, upon their oaths and affirmations, present that DANIEL BECKWITT, on or about September 10, 2017, in Montgomery County, Maryland, did feloniously kill and murder Askia Khafra, in violation of the common law and Section 2-204 of the Criminal Law Article against the peace, government, and dignity of the State.

COUNT TWO: INVOLUNTARY MANSLAUGHTER

The Grand Jurors of the State of Maryland, for the body of Montgomery County, upon their oaths and affirmations, present that DANIEL BECKWITT, on or about September 10, 2017, in Montgomery County, Maryland, did feloniously, without malice aforethought, kill and slay Askia Khafra, in violation of the common law and Section 2-207 of the Criminal Law Article against the peace, government, and dignity of the State.

FILED MAY 31 2018 Clerk of the Circuit Court
Montgomery County, Md.
TRUE BILL
FOREPERSON OF THE GRAND JURY
/s/ [illegible]
STATE'S ATTORNEY FOR
MONTGOMERY COUNTY, MARYLAND
/s/ John J. McCarthy
Upon the information of:
Det. Edward Day

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

STATE OF MARYLAND :
v. : CRIMINAL NUMBER:
DANIEL BECKWIT : 133838C
DEFENDANT :

STATE'S RESPONSE TO DEFENDANT'S REQUEST FOR BILL OF PARTICULARS

1. The defendant is not entitled as a matter of right to a bill of particulars.
2. The state is not required to provide all evidence as to the charges against the defendant.
3. A bill of particulars has never been utilized to require the State to elect a theory upon which to proceed.
4. When furnishing a bill of particulars, the State need not specify and make an election between the facts relevant to proving its case.
5. With these parameters in mind, the State further particularizes the conduct that forms the basis of the charges of Second Degree Murder (that the defendant acted with extreme disregard for human life), and for Manslaughter (that the defendant acted in a grossly negligent manner).
6. With regards to the defendant's conduct, the State alleges that the defendant acted with extreme disregard for human life and in a grossly negligent manner by creating an underground tunnel in his home with no smoke detector, for which he prioritized secrecy over safety, and by having Askia Khafra spend extended periods of time working in that tunnel, where the path to the only viable exit to outside was lengthy, and in, the basement portion of the path, restricted by debris and unsafe hoarding conditions, and by failing to reasonable respond to warnings of potential fire risk. Furthermore, the State alleges the defendant failed to exercise reasonable efforts within his power to assist Askia Khafra in escaping the fire from his home once the defendant became aware of it.

7. With regards to the cause of the fire, based on a combination of the opinions of Fire Investigator Dan Maxwell (that the fire originated in the area of the workbench) and ATF Electrical Engineer Jeremey Neagle (that there was damage on an outlet in the area of the workbench consistent with a poor connection, which can be an ignition source), the State will argue that the fire was an accidental fire caused by a poor connection outlet in the area of the workbench.
8. The State reserves the right to supplement this Bill of Particulars should additional information come to the attention of the State.
9. Therefore, under Maryland Rule 4-241 and Dzikowski v. State, 436 Md. 430 (2013), with this Response to Defendant's Request for Bill of Particulars, the State has now provided the defendant with "the basic facts supporting the [indictment's] charges." Id. At 453.

WHEREFORE, the State of Maryland respectfully requests this Honorable Court to find the Defendant's Request for a Bill of Particulars to be SATISFIED.

Respectfully submitted,
John J. McCarthy
State's Attorney for
Montgomery County Maryland

By: /s/ Marybeth Ayres
Marybeth Ayers
Doug Wink
Assistant State's Attorneys
50 Maryland Avenue
Rockville, MD 20850
(240) 777-7300

IN THE
COURT OF SPECIAL APPEALS OF MARYLAND

SEPTEMBER TERM, 2019
NO. 0794

DANIEL BECKWITT,
Appellant

v.

STATE OF MARYLAND
Appellee

APPEAL FROM THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
THE HONORABLE MARGARET M. SCHWEITZER
PRESIDING OVER A JURY

BRIEF OF APPELLANT

ROBERT C. BONSIB, ESQ.
MEGAN E. COLEMAN, ESQ.

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EXCERPTED FROM PAGES 17-19

Assuming, *arguendo*, there was a common law duty to have a smoke detector or to provide emergency egress, those duties have been pre-empted by statutory enactments.

In *Salvatore v. Cunningham*, 305 Md. 421 (1986), when an argument was made that there was a common law obligation on the part of the property owner to install smoke detectors or other warning devices, the Maryland Court of Appeals

> [F]ound the argument relative to a common law obligation to be without merit. If any common law obligation ever existed it was rooted out when the General Assembly passed Ch. 860 of the Acts of 1975 which by its terms exempted residential buildings erected prior to July 1, 1975 from any obligation to install smoke detectors.

305 Md. 421, 430 (1986).

Chapter 860 of the Acts of 1975 eventually became Public Safety Article ("P.S.") Title 9. P.S. § 9-106(c) states: "The landlord or property owner is responsible for the installation, repair, maintenance, and replacement of smoke alarms require by this subtitle." App. 221. Beckwitt was neither the landlord nor property owner of the residence, and therefore was without obligation to install smoke detectors according to this article.

Furthermore, the State Fire Prevention Code, codified in the Code of Maryland Regulations ("COMAR") 29.06.01, and its enabling statute, P.S. § 6-206(a)(1)(i), is an "entire body of law [ ] occupied on a comprehensive basis" as to fire safety and egress, and therefore preempts any prior laws in the field of fire safety and egress. *Genies v. State*, 426 Md. 148, 155 (2012) (citing *Robinson v. State*, 353 Md. 683 (1999)). App. 215, 225.

COMAR 29.06.01.06 incorporates by reference National Fire Protection Association ("NFPA") 101. NFPA 101 § 4.5.3.2 requires that "In every occupied building or structure, means of egress from all parts of the building shall be maintained free and unobstructed." App. 229. This brings emergency egress within the preemption's purview. However, single-family residences are expressly exempted from compliance as stated in COMAR 29.06.01.03.D: "The provisions of this chapter do not apply to buildings use solely as dwelling houses for not more than two families..." App. 227. As in *Salvatore v. Cunningham*, this represents a de-regulating negative preemption. *See CSX v. Miller*, 159 Md. App. 123, 171-73 (2004). This is so because the conduct falls within the scope of comprehensive regulatory authority delegated but not fully exercised. *See Napier v. Atlantic Coast Line R. Co.*, 272 U.S. 605, 613 (1926). Finally, the code's savings clause found at P.S. § 6-206(d)(2) only saves a "more stringent... state or local law or regulation." This does not encompass the common law, as is explained in *Sprietsma v. Mercury Marine*, 537 U.S. 51, 62-63 (2002). App. 216.

There is a corresponding local regulation found in the Montgomery County Fire Safety Code, Sec. 22-40 called "Exits and means of egress in buildings generally" providing "(d) *In other than individual dwelling units* no person shall place, store or keep, or permit to be placed, store or kept any materials the presence or burning of which would obstruct or render hazardous an exit." App. 230. (Emphasis added). This regulation likewise exempts Beckwitt from duties regarding means of egress.

"There can be no negligence where there is no duty." *Hartford Ins. Co. v. Manor Inn of Bethesda*, 335 Md. 135, 148 (1994). Therefore, commission of grossly negligent manslaughter and/or depraved heart murder by omission of smoke alarms and/or emergency egress in a single family

dwelling is legally impossible.

EXCERPTED FROM PAGES 31-32

This Case Does Not Rise to Manslaughter as None of the Omissions were of "Malum In Se" Character, or even "Malum Prohibitum."

Beckwitt adopts and incorporates his arguments, supra. Additionally, the tunnels, the hoarding conditions, the lack of a smoke detector, and failure to respond to warning signs are not of *malum in se* character, nor are they inherently dangerous. The acts, as applied to Beckwitt, are not even *malum prohibitum*, as no regulatory code reaches his status as an occupant, but not homeowner, or landlord, or the single-family dwelling.

In *Pagotto v. State*, which was a gross negligence manslaughter case, this Court recognized that "for a common law felony such as manslaughter, the quality of gross criminal negligence has to be something inherently dangerous, something of a *malum in se* character, rather than a mere *malum-prohibitum*-type of regulatory violation that may vary from year to year and from county to county." 127 Md. App. at 332.

The conditions in Beckwitt's case do not meet these requirements and therefore cannot serve as a basis of liability for gross negligence involuntary manslaughter.

Proof of simple negligence, no matter how much is proven, is still no evidence of gross negligence.

IN THE
COURT OF SPECIAL APPEALS OF MARYLAND

SEPTEMBER TERM, 2019
NO. 0794

DANIEL BECKWITT,
Appellant

v.

STATE OF MARYLAND
Appellee

APPEAL FROM THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
THE HONORABLE MARGARET M. SCHWEITZER
PRESIDING OVER A JURY

REPLY BRIEF OF THE APPELLANT

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EXCERPTED FROM PAGES 7-8

Multiple extension cords and the power outage.

Appellee finds significance in Beckwitt's statement that the *night before* the fire, there was a "major electrical failure" that caused a loss of power to the tunnels. (Appellee Brief 2, 8). This Court should not infer anything more than a typical power outage where there is no other support for the statement. State v. Morrison ---A.3d---, 2020 WL 4333684, *13 (July 28, 2020).

Neither Neagle nor Maxwell testified that multiple electrical cords or the power outage contributed to the fire or to Khafra's inability to escape. The extension cords causing the power outage were on a different electrical circuit than the outlet with the latent defect that cause the fire. T 4/16 66-67, 75-76, 90, 94. In fact, there was no electrical cord attached to the defective outlet that caused the fire. T. 4/12 44-45. Maxwell refused to speculate on the correlation between electrical issues, and further opined that Beckwitt's troubleshooting of those issues was reasonable T. 4/11 237-38.

Assuming *arguendo*, the "major electrical failure" the night before was notice of a *patent* defect, it does not make failing to discover a *latent* defect which caused the fire, actual or constructive notice for purposes of negligence. *See Colbert v. Mayor and City Council of Balitmore*, 235 Md.App. 581, 589 (2018).

IN THE
COURT OF SPECIAL APPEALS OF MARYLAND

SEPTEMBER TERM, 2019

NO. 794

DANIEL BECKWITT,
Appellant,
v.
STATE OF MARYLAND
Appellee.

APPEAL FROM THE CIRCUIT COURT
FOR MONTGOMERY COUNTY

(Hon. Margaret Schwetizer, Trial Judge)

BRIEF OF APPELLEE

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EXCERPTED FROM PAGE 40

Beckwitt owed a legal duty to Khafra and his failure to perform that duty was grossly negligent

Only if this Court finds that the evidence was insufficient to convict Beckwitt of second-degree depraved heart murder and grossly negligent involuntary manslaughter does it have to consider whether the evidence was sufficient to support the involuntary manslaughter conviction under the "legal duty" theory. It was.

September Term, 2021
No. 16

IN THE
COURT OF APPEALS OF MARYLAND

DANIEL BECKWITT,
Appellant / Cross-Appellee,
v.
STATE OF MARYLAND
Appellee / Cross-Appellant.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

OPENING BRIEF OF APPELLANT/CROSS-APPELLEE

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EXCERPTED FROM PAGES 22-49
ARGUMENTS

I. The circuit court lacked subject matter jurisdiction to enter a conviction and sentence on a common law charge resulting from an accidental housefire against an occupant of a home.

"Perhaps the universal silence in our courts upon the subject of any such responsibility of the [occupant] for accidental fires, is presumptive evidence that the doctrine of [negligence for failing to provide egress from an accidental fire] has never been introduced, and carried to that extent, in the common law jurisprudence[.]" *Rogers v. Atl., G. & P. Co.*, 213 N.Y. 246, 250, 107 N.E. 661 (N.Y. 1915); *accord Kellogg v. Chicago & N.W. Ry. Co.*, 26 Wis. 223, 272 (Wis. 1870).

A. Standard of Review

"[A] challenge to the trial court's subject matter jurisdiction may be raised on appeal even if not raised in or decided by the trial court."[3] *Lane v. State*, 348 Md. 272, 278 (1997); Maryland Rule 8-131(a). This is "based on the premise that a judgment entered on a matter over which the court had no subject matter jurisdiction is a nullity and, when the jurisdictional deficiency comes to light in...an appeal...

[3]At trial, Beckwitt did challenge the trial court's ability to enter a conviction on a common law offense that was not cognizable, arguing "it is legally not possible to provide a basis for these charges by not providing adequate egress from a single-family home because there is no statutory or common law duty." E. 1255. Beckwitt further argued that any common law duties were "abrogated by enactment of the Maryland State Fire Prevention Code" and its applicable regulation. E. 1255-1256.

ought to be declared so." *Id.* at 278 (internal citations omitted). "[A] court may not validly enter a conviction on a charge that does not constitute a crime and [ ] the deficiency in any such judgment is jurisdictional in nature." *Id.*

This Court must determine whether the trial court had the power to adjudicate a "class of cases within which a particular one falls." *Downes v. Downes*, 388 Md. 561, 575 (2005) (internal citation omitted). An unintentional homicide is not cognizable at common law if it included the instrumentality of an accidental house fire that caused death. *Accord State v. Gibson*, 4 Md. App. 236, 240, *aff'd*, 254 Md. 399 (1969) (an unintentional homicide is not cognizable at common law if it included the instrumentality of a motor vehicle that caused death). There are no "condition precedents", i.e., facts, that can be proven that will allow the offense to become cognizable. *Carroll v. Konits*, 400 Md. 167 (2007).

Similarly, if the conduct has been preempted such that Beckwitt should not have been charged, convicted, or sentenced, then he was given an illegal sentence which may be reviewed by this Court at this time. *See Roary v. State*, 385 Md. 217, 225-26 (2005), *overruled on other grounds by State v. Jones*, 451 Md. 680, 704 (2017) (A "sentence imposed under an entirely inapplicable statute is an illegal sentence which may be challenged at any time."). *Accord Fisher v. State*, 367 Md. 218, 239-40 (2011) (reviewing claim that felony murder doctrine is inapplicable to a homicide resulting from child abuse because, if true, the sentence imposed on the felony murder conviction would be an illegal sentence).

This Court must review several statutes for this issue. This Court reviews interpretations and applications of constitutional, statutory, or case law, under a de novo

standard of review. *Peterson v. State*, 467 Md. 713, 725 (2020) (internal citation omitted).

In reviewing the statutes at issue, this Court must look "to the language of the statute, giving it is natural and ordinary meaning" on the "tacit theory" that the legislating body "is presumed to have meant what it said and said what it meant." *Id.* At 727.

B. The common law courts have been legislatively preempted from jurisdiction over accidental fires.

1. The English Statutes

Medieval common law courts of England developed a doctrine of absolute liability upon occupiers of land for the occurrence of fires, this doctrine being called ignis suus or "his fire." *Koos v. Roth*, 652 P.2d 1255, 1262 (Or. 1982); *Turbverville v. Stampe*, (1697) 91 Eng. Rep. 1072, 1 Ld Raym. 264

In 1707, this doctrine was legislatively abrogated by "An Act for the better preventing Mischiefs that may happen by Fire." *See 6 Ann.*, Chapter 31[4], Section 6 (1707) which provided:

> That *no action*, suit, or process whatsoever, shall be had, maintained, *or prosecuted against any person in whose house* or chamber *any fire shall*, from and after the said first day of May, accidentally begin, or any recompence be made by such law, usage, or custom to the contrary notwithstanding.

APP. 8 (emphasis added).

[4]Chapter 31 is widely misreported as Chapter 3 in judicial opinions.

The Act banned any action, including prosecutions resulting from damage or injury caused by an accidental fire in a person's home. As further evidence that criminal prosecutions were contemplated by this Act, Section 3 of the same Act, is a provision which explicitly allowed criminal prosecutions and punishment in special circumstances, not applicable here, against servants who negligently started a fire. APP. 8

Section 6 of Anne's Act of 1707 was made permanent by 10 *Ann.*, Chapter 14, Section 1 (1711). APP. 9. This act was later reenacted as 12 Geo. III, Chapter 73, Section 37 (1772) which added a savings clause for contracts and agreements between landlords and tenants. APP. 10. Section 34 of that act sought to deter the willful setting of fire to one's home, and Section 35 reinstated criminal penalties for one's servant who negligently set a fire, thereby indicating an exception for criminal prosecutions in certain circumstances. APP. 10.

Finally, in 1774, this statutory defense was expanded by the passage of the Fires Prevention (Metropolis) Act of 1774, 14 Geo. III, Chapter 78, Section 86, which expanded the protected premises of "house or chamber" to include fires that accidentally started in one's "house, chamber, stable, barn, or other building, or on whose estate." APP. 11.

Because all four acts cover dwelling houses they have no difference relevant to the matter sub judice.

2. Incorporation Into Maryland Common Law

Article 5 of the Maryland Declaration of Rights provides:

That the Inhabitants of Maryland are entitled to the Common Law of England, and the trial by Jury, according to the course of that Law, and to the benefit of the English Statutes as existed on the Fourth day of July, seventeen hundred and seventy-six; and which, by experience, have been found

applicable to their local and other circumstances, and have been introduced, used and practiced by the Courts of Law or Equity; and also of all Acts of Assembly in force on the first day of June, eighteen hundred and sixty-seven; except such as may have since expired, or may be inconsistent with the provisions of this Constitution; subject, nevertheless, to the revision of, and amendment or repeal by, the Legislature of this State.

Md. Decl. Rts., art.5(a)(1). APP. 4.

As of July 4, 1776 there existed this Fire Prevention (Metropolis) Act of 1774, which stated in relevant part:

> *That no action, suit, or process whatever, shall be had, maintained, or prosecuted, against any person in whose house, chamber, stable, barn, or other building, or on whose estate any fire shall, after the said twenty-fourth day of June, accidentally begin...*

14 Geo. 3, c. 78, § 86 (1774) (emphasis added). APP. 11.

As previously discussed, this statute derived from Statute 6 Ann., c. 31, § 6 (1707); Statute 10 Ann., c. 14, § 1 (1711), and Statute 12 Geo. III, c. 73 (1772).

Courts in the United States "have found these statutes applicable to their local and other circumstances, and have been introduced, used and practiced by the Courts of Law or Equity" and therefore the statutes have met the requirements of Md. Decl. Rts., art.5(a)(1).

In *Lansing v. Stone*, 37 Barb. 15 (N.Y. Gen. Term. 1862), the New York Supreme Court determined that the Statute of Anne (6 *Anne*, Ch. 31), as re-enacted by 14 Geo. III, "is part of the common law of this state[.]" *Id.* at 18. In so finding, the Court determined that:

> The common law of the mother country as modified

> by positive enactments, together with the statute laws which were in force at the time of the emigration of the colonists, because in fact the common law...The statute law of the mother country, therefore, when introduced into the colony of New York, by common consent, because it was applicable to the colonists in their new situation, and not by legislative enactment, became a part of the common law of the province.

Id. The Court determined that 14 *Geo. III* was in force and has not since expired, or been repealed or altered. *Id.* at 19. The same findings were made again by the Court of Appeals of New York in *Rogers v. Atlantic Gulf and Pac. Co.*, 213 N.Y. at 254, 107 N.E. at 662.

In *Kellogg v. Chicago & N.W. Ry. Co.*, the Supreme Court of Wisconsin determined that "statute 6 Ann, c. 31, § 6, still in force, which ordains that no action shall be maintained against any in whose house or chamber any fire shall accidentally begin[.]" 26 Wis. at 272. The Court further found "[t]hat statute being in force in this country at the time of the revolution and since as part of our common law, sufficiently explains the absence of precedents for the recovery of damages in such cases[.]" *Id.*

The viability of these statutes into common law in the United States has been recognized by the Supreme Court of the United States. *See St. Louis & S.F.R. Co. v. Mathews*, 165 U.S. 1, 6 (1897) recognizing that "common-law liability in case of ordinary accident, without proof of negligence" for the inception of a fire was altered by passage of all four statutes.

The statutes were also recognized by the Supreme Judicial Court of Maine. *See Bachelder v. Heagan*, 18 Me. 32, 33 (Me. 1840) (recognizing that "[t]he hardship of" the "ancient common law" that "if a house took fire, the owner

was held answerable for any injury thereby occasioned to others" was "corrected by the statute of 6 *Anne, c.* 31, which exemp[t]ed the owner from liability, where the fire was occasioned by accident.").

American courts have been largely influenced by the Metropolis Act as American courts have been reluctant to find liability for accidental fires. *See* W. Page Keeton, et. al., *Prosser and Keeton on The Law of Torts*, § 77, pp. 543-44 (5th ed. 1984).

Not only have the acts been made applicable to the United States, but they have continued to provide defenses in England, Africa, New Zealand, and Canada. *See*, e.g., *Collingwood v. Home & Colonial Stores*, [1936] 3 All E.R. 200 (Court of Appeal of England holding that Section 86 of the 1774 Act was a defense to an accidental electrical fire) (APP. 110); *Solomons v. R. Gertzenstein Ltd*, [1954] 1 Q.B. 565 (England's High Court of Justice holding that Section 86 of the 1774 Act was a defense for an accidental electrical fire) (APP. 131); *Torr v. Davidson*, (1920) 216 L.R.K. 170 (The Court of East Africa holding "[i]n the case of an accidental fire 14 Geo. III C. 78 Section 86 applies and affords a defence to common law liability.") (APP. 187); *Hunter v. Walker*, (1888) 6 N.Z.L.R. 690 (Supreme Court of New Zealand holding that "The English Common Law on the subject of fires applies to this colony. The provisions of 14 Geo. III., c. 78 (the Metropolitan Building Act), relating to fires are applicable to bush fires in this colony.") (APP. 120); *Canada Southern Ry. Co. v. Phelps*, (1884) 14 SCR 132 (Supreme Court of Canada holding the statute 14 Geo. 3 ch. 78 sec. 86, which is an extension of 6 Ann. ch. 31 secs. 6 and 7 is in force in the Province of Ontario as part of the law of England) (APP. 89).

As recent as 2012, the defense of the Metropolis Act to a claim of negligence based upon an accidental fire was

applied in *Stannard v. Gore*, [2012] EWCA Civ 1248, 2012 WL 4050249, *3 (2012) (APP. 141), a negligence claim that was brought under facts similar to Beckwitt's where "the primary cause of the fire lay in the wiring or electrical appliances" on the premises. The Court of Appeal of England determined that "there was nothing to show that such a state of affairs was the result of a failure to maintain or keep in good order the electrical system itself or all those electrical appliances that were located within the premises, as opposed to something that might have arisen entirely by accident." *Id.* at *3. The Court of Appeal repeated the lower court's holding that "the failure of Mr[.] Gore to establish to the satisfaction of the court any negligence on the part of Mr[.] Stannard means that...he has the benefit of a defence under section 86 of the Fires Prevention (Metropolis) Act 1774 on the basis that the fire was accidental." *Id.*

This Court has not yet been asked to decide whether these statutes were incorporated into Maryland's common law pursuant to Article 5 of the Maryland Declaration of Rights. However, in 1818, this Court did comment on the existence of the statutes in *White v. Wagner*, 4 H. & J. 373 (1818). In that case, this Court commented that "[i]f fire in every case was an excuse to the tenant, why was the statute of Anne passed?" Id. at 385. Years later in *Bodman v. Murphy*, 35 Md. 154 (1872), this Court again recognized the existence of the statutes:

> Now it has been held that a fire negligently lighted or kept by a person or his servant on his own premises which communicates with his neighbor's premises, is not within the protection of *Stat.*, 6 *Ann.* c. 31, which does not apply to a case of negligence or a fire intentionally lighted. *Filliter vs. Phippard*, 11 Q. B., 347. Thus, if a negligent fire from Murphy & Co's

> premises communicates with the adjoining house, Murphy & Co. are liable therefor.

Bodman, 35 Md. at 156.

Beckwitt recognizes that in Maryland, courts have turned to *Kilty's Report of the Statutes* which is "'[t]he only evidence to be found on [the] subject'" of "which statutes by experience have been found to be applicable" in Maryland. State v. Magliano, 7 Md. App. 286, 293 (1969) (citing *Dashiell v. Attorney General*, 5 Har. & J. 392, 401 (1822)).

Candidly, the statutes relied upon by Beckwitt have not been found applicable by Kilty. With no explanation by Kilty at all, the first two statutes of Anne (6 *Ann.*, Ch. 31, sec. 6 (1707) and 10 *Ann.*, Ch. 14, sec. 1 (1711)) were "statutes not found applicable" to Maryland. *See Kilty's Report of the Statutes* at 108, 110 (APP. 86-87). The two statutes of George III. (12 Geo. III, Ch. 73, sec. 37 (1772) and 14 Geo. III, Ch. 78, sec. 86 (1774)) were likewise "statutes not found applicable" but for a different reason in which Kilty said that *all* statutes after 1760 were "statutes which did not extend in the province being very numerous, and entirely on local subjects[.]" *Id.* at 136 (App. 88).

Although Kilty's Report is the authority that has been relied upon, Maryland Courts have ruled that just because "Kilty did not regard a statute as 'applicable' did not preclude a court form having a different view." *See Magliano*, 7 Md. App. at 293, n.5 (citing *Shriver v. State*, 9 Gill & J. 1, 11 (1837) (overruling Kilty's opinion) and *Sibley v. Williams*, 3 Gill. & J. 63 (1830) (overruling Kilty's opinion)).

This Court should likewise determine that these English Statutes which existed on July 4, 1776, and which by experience, have been found applicable and used and practiced by the Courts, as exemplified by the numerous cases *supra*, are in fact part of the common law of Maryland

today. With respect to Kilty's findings that statutes post-1760 did not extend to the province because they were "entirely on local subjects", Kilty was incorrect. While it is true that the Statutes of George state that their purpose is "for the better regulation of Buildings and Party Walls within the Cities of *London and Westminster*, and the Liberties thereof...", it was held by the English Court of Exchequer in *Richards v. Easto*, (1846) 15 M&W 244, 251, 153 E.R. 840, that universal applicability inhered in "some of the clauses affecting all the Queen's subjects, as the 84th and 86th, relating to accidental fires; and the statute is, in that respect, public." (APP. 127). The 86th clause refers to 14 George III, Chapter 78, Section 86 (1774).

This view that section 86 affected all of the Queen's subjects was adopted and approved in *Filliter v. Phippard*, (1847) 11 Q.B. 347, EngR 999, 116 ER 506 (APP. 115), the case cited by this Court in *Bodman*, supra, 35 Md. at 156, when this Court discussed section 86's predecessor, Statute 6 Anne, Chapter 31.

The opinions of *Richards v. Easto* and *Filliter v. Phippard* were relied upon by *Torr v. Davidson, supra*, in deciding to apply section 86 to the common law of East Africa.

The United States Supreme Court and the New York Supreme Court did not find that George's statutes did not extend to the province, or that they were only related to local subjects. Both of those courts specifically referred to 14 *Geo. III* as part of the common law in this country. *See St. Louis & S.F.R. Co. v. Mathews*, 165 U.S. at 6 (1897); *Lansing v. Stone*, 37 Barb. at 15.

Beckwitt is therefore entitled to any defense that was available by English statute that was incorporated into Maryland common law. Because "no action, suit or process whatever, shall be...prosecuted, against any person in whose

house...any fire shall...accidentally begin [.]" 14 Geo. 3, c. 78, § 86 (1774), the State could not bring any action, including a criminal prosecution against Beckwitt for liability for an accidental fire that began in his home.

This "no action...shall be" language is the core term of exculpatory negative preemptive field occupation that has been determined to be sweeping and barring of jurisdiction in other contexts, and because it is contained within an applicable statute, it provides a defense to Beckwitt's prosecution of common law charges based upon an accidental fire. *See e.g., Weinberger v. Salfi*, 422 U.S. 749, 757 (1975) (The "no action shall be brought" language is "sweeping and direct" and states that "no action shall be brought under s 1331, not merely that only those actions shall be brought in which administrative remedies have been exhausted."); *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993).

In Beckwitt's case, there was no dispute that the fire did accidentally begin in Beckwitt's home. E. 107, 511. Thus, Beckwitt's case was barred from any action, including a prosecution.

C. The common law courts never imposed a duty upon anyone (i) to install a smoke detector; or (ii) to provide emergency egress from an accidental fire; but even if there were any arguendo duties, such duties have been legislatively preempted and are inapplicable to Beckwitt's circumstances.

1. Beckwitt was under no duty to install a smoke detector.

Without any basis in the common law or any obligation by statute, the State averred in its Bill of Particulars that

Beckwitt committed common law involuntary manslaughter by failing to install a smoke detector in the tunnel underneath his home. E. 106. In the prosecutor's opening statement, the State argued to the jury that "there wasn't a smoke detector or carbon monoxide detector in the tunnel[.]" E. 111. The State further argued that this case is about "gross negligence and you are showing you don't care about human life to put a person down there with no smoke detector, with no carbon monoxide detector[.]" E. 112. At trial, the State produced evidence that there was no smoke detector in the tunnel, E. 693; and that a smoke detector provides a reasonable warning for escape. E. 454. The State's theory for its conviction was that Khafra was unable to escape the tunnel in sufficient time to avoid the deleterious effects of the fire.

During the motion for judgment of acquittal, defense counsel argued that the State

> [C]an't just pull out of plain air and say, okay, you're supposed to have a smoke detector in an underground tunnel, and if you don't, that somehow is an act that supports these charges. There is no evidence in this case to support that there is any requirement for that at all...there is nothing elsewhere that suggests that this is an allegation they can make that constitutes a basis for a criminal charge.
>
> ---
>
> [Y]ou can't tell the jury that if he didn't have a smoke detector...that's a factor they can consider in supporting a verdict for either one of these charges[.]"

E. 1242-1243.

Defense counsel further argued that

> [W]ith respect to the issue of the absence of a smoke

> detector, there is no statutory standard for this, for a private home, for a personal residence. To the extent that there has been any legislation in this area under COMAR that incorporated any fire safety codes that deal with these kinds of issues...it does not apply to somebody in Mr. Beckwitt's position. Mr. Beckwitt was neither a landlord, nor was he a property owner. To the extent that there has been legislation in this area to discuss these standards, it has preempted any common law. And to the extent that it has preempted any common law...[a]nd so, what we're left with is really no legal, no statutory, no common law standards[.]

E. 1251-1252.

Defense counsel specifically referred to *Salvatore v. Cunningham*, 305 Md. 421 (1986) and that court's determination that there was no common law duty to provide smoke detectors in a single-family home and that the Maryland statutes are inapplicable in Beckwitt's case. E. 1256.

The trial court failed to address these arguments, and instead focused exclusively on the common law employer duty to provide a reasonably safe workplace in denying Beckwitt's motion for judgment of acquittal. E. 1261-1264.

In *Salvatore v. Cunningham*, 305 Md. 421, 430 (1986), the plaintiffs brought a negligence claim asserting that the defendants were negligent in that they had a duty to pursuant to Article 38A, Section 12A to equip a ski chalet with a fire alarm system and smoke detectors; that they had a duty, pursuant to Maryland common law, to take reasonable care to not subject others to an unreasonable risk of harm, and to provide a reasonably safe premises for their tenant; and that they breached that duty by failing to equip the chalet with a

smoke alarm system. *Id.* at 425. The trial court found "that there is no common law duty to install fire detection devices" and held "that the common law duty to maintain safe premises for a tenant does not encompass the installation of fire detection devices." *Id.* at 425-26. The trial court also determined that Article 38A, Section 12A exempted one, two or three family dwellings constructed prior to July 1, 1975 to install smoke detectors. *Id.* at 426. Applying the language of the statute to the facts of the case, the ski chalet was precluded from any statutory duty.

This Court determined that the trial judge was correct in determining that "the construction and configuration of the premises [ ] must determine its classification", not "the intention of the parties as a criterion for classification" and this Court agreed that as a single family dwelling, under § 12A(b), there was no obligation on the part of the owner to install smoke detectors. *Id.* at 429-430. This Court further "f[ou]nd the argument relative to common law obligation to be without merit" because "[i]f any common law obligation ever existed it was rooted out when the General Assembly passed Ch. 860 of the Acts of 1975 which by its terms exempted residential building erected prior to July 1, 1975 from any obligation to install smoke detectors." *Id.* At 430.

The Act in *Salvatore* was repealed by Acts 2003, c. 5, § 1, eff. Oct. 1, 2003, and the Public Safety Article ("P.S.") became codified within the Annotated Code of Maryland. P.S. § 9-106(c) is the provision imposing a statutory duty upon certain individuals to install smoke detectors. APP. 23. P.S. § 9-106(c) exempts Beckwitt from any requirement to install a smoke detector because the statute only applies to "a landlord or property owner", but not to occupants of a home, such as Beckwitt. As in *Salvatore*, there was no common law duty obliging Beckwitt to install fire detection devices, and therefore a common law conviction could not be based upon

such a failure. Moreover, as in *Salvatore*, the enactment of Ch. 860 of the Acts of 1975, which was recodified as P.S. § 9-106(c), "rooted out" any so-called obligation, "if such an obligation ever existed", and therefore, there continued to be no common law obligation by Beckwitt to install a smoke detector. Thus, Beckwitt could not be negligent, grossly negligent, possessive of a depraved heart, or in violation of a legal duty, for failing to install a smoke detector. These arguments should not have been made to the jury and a conviction which may be based upon the failure to install smoke detectors is not a sound theory of common law liability.

2. Beckwitt was under no duty to provide emergency egress to an employee from an accidental fire that began in a single-family dwelling.

The State further particularized that Beckwitt's conduct was criminal because Khafra was "working in [a] tunnel, where the path to the only viable exit to outside was lengthy and, in the basement portion of the path, restricted by debris and unsafe hoarding conditions[.]" E. 106.

a. There was no duty at common law for an employer to provide egress to an employee from an accidental fire.

Beginning with a review of the common law, a duty to maintain a safe workplace did not encompass a duty to provide emergency egress in the case of an accidental fire. In *Jones v. Granite Mills*, 126 Mass. 84 (1878), the Supreme Judicial Court of Massachusetts held that there was no common law duty for a master to provide a means of escape for an employee trapped in a fire that started by accident, where the fire was not caused by the master's negligence:

> We know of no principle of law by which a person is liable in an action of tort for mere nonfeasance by reason of his neglect to provide means to obviate or ameliorate the consequences of the act of God, or mere accident, or the negligence or misconduct of one for whose acts towards the party suffering he is not responsible. If such liability could exist, it would be difficult, if not impossible, to fix any limit to it.
>
> ***
>
> [T]he liability arises upon the doing of the act. But the common law goes no further; it does not provide a remedy when the master is not responsible for the act, on the ground that he has omitted to provide means to avoid its consequences.
>
> ***
>
> It is no part of the contract of employment between master and servant so to construct the building or place where the servants work, that all can escape in case of fire with safety, notwithstanding the panic and confusion attending such a catastrophe. No case has been cited where an employer has been held responsible for not providing such means of escape.

Id. at 88-89.

Numerous courts have determined the same. "At common law the owner of a building was not bound to anticipate the possibility of remote danger from fire, or that its occurrence would put in jeopardy the lives of its employees or tenants." *Irwin v. Torbert*, 49 S.E.2d 70, 81 (Ga. 1948) (internal citation omitted). "At common law the owner of a building, not particularly exposed to the danger of fire from the character of the work to be carried on in it, was not bound to anticipate the possibility of remote danger from fire, or that

its occurrence would put in jeopardy the lives of his employe[e]s or tenants[.]" *Yall v. Snow,* 100 S.W. 1, 3 (Mo. 1906). "We are satisfied that, if any duty devolved upon the defendant to anticipate the possible burning of its building, and provide modes of escape to that emergency, such duty did not exist at common law[.]" *Pauley v. Steam-Gauge & Lantern Co.,* 131 N.Y. 90, 94, 29 N.E. 999, 999 (N.Y. 1892). "It is held that there is no common-law obligation resting on the master to provide means of escape from fire for his employe[e]s." *Schmalzreid v. White,* 36 S.W. 393, 395 (Tenn. 1896) (internal citations omitted).

Common law negligence actions, as in Beckwitt's case, are predicated upon the existence of a duty that the defendant was under to protect the plaintiff from injury. *Cipollone v. Liggett Group, Inc.,* 505 U.S. 504, 522 (1992). *See also Warr v. JMGM Grp., LLC,* 433 Md. 170, 181 (2013). It is axiomatic that "[t]here can be no negligence where there is no duty." *Hartford Ins. Co. v. Manor Inn of Bethesda,* 335 Md. 135, 148 (1994).

Despite the lack of duty at common law, the State, the trial court, and the Court of Special Appeals, relied exhaustively on this "common law duty" of egress from an accidental fire as a requirement for an employer, to find liability in this case.

During the first motion for judgment of acquittal, the prosecutor argued that "fire is always a risk" and "that's why we have smoke detectors and fire escapes...we assume that fire could always break out...and that's why we have emergency exits, and that's why we take precautions, and that's why those things are required in a public building like this." E. 1258. The trial court determined that there is a duty to provide a safe workplace, E. 1261- 1262, and determined that the unsafe working condition in this case was "egress and ingress" because "as an employer, he had a duty to make

it safe[.]" E. 1236. The trial court further found "that the circumstances under which [Khafra] was working, that if a fire broke out, and there is testimony from Firefighter Maxwell that it was very difficult to make ingress or egress around that corner...the only exit that he had would be circuitous at best" so Beckwitt "breached that standard of care." E. 1264.

During closing argument the prosecutor argued, over defense objection, "that to have a safe working environment people need to be able to escape from a building, to be able to escape from a fire[.]" E. 1532-1533. Though the prosecutor "acknowledge[d] that, the defendant didn't cause the fire", the prosecutor argued that "the defendant caused the inability to escape from the fire and that's what caused Askia's death." E. 1562. The prosecutor reiterated that Khafra "died because of the inability to escape the fire." E. 1563.

Like the trial prosecutor and the trial court, the Court of Special Appeals improperly focused on the "anticipat[ion] [of] the possibility of remote danger from fire", Irwin, 49 S.E.2d at 81; finding that actus reus for manslaughter was satisfied by Beckwitt's failure to provide adequate egress "in the event of an emergency." E. 59. The Court of Special Appeals found that the hoarding "conditions elevated the danger by *hampering Khafra's ability to escape in the event of an emergency.*" E. 59 (emphasis added). Similarly, in determining that causation was satisfied, the Court of Special Appeals again relied upon a lack of adequate egress "in the event of a fire emergency." E. 69.

Beckwitt's common law convictions cannot be sustained based upon a breach of a common law duty to provide egress for an employee in the event of an accidental fire that was not caused by Beckwitt's negligence. The trial court lacked subject matter jurisdiction to enter such a conviction, and

therefore, the sentence imposed was illegal.

b. Any arguendo common law duty to provide egress from an accidental fire was preempted by the enactment of Maryland's State Fire Prevention Code.

Assuming, *arguendo*, that any common law duty ever existed to provide emergency egress from an accidental fire, "it was rooted out"[5] by the passage of the State Fire Prevention Code, codified in the Code of Maryland Regulations ("COMAR") 29.06.01 (APP. 28), and its enabling statute, P.S. § 6-206(a)(1)(i) (APP. 12), which is an "entire body of law [ ] occupied on a comprehensive basis" as to fire safety and egress, and therefore preempts any prior laws in the field of fire safety and egress. *Accord Genies v. State*, 426 Md. 148, 155 (2012) (internal citation omitted).

"The presumption against such repeal [of the common law] may be overcome, generally, when the statute [ ] addresses the entire subject matter, known as field preemption", *Genies*, 426 Md. at 154, just as occurred in *Salvatore v. Cunningham* with respect to a duty to install smoke detectors.

"Field preemption is implicated when an entire body of law is occupied on a comprehensive basis by a statute." *Id.* at 154-55 (citing *Robinson v. State*, 353 Md. 683, 694 (1999)). Where "statutes as adopted represent the entire subject matter" the statutes "abrogate the common law on the subject." *Robinson*, 353 Md. at 694 (enactment of assault statutes preempted the common law offenses of assault and battery entirely); *State v. Gibson*, 254 Md. 399, 401 (1969) (enactment of manslaughter by motor vehicle statute was a comprehensive in which Legislature intended to deal with an

[5]Salvatore v. Cunningham, 305 Md. at 430.

entire subject matter of unintended homicides resulting from motor vehicle, and therefore the statute implicitly preempted the common law); *accord Board of County Commissioners of Washington County v. Perennial Solar, LLC*, 464 Md. 610 (2019) (implicit preemption of local zoning authority by State statute granting general regulatory powers over entire subject matter of generation stations).

"'The primary indicia of a legislative purpose to preempt an entire field of law is the comprehensiveness with which the General Assembly has legislated in the field.'" *Howard County v. Pepco*, 319 Md. 511, 23 (1990) (internal citation omitted).

Maryland's State Fire Prevention Code requires that "the Commission *shall adopt comprehensive regulations* as a State Fire Prevention Code." P.S. § 6-206(a)(1)(i) (emphasis added) (APP. 12). The intended purpose of the State Fire Prevention Code is to "establish[] the minimum *requirements to protect life and property from the hazards of fire and explosion.*" P.S. § 6-206(d)(1) (APP. 13) (emphasis added). The General Assembly further commanded that the "Code has the *force and effect of law* in the political subdivisions of the State". See P.S. § 6-206(a)(1)(iii); APP. 12 (emphasis added). Hence, the statute is "interpreted as expressly occupying the field with respect to state...regulations" on protection from the hazards of fire. *Spreitsma v. Mercury Marine*, 537 U.S. 51, 69 (2002).

COMAR 29.06.01 is the corresponding regulation to the State Fire Prevention Code. COMAR 29.06.01.02 discusses the purpose of the State Fire Prevention Code, which similar to P.S. § 6-206(d)(1), states that the purpose of the Code is "to establish minimum requirements that will provide a reasonable degree of fire prevention and control to safeguard life, property, or public welfare from (1) the hazards of fire and explosion..." The regulations specifically state that the

Code is to safeguard against "(1) [t]he hazards of fire and explosion arising from the storage, handling, or use of substances, materials, or devices; and (2) [c]onditions hazardous to life, property, or public welfare in the use or occupancy of buildings, structures, sheds, tents, lots, or premises." COMAR 29.06.01.02A(1) & (2); APP. 28.

Importantly, the State Fire Prevention Code "incorporates by reference NFPA 1 Fire Code (2015 Edition)...and NFPA 101 Life Safety Code (2015 Edition)[.]". COMAR 29.06.01.06B(1) & (2); APP. 29. The significance of the incorporation of NFPA 1 Fire Code and NFPA 101 Life Safety Code into the comprehensive regulations of the State of Maryland, is that those codes encompass emergency egress, thereby bringing provisions regarding egress from a fire within the State Fire Prevention Code's preemption purview.

Most of the State's allegations in Beckwitt's case correspond to a failure to comply with a field of legal duties covering conduct constituting the maintenance of egress from a fire. NFPA 1 and NFPA 101 are all-encompassing when it comes to the field of egress from a fire. For instance, NFPA 1 Fire Code contains Chapter 14, a chapter titled "Means of Egress" that is dedicated to egress from a fire. *See, e.g.*, § 14.1 "Application"; § 14.2 "Exit Access Corridors"; § 14.3 "Exits"; § 14.4 "Means of Egress Reliability"; § 14.5 "Door Openings"; § 14.6 "Enclosure and Protection of Stairs"; § 14.7 "Exit Passageways", § 14.8 "Capacity of Means of Egress"; § 14.9 "Number of Means of Egress"; § 14.10 "Arrangement of Means of Egress"; § 14.11 "Discharge from Exits"; § 14.12 "Illumination of Means of Egress"; § 14.13 "Emergency Lighting"; § 14.14 "Marking of Means of Egress"; and § 14.15 "Secondary Means of Escape." APP. 60.

Similarly, NFPA 101 Life Safety Code, also incorporated by the Maryland State Fire Prevention Code, contains

Chapter 7, entitled "Means of Egress", detailing standards for provisioning egress. See § 7.1 "General"; § 7.2 "Means of Egress Components"; § 7.3 "Capacity of Means of Egress"; § 7.4 "Number of Means of Egress"; § 7.5 "Arrangement of Means of Egress"; § 7.6 "Measurement of Travel Distance to Exits"; § 7.7 "Discharge from Exits"; § 7.8 "Illumination of Means of Egress"; § 7.9 "Emergency Lighting"; § 7.10 "Marking of Means of Egress"; and § 7.11 "Special Provisions for Occupancies with High Hazard Contents". APP. 67.

Incorporation by reference is also important because NFPA 1 Fire Code contains section 11.1 "Electrical Fire Safety" which provides provisions for basic electrical safety adopting topics such as power taps (power strips), multi-plug adapters, extension cords, electrical appliances, equipment, fixtures, and wiring. NFPA 1 incorporates NFPA 70 which is the National Electric Code. Importantly, existing electrical wiring, fixtures, wiring, appliances, and equipment, "shall be permitted to be maintained" unless it has been determined to present an imminent danger. NFPA 1, § 11.1.2.2.

Taken together, the relative completeness with which these various provisions cover the egress field, fire safety, and electrical issues, leads to a strong inference that all conduct within those fields is subsumed by the State Fire Prevention Code and its corresponding regulations and codes. *See Robinson*, 353 Md. at 693-96. "These statutory provisions manifest the general legislative purpose to create an all-encompassing state scheme of" regulation of fire prevention and safety, including egress from a fire. *Accord Talbot Cty. v. Skipper*, 329 Md. 481, 491 (1993); *Perennial Solar, LLC*, 464 Md. at 631.

Moreover, additional language within the State Fire Prevention Code further signals the General Assembly's intent to preempt the common law in this field. For instance,

the State Fire Prevention Code "establishes the minimum requirements to protect life and property from the hazards of fire and explosion." P.S. § 6-206(d)(1) (emphasis added); APP. 13. The Supreme Court has determined that "[a]bsent other indication, reference to a State's 'requirements' includes its common-law duties." *Riegel v. Medtronic, Inc.*, 552 U.S. 312, 324 (2008). Therefore, when the Maryland General Assembly enacted the State Fire Prevention Code, and indicated that the Code "establishes the minimum requirements to protect life and property from the hazards of fire and explosion", P.S. § 6-206(d)(1), the Code intended to regulate all duties in this field.

As yet another example of how the State Fire Prevention Code preempts other law in the State, the General Assembly put determination of any question as to whether a State or local law or regulation governs into the decision-making power of the Commission. *See* P.S. § 6-206(d)(3); APP. 13. This was of significance in *Perennial Solar* where this Court found that Public Utilities (P.U.) Article § 7-207 pre-empted local law by field preemption based in part on the fact that "the final determination whether to approve" a Certificate of Public Convenience and Necessity application is ultimately made by the Maryland Public Service Commission, and not the local authority, even though the local authority was given the opportunity for input. *Perennial Solar*, 464 Md. at 632-633. The language in P.S. § 6- 206(a)(2)(ii) further supports this principle because where a regulation adopted under this subsection does not apply to a certain set of conditions, it is up to "the Commission [to] determine[]" whether the regulations should in fact apply and the situation be corrected. APP. 12. This is further bolstered by COMAR 29.06.01.03.A which provides that "The State Fire Marshal or the legally appointed designee has the authority to make a determination of the applicability of this chapter to any

building or condition in it." APP. 28.

Lastly, the Supreme Court has previously determined that field-pre-emption rules apply where a field has been reserved for specific regulation. In *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978), the Supreme Court held that the scheme of mandatory federal regulation over oil tankers implicitly pre-empted the power of the State of Washington to regulate such matters; noting that the federal act's language "*required* the Secretary to issue 'such rules and regulations as may be necessary with respect to the design, construction, and operation of the covered vessels." (emphasis in original)). *Id.* 161. Likewise, Maryland's State Fire Prevention Code "requires" the Commission to adopt such comprehensive rules and regulations as may be necessary with respect to the hazards associated with fires. See P.S. § 6-206(a)(1)(i) ("To protect life and property from the hazards of fire and explosion, the Commission shall adopt comprehensive regulations as a State Fire Prevention Code.") (emphasis added); APP. 12.

Reading all the aforesaid provisions in concert, it is plainly obvious that they "manifest the intention to occupy the entire field." *Napier v. Atlantic Coast Line R. Co.*, 272 U.S. 605, 611 (1926).

Not only did the General Assembly intend to occupy the field of fire prevention and safety to include adequate egress in the event of a fire, but it was specifically contemplated whether the requirements in the State Fire Prevention Code should be made applicable to one- and two-family dwelling houses, and it was determined that it should not.

Under the "Application and Scope" section of the Fire Prevention Code in COMAR 29.06.01.06, as amended by COMAR 29.06.01.07 and COMAR 29.06.01.08, the fire safety field, and all of the field therein requiring the maintenance of emergency egress from a structure, is

occupied. APP. 29. There is but one *exemption* and that is for one- and twofamily dwelling houses. The regulations state that "[t]he provisions of this [State Fire Prevention Code] chapter do not apply to buildings used solely as dwelling houses for not more than two families as prescribed in Public Safety Article, Title 6, Subtitle 3, Annotated Code of Maryland." COMAR 29.06.01.03.D; APP. 28. But for the decision by the State Fire Prevention Commission, single family dwellings would have come under the requirements of the code. Additional support that the General Assembly intended to exempt single family dwellings from the requirements of the State Fire Prevention Code can be found in P.S. § 6-305(1) which places a duty upon the State Fire Marshal to enforce "all laws of the State that relate to...(iv) the means and adequacy of exit, in case of fire, from buildings and all other places in which individuals work, live, or congregate, *except buildings that are used solely for dwelling houses for no more than two families.*" (emphasis added); APP. 16. Support can also be garnered from P.S. § 9-803 which authorizes inspection by fire officials for "accumulations...[of] combustible material...except [within] the interior of a private dwelling." APP. 25. *See also* P.S. § 6-307 (imposing duty upon the State Fire Marshal to inspect various buildings except those "occupied as a private dwelling."). APP. 20.

This is not simply a case of the regulators failing to address whether protections from fire hazards are needed in single family dwellings, rather, this is a case of an explicit consideration and determination that single family dwellings are exempted. If the Fire Prevention Code were not preemptive, the common law would have jurisdiction to fill this regulatory gap (assuming the common law had a duty requiring action in the first place). However, this is not the case. Instead, this is a case where a "decision to forego

regulation in a given area may imply an authoritative... determination that the area is best left *un* regulated, and in that event would have as much pre-emptive force as a decision to regulate." *Ark. Elec. Coop. v. Ark. Pub. Serv. Comm'n*, 461 U.S. 375, 384 (1983) (emphasis in original) (internal citations omitted).

Therefore, pursuant to P.S. § 6-206(a)(2)(ii), it is up to "the Commission [to] determine[]" whether the regulations should in fact apply to single family dwellings, not the courts. Thus, buildings used solely as dwelling houses for not more than two families are expressly exempted from compliance with the State Fire Prevention Code. This represents a de-regulating negative pre-emption. *CSX v. Miller*, 159 Md. App. 123, 171-73 (2004). This is because the conduct falls within the scope of comprehensive regulatory authority delegated but not fully exercised. *Napier*, 272 U.S. at 613.

In Maryland, the only way for a person to be liable "at common law" for conduct relating to fire safety, egress, and electrical issues, would be if the liability is based upon a parallel violation of the State Fire Code or a more stringent local code that is not in conflict with the State Code. It would then be the duty imposed by the code that is actually being transplanted into the common law action. *See, e.g., Pittway Corp. v. Collins*, 409 Md. 218 (2009) (negligence action premised upon violations of City of Gaithersburg Housing Ordinance and Building Codes); *Collins v. Li*, 176 Md. App. 502 (2007) (same); *Rivers v. Hagner Management Corp.*, 182 Md. App. 632 (2008) (negligence action based upon violation of Prince George's County Fire Code).

The relative strength of the preemptive inference far exceeds those inferences drawn in *Gibson*, 4 Md. App. 236 and in *Robinson*, 353 Md. 683. This is one of those "times when the legislature [ ] so forcibly express[es] its intent to

occupy a specific field of regulation that the acceptance of the doctrine of pre-emption by occupation is compelled." *County Council for Montgomery County v. Montgomery Assn., Inc.*, 274 Md. 52, 59 (1974) (citing *City of Baltimore v. Sitnick*, 254 Md. 303, 323 (1969)).

The State Fire Prevention Commission declined state-wide dwelling regulations. The common law courts are simply not authorized "safety-standard cooks"[6] that can whip up a recipe of a failure to provide adequate egress in the event of an accidental fire emergency in a single-family dwelling and use that to serve up a defendant on a common law silver platter. Rather, courts should "defer to the judgments of legislatures and agencies when they have spoken because they are institutionally better situated to set safety standards. These same principles underlie many forms of judicial deference to agency action." *In re City of New York*, 522 F.3d 279-285-86 (2d Cir. 2008) (citing *United States v. Mead Corp.*, 533 U.S. 218, 228-29 (2001); *Auer v. Robbins*, 519 U.S. 452, 461 (1997); (additional citations omitted)). "As the Supreme Court has recently noted, [ ] agencies are often better positioned to set standards of care than are common-law courts." *Id.* at 286 (citing *Riegel v. Medtronic Inc.*, 128 S.Ct. 999, 1008, 1011 (2008) (noting that juries applying the common law lack the expertise of agencies)).

It was error to allow the jury to speculate that a lack of a smoke detector and lack of adequate egress from an accidental fire were instrumentalities of negligence in this common law case. *Robinson*, 353 Md. at 704. Maryland's Public Safety statutes foreclosed the use of the common law reasonable person standard within the subject matter of smoke detectors and egress from a fire in single family

[6]Geier v. American Honda Motor Co., Inc., 529 U.S. 861, 871 (2000).

dwellings, and left the statutory violations as the sole route to provide negligence. *See Salvatore*, 305 Md. at 430; *Riegel v. Medtronic, Inc.*, 552 U.S. 312, 344-45 (2008) (Ginsburg, J., dissenting).

Neither at common law, nor by statute today, did Beckwitt have any duty to provide a smoke detector or emergency egress to an employee trying to escape from an accidental fire in a single-family dwelling. It was error for the trial court to enter a conviction and impose a sentence based upon conduct that was neither criminal at common law, nor is criminal by statute as applied to Beckwitt. Where there is no duty, there is no negligence, and therefore, can be no gross negligence manslaughter conviction.

EXCERPTED FROM PAGE 53

Beckwitt should not have been held to a legal standard, never applied before, at the whim of the trial court and the jury. *See Bouie v. City of Columbia*, 378 U.S. 347, 352 (1964) ("There can be no doubt that a deprivation of the right of fair warning can result...from an unforeseeable and retroactive judicial expansion" of well-settled common law principles.) *see similarly, Doe v. Department of Public Safety and Correctional Services*, 430 Md. 535, 547-48 (2013) ("determining that the retroactive application" of the law "violates Article 17" of the Maryland Declaration of Rights); *accord* MD. CONST. DECL. OF RTS. arts. 5, 17, 21, and 24; U.S. CONST. amends. V and XIV.

EXCERPTED FROM PAGE 56

In Judge Moylan's *Pagotto v. State*, 127 Md. App. 271, 332 (1999), there was recognition that conduct for gross negligence manslaughter must be both inherently dangerous and of a malum in se character, in other words, conduct that is traditionally universally prohibited, rather than a mere malum-prohibitum-type of regulatory violation that may vary

from year to year and from county to county. This Court recognized in *State v. Pagotto*, 361 Md. 528, 551 (2000), that the conduct must be prohibited at least on a statewide basis in order to be grossly negligent.

EXCERPTED FROM PAGES 60-62

c. The extension cords and two power outages did not make it likely, highly probable, or foreseeable that a fire would occur.

The Court of Special Appeals correctly found: "Nor was [Beckwitt's] use of multiple electrical extension cords, despite their apparent history of failing, reasonably likely to cause death." E. 74.

Despite this finding, the intermediate court posited an unproven hypothesis in its opinion that two prior power outages on the day of the fire made it possible "that a fire *might* occur in the basement", E. 68; and that Beckwitt should have "recognize[d] the implications of two electrical failures", E. 68, and "ask[ed] Khafra to leave the basement for precautionary reasons." E. 60. (Emphasis added).

Courts, including this one, have wisely advised that they do not want people to rely upon "judicial opinions – to obtain technical information concerning the significance of the evidence before them", instead; "[a] properly qualified expert" like an "electrical engineer" is "needed" to make such sweeping conclusions. *State v. Payne*, 440 Md. 680, 721 (2014). *See also Crickenberger v. Hyundai Motor America*, 404 Md. 37, 53 (2008) ("Without expert testimony... allegations of a defect in this case amount to 'mere speculation.'"); *accord Moser v. Agway Petroleum Corp.*, 866 F.Supp. 262, 264 (D.Md. 1994) (noting that the average lay person would require expert testimony to come to a conclusion regarding the operation of equipment involving electrical circuits).

In this case, the State's expert electrical engineer, Jeremy Neagle, never testified that the use of extension cords to power the basement or the tunnel would make it likely or foreseeable that an electrical fire would occur. Neagle never testified that two prior power outages that day made it likely or foreseeable that a fire would occur. Neagle never expressed an opinion that the extension cords or the two prior power outages caused the fire in this case to occur. Significantly, Neagle was never asked:

- What caused the two prior electrical failures on September 10, 2017?
- Did the latent defect in the faulty electrical outlet cause the earlier power outages to occur?
- Did the use of extension cords cause the two prior electrical failures?
- Did the prior electrical failures cause the electrical fire?
- Could the prior electrical failures cause an electrical fire?
- How likely is it that the prior electrical failures would cause an electrical fire?
- What should an occupant of a home do when there are two power outages in one day?
- Are two power outages indicative of a problem in the entire electrical system?
- Is it dangerous to use extension cords in a home?
- Does the use of extension cords increase the likelihood that an electrical fire might occur?
- Does the use of a three-prong plug adapter increase the likelihood that an electrical fire might occur?

The intermediate court's bald assertion that there were "implications" that a person in their home should have "recognized" as likely to cause substantial harm when the power outages occurred is not supported by the record.

EXCERPTED FROM PAGES 65-66

Not only did the Court of Special Appeals use the earlier power outages, that were not proven to have caused or been related to the fire, as evidence to of knowledge or notice of some claimed danger in the greater electrical system, but the Court also improperly used the earlier power outages as direct evidence of negligence where the State never alleged that the fire was negligently caused by overloading an extension cord. *See Locke v. Sonnenleiter,* 208 Md. 443, 447-48 (1955).

The Court of Special Appeals improperly lumped together all the electrical equipment in the premises into a single instrumentality for analytical purposes and faulted Beckwitt for failing to recognize occult and nebulous "implications" of prior occurrences that find no support in the expert testimony or caselaw. *See Wise v. Ackerman,* 76 Md. 375 (1892) (holding that circumstances of two different accidents in different freight elevators inside the defendant's building could not be legally combined into an inference of negligence). The misuse of prior defect evidence is never appropriate where "no ordinary care or reasonable diligence could have discovered the defects." *State v. Emerson & Morgan Coal Co.*, 150 Md. 429, 446 (1926). Instead, the rule is "that when an appliance or machine not obviously dangerous, has been in daily use for a long time, and has uniformly proved adequate and safe, its use may be continued without imputation of negligence." *Stewart & Co. v. Harman,* 108 Md. 446, 70 A. 333, 336 (1908) (internal citation omitted); *accord McVey v. Gerrald,* 172 Md. 595, 192 A. 789. 791 (1937).

B. Legal Duty Manslaughter is a type of Gross Negligence Manslaughter.

Although this Court has referred to "three varieties" of

involuntary manslaughter – (1) unlawful act manslaughter; (2) gross negligence manslaughter; and (3) the negligent omission to perform a legal duty – the "latter two categories" are really one in the same, both requiring grossly negligent conduct that proximately caused death. *Thomas*, 464 Md. at 152.

Indeed, legal treatises are now beginning to recognize that though the scope of involuntary manslaughter "is still undergoing slow change"; "[i]nvoluntary manslaughter itself may be divided into two separate types" labeled: (1) "criminal-negligence" manslaughter and (2) "unlawful-act" manslaughter. Wayne R. LaFave, *Substantive Criminal Law*, 2 Subst. Crim. L. § 15.4 (3d ed.) (October 2020 Update).

Even Judge Moylan's famous treatise, *Criminal Homicide Law*, which devotes Chapter Eleven to "Unlawful Act-Manslaughter" and Chapter Twelve to "Gross Negligence Manslaughter", does not contain a Chapter Thirteen for "Legal Duty Manslaughter". *See* Judge Charles E. Moylan, Jr., *Criminal Homicide Law*, pp. xv-xvii (2002). This is because omissions to act pursuant to a legal duty fall under the category of "Gross Negligence Manslaughter" discussed in Chapter Twelve. *Id.* at § 12.9, p. 235 ("Gross Negligence May Consist of Acts of Omission.").

Likewise, in *Thomas*, this Court classified the failure to perform a legal duty as a type of gross negligence involuntary manslaughter: "Our courts have discussed gross negligence involuntary manslaughter in four main contexts: automobiles, police officers, *failure to perform a duty*, and weapons." *Thomas*, 464 Md. at 154 (emphasis added).

Similarly, in *State v. Kanavy*, 416 Md. 1 (2010), this Court recognized that gross negligence manslaughter is the umbrella term that can be committed by affirmative conduct or omissive conduct, finding that "[w]ith gross negligence manslaughter..., the act of killing may be by omission as

surely as by commission[.]" *Id.* at 10 (citing Moylan, *Criminal Homicide Law*, § 12.9, pp. 235-36); *see also State v. Gibson*, 4 Md. App. 236, 242 (1968), *aff'd*, 254 Md. 399 (1969).

Thus, the two grossly negligent modalities – affirmative act gross negligence manslaughter and failure to perform a legal duty gross negligence manslaughter – are but a mere means of commission and omission for exactly the same offensive conduct of gross negligence involuntary manslaughter. The "means" of committing an offense is not an "element" of an offense, but rather is a "fact" which must be decided by the jury. *See Mathis v. United States*, --- U.S. ---, 136 S.Ct. 2243, 2255 (2016) (citing *Descamps v. United States*, 570 U.S. 254, 265, n. 3 (2013)) (A "means" is a "non-elemental fact" which "by definition" is "not necessary to support a conviction."); *see also Schad v. Arizona*, 501 U.S. 624, 639 (1991) (distinguishing means from elements).

Grossly negligent involuntary manslaughter, whether by active conduct or omissive conduct, is at its core a negligence action, requiring "(1) that the defendant was under a duty to protect the plaintiff from injury, (2) that the defendant breached that duty, (3) that the plaintiff suffered actual injury or loss, and (4) that the loss or injury proximately resulted from the defendant's breach of the duty." *See Blondell v. Littlepage*, 413 Md. 96, 119 (2010) (internal citations omitted) (emphasis omitted).

Thus, grossly negligent involuntary manslaughter contains the same basic elements of: (i) a legally cognizable duty; (ii) breached to a degree objectively constituting gross negligence; (iii) proximately creating a high degree of risk; (iv) causative of death. *See generally People v. Sealy*, 136 Mich.App. 168, 172, 356 N.W.2d 614 (1984).

Historically, when there is affirmative, active risk creation, trial courts have not explained to criminal juries,

nor have appellate courts explained in their opinions, that there must be a breach of a legal duty (of a reasonable care) in order to sustain a conviction for depraved heart murder or affirmative act gross negligence manslaughter. This may be because the affirmative act of creating a risk of danger essentially speaks for itself, as a dangerous act towards another is a breach of a care.

However, it is implicit in Maryland's prior jurisprudence on the affirmative act modality of grossly negligent involuntary manslaughter that the defendant's affirmative acts of risk creation equate to a failure to exercise "reasonable care", i.e., a breach of a legal duty. *See e.g., Thomas*, 464 Md. at 153 ("The act must 'manifest[ ] such a gross departure from what would be the conduct of an ordinarily careful and prudent person[.]'") (internal citation omitted); *Duren*, 203 Md. at 592 ("As a rule, the care required is to be proportioned to the danger[.]") (internal quotation omitted). Hence, a "legal duty" is simply "an obligation, to which the law will give recognition and effect, to conform to a particular standard of conduct toward another.". *Gourdine v. Crews*, 405 Md. 722, 745 (2008) (citing W. Page Keeton, et. al., *Prosser and Keeton on The Law of Torts* § 53 (5th ed. 1984)); *see also Warr v. JMGM Grp., LLC*, 433 Md. 170, 214 (2013) (Adkins, J., dissenting) (internal citations omitted) ("[A]n individual who engages in active risk creation is subject to the ordinary duty of reasonable care."). By contrast, in the instance of a failure to act, such inaction requires an explanation that a failure to act may become criminal when a defendant has a duty to affirmatively act as established by statute, by contract, or by operation of a special relationship. *Bobo v. State*, 346 Md. 706, 715 (1997).

DANIEL BECKWITT	IN THE
Appellant/Cross-Appellee	COURT OF APPEALS
v.	OF MARYLAND
STATE OF MARYLAND	September Term, 2021
Appellee/Cross-Appellant	Case No. 16

MOTION FOR RECONSIDERATION

Daniel Beckwitt, pro se, respectfully requests that this Court reconsider its affirmance of his involuntary manslaughter conviction reported in its opinion of January 28, 2022, and in support thereof, states as follows:

The standard of care required is statutory, not common law. This Court's omission to engage in statutory construction of the Maryland State Fire Prevention Code and find Beckwitt preemptively not guilty by reason of regulatory immunity is in direct material conflict with the holdings of Cipollone, 505 U.S. at 521-22; Easterwood, 507 U.S. at 664; Sprietsma, 537 U.S. at 63; Riegel, 552 U.S. at 324&327-29; Bartlett, 570 U.S. at 480-81; and Salvatore, 305 Md. at 430. The ex post facto elimination of Beckwitt's field preemption by State Fire Prevention Code defense and retroactive imposition of the common law standard of reasonable care to conduct within the subject matter covered by the Code is a violation of Beckwitt's right to fair notice under the due process clause of the Fifth Amendment to the U.S. Constitution applicable under the Fourteenth Amendment thereof through the holdings of Bouie, 378 U.S. at 354 and Rogers, 532 U.S. at 462. MD Rule 8-605(5).

EXCERPTED FROM PAGES 17-18

A Serious Fair Notice Violation

While this Court plainly finds Beckwitt's conduct grossly unreasonable and this State's Fire Code grossly inadequate as a tool to hold Beckwitt accountable, it must nonetheless face the music with regards to what is entailed by simply abandoning the tools of statutory construction in 1774: A

very serious violation of Beckwitt's due process rights to fair notice of what conduct the law prohibits. The familiar legal maxim that everyone is presumed to know the law functions as both a sword and shield; not only must Beckwitt be assumed to know that people and employers are under general duties to act reasonably, he must also be imparted with knowledge that preemptive statutes "rooted out" these duties with respect to specific conduct covered by their scope. See Salvatore, 305 Md. at 430. This Court admits Beckwitt's conviction may be based upon an omission of a smoke alarm (Slip op. At 44), yet he was plainly entitled to rely on Salvatore, which at least entitles him to a new trial. Cf. Robinson, 353 Md. at 704. Beckwitt was further entitled to read the State Fire Prevention Code as also supplying him with this "special kind of defense... to immunize [himself] from state common-law liability" Geier, 529 U.S. at 869. Instead, Beckwitt was been ambushed by the Maryland judiciary's inexplicable sub silento abandonment of field preemption and retroactive imposition of illegal common law duties. Cf. Bouie, 378, U.S. at 354. Additionally, Beckwitt's right to jury unanimity was so violated. See Ramos, 140 S. Ct. at 1397.

Beckwitt recognizes he is asking to go scot free (or at least receive a new trial) based upon a sophisticated regulatory immunity defense, but a more careful review of precedent reveals that the law clearly demands it. This Court's shell game with the element of legal duty is not a logically defensible method to avoid reading the Fire Code, and the Fire Code must supersede this Court's opinion of reasonableness. "Every judge must learn to live with the fact that he or she will make some mistakes; it comes with the territory. But it is something else entirely to perpetuate something we all know to be wrong only because we fear the consequences of being right." Ramos supra, 140 S. Ct. at 1408. Beckwitt should not be forced into the federal Courts to vindicate his rights.

IN THE
COURT OF APPEALS OF MARYLAND

SEPTEMBER TERM, 2021

NO. 16

DANIEL BECKWITT,
Petitioner/Cross-Respondent,
v.
STATE OF MARYLAND
Respondent/Cross-Petitioner.

ON WRIT OF CERTIORARI TO THE
COURT OF SPECIAL APPEALS OF MARYLAND

BRIEF OF RESPONDENT/CROSS-PETITIONER

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Counsel for Respondent

EXCERPTED FROM PAGES 21-22

This Court has modified its view on subject matter jurisdiction over the years. Earlier decisions viewed limitation on a court's "authority or discretion as jurisdictional in nature[.]" *Downes v. Downes*, 388 Md. 561, 574 (2005). Now, however, only where "jurisdiction is lacking in a fundamental sense," is there a lack of subject matter jurisdiction. *Salvagno v. Frew*, 388 Md. 605, 616 n.4 (2005). "[R]ulings made in violation of a statutory restriction on a court's authority or discretion" are viewed as improper exercises of discretion, as opposed to an action outside of the court's jurisdiction. *Downes*, 388 Md. at 574-75. "[T]he fact that a statutory provision directs a court to decide a case in a particular way, if certain circumstances are shown, does not create an issue going to the court's subject matter jurisdiction." *Salvagno*, 388 Md. At 616 n.4 (cleaned up).

Under this modern view, "[s]ubject matter jurisdiction is the court's ability to adjudicate a controversy of a particular kind." *John A. v. Board of Educ. for Howard Co.*, 400 Md. 363, 388 (2007). So long as a court has "the power to render a judgment over that class of cases within which a particular case falls, the court has subject matter jurisdiction." *Id*; accord *Downes*, 388 Md. At 575.

Circuit courts are courts of general jurisdiction and have "full common law and equity powers and jurisdiction in all civil and criminal cases within [their] county[.]" Md. Code Ann., Cts. & Jud. Proc. § 1-501 (LexisNexis 2021). The Circuit Court for Montgomery County had subject matter jurisdiction over Beckwitt's criminal case—that is to say, it had the power to render a judgment over the class of cases within which Beckwitt's case falls.

Beckwitt's claim that English statutes from the 1700's provide him a complete defense because his crime was based upon an accidental fire is an argument that "a statutory provision directs a court to decide a case in a particular way[.]" *Salvagno*, 388 Md. at 616 n.4 (cleaned up). It is not an issue of subject matter jurisdiction.

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

STATE OF MARYLAND	
	Criminal No.
v.	133838C
DANIEL BECKWITT,	
Defendant.	

JURY TRIAL

Rockville, Maryland April 10, 2019

DEPOSITION SERVICES, INC.
12321 Middlebrook Road, Suite 210
Germantown, Maryland 20874
(301) 881-3344

EXCERPTED FROM PAGE 31
OPENING STATEMENT BY MARYBETH AYERS, ESQ.

EXCERPTED FROM PAGES 53-54

This case is not a case about an intentional arson; you're not going to hear any evidence about an intentional arson being set. This isn't a kidnapping case; you're not going to hear evidence that Askia was kidnapped, yes he agreed to go because he was a dreamer, he was a little bit naive and he ignored red flags. But that's not what matters in this case; the charges that you're going to hear about don't require you to consider those things; its gross negligence and depravity to human life. That's what you're going to need to consider in this case. It's not about intentional fire setting, it's about, it is gross negligence and you are showing you don't care about human life to put a person down there with no smoke detector, with no carbon monoxide detector, with no bathroom, with no shower, tell them you can't come up into the first and second floor, sure feel free to roam about the basement that has trash in it. But that you can't come up into the regular part of the house, you can't leave and then when you warn me that there's smoke I'm not going to respond. Even if you say never mind, you've got an employee down there, you check it out, especially when that person says, and its pitch black and there is no air flow..

EXCERPTED FROM PAGE 236

√ Digitally signed by Kimberly S Marcantoni.

DIGITALLY SIGNED CERTIFICATE

DEPOSITION SERVICES, INC. hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings in the Circuit Court for Montgomery County in the matter of:

Criminal No. 133838

STATE OF MARYLAND

v.

DANIEL BECKWITT

By:

/s/
Kimberly S Marcantoni
Transcriber

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

STATE OF MARYLAND	
v.	Criminal No. 133838C
DANIEL BECKWITT,	
Defendant.	

JURY TRIAL

Rockville, Maryland April 11, 2019

DEPOSITION SERVICES, INC.
12321 Middlebrook Road, Suite 210
Germantown, Maryland 20874
(301) 881-3344

EXCERPTED FROM PAGE 122

DAN MAXWELL

called as a witness on behalf of the State, having been first duly sworn, was examined and testified as follows:

VOIR DIRE EXAMINATION

BY MS. AYRES:

EXCERPTED FROM PAGE 124

I was the lieutenant station officer for a few years and then I got into the fire investigation section and worked there as an origin and cause investigator and a bomb technician for the last, I think 12 years of my career, maybe 13. Somewhere in there.

EXCERPTED FROM PAGES 199-200

Q How does – in your training and experience, how does one increase their chances of escaping a fire?

MR. BONSIB: Objection.

THE COURT: I'm going to allow it.

THE WITNESS: Well, knowledge of the area. I mean a blind person can get out of the house if they're familiar with the house. They can't if they're not. So familiarity with the structure that you're in is number one. The other is proper or I shouldn't say proper, reasonable warning. And that's why we have smoke detectors and fire alarms. That's why people used to die in fires before smoke detectors more than they do now. Because by the time they were altered to the fires, sleeping in their bed, it was too late for them to get out.

The smoke detector allows you a reasonable amount of time to get out of the fire. It alerts you sooner.

EXCERPTED FROM PAGE 221
CROSS-EXAMINATION
BY MR. BONSIB:

EXCERPTED FROM PAGE 237-238

Q All right. Now what Mr. Beckwitt told you, I think you already indicated in direct, in terms of a sound that a carbon monoxide detector makes when the power goes out, is that something you're familiar with, correct?
A Yes.
Q How are you familiar with it?
A I have one very similar to the one he had.
Q And when your carbon monoxide detector gives you a power out signal, do you go and determine why the power is out?
A Yes.
Q And generally flip a circuit breaker and turn it back on?
A Well, that's not usually why my power goes out, but okay, yeah.
Q I mean that's a pretty normal thing to do.
A Yeah, you want to find out what's going on.
Q All right. And sometimes our circuit breakers just flip because they get a quick power overload and we flip them and go back about our business, right?
A Yes, that can happen.
Q Okay. So there was nothing that sounded out of the ordinary or inconsistent with ordinary common experience with respect to that, correct?
A Okay. I'll do that.
Q But it also shows you that he had a carbon monoxide detector in the premises, correct?
A Uh-huh.

Q That's a yes?
A Yes. I'm sorry.
Q So do we know, we don't know, do we, whether the, what the relationship if any to the fire was to the carbon monoxide detector and the power source to the carbon monoxide detector going off, do we?
A I don't know the direct correlation, no.

EXCERPTED FROM PAGE 285

√ Digitally signed by Jessica L. Pineda

DIGITALLY SIGNED CERTIFICATE

DEPOSITION SERVICES, INC. hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings in the Circuit Court for Montgomery County in the matter of:

Criminal No. 133838

STATE OF MARYLAND

v.

DANIEL BECKWITT

By:

/s/
JESSICA L. PINEDA
Transcriber

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

STATE OF MARYLAND	
	Criminal No.
v.	133838C
DANIEL BECKWITT,	
Defendant.	

JURY TRIAL

Rockville, Maryland April 12, 2019

DEPOSITION SERVICES, INC.
12321 Middlebrook Road, Suite 210
Germantown, Maryland 20874
(301) 881-3344

EXCERPTED FROM PAGE 8

JEREMY NEAGLE

called as a witness on behalf of the State, having been first duly sworn, was examined and testified as follows:

VOIR DIRE EXAMINATION

BY MR. WINK:

Q How are you employed:

A I'm an electrical engineer with the Bureau of Alcohol, Tobacco, Firearms and Explosives.

EXCERPTED FROM PAGE 13-27

Q So, Mr. Neagle, what role did you have in the investigation of the house fire at 5212 Danbury Road, Bethesda?

A I was requested to respond to that scene to examine and assess the electrical system and electrical items that may have been involved.

Q When did you go there?

A That was September 12th of 2017.

Q Who did you go with?

A There were a number of different people there. From ATF, was another engineer, Cameron Novak, that came along with me. There were a couple of ATF special agents, Eric Bania (phonetic sp.), Dan Giblin (phoenetic sp.) and a number of other investigators, individuals from Montgomery County.

Q And what did you do when you got there?

A When I got there, I typically start all of my examinations the same way. I start from the outside and I work my way in. So, in this case, I start outside the house, identify where the power comes from, utility company, and then I follow it as it works its way into the house and then branches out from there.

Q So, this particular house was in a neighborhood, but was it connected to a municipal electrical source, or what do you call that?
A It was, it was supplied from a transformer that was located on a utility pole diagonally across the street from the house. Wiring came overhead to the house, down the side of the house, toward the rear, to an electric meter would be just outside the, the rear door to the basement, or on the rear corner of the house, anyway. From there, it went to a panel door in the basement area and then branched out throughout the house.
Q Okay. Is that pretty typical for a house like this?
A That is, yes.
Q What is a panel board?
A A panel board is an electrical enclosure that typically houses things like circuit breakers and fuses and serves as a distribution point for branch circuits downstream from that.
Q What's a circuit breaker?
A A circuit breaker is a circuit protection device that is designed to protect a circuit from things like overcurrent, overload or short circuit.
Q But how does a circuit breaker know when to break the circuit?
A A circuit breaker, like you might have in a residential situation, is what we call a thermal magnetic circuit breaker. That means it got two different modes of operation, a thermal side and a magnetic side. The thermal side responds to overcurrent or excessive amounts of current flowing through a circuit, and it works on the principle that current flowing through a wire generates heat, and the amount of heat that it generates is proportional to the

amount of current flowing, so more current, more heat.

As the internal components heat up from excessive current, it causes them to move out of place and open the internal switch in the circuit breaker and shut off power to the downstream circuit. On the other side, the magnetic side, that's designed to respond to short circuits, which have a very high current flow, and that works on the principle that current flowing through a wire generates a magnetic field, and again that magnetic field, strength or size of it, is proportional to the amount of current flowing, so higher currents, larger magnetic field.

When a short circuit occurs, there's a very large current flowing for a period of time that generates a very large magnetic field that causes the internal components of the circuit breaker to move, and again, open the switch and de-energize the circuit.

Q How does a person then, come along and reset that circuit?

A Once the circuit breaker is tripped, to reset it, this particular type of breaker has three handle positions, on off and trip would be in the center. To reset a tripped circuit breaker, you first have to move it to the off position, and then back to on. If you were to try to move it straight to the on position from the tripped position, it would just keep springing back. It wouldn't reset. You have to go to off, first, then back to on.

Q Did you observe the panel board at 5212 Danbury Road?

A I did.

Q Where was it?

A If you were to walk in the exterior basement door, which would be on the right side of that photo, towards the back corner.

Q We have State's Exhibit 13 here, and the exterior basement door would be here?
A Yes.
Q Okay, so where is the panel?
A If you were to walk in the door from the outside, it would be, pretty much immediately, to the right in the back corner of the house, mounted to the wall.
Q Okay, so this little box here says circuit breaker?
A Yep, that's it.
Q Approximately where it would be?
A Yes.
Q Okay, and what did it look like?
A Pretty typical circuit breaker panel. I believe by the time I arrived the covers had been removed already.
Q I'll show you here what's been marked as State's Exhibit 59. Can you tell the jury what that is, please?
A That's a photograph of the circuit breaker panel.
Q All right.
Q Is this particular circuit breaker panel customary to this type of residence?
A It's pretty typical.
Q Okay, and what positions were the circuits in when you saw them?
A The majority of them were in the off position. I believe there were a couple that were on. None of them were in the tripped position.
Q Did you observe any damage to the panel board?
A It had a light covering of soot, basically smoke that had been deposited on it, but no other damage to speak of, per say.
Q Did you observe any evidence that it had sparked?
A No. That would typically leave pretty characteristic evidence in the metals, that would have maybe short circuited or something like that, and I did not see any

evidence of that.
Q Did you observe ant evidence that it made a pop-pop noise?
A No.
Q Did you observe any evidence that itself was on fire?
A No, it did not have any fire damage.
Q Are you familiar with the location for the origin, I think that is the word you use, of the fire in the house?
A Yes, I believe it was more toward the center of the basement, in an area that would probably be considered the laundry room area.
Q Okay, and how far, approximately, was that from the panel board?
A Might be 10 or 15 feet.
Q Okay. So, what part of your investigation was conducted in the unfinished part of the basement, and by that, I mean the laundry room you described to the Court, over here where the dryer is?
A Once I did the front-end work, again, starting from the outside, working through the meter and the panel board, the bulk of my time was spent in that laundry area.
Q And why is that?
A Because that area was identified to me, by the fire investigators, as being the area of origin, so obviously we're now interested in what potential, or possible, ignition sources may be in that area.
Q What possible, possible sources of ignition did you observe in that area?
A In that area was an electric clothes dryer, an electric arch welder, a number of power strips, for lack of a better term, cords, wiring, plugs, receptacles, things like that.
Q I'll show you here what's been marked as State's

Exhibit 60. Can you tell the jury what that is?
A It's a photograph of the laundry area, showing the dryer, and some other items around it.
Q Now of those items that you described as possible sources of ignition, did you analyze them –
A Yes, I did look at all –
Q – and see their potential –
A – those items in that area.
Q Okay, and which potential sources of ignition did you identify in that area?
A Of the things that I looked at in that area, there were two things that stood out. Those being the electric arch welder and a duplex receptacle or wall outlet that was also in that general area.
Q What is an electrical arch welder?
A An arch welder, or welding machine, is a machine that is used to general high currents that are then used to melt metals and fuse them together in a welding process.
Q All right. I'm going to show you here what's been marked as State's Exhibit 61. Can you tell the jury what that is, please?
A Yes. That's a photograph of the arch welder.
Q Okay, so what kind of arch welder is that?
A The brand you can see written on the side is Chicago Electric. They type is, this welder actually has two different functions, what we call gas metal arch weld, or MIG weld, as well as flux core arch weld, which uses a slightly different process. So, it can weld at two different modes. It's what I consider a wire feed welder, because it's got a spool of welding wire in it, and a handheld torch with a trigger to do the welding.
Q And what kind of electricity requirement does this device have?

A This welder's rated 240 volts, 25 amps.
Q And why is this device a possible source of, potential or probable source of ignition?
A Welding, by its nature –
MR. BONSIB: Objection to the form of the question.
THE COURT: Yes.
BY MR. WINK:
Q What, the words I used, potential, possible, or probable –
A Yes.
Q How would you describe this as a source of ignition?
A If someone were welding at the time, I would say that is a probable ignition source. If they're –
Q Probable?
A Yes.
Q Okay, and why, what do you mean if someone were welding at the time?
A Sitting there, as it is, it's not doing much of anything. If somebody were welding, the welding process, by its very nature generates very high temperatures, high enough to melt the metal that are involved and fuse them together. Aside from that, the welding process gives off a shower of sparks, and those sparks are essentially molten pieces of metal that retain a certain amount of heat, and if they were to land on a combustible material, that may cause it to ignite.
Q Okay, on State's Exhibit 13, where is the welder located in the unfinished portion of the basement?
A The welder is somewhat just in front of the dryer, I'm assuming underneath the body. He had it labeled welder there.
Q Welding machine?
A Yes.

Q Okay, so that's the same welding machine?
A Yes, it is.
Q And it was found underneath the body?
A The body was not there when I responded to the scene. It was sitting in, roughly, that location in front of the dryer.
Q All right, so I'm going to go back to State's Exhibit 60. Can you tell the jury where the welder would be in this picture?
A Yes, so in the center of that picture, you can see the dryer. It's kind of a big square white thing, central, yes. More toward the foreground, you can see a little bit of blue, underneath that light, so that is probable a fire department light, or fire investigator's light, which is sitting on top of the welding machine.
Q Okay. So, when you saw the welder, was it plugged in?
A When I arrived, it was not plugged in. I was told by another investigator on the scene that it had been plugged into a make-shift adapter cord, which was then, in turn, plugged into the dryer outlet.
Q Okay, and what was the status of the circuit breaker on the outlet that it was plugged into?
A The circuit breaker that was marked in the panel as controlling the dryer was in the off position.
Q What is your expert opinion, as to whether this welder was a probable source of the ignition of the fire?
A Again, it would be a probable source of ignition if somebody were welding at the time.
Q Could you tell whether someone was welding at the time?
A I did not have the information that would tell me that, no.
Q Now, you also mentioned a duplex receptacle, what

does that mean?
A Correct. A duplex receptacle is a term we use for a standard wall outlet. It's got two places to insert a plug, but it's a pretty typical wall outlet like you might have in your home. I don't see one nearby in the courtroom, but typically what you would plug in your lamp or your T.V. or something like that.
Q Because there isn't one –
THE COURT: There is underneath there.
MR. WINK: Oh, there's one under here, but you can't see it.
BY MR WINK:
Q So, it's just a regular plug, or a little outlet?
A Yeah, an outlet or a socket.
Q In your house?
A Yeah.
Q All right, I'm showing you what's been marked as State's Exhibit 62. Can you tell the jury what that is?
A That is the outer box and remnants of the duplex receptacle that I referred to earlier.
Q Okay, so where was State's Exhibit 62 in the house?
A That box was mounted to the wall that separated the laundry area, on the back side of the clothes dryer, from what was on the other side, which appeared to be a work bench area.
Q Okay, so on State's Exhibit 13, which is the diagram, where would it have been?
A In that wall that's separating those two areas, yeah, just about the end of the wording that's written there.
Q Right here?
A Right there, yes.
Q Okay, and on State's Exhibit 60, where would it have been?
A I can see it pretty clearly. Would like me to get up

and point to it?
Q Sure, come on up. Use my pen, or use the pencil, because it's yellow.
A That box with the receptacle was actually located right here.
Q Okay.
A You can see a stud in the wall. There's some plywood on that as well. That white spot is the receptacle.
Q And were you able to determine whether the circuit breaker, that was connected to this plug, was in the on, or off, or tripped position?
A The circuit breaker that was identified in the panel board as supplying the basement lights and sockets was also in the off position.
Q You say off?
A Yes.
Q Okay, so what materials are used to manufacture this outlet, State's Exhibit 62?
A The internal parts that carry the current are made of metal, typically brass. That's surrounded by a plastic body.
Q Are the fire resistant?
A The metal, by its nature, is not typically going to burn. The plastic materials are designed not to easily be ignited or support combustion from a small heat source, but given enough heat, they will burn.
Q So, what is your expert opinion on whether this outlet could generate smoke?
A Smoke is a byproduct of the combustion or a –
MR BONSIB: Objection.

EXCERPTED FROM PAGE 28-49

THE COURT: Overruled.

BY MR. WINK:
Q Do you remember the question, whether the receptacle could generate smoke?
A Yes.
Q What's the answer?
A Smoke, excuse me, smoke is a byproduct of the combustion or pyrolysis process. Pyrolysis being the breakdown of material by the action of heat. So, as you would heat a plastic material, it would begin to breakdown and give off what we would know as smoke.
Q And could that happen without having a flame?
A Yes. Pyrolysis typically precedes flame and combustion. So, it will heat, begin to breakdown chemically, give off those materials, gases and vapors, and at some point, if you continue to heat it, they may ignite and then you will get flame and combustion.
Q So, what is your expert opinion on whether this electrical outlet was a probable source, or a probable source of ignition?
A So when I examined this outlet –
MR. BONSIB: Objection to the form of the question.
THE COURT: I'm going to allow it, yes, I'll allow it.
THE WITNESS: When I examined this object, a couple things stood out out. There was a small area of arch melting on one of the power rails. The power rail is the metal component inside that carries the current, and actually the component that the plug blade slides up against to make contact, so one of those had an area of arch melting.

That tells me that there was some electrical activity there, and the other one actually had significantly more damage to one end of it. It was localized to one end, and it actually melted a portion of that brass power rail, and piece of the plug blade that had been

inserted into this outlet remained there and was fused to that power rail. That damage is pretty characteristic of a known failure mode for this type receptacle. That being what we call a high resistance connection.

Q Okay, and how did you arrive at that conclusion?

A Essentially, by making those observations. It's a pretty typical failure mode for a plug in a socket. It's effectively a core or loose connection, where the system is designed to be very lower resistance, by its nature, including metal to metal contact. If that contact is a little bit loose, there's a little bit of oxidation on those materials.

It generates a little bit of extra electrical resistance and when we flow a current through that resistance, it generates heat, and over time that can progress to the point of heating up the materials around it and causing an ultimate failure, and potentially resulting in a fire.

Q Now, of all the other potential sources of ignition in the basement that you analyzed but determined that they weren't probable sources of ignition, did you like, remove them from the house and analyze them?

A Yes, some were, were examined in place and some were removed the rear deck, on the back side of the house. There was not a lot of room in there to work, so things like the dryer, we had to physically take it out to examine it, the welding machine as well.

Q And the washer?

A Yes, washer, no, washer remained in there.

Q Okay. So, did you see any other, other than these two things that you mentioned, the electrical outlet and the welder, did you see any other probable sources of ignition in the basement?

A No, those were the only two things that identified as

being probable sources of ignition.
Q Okay, and given the fact that you can't tell if the welder was on, was this electrical outlet really the only remaining probable source of ignition?
A Again, I don't have information on whether somebody was welding at the time. My role in this is to gather data, analyze it, provide that information to the origin of cause investigator, and essentially, I hand him those two pieces of information, that this receptacle or outlet exhibits signs of a known failure, and the welder, if somebody were welding at the time, was something else that should be considered.
Q Thank you. I want to thank you for your testimony, and defense counsel may have some questions for you.
A Thank you.
CROSS-EXAMINATION
BY MR. BONSIB:
Q Good morning, sir, how are you?
A Morning, very good.
Q Just so the, make sure the language is clear, there is no evidence that the welder was on or being used?
A That's correct. I don't have the information that tells me that.
Q Right, and so the location where the fire began that you could make any opinion about was the within this electrical box, correct?
A That is the only item that I was able to identify in that area of origin, so the area in the laundry room, area backing up to the workbench area that had signs of failure, yes.
Q All right, and the type of failure that you noted that it had really resulted from the deterioration, apparent deterioration over time of the contacts that were within the box, correct?

A That's correct. It's pretty typical failure mode for a receptacle, and it can happen in anywhere from hours to years or decades.
Q All right, and it's this, essentially a late defect, in so far as the homeowner would be concerned. It's not something you could see from the outside?
A Depends how closely you're looking at it. I mean, you may see smoke coming out of it if you're nearby it at the time.
Q Well, I'm not talking about once it fails. I'm talking about before it fails. These are the kinds of common outlets that people have?
A Correct.
Q And what you're talking about, in terms of these contacts sort of coming apart, and thus creating high resistance within the box, are things that you observed, but only after the face plate was removed?
A That's correct. They would be located behind the plastic and within the receptacle itself. Only if it were beginning to fail would you see, maybe, evidence of heating from the outside, or smoke or something like that.
Q And in this case, you have no, you're not able to determine at what point the failure occurred and how long any failure might have taken to either generate smoke or fire, correct?
A Yes, that's correct.
Q And so, in terms of, if we're going to put the smoke side apart for the moment --
A Sure.
Q -- what happens, in terms of the contacts you would say there's high resistance, that happens between these two points that sort of come apart, or deteriorate in terms of the connection, when that happens, what is

the mechanism? What's going on inside? Does it generate sparks? Does it generate high heat? What is it that is the fire generating mechanism?

A There are a few different things that go on, as it happens again. You've essentially got two pieces of metal that are in contact, and we want those to be in very good contact with a low resistance connection. If they are not held in close contact, they may move a little bit, and that may create some, some arching or sparking at that point. It's what we call series arching or sparking. That meaning it's limited by the load current that's flowing through it, so they tend to be smaller than what you might think of as a short circuit current. They'll get some oxidation, which is effectively corrosion of those, those metal materials, and that arching and sparking process actually accelerates the oxidation growth. The oxides that are formed are somewhat semiconductive, meaning that they have a fair amount of electrical resistance.

So, as that process happens, of arching, sparking and maintaining a loose connection with current flowing through it, it will actually get worse over time, and the process begins to snowball. It will heat up, generate more oxide, which makes it more resistive. It will continue to heat up, generate more oxide and eventually it may reach a point of ultimate failure.

Q So, when you examined the scene, did you note that the box -- this was the workbench area, correct?

A Yes.

Q All right, and so, this was on a pole, pole is the wrong word, a timber --

A A stud, or, yeah.

Q -- like a timber, or stud --

A Yes.

Q -- wall to ceiling stud?
A Yes.
Q Wood?
A Correct.
Q And it was on the other side of this wall, correct?
A Correct.
Q So, it was back in this room, correct?
A That's correct.
Q Not presumably observable before the fire, from somebody who would be in the dryer area?
A There was plywood covering that wall. I don't know how far it extended up. A portion of it was burned away when I was there.
Q Okay, all right, so in terms of when the outlet failed, and did you have discussions with a fire investigator, Marshal Maxwell --
A Maxwell, yes.
Q -- about the location where it looked like the burn pattern went from the area of the outlet?
A No, I would typically not get into the burn patterns. That's something that, that he would look at, as the investigator. I had discussions with him about the outlet and its condition.
Q All right. Well, assuming that the burn pattern is consistent with what you say with the outlet causing the fire that the burn pattern shows, sort of, emanated from that area and where it went. Is it, in terms of causing the wood to catch fire, is it going to be, then, from the extreme heat that is generated inside of this box in all likelihood or is it going to be a spark that hits, or is it something, you're not sure which way it would have gone?
A So, this outlet, you can see, is mounted in a metal box, and that metal box is mounted to that, that wall,

that wooden wall. It actually has a metal cover on it as well. You can actually see it in the top of that photo. That's the metal cover plate.

Q Up here?

A Correct, that's it right there. So, that has two openings where the two receptacles, where you would insert the plug. Those would be filled by the plastic body of the receptacle itself, and then there would be slots in those for the plug blades to be inserted. It's not uncommon for a failure to extend outside the box. The box is designed to contain an electrical failure, but it does happen that if there's a failure, such as a short circuit or something like that inside, it may eject some molten material out the front of that box.

Q Now, in its original condition, there was a plug into one of the receptacles, correct?

A Yes, there's actually a portion of the plug blade is fused to a piece of the receptacle.

Q And that went to a couple of fluorescent lights?

A There was one plug that went to some fluorescent lights. The other one, where the failure was, was not for the lights, and there's a photograph of it in my report. The plug blade is kind of an odd shape. It's not the shape that I typically see for plug blades, so it kind of stood out as being a little bit different. We looked through area, and on the workbench, we found, and you can actually see one here in the photograph, that orange item is a grounding adapter. So, it would go from a three-prong plug to be able to plug it into a two-prong outlet, and that, we found several of those that had same plug shape that was adhered to that receptacle.

Q But it wasn't in the receptacle?

A That particular one, no, no.

Q All right, was there one in the receptacle?
A There was a plug blade in the receptacle that matched the plug blade on that type of adapter.
Q But there was nothing connected to it?
A I don't know. There wasn't anything left of the rest.
Q Well, at the time you observed it, there was nothing connected to it?
A No.
Q So, the plug receptacle that was the one that was faulted was the one that wasn't, when you observed it, connected to anything?
A Right, I could see that there was a plug inserted, and there was a portion of a plug blade in there, but there was no more wiring. The other plug blade was not there.
Q And so, you indicated that when you made the inspection of the circuit breaker, the circuit breaker that went to this particular power source, for this particular location, was tripped off, correct?
A We did not trace the entire circuit. It was not something that we were able to put our eyes on from point A to point B, but the circuit that was identified, on the panel legend as controlling the basement lights and sockets, was off, not tripped off, just off.
Q All right, and so that was just based upon -- is the circuit box picture the one that's up here? Is it a small one or a big one?
MR. WINK: It's underneath there.
MR. BONSIB: Okay.
MR. WINK: If you lift that one up, it's in there.
MR. BONSIB: Okay.
MR. WINK: Or that one too.
BY MR. BONSIB:
Q It's not shown in this picture, but there was, on the,

there was a legend --
A Correct.
Q -- on the, when you opened it up, there was a legend, and as this common, you see handwriting on the various blanks where somebody has written in --
A That's correct.
Q -- where it went to, and that was what you based upon, that somebody wrote on there that this particular circuit breaker controlled this area of the power, correct?
A That's correct.
Q And did you also see, on there, that it indicated that there was an inspection done in like 1974?
A I did see that, yes.
Q And that was consistent with the age of the type of outlet that you saw?
A Probably, but it appeared to be a two-prong outlet, instead of a three prong. It did not have the grounding connection, so those are typically older.
Q Do you know, could you tell from your examination, what was the first thing that actually ignited?
A It's kind of a tricky question to answer. I'm trying to think how to phrase it best.
Q Okay.
A If I were to consider, so, I considered multiple things, right, and, and one I said was the welder, and one I said was the receptacle, as potential causes, so hypotheses that maybe that started the fire, and then I tried to test my hypothesis to see if that remains valid or not. In the scenario of the receptacle failing and causing fire, the failure mode would typically unfold where the high resistance connection of the metal parts is heating the plastic. The plastic breaks down and pyrolyzes, and eventually ignites the plastic. That

would be the typical scenario for that.
Q Okay, all right, and as you indicated, I think, before, in terms of the timing that it took for all of this to occur, whether it occurred in the matter of seconds or minutes or whatever time frame, there's not a way for you to offer an opinion within a reasonable degree of scientific certainty as to the length of time that all of this happened, correct?
A The, that particular failure mechanism, failure mode, is one that we would typically say can occur from hours to years. I mean, it could be many years. There's really not much more specific than that, that I can get.
Q Okay, well, I'm not making my question clear. That is the process of the contacts deteriorating, correct?
A The whole overall process.
Q What I'm talking about is once the plates begin to ignite or heat up, when the actual event that causes the fire to occur in this particular instance, you can't tell us how long it would take for that defect to generate the heat necessary to cause the fire to have happened, correct?
A No, there's no way I could put a value of time on that.
Q All right, thought so. Thank you. One moment please. That's it, thank you, sir.
THE COURT: All right.
MR. WINK: Yes.
REDIRECT EXAMINATION
BY MR. WINK:
Q Just to clarify some things about, so to start with the terminology, can you take the stick? Can you hold that?
A Sure.

Q Thanks. All right, so to start with the terminology here, this is the face plate. This item up to the top of State's Exhibit 62 is the face plate to this box?
A Correct, that would be the face plate or cover plate for that box.
Q And then if you were looking at it, it just looks like a regular plug that we're used to, except instead of a rectangle it's a circle.
A That's correct.
Q Okay, and then what is this thing?
A That is the grounding adapter that we recovered from the debris that was on the workbench area, again, trying to identify what may have been plugged into the outlet. I mentioned that the fragment of the plug blade that was fuse to the receptacle component was an odd shape. We sifted through the debris, found several of these orange grounding adapters that had the same shape and style of plug blade.
Q So, at the top of this orange part that you're calling a what?
A A grounding adapter.
Q Grounding adapter, can I call it a plug? Can I call it an orange plug?
A Sure.
Q Okay, but it doesn't have a cord coming out of it.
A No, it's actually got a receptacle on the back end. You would plug another plug into that.
Q Okay, so this orange plug has two metal prongs on it.
A Correct.
Q What do you call those metal prongs?
A Plug blades.
Q Plug blades, and there's two of them?
A Yes.

Q Okay, sometimes there's three?
A Correct.
Q One's like round and two are flat?
A Yeah, so you would have hot, neutral and ground.
Q Okay.
A Typically on modern plugs. Older and certain things that we use today would use, still, two without ground.
Q So, the two parts, the two metal parts you put in the wall are the blades?
A Correct.
Q And those blades were unique in shape?
A Yes.
Q How are they unique in shape?
A There's a photograph of them. With a two prong plug, we need to ensure that it goes in the right way, basically that we don't put it in upside down, so we use what's called a polarized plug, meaning that it only goes in one way or its designed to only go in one way. If you look at the average outlet or receptacle, the slot on the left is slightly larger than the slot on the right, and that, the reason for that is to maintain that plug orientation. So, now our plug blades, one has to be a little bit wider than the other. Sometimes they just make a wide plug blade. It might just be wide and straight, as compared to the other one. Sometimes it has a flare at the end, kind of, kind of gets a little bit larger toward the tip. This one actually had two little protrusions that came up with curved ends on each corner. It's not something I'd run into previously, in my time doing this, so it struck me as odd, and we looked around and identified that this particular grounding adapter had the same style plug, plug blade, sorry.
Q Okay, so in this device here, the big round part, on State's Exhibit 62 --

A Yes.
Q -- how many plug blades did you find in the outlet that had the failure?
A There was a cord plugged in for a fluorescent light, which I believe was over in the workbench area.
Q So, that would have like one of these two holes?
A Yes.
Q And you're saying that the one that's plugged into the fluorescent light was the one that failed?
A No.
Q Oh.
A The one that did not have a cord coming from it was the one that failed.
Q I see.
A So, there was a plug blade in there, but nothing else attached to it at that point.
Q Okay, so if you were to look at it quickly, would it look like anything was plugged into it?
A After it's been fire damaged?
Q No, I mean just prior to the fire.
A I would assume that you would have seen something like this orange grounding adapter plugged in there, maybe a cord. I don't know.
Q But you said you only found one blade?
A Correct.
Q Well, how would that be possible?
A During the fire, I would assume that the rest of that plastic body were consumed, and it got separated?
Q Did you find any orange receptacles with only one blade in it?
A No.
Q Okay, so could it just be that at one point there was something plugged in and when it was pulled out the plug, one of the blades remains stuck in it?

MR. BONSIB: Objection, objection.
THE COURT: I'll allow it, because if he knows, I'll allow it. Go ahead.
MR. BONSIB: Well, it's -- may we approach, Your Honor?
THE COURT: Yes.
(Bench conference follows:)
MR. BONSIB: Your Honor, this is a speculate, this is a question that calls for him to speculate, pure speculation, and it is not a proper subject matter for expert opinion. You know, you can come up with a whole bunch of factual scenarios, but they don't require an expert to opine on them. If counsel wants to argue that to the jury, the jury doesn't need an expert to tell them what something could be plugged in or not be plugged in, so I, you know, I think this is beyond expert opinion testimony, and I object on that basis.
THE COURT: Okay. The reason I would allow it, is, the reason I would allow it, is if it could happen when you're pulling a plug out, they come apart. I would allow for him, if he's ever seen that before, the plugs coming apart, not whether it happened in this case. I'll allow it for that, but I won't allow him to say it happened in this case.
MR. WINK: How would he know? He said it could have happened, or the fire could have burned it off, but I think it's --
THE COURT: Okay, ask him if he's ever seen a situation where that has happened, and then we're moving on.
MR. BONSIB: Well, I mean, if he's going to say there's no evidence of that having happened in this case, which I think is what he would say, we're then getting into possibilities that are not based upon the facts of

this case. So, I mean, there's no evidence that he's suggested that there was anything to suggest that anything was plugged into that receptacle, so throwing out a speculative possibility, with no factual predicate on which an inference can be drawn from that, seems to me, to be totally improper.

THE COURT: But he has, he has the remainder of a part of plug in there, and he's --

MR. BONSIB: But he has no --

THE COURT: -- exploring how that could have come to happen, correct?

MR. BONSIB: Well, he is speculating, and we're not in the area of expert opinion when we're speculating. There's no evidence in this case, no physical evidence to suggest that there was anything plugged into that at the time, so we're purely speculating as to something that is not based on anything in the record or any of the facts.

THE COURT: Well, he can ask whether or not hisexperience would allow him to opine as to how that may happen, and if the answer is he has no idea, we'll move on.

MR. BONSIB: Well, we don't have any expert notice of him offering an opinion in that area.

THE COURT: Okay, I'll allow it.

(Bench conference concluded.)

BY MR. WINK:

Q Okay, so you were testifying as to how a plug, the plug with two plug blades, could leave one of those blades in the receptacle.

A The entire blade was not in the receptacle. It was only the very tip of it, and it was melted, so it was, the blade was severed by the melting of the brass material.

Q Okay.

A As far as what it would take to pull one of those plug blades out of that orange grounding adapter, we did pull one out, not physically pull it, we actually cut one out. That's a molded assembly, where the metal pieces are molded into the plastic. I can tell you it was not easy to get it out.
Q What does that mean?
A That we had to spend quite a bit of time with a knife cutting at it, trying to get the metal piece out of the plastic that it was embedded in.
Q It, okay, so then the process by how it melts in, you called it oxidizing and arching, is that right?
A The process of the high resistance connection forming?
Q Right.
A Yeah, it's typical for it to include arching or sparking where the parts are moving a little bit, and you may get a separation. When you get that separation, it's going to draw an electrical arch, and that may produce some sparking at the same time. So, that's pretty common. Then it also oxidizes, which is basically forming other compounds from the metal and oxygen.
Q And does that create heat?
A Those, those compounds from the oxidation, again, are semi-conductive, and they have considerably more resistance than the base metal would, so they will tend to generate heat, as you flow current through them.
Q And does that heat create what you called pyrolyzing?
A It may, yes, may tend to breakdown the plastic as you heat it.
Q And is that pyrolyzing, in common terms, smoke?
A It's the process that leads to smoke.

EXCERPTED FROM PAGE 158

ERIN WIRTH

called as a witness on behalf of the State, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WINK:

Q How are you employed?

A I work for Montgomery County Fire Rescue and I'm part of the Fire and Explosives Investigations Unit

EXCERPTED FROM PAGE 167

Q Okay. Despite the challenging lighting conditions, were you able to see if there were any like smoke detectors or carbon monoxide detectors down there?

A Not that I saw, no.

EXCERPTED FROM PAGE 211

√ Digitally signed by Jacqueline Johnson

DIGITALLY SIGNED CERTIFICATE

DEPOSITION SERVICES, INC. hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings in the Circuit Court for Montgomery County in the matter of:

Criminal No. 133838

STATE OF MARYLAND

v.

DANIEL BECKWITT

By:

/s/

Jacqueline Johnson

Transcriber

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

STATE OF MARYLAND	
v.	Criminal No. 133838C
DANIEL BECKWITT,	
Defendant.	

JURY TRIAL

Rockville, Maryland April 23, 2019

DEPOSITION SERVICES, INC.
12321 Middlebrook Road, Suite 210
Germantown, Maryland 20874
(301) 881-3344

EXCERPTED FROM PAGE 32
JURY INSTRUCTIONS

EXCERPTED FROM PAGE 39-40

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. 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 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.

EXCERPTED FROM PAGE 159

√ Digitally signed by Tanja G. Gish

DIGITALLY SIGNED CERTIFICATE

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Criminal No. 133838

STATE OF MARYLAND

v.

DANIEL BECKWITT

By:

/s/
TANJA G. GISH
Transcriber