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## Recent Developments: State v. Thomas

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## RECENT DEVELOPMENT

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### **STATE V. THOMAS: A DISTRIBUTOR OF HEROIN MAY BE CONVICTED OF INVOLUNTARY MANSLAUGHTER FOR THE FATAL OVERDOSE OF A BUYER UPON A FINDING OF GROSS NEGLIGENCE AND CAUSATION.**

**By: Katherine Burgess**

The Court of Appeals of Maryland held that a distributor of heroin may be convicted of gross negligence involuntary manslaughter if there is sufficient evidence to prove that the distributor's conduct was both the actual and legal cause of a buyer's fatal overdose. *State v. Thomas*, 464 Md. 133, 139, 211 A.3d 274, 278 (Md. 2019). The evidence must be reviewed on a case-by-case basis to determine the degree of gross negligence required and whether a sufficient causal connection exists between such gross negligence and the fatal overdose of a buyer. *Id.* at 167, 211 A.3d at 294. The Court of Appeals of Maryland held that the trial court did not err in finding Thomas's conduct sufficient to establish gross negligence and causation, affirming the conviction of involuntary manslaughter based on the inherent dangers of distributing and consuming heroin, and the circumstances of this transaction. *Id.* at 180, 211 A.3d at 301.

On the morning of June 26, 2015, Colton Matrey ("Matrey") was found deceased in the bathroom of his residence in Worcester County, Maryland. Responding officer Detective Jeff Johns ("Johns") observed four bags on and around Matrey's person, each bag labeled "banshee." After speaking with Matrey's family, Johns learned that Matrey had been abusing heroin for over four years. An investigation of Matrey's cell phone call log revealed a total of 27 outgoing phone calls and several text messages to Patrick Thomas ("Thomas") in a 20-minute window around midnight on June 25. A search of Thomas' person and residence revealed 60 bags identical to those found in Matrey's possession, containing a total of 13.10 grams of heroin.

In his voluntary statements made to police, Thomas stated that he had been selling "banshee" for over a month and that he personally consumed about 12 bags of heroin a day, dosed in quantities of 4 bags at a time. Thomas admitted that he had sold heroin to Matrey on more than one occasion and that he sold Matrey four bags of "banshee" around midnight on June 26, 2015. Upon learning of Matrey's death the night of the sale, Thomas expressed dismay: "He [Matrey] couldn't have overdosed off what I sold him. I only sold him four bags." Thomas stated that he felt bad, acknowledging that he would have to live with this incident on his conscience.

The Circuit Court for Worcester County convicted Thomas of distribution of heroin, reckless endangerment, and involuntary manslaughter based on a theory of gross negligence. Thomas appealed to the Court of Special Appeals of Maryland on the basis that the evidence did not support a conviction of involuntary manslaughter. On appeal, the court held that the State did not provide sufficient evidence of gross negligence. Additionally, the court held that there was a break in the causal chain between Thomas's actions and Matrey's death was broken, and as a result, Thomas was not the "but for" cause of death. The State filed a petition for writ of certiorari, which the Court of Appeals of Maryland granted.

The question presented to the Court of Appeals of Maryland was whether the distribution of heroin may establish the requisite gross negligence to support a conviction of involuntary manslaughter. *Thomas*, 464 Md. at 160-61, 211 A.3d at 290. Maryland precedent has "equated 'gross negligence' with a 'wanton and reckless disregard'" and involving a "high degree of risk" to human life." *Id.* at 153, 211 A.3d at 286 (citing Charles E. Moylan, Jr., *Criminal Homicide Law* § 12.24 at 226 (2018); *Maryland Pattern Criminal Jury Instructions* § 4:17.8 at 699 (2018)). The court calls for an objective reading of the facts to determine the degree of negligence needed to establish the *mens rea* of gross negligence manslaughter. *Thomas*, 464 Md. at 160, 211 A.3d at 289.

In reaching its decision, the court reviewed findings from the Supreme Judicial Court of Massachusetts and the North Carolina Court of Appeals on the issue of whether the distribution of intoxicating substances can support a conviction of involuntary manslaughter under a gross negligence theory. *Thomas*, 464 Md. at 164-65, 211 A.3d at 292-93. In line with these jurisdictions, the Court of Appeals of Maryland held that Thomas' actions were wanton and reckless because of the dangers inherent in the distribution and consumption of heroin of unknown potency carrying with it a high degree of risk to human life. *Id.* at 164-65, 169, 211 A.3d at 292-93, 295.

The Court of Appeals of Maryland declined to create a *per se* ruling deeming all heroin distribution that results in a fatality as gross negligence. *Thomas*, 464 Md. at 167, 211 A.3d at 294. Rather, Maryland courts must consider the totality of the circumstances of the parties and the sale. *Id.* at 167, 211 A.3d at 294. Here, the court considered Matrey's history of drug use and dealings with Thomas, the urgency with which and unusual hour Matrey contacted Thomas, Thomas's history of drug use and distribution, and his knowledge of the potential risks to human life of heroin use. *Id.* at 168-170, 211 A.3d at 294-96. The court found that Thomas was aware of the foreseeable consequences of heroin use and of Matrey's desperation, based on the number of attempts to contact Thomas. *Id.* at 169-71, 211 A.3d at 295-96. However, he completed the sale of heroin that resulted in Matrey's fatal

overdose. *Id.* at 169-71, 211 A.3d at 295-96. Therefore, the evidence reviewed by the trial court was sufficient to find Thomas' conduct indicative of a wanton and reckless disregard for human life, constituting gross negligence. *Id.* at 172, 211 A.3d at 297.

For a conviction of involuntary manslaughter to stand, the State must show that the distributor was both the factual and legal cause of death. *Thomas*, 464 Md. at 173, 211 A.3d at 297. The State is not required to show that the heroin was an independent cause of death, only that Matrey's death would not have occurred 'but for' "the heroin Thomas supplied." *Id.* at 177-79, 211 A.3d at 300-01. The court determined that the concentration of narcotics found in Matrey's blood at the time of death amounted to a lethal dose. *Id.* at 179, 211 A.3d at 300. This finding negates the argument by Thomas that Matrey's blood alcohol content ("BAC") of 0.08% was a contributing factor to his death. *Id.* at 177, 211 A.3d at 300. The court explains that such a percentage does not constitute a lethal dose of alcohol, considering that Maryland's BAC legal limit for driving is 0.08%. *Id.* Instead, the court stated, the main issue is whether or not Matrey's death would have occurred if not for Thomas' conduct. *Id.*

The determination of legal causation depends on the foreseeability of the consequences of the distributor's actions judged by a reasonable person standard. *Thomas*, 464 Md. at 178-79, 211 A.3d at 300-01. Death is not required to be foreseen by the distributor, it only needs to be rationally related to the distributor's conduct. *Id.* at 179, 211 A.3d at 301. The court determined that Matrey's intervening conduct of consuming all four bags of heroin does not negate Thomas' criminal liability as such conduct was reasonably foreseeable following the sale. *Id.* at 179, 211 A.3d at 301 (citing *Commonwealth v. Catalina*, 407 Mass. 779, 556 N.E.2d 973 at 980 (1990)). The court stated that Matrey's contributory negligence is not a valid defense to involuntary manslaughter. *Id.* at 179, 211 A.3d at 301.

The dissenting opinion rejects the finding of a sufficient causal connection between the sale of heroin and Matrey's death. *Thomas*, 464 Md. at 181, 211 A.3d at 302. Maryland precedent that has applied the felony murder doctrine has found defendants culpable when the commission of the felony and death are a part of a single continuous transaction. *Id.* at 182, 211 A.3d at 302-03. In the present case, the sale and subsequent use and overdose are entirely separate by time, place and participation. *Id.* at 183, 211 A.3d at 303-04. Thomas was not present, and he did not prepare the dose or inject Matrey, nor was he afforded the opportunity to save him. *Id.* The dissent also proposes that the finding of tramadol (an opioid analgesic that like heroin, converts into free morphine in the bloodstream when metabolized) in Matrey's bedroom contributes to the uncertainty of the cause of death. *Id.* at 184, 211 A.3d at 304. The dissent states that classifying Thomas' actions of

distributing heroin as involuntary manslaughter is a policy concern that should be dealt with by the Maryland General Assembly, not judges. *Id.* at 187, 211 A.3d at 306.

The Court of Appeals of Maryland held that a distributor of heroin is guilty of involuntary manslaughter for the death of a buyer upon a sufficient showing of gross negligence and causation. This case has paved the way to prosecuting small time distributors contributing to the opioid and heroin epidemic in Maryland. However, the potential flood of prosecutions that may be brought because of many opioid-related deaths could pose a problem for Maryland's State's Attorney's Office with regard to the increased caseload and manpower required to investigate these highly fact-specific incidents. The question remains whether this holding will deter small-time distributors from engaging in the sale of heroin and other intoxicating substances because of the burden on the State to prove the requisite circumstances that push the transaction past a mere distribution.