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ADVANCE SHEET HEADNOTE  
May 5, 2025

2025 CO 18

**No. 24SA258, *In re People v. Beverly*—Intervening Cause—Proximate Cause—Suicidal Intent—Distribution—Fentanyl—C.A.R. 21.**

The supreme court holds that evidence of a drug purchaser's suicidal intent may be relevant in determining whether a defendant's distribution of drugs to the purchaser constituted the "proximate cause" of the purchaser's death under section 18-18-405(2)(a)(III)(A), C.R.S. (2024). This is because a drug purchaser's suicide by means of intentional overdose may constitute an intervening cause that severs the causal connection between the drug distributor's criminal conduct and the purchaser's death. The court further concludes that, under the circumstances of this case, the trial court did not abuse its discretion in ruling that evidence of the drug purchaser's suicidal intent, coupled with physical evidence of suicide, is relevant to the proximate-cause analysis under section 18-18-405(2)(a)(III)(A) and is sufficiently probative to overcome any risk of confusing the jury for purposes of CRE 403. Accordingly, the court discharges the order to show cause.

**The Supreme Court of the State of Colorado**  
2 East 14th Avenue • Denver, Colorado 80203

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**2025 CO 18**

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**Supreme Court Case No. 24SA258**  
*Original Proceeding Pursuant to C.A.R. 21*  
El Paso County District Court Case No. 24CR1183  
Honorable Marcus S. Henson, Judge

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**In Re**  
**Plaintiff:**

The People of the State of Colorado,

v.

**Defendant:**

Patrick L. Beverly, II.

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**Order Discharged**

*en banc*  
May 5, 2025

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**CHIEF JUSTICE MÁRQUEZ** delivered the Opinion of the Court, in which **JUSTICE HOOD, JUSTICE GABRIEL, JUSTICE HART, and JUSTICE SAMOUR** joined.  
**JUSTICE BOATRIGHT**, joined by **JUSTICE BERKENKOTTER**, dissented.

CHIEF JUSTICE MÁRQUEZ delivered the Opinion of the Court.

¶1 In 2016, fentanyl surpassed heroin as the drug responsible for the most opioid-related deaths nationwide. Colo. Dep’t of Law, *Social Media, Fentanyl & Illegal Drug Sales: A Report from the Colorado Department of Law*, 31 (2023), <https://coag.gov/app/uploads/2023/03/Colorado-AG-Report-Social-Media-Fentanyl-Illegal-Drug-Sales.pdf> [<https://perma.cc/W8RD-38AY>]. By 2021, fentanyl—which is roughly fifty times more potent than heroin—accounted for two-thirds of drug overdose deaths in the United States. *Id.* That year, roughly half of the overdose deaths in Colorado were related to this synthetic opioid. *Id.* at 33.

¶2 In 2022, the General Assembly responded to these trends by enacting H.B. 22-1326. Ch. 225, sec. 1, 2022 Colo. Sess. Laws 1625, 1625–26. Among other things, this bill enhanced the penalties for those convicted of distributing drugs where the offense is “the proximate cause of the death of another person who used or consumed” the substance. Ch. 225, sec. 3, § 18-18-405(2)(a)(III)(A), 2022 Colo. Sess. Laws, 1625, 1628–29. Under the provisions of H.B. 22-1326, defendants charged with fentanyl distribution under these circumstances face sentences that are four times longer than the ordinary presumptive range for fentanyl distribution offenses. *See* § 18-1.3-401.5(2)(a), C.R.S. (2024).

¶3 In this original proceeding under C.A.R. 21, we are asked to determine whether evidence of a drug purchaser’s suicidal intent may be relevant to determining whether a defendant’s distribution of fentanyl was the “proximate cause” of the drug purchaser’s death under section 18-18-405(2)(a)(III)(A), C.R.S. (2024). Here, Defendant Patrick L. Beverly, II, sold pills containing fentanyl to Matthew Bowen, who died after consuming them. A coroner later determined that Bowen had died by suicide. The People charged Beverly with distribution of less than four grams of fentanyl where the distribution was “the proximate cause” of Bowen’s death. § 18-18-405(1)(a), (2)(a)(III)(A), (2)(c)(V).

¶4 Anticipating that Beverly would seek to introduce evidence of Bowen’s suicidal intent as a defense against section 18-18-405(2)(a)(III)(A)’s enhanced penalties, the People filed a motion in limine to exclude such evidence. The trial court denied the People’s motion.

¶5 The People then sought relief in this court under C.A.R. 21, contending that the trial court erred by concluding that evidence of a drug purchaser’s suicide may be relevant to section 18-18-405(2)(a)(III)(A)’s proximate-cause requirement. We granted the People’s petition and issued an order to show cause.

¶6 We now discharge the order for two reasons. First, we conclude that the plain language of section 18-18-405(2)(a)(III)(A) does not preclude a court from admitting evidence of a purchaser’s suicidal intent in taking fentanyl. The General

Assembly's use of the specific phrase "proximate cause" invokes the well-established legal definition of that term. *See People v. Rockwell*, 125 P.3d 410, 417 (Colo. 2005). Under that definition, conduct that might otherwise constitute a legal or "proximate" cause of a person's death is not a proximate cause when an "intervening cause" instead causes the death. *E.g., People v. Stewart*, 55 P.3d 107, 121 (Colo. 2002). An intervening cause is an event in which the defendant does not participate, that is not reasonably foreseeable, and but for which the person's death would not have occurred. *People v. Saavedra-Rodriguez*, 971 P.2d 223, 226 (Colo. 1998). We conclude that a drug purchaser's suicide by intentional overdose may constitute an intervening cause that precludes the defendant's act of distributing fentanyl from being the proximate cause of a purchaser's fentanyl-related death. Because suicide by intentional overdose may serve as an intervening cause, and because any factual disputes regarding proximate cause are best left for the jury to decide, we hold that evidence of a purchaser's suicidal intent may be relevant for the purpose of applying section 18-18-405(2)(a)(III)(A)'s proximate-cause requirement.

¶7 Second, under the facts of this case, we conclude that the trial court did not abuse its discretion when it denied the People's motion to exclude evidence of Bowen's suicidal intent either as irrelevant under CRE 402 or as unduly likely to confuse the jury under CRE 403.

## I. Facts and Procedural History

¶8 On the morning of August 26, 2023, Bowen sent the following text message to his girlfriend:

Goodbye . . . I love u so much I really tell the kids that I love them so much I hope the best for u. U were my world ur so beautiful and amazing. I'm just not strong enough to do this anymore. Ur always gonna be in my heart and u will always be the greatest thing that ever happened to me. If something happens to me my moms number is . . . .<sup>1</sup>

That night, police found Bowen's body in his car with his cell phone in his lap and a blue pill partially melted on a piece of foil. The police believed the pill to be counterfeit oxycodone containing fentanyl. They found no other narcotics at the scene.

¶9 Following an autopsy, the El Paso County Coroner concluded that Bowen "died as a result of fentanyl intoxication" and that the intoxication was "with lethal intent." Accordingly, the coroner listed the manner of death as suicide.

¶10 Police later discovered evidence that Beverly sold Bowen ninety dollars' worth of fentanyl pills on the day of Bowen's death. The People charged Beverly with one count of distributing less than four grams of fentanyl in violation of section 18-18-405(1)(a), (2)(c)(V). The People charged the offense as a level one drug felony under section 18-18-405(2)(a)(III)(A), which enhances the sentence

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<sup>1</sup> We quote the text message exactly as it appears in the record. We omit Bowen's girlfriend's name and his mother's phone number to maintain their privacy.

associated with certain drug distribution charges if the alleged criminal conduct was “the proximate cause of the death of another person who used or consumed” the drugs.

¶11 Anticipating that Beverly would seek to introduce evidence of Bowen’s suicidal intent to rebut the proximate-cause element of section 18-18-405(2)(a)(III)(A), the People filed a motion in limine to exclude such evidence. Citing the legislative declaration accompanying the General Assembly’s enactment of section 18-18-405(2)(a)(III)(A), the People argued that the General Assembly’s intent in passing the statute was to impose harsher penalties whenever a purchaser dies from ingesting fentanyl that a defendant distributed – regardless of whether the overdose was accidental or intentional. Acknowledging that the interpretation of section 18-18-405(2)(a)(III)(A) presented an issue of first impression, the People cited to cases from other jurisdictions that reached similar conclusions, albeit in different contexts. *E.g., United States v. Camacho*, CR No. 21-00109 SOM, 2024 WL 2089948, at \*2 (D. Haw. May 8, 2024) (applying a similar federal statute); *Baker v. State*, No. 2469, 2021 WL 3052916, at \*1 (Md. Ct. Spec. App. July 20, 2021) (unpublished opinion) (considering a grossly negligent manslaughter charge). The People also pointed to Colorado case law on “intervening causes,” arguing that suicide could not destroy the causal link between the distribution of fentanyl and the user’s death because death – even by



suicide – is always a reasonably foreseeable consequence of distributing fentanyl. Finally, the People asked the trial court to exclude the evidence under CRE 403, arguing that it would mislead jurors by focusing their attention on Bowen’s subjective intent rather than Beverly’s conduct.

¶12 In response, Beverly distinguished the case law cited by the People as inapposite. He also argued that evidence of Bowen’s suicidal intent could support a jury instruction on intervening cause as a defense to the People’s allegation that Beverly’s conduct was the proximate cause of Bowen’s death.

¶13 At a hearing on the People’s motion, Beverly called the coroner to testify. The coroner discussed the factors he considered in concluding that Bowen ingested fentanyl “with lethal intent” and, thus, died by suicide. He cited Bowen’s text message to his girlfriend on the day of his death as evidence of “suicidal ideation” and noted that Bowen had scars on his arms indicating a history of self-harm, which increases the risk that an individual will die by suicide. In addition, the coroner described the fentanyl concentration in Bowen’s blood as “exceptionally high” and as “one of the higher levels [he had] ever seen.” These high blood concentrations, the coroner explained, “indicate[] that the drug was taken in massive amounts with the intent to harm [the drug user].” These toxicological testing results, combined with Bowen’s text message and the

evidence of previous self-harm, led the coroner to conclude that Bowen died by suicide.

¶14 Following the coroner's testimony, the trial court heard the parties' oral arguments. The People maintained that evidence of a purchaser's intent in taking fentanyl is irrelevant to determining proximate cause under section 18-18-405(2)(a)(III)(A) and that the probative value of such evidence is substantially outweighed by the danger that it will mislead the jury. Beverly responded that a purchaser's conscious choice to greatly increase their risk of death by taking a large quantity of fentanyl all at once is not a foreseeable consequence of fentanyl distribution. Therefore, he continued, such a choice could constitute an intervening cause, and evidence of the purchaser's intent to make that choice would be relevant to the question of proximate cause.

¶15 The trial court agreed with Beverly and denied the People's motion in limine. In a bench ruling, the court explained that there was no evidence to suggest that Beverly reasonably should have been aware of Bowen's suicidal tendencies or of the amount of fentanyl he planned to take. The court also found that Beverly could not have reasonably foreseen that Bowen, who knew he had purchased fentanyl, would "misuse" that fentanyl by taking such a large quantity at once. For these reasons, the trial court denied the People's motion to exclude

evidence of Bowen’s suicidal intent, including the text message and the coroner’s expert opinion.

¶16 The People then sought relief in this court under C.A.R. 21. We issued an order to show cause. We now discharge the order.

## **II. Original Jurisdiction**

¶17 Whether to exercise our original jurisdiction pursuant to C.A.R. 21 is within our sole discretion. C.A.R. 21(a)(2) (“Relief under this rule . . . is a matter wholly within the discretion of the supreme court.”). But because the relief C.A.R. 21 offers “is extraordinary in nature,” *id.*, the scope of our jurisdiction under this rule is “narrow,” *People v. Subjack*, 2021 CO 10, ¶ 12, 480 P.3d 114, 117.

¶18 Given the prevalence of fentanyl in Colorado, the interpretation of section 18-18-405(2)(a)(III)(A) “raises an issue of first impression that is of significant public importance.” *Subjack*, ¶ 13, 480 P.3d at 117. Further, the People have no alternative remedy if a jury concludes that Beverly’s distribution of fentanyl was not the proximate cause of Bowen’s death, which would preclude imposition of an enhanced sentence. *See* C.A.R. 21(a)(2) (noting that relief “will be granted only when no other adequate remedy is available”); *People v. Elmarr*, 2015 CO 53, ¶ 19, 351 P.3d 431, 437 (exercising C.A.R. 21 jurisdiction when “the People have no other adequate remedy”). For these reasons, we exercise our jurisdiction under C.A.R. 21 to review the trial court’s ruling.

### **III. Analysis**

¶19 We first set forth our standard of review and, in so doing, clarify the scope of the question before us. Next, we interpret section 18-18-405(2)(a)(III)(A) and hold that evidence of a drug-purchaser's suicidal intent may be relevant for the purpose of evaluating the statute's proximate-cause requirement. Finally, we consider whether the trial court abused its discretion by denying the People's motion to exclude evidence of Bowen's suicidal intent and conclude that it did not.

#### **A. Standard of Review**

¶20 Because the parties dispute the scope of the question before us, they also dispute the standard of review. The People argue that we should review the undisputed facts de novo to determine whether Beverly's distribution of fentanyl was the proximate cause of Bowen's death. In contrast, Beverly construes the question as whether the trial court abused its discretion by admitting evidence of Bowen's suicidal intent. Finally, the trial court asserts that this case presents a question of statutory interpretation that we should review de novo. We view the question before us as consisting of two parts.

¶21 First, we consider whether evidence of a drug-purchaser's suicidal intent is relevant to evaluating the proximate-cause requirement of section 18-18-405(2)(a)(III)(A). This is a question of statutory interpretation that we review de novo. *Johnson v. People*, 2023 CO 7, ¶ 15, 524 P.3d 36, 40. We strive to effectuate

the legislature's intent, "look[ing] first and foremost at 'the language the legislature has actually chosen to express itself'" and giving the text its plain and ordinary meaning. *People v. Lucy*, 2020 CO 68, ¶ 29, 467 P.3d 332, 338 (quoting *In re People in Int. of A.A.*, 2013 CO 65, ¶ 10, 312 P.3d 1170, 1172). We assume that the legislature chose its language deliberately, see *People v. Guenther*, 740 P.2d 971, 975 (Colo. 1987), and with "aware[ness] of the previously expressed legal importance of the words and phrases it uses," *Rockwell*, 125 P.3d at 417.

¶22 Second, we evaluate whether the trial court properly denied the People's motion to exclude evidence of Bowen's suicidal intent in this case. Trial courts have broad discretion to decide the admissibility of evidence in light of its probative value and potential prejudicial impact. *Elmarr*, ¶ 20, 351 P.3d at 437. Accordingly, we review a trial court's evidentiary ruling for an abuse of discretion—that is, to determine whether the ruling is manifestly arbitrary, unreasonable, or unfair, or stems from an erroneous view of the law. *Id.* at ¶ 20, 351 P.3d at 437–38.

**B. A Fentanyl User's Suicidal Intent May Be Relevant to  
Determining the Issue of Proximate Cause Under  
Section 18-18-405(2)(a)(III)(A)**

¶23 Section 18-18-405(1)(a) criminalizes the distribution of a controlled substance. If the distribution involves four grams or less of a substance containing fentanyl, the sentencing range varies based on the circumstances of the offense. A

level three drug felony carries a presumptive range of two to four years in prison. § 18-1.3-401.5(2)(a); § 18-18-405(2)(c)(V). By contrast, a level one drug felony carries a presumptive range of eight to thirty-two years in prison. § 18-1.3-401.5(2)(a); § 18-18-405(2)(a)(III)(A), (B). Section 18-18-405(2)(a)(III)(A) elevates a distribution offense to a level one drug felony if the People prove that the defendant's distribution of fentanyl to the purchaser was "the proximate cause" of the purchaser's death. § 18-18-405(2)(a)(III)(A).

¶24 The term "proximate cause" carries special legal significance. When a crime requires not merely conduct but also a specified result, a defendant generally may not be convicted unless their conduct is both the actual cause and the legal (or "proximate") cause of the result. *Burrage v. United States*, 571 U.S. 204, 210 (2014); 1 Wayne R. LaFare, *Substantive Criminal Law* § 6.4(a), Westlaw (3d ed. database updated Oct. 2024). An "actual" or "but-for" cause is any cause "but for" which the harm would not have occurred. *Burrage*, 571 U.S. at 211. A "proximate cause" is "any 'cause which in natural and probable sequence produced the claimed injury.'" *Martinez v. People*, 2024 CO 6M, ¶ 13, 542 P.3d 675, 679 (quoting *Stewart*, 55 P.3d at 116). The proximate-cause requirement thus limits a defendant's criminal liability for an injury to circumstances in which there is a "causal connection" between the defendant's conduct and the injury. *People v. Lopez*, 97 P.3d 277, 280 (Colo. App. 2004).

¶25 Some events break this causal connection by “interrupt[ing] the natural and probable sequence of events following the defendant’s acts.” *Id.* at 282. When such “intervening causes” arise, the defendant’s unlawful conduct cannot be the legal or proximate cause of another’s injury. *Martinez*, ¶ 13, 542 P.3d at 679. To constitute an “intervening cause,” an event must exhibit three qualities: (1) the defendant must not have participated in the event, (2) the event must not have been reasonably foreseeable, and (3) the event must have been a cause but for which the injury would not have occurred. *Saavedra-Rodriguez*, 971 P.2d at 226; *see also Lopez*, 97 P.3d at 282 (summarizing the three requirements).

¶26 The parties generally agree on these principles of proximate cause analysis and the role of intervening causes within that analysis. They disagree, however, over whether a drug purchaser’s consumption of fentanyl with the intent to die by suicide may serve as an intervening cause under section 18-18-405(2)(a)(III)(A)’s proximate-cause requirement. The People argue that the legislature intended to subject any defendant who distributes fentanyl that causes a user’s death to an enhanced penalty, regardless of the purchaser’s intent in taking the fentanyl. Relying largely on other jurisdictions’ case law, they contend that a purchaser’s suicidal intent cannot sever the causal connection between a defendant’s distribution of fentanyl and the purchaser’s death because death is always a foreseeable consequence of illicit fentanyl use.

¶27 Beverly responds that the People’s interpretation of section 18-18-405(2)(a)(III)(A) reads the term “proximate cause” as equivalent to “but-for cause,” contrary to the statute’s plain language. He further argues that the People’s proximate cause analysis relies on inapposite cases that arose under distinguishable legal regimes. We agree with Beverly based on our interpretation of the statute, our understanding of the proximate-cause requirement, and the fundamentally factual nature of the proximate cause inquiry.

¶28 First, the plain language of section 18-18-405(2)(a)(III)(A) expressly imposes a “proximate cause” requirement.<sup>2</sup> Had the General Assembly intended to trigger an enhanced penalty anytime a fentanyl distribution “results in” a user’s death, it could have said so. For example, the United States Code enhances the federal penalty for drug distribution “if death or serious bodily injury *results from* the use

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<sup>2</sup> During the hearing on the People’s motion, the trial court asked the parties whether the statute’s use of the term, “*the proximate cause*,” as opposed to “*a proximate cause*,” carries any significance. (Emphases added). In its response to the People’s C.A.R. 21 petition, the trial court suggests that a ruling in Beverly’s favor assumes that a defendant may face section 18-18-405(2)(a)(III)(A)’s enhanced penalty only if their distribution of fentanyl was the *sole* proximate cause of the purchaser’s death — despite precedent indicating that there may be more than one proximate cause of the same result. *E.g., Lopez*, 97 P.3d at 280. We disagree with the trial court’s suggestion because “[u]nlawful conduct that is broken by an independent intervening cause *cannot be the proximate cause* of injury to another.” *Martinez*, ¶ 13, 542 P.3d at 679 (alteration in original) (emphasis added) (quoting *Stewart*, 55 P.3d at 121). Thus, even if section 18-18-405(2)(a)(III)(A) allows for multiple proximate causes, fentanyl distribution is not one of them when an intervening cause exists.



of” the drugs a defendant distributed. 21 U.S.C. § 841(b)(1)(B), (C), (E) (emphasis added). By the time of H.B. 22-1326’s enactment, numerous federal courts had interpreted section 841(b)(1) as imposing only a but-for cause requirement. *E.g.*, *United States v. Jeffries*, 958 F.3d 517, 520–21 (6th Cir. 2020) (“The proper inquiry . . . is whether death arose as an effect, issue, or outcome from drug use. . . . [.] not whether death was a foreseeable result of the defendant’s [distribution] violation.”); *United States v. Burkholder*, 816 F.3d 607, 614–18 (10th Cir. 2016) (explaining why the plain language of section 841(b)(1) does not impose a proximate-cause requirement).

¶<sup>29</sup> But the General Assembly did not follow the federal example. Instead, section 18-18-405(2)(a)(III)(A) unambiguously requires the defendant’s distribution to be the “proximate cause” of the drug-purchaser’s death to enhance the defendant’s potential penalty.<sup>3</sup> Because we assume the General Assembly

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<sup>3</sup> Contrary to the People’s contention, nothing in the legislative declaration conclusively establishes that the General Assembly sought to enhance punishment for defendants who distribute drugs that a purchaser consumes with the intent to die by suicide (rather than by accidental overdose). At most, the legislative declaration is ambiguous as to whether a purchaser’s intent is relevant to the proximate cause inquiry. *See* 2022 Colo. Sess. Laws at 1626 (stating the General Assembly’s intent to “specifically design[] penalties for people whose . . . distribution [of fentanyl] . . . leads to the death of another person”). In any event, language in a legislative declaration cannot override the plain language chosen by the legislature in a statute. *See People in Int. of T.B.*, 2019 CO 53, ¶ 33, 445 P.3d 1049, 1056 (explaining that language in a legislative declaration does not “narrow or otherwise modify the actual elements” of an offense). Accordingly, we ground

understands the legal import of the language it uses, *Rockwell*, 125 P.3d at 417, the defendant's distribution is not the "proximate cause" of the purchaser's death unless it is a "cause which in natural and probable sequence produced" that death, *Martinez*, ¶ 13, 542 P.3d at 679 (quoting *Stewart*, 55 P.3d at 116). And even if the defendant's distribution satisfies this definition, it does not constitute the "proximate cause" of the purchaser's death if an intervening cause exists. *Saavedra-Rodriguez*, 971 P.2d at 226. Therefore, the question here is simply whether evidence of a purchaser's suicidal intent may be relevant to establishing an intervening cause (suicide) when the purchaser died by overdosing on fentanyl.

¶30 Second, and in response to this question, we conclude that evidence of a purchaser's suicidal intent may be relevant to establishing an intervening cause when the purchaser's suicide was unforeseeable. The People contend that a reasonable person distributing illicit drugs should foresee the possibility that any of their purchasers will die upon ingesting the drugs they purchased. Like courts in other jurisdictions, we agree with this premise to the extent it encompasses purchasers who consume so much of a dangerous drug that they unintentionally die as a result. *See, e.g., State v. Thomas*, 211 A.3d 274, 301 (Md. 2019) ("Ingesting heroin is a foreseeable result of its supply, and death a foreseeable consequence of

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our analysis in the unambiguous "proximate cause" language the legislature chose to use in section 18-18-405(2)(a)(III)(A).

its ingestion.” (citation omitted)); *State v. McCrorey*, 896 S.E.2d 309, 313–15. (N.C. Ct. App. 2023) (rejecting the defendant’s argument that he could not have reasonably foreseen that the purchaser would consume all the drugs at the same time); *Yeary v. State*, 186 N.E.3d 662, 673 (Ind. Ct. App. 2022) (holding that the purchaser’s consumption of drugs could not be an intervening cause because it was a foreseeable result of distribution).

¶31 But we are not persuaded that a reasonable person who distributes fentanyl should, as a matter of law, always foresee the possibility that a purchaser will consume extraordinary amounts of fentanyl with the intent to die by suicide. True, a purchaser may overdose by accidentally consuming more fentanyl than they intended to consume. But when a purchaser consumes large amounts of fentanyl with the intent to die by suicide, they make “a voluntary and willful choice.” *Moore v. W. Forge Corp.*, 192 P.3d 427, 436 (Colo. App. 2007) (noting that suicide generally precludes tort liability for the death of another); LaFave, *supra*. § 6.4(c) (explaining that proximate cause is typically treated in the same way in both criminal and civil contexts). Though a fentanyl distributor should foresee that distributing fentanyl may result in death by accidental overdose, the distributor should not necessarily be expected to foresee, in every case, that a purchaser will make the “abnormal” decision to intentionally die by way of ingesting “extraordinary” amounts of fentanyl. *Saavedra-Rodriguez*, 971 P.2d at 226–27

(characterizing an event as “unforeseeable” for purposes of determining whether it constitutes an intervening cause when that event is “abnormal” or “extraordinary”).

¶32 We therefore decline to follow the example of those few courts that have concluded that because accidental death is a reasonably foreseeable result of drug distribution, death by suicide is also reasonably foreseeable. *E.g., Baker*, 2021 WL 3052916, at \*4–6 (holding that evidence of a purchaser’s suicidal intent would not affect the conclusion that his death was a foreseeable result of the defendant’s distribution); *State v. Price*, 135 N.E.3d 1093, 1113–14 (Ohio Ct. App. 2019) (same). *Baker’s* and *Price’s* emphasis on the fact that drug sellers reasonably should foresee the drug-related death of a purchaser, regardless of the manner in which that death occurs, gives insufficient weight to the purpose of the proximate cause analysis: “‘to spell out rules of law limiting the liability of a negligent actor’” based on foreseeability, which represents “policy considerations of whether a defendant’s responsibility should extend to the results in question.” *Boulders at Escalante LLC v. Otten Johnson Robinson Neff & Ragonetti PC*, 2015 COA 85, ¶¶ 50–51, 412 P.3d 751, 762 (quoting *Moore*, 192 P.3d at 436). Because suicide strikes us as the kind of “abnormal” behavior we should not expect defendants to foresee, at least in some circumstances, we conclude that a purchaser’s suicide by intentional

overdose may sever the causal connection between a defendant's sale of drugs and the purchaser's death.

¶33 Finally, we decline to declare that a purchaser's suicidal intent is categorically irrelevant to section 18-18-405(2)(a)(III)(A)'s proximate-cause requirement because proximate cause "is, at its core, a fact-based determination." *Martinez*, ¶ 29, 542 P.3d at 682. When that determination requires deciding whether a purchaser's suicide constitutes an intervening cause, a reasonable jury may reach different conclusions under different circumstances.

¶34 Recall that for an event to qualify as an intervening cause, (1) the defendant must not have participated in the event; (2) the event must not have been reasonably foreseeable; and (3) the event must have been a but-for cause of the injury. *Saavedra-Rodriguez*, 971 P.2d at 226; *see also Lopez*, 97 P.3d at 282 (summarizing the three requirements). What if evidence showed the purchaser was unaware that the purchased drugs contained fentanyl? *See, e.g., McCrorey*, 896 S.E.2d at 313 (stating that the purchaser believed she was buying heroin, not fentanyl); *Yeary*, 186 N.E.3d 668–69 (same). In that scenario, a reasonable jury might conclude that the defendant effectively participated in the purchaser's suicide by distributing drugs the defendant knew were more potent than the purchaser believed. *Saavedra-Rodriguez*, 971 P.2d at 226. What if the defendant was aware, or should have been aware, of the purchaser's suicidal tendencies? *See,*

*e.g., Camacho*, 2024 WL 2089948, at \*1–2 (describing the defendant’s decision to sell the purchaser more fentanyl pills after learning that, earlier that day, the purchaser was treated for an overdose from those same pills). If so, a reasonable jury might conclude that the purchaser’s suicide was reasonably foreseeable because the defendant observed signs of the purchaser’s suicidal ideation. *Saavedra-Rodriguez*, 971 P.2d at 226. And what if the defendant has evidence suggesting that the purchaser would have died by suicide in some manner, even if they had not procured drugs from the defendant? *See Camacho*, 2024 WL 2089948, at \*7 (requiring the defendant to “show that, without the drug distributed by the defendant, the [purchaser] would still have committed suicide by other means at the same time”). A reasonable jury would have to weigh that evidence to determine whether it shows that suicide was a but-for cause of the purchaser’s death. *Saavedra-Rodriguez*, 971 P.2d at 226.

¶35 In sum, section 18-18-405(2)(a)(III)(A) plainly requires a defendant’s distribution to be the “proximate cause” of the purchaser’s death to enhance the defendant’s penalty. And contrary to the People’s contention, our review of relevant authorities does not persuade us that suicidal intent is never, as a matter of law, relevant to the determination of proximate cause. Because the circumstances surrounding a purchaser’s death may render their suicidal intent relevant to section 18-18-405(2)(a)(III)(A)’s proximate-cause requirement, we

cannot categorically exclude evidence of suicidal intent from the analysis the statute demands. Accordingly, we hold that evidence of a purchaser's suicidal intent may be relevant to determining whether a defendant's distribution of fentanyl to a purchaser was the proximate cause of the purchaser's death under section 18-18-405(2)(a)(III)(A).

¶36 We now turn to the question of whether the trial court abused its discretion by denying the People's motion to exclude such evidence here.

**C. The Trial Court Did Not Abuse its Discretion by Denying  
the People's Motion to Exclude Evidence of Bowen's  
Suicidal Intent**

¶37 The People raise two grounds for excluding the evidence of Bowen's suicidal intent, including the text message Bowen sent to his girlfriend and the coroner's expert testimony on manner of death. First, they contend that such evidence is not relevant to the proximate cause analysis. *See* CRE 402. Second, they argue that the limited probative value of such evidence is substantially outweighed by the risk that it will confuse the jury. *See* CRE 403. We are not persuaded that the trial court abused its discretion on either ground.

¶38 First, consistent with our holding that evidence of suicidal intent may be relevant to the proximate-cause inquiry under section 18-18-405(2)(a)(III)(A), the trial court properly concluded that evidence of Bowen's suicidal intent may be relevant here. "Evidence is relevant if it has 'any tendency to make the existence

of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.’” *People v. Acosta*, 2014 COA 82, ¶ 56, 338 P.3d 472, 482 (quoting CRE 401). Bowen’s text to his girlfriend describing how much he loved her, saying goodbye, and stating that he was “just not strong enough to do this anymore” suggests he was contemplating suicide the morning of his death. And evidence that the concentration of fentanyl in Bowen’s blood was among the highest the coroner had ever seen supports the coroner’s expert opinion that Bowen died by suicide. Evidence of suicidal ideation, coupled with physical evidence of suicide, makes more probable the fact that Bowen intentionally consumed a very large quantity of fentanyl to effectively guarantee his death. And Bowen’s suicide may serve as an intervening cause that severs the connection between Beverly’s actions and Bowen’s death.

¶39 Second, we disagree with the People’s contention that evidence of Bowen’s suicide would confuse the jury by mistakenly suggesting that Bowen’s intent in taking the fentanyl pills is relevant here. As we have already explained, Bowen’s intent is relevant to the extent it supports Beverly’s assertion that Bowen’s suicide was an intervening cause that interrupted the causal connection between Beverly’s conduct and Bowen’s death. Furthermore, we give evidence challenged under CRE 403 “the maximum probative value attributable to it by a reasonable factfinder and the minimum unfair prejudice that may be reasonably expected



from it.” *People v. Vanderpauye*, 2023 CO 42, ¶ 59, 530 P.3d 1214, 1228–29. Applying these principles here, we have no difficulty concluding that Bowen’s text message and the coroner’s testimony are sufficiently probative of Bowen’s suicide—and, thus, of a potential intervening cause—to overcome any risk of confusing the jury for purposes of CRE 403.

¶40 In sum, we hold that the trial court did not abuse its discretion by concluding that evidence of Bowen’s suicidal intent may be admissible to counter the People’s assertion that Beverly’s conduct proximately caused Bowen’s death.

#### **IV. Conclusion**

¶41 When the General Assembly enacted H.B. 22-1326, it plainly sought to increase penalties for those who distribute substances containing fentanyl where that distribution is the “proximate cause” of the consumer’s death. Affording the legislature’s language its well-established legal significance, we hold that evidence of a purchaser’s suicidal intent may be relevant in determining whether a defendant’s distribution of fentanyl was the proximate cause of the purchaser’s death. And we hold that, here, the trial court did not abuse its discretion by denying the People’s motion to exclude such evidence.

¶42 We stress the limited scope of our decision. Though evidence of Bowen’s suicidal intent may be admissible here, such evidence may not always be admissible in cases brought under section 18-18-405(2)(a)(III)(A). Even when such

evidence is admissible, it may not suffice for the trial court to instruct the jury on intervening cause. *See Saavedra-Rodriguez*, 971 P.2d at 228 (requiring “a scintilla of evidence” supporting an intervening-cause defense for a corresponding jury instruction). And even when the evidence is sufficient to warrant a jury instruction, a reasonable jury may well find in the People’s favor. Our holding merely leaves the factual question of proximate cause where it belongs – with the jury.

¶43 For these reasons, we discharge the order to show cause and affirm the trial court’s evidentiary ruling.

**JUSTICE BOATRIGHT**, joined by **JUSTICE BERKENKOTTER**, dissented.

JUSTICE BOATRIGHT, joined by JUSTICE BERKENKOTTER, dissenting.

¶44 The death of Matthew Bowen by a drug overdose was not just foreseeable, it was practically expected. It is undisputed that fentanyl is the “primary driver” of drug-poisoning deaths.<sup>4</sup> It is also undisputed that someone distributed fentanyl to Bowen, who then died of fentanyl intoxication. Patrick L. Beverly, II, has been charged with that distribution. Beverly now attempts to hide behind evidence that Bowen took the fentanyl with the intent to end his own life. In my view, whether Bowen died from an accidental overdose or an intentional suicide, the fact remains that if Beverly sold Bowen the fentanyl that led to his overdose, then Beverly is legally responsible for Bowen’s death.

¶45 The legal question presented is whether the distribution of fentanyl was the proximate cause of the death in this case as required by section 18-18-405(2)(a)(III), C.R.S. (2024). If it was, then Bowen’s intent in taking the drugs is irrelevant and any evidence regarding that intent should be excluded. Under the majority’s construction of the proximate cause requirement, Bowen’s suicide, if proven at trial, may qualify as an independent intervening cause. Maj. op. ¶¶ 30–32. Thus, in the majority’s view, evidence of Bowen’s intent to end his life is relevant as to

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<sup>4</sup> As of 2024, fentanyl continues to be associated with the high number of overdose fatalities in the United States. See Dep’t of Just. Drug Enf’t Admin., *Fake Pills Fact Sheet* (Nov. 2024), [https://www.dea.gov/sites/default/files/2024-11/DEA-OPCK\\_FactSheet\\_November\\_2024.pdf](https://www.dea.gov/sites/default/files/2024-11/DEA-OPCK_FactSheet_November_2024.pdf) [<https://perma.cc/2X6T-4WQM>].

whether Beverly's distribution of fentanyl was the proximate cause of Bowen's death. *Id.* at ¶¶ 33–35.

¶46 I disagree. Given the danger inherent in illegal fentanyl use, the risk of death to Bowen was foreseeable at the time of distribution, regardless of whether the death was an intentional suicide or an accidental overdose. Selling fentanyl obtained on the black market is the equivalent of selling someone a gun and bullets, knowing that the purchaser plans to repeatedly play Russian Roulette. Death of the person buying the gun and bullets, under those circumstances, is not only foreseeable, but virtually inevitable.

¶47 The same is true under the facts of this case. As alleged, Bowen purchased illicit fentanyl from Beverly. There was no prescription indicating the proper dosage. There was no way to know the pills' potency, or even if each pill contained comparable amounts of fentanyl. What is known is that Bowen was sold a lethal amount of fentanyl at a cost of \$90; there was enough fentanyl that Bowen could ingest it in "massive amounts"; this ingestion resulted in a fentanyl concentration in Bowen's blood that was "exceptionally high"<sup>5</sup>; and the fentanyl *caused* Bowen's death. In my view, the act of selling Bowen fentanyl is the proximate cause of Bowen's death, and Bowen's mindset is irrelevant. Hence, I respectfully dissent.

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<sup>5</sup> The coroner who performed the decedent's autopsy testified to these facts at the hearing on the People's motion in limine, first referenced in Maj. op. ¶ 13.

## **I. The Facts of This Case Do Not Implicate an Independent Intervening Cause**

¶48 “Proximate cause” requires a causal connection between a defendant’s conduct and the claimed injury; conduct that is interrupted by an intervening cause cannot be the proximate cause of another’s death. *People v. Stewart*, 55 P.3d 107, 120–21 (Colo. 2002). “An independent intervening cause is an act of an independent person or entity that destroys the causal connection between the defendant’s act and the victim’s injury and, thereby becomes the cause of the victim’s injury.” *People v. Saavedra-Rodriguez*, 971 P.2d 223, 225–26 (Colo. 1998).

¶49 I agree with the test applied by the majority, Maj. op. ¶ 25, which requires that, in order to establish an intervening cause defense, three elements be satisfied: “(1) the defendant must not participate in the intervening cause; (2) the intervening cause is one but for which the death would not have occurred; and (3) the intervening cause must not have been reasonably foreseeable.” *People v. Lopez*, 97 P.3d 277, 282 (Colo. App. 2004). A defendant’s failure to establish even one of these elements “deprives him of the affirmative defense.” *People v. Counterman*, No. 21CA1982, ¶ 18 (Feb. 13, 2025).

¶50 In my view, Beverly fails on all three. First, under the alleged facts of this case, Beverly cannot fairly be characterized as a non-participant—he sold Bowen a lethal quantity of fentanyl that Bowen then consumed. Second, irrespective of Bowen’s intent, the cause of his death was the consumption of a large quantity of

fentanyl allegedly distributed by Beverly. Moreover, the lethal quantity sold—coupled with the conspicuous trail of deaths fentanyl has left nationwide—demonstrate that the victim’s death could easily have occurred irrespective of his mental state. And lastly, as to the third element, the misuse of fentanyl obtained illegally cannot logically be deemed unforeseeable; rather, the misuse of fentanyl under such circumstances is expected. In fact, there is *no* “ordinary” or “normal” use of fentanyl purchased illegally. See Maj. op. ¶ 31. Again, the failure to satisfy any of these three elements causes an intervening cause defense to fail. Accordingly, establishing an intervening cause is a high bar.

¶51 Courts have generally been reluctant to allow an intervening cause defense absent sufficiently extreme conduct. For example, in the context of inadequate medical care, we held in *People v. Fite*, 627 P.2d 761, 767 (Colo. 1981), that there was no evidence to support an intervening cause. There, the defendant shot her husband, who then underwent extensive medical care to address his injuries. *Id.* at 763. Unaware of a developing liver abscess, the attending physician discontinued antibiotics—the husband later died from infection and multiple organ failure, more than a month after the shooting. *Id.* The defendant argued that the victim’s laboratory tests clearly indicated the presence of an infection that was left untreated; thus, the discontinuation of antibiotic treatment in spite of such signs constituted an intervening cause relieving her of criminal responsibility for

her husband's death. *Id.* at 766–67. This court disagreed, concluding that the record did not support a finding of gross negligence by the attending physician sufficient to break the causal chain. *Id.* *Fite* demonstrates that, even though the defendant did not directly participate in the events following the shooting—i.e., the victim's medical care—the natural consequences of a defendant's conduct extend well beyond the initial act. *See id.* If the facts in *Fite* do not implicate an intervening cause, certainly we cannot find one here.

¶52 The majority concludes that evidence of Bowen's mental state may be relevant to establishing an intervening cause, Maj. op. ¶¶ 30, 32; yet, the caselaw is clear that a defendant must take his victim as he finds them. *Hamrick v. People*, 624 P.2d 1320, 1324 (Colo. 1981). In *Hamrick*, this court concluded that an instruction on intervening cause was not warranted where the defendant had attacked an individual with epilepsy. *Id.* at 1323–24. In that case, after the defendant assaulted the victim with a club, the victim died of cardiac arrest due to an epileptic seizure. *Id.* at 1321–22. The parties disputed whether the seizure was caused by the trauma inflicted by the defendant, or by the victim's ingestion of alcohol and failure to take anti-convulsant medication. *Id.* at 1322. In concluding that the facts of the case did not give rise to an intervening cause, we noted that “it is no defense that the victim is suffering from physical infirmities.” *Id.* at 1324. Today, however, the majority allows Beverly to rely on what is arguably Bowen's

mental health condition to potentially avoid responsibility. Just as in *Hamrick*, Bowen's pre-existing medical condition here is no defense.

¶53 If it is proven that Beverly sold Bowen the fentanyl that he later consumed, then Beverly's act of distribution incontrovertibly began the chain of events that caused Bowen's death. Thus, in accordance with the caselaw discussed above, it is my view that Beverly has failed to present sufficient evidence to support an intervening cause defense.

## **II. A Drug Purchaser's Suicidal Intent Is Irrelevant to Section 18-18-405(2)(a)(III)'s Proximate Cause Requirement**

¶54 Section 18-18-405(1)(a) provides that "it is unlawful for any person knowingly to manufacture, dispense, sell, or distribute . . . a controlled substance," including fentanyl. Furthermore, section 18-18-405(2)(a)(III) dictates that when the defendant's distribution is the proximate cause of another person's death, the offense is elevated to a level 1 drug felony.

¶55 Under the majority's construction of section 18-18-405(2)(a)(III), the proximate cause requirement allows for consideration of a purchaser's intended use of fentanyl in determining whether the death was foreseeable. Maj. op. ¶¶ 30-32, 35, 41. From my perspective, that conclusion has a significant logical flaw – it assumes that a "normal" or "ordinary" use of fentanyl obtained illegally on the black market exists in the first instance. See Maj. op. ¶ 31. In fact, there is



no such use. The reality is that *any* use of illicit fentanyl carries with it the risk of death. The fentanyl that Bowen consumed did not have a prescription explaining how to safely use the drug. Bowen, and likely Beverly, could not have known how much fentanyl was contained in each pill. The coroner testified, and I address below, that a single pill could contain a fatal dose. That is why, in my mind, selling illicit fentanyl is tantamount to facilitating a game of Russian Roulette.

¶56 This view aligns with the plain language of the statute. Section 18-18-405(2)(a)(III) provides that when the defendant's distribution of fentanyl is "the proximate cause of the death of another person who used or consumed" the fentanyl, the defendant is liable. The "proximate cause" is the defendant's provision of fentanyl. *See id.* In other words, the statute subjects a distributor of fentanyl to enhanced criminal liability when such distribution leads to the death of another, irrespective of that person's intent in purchasing the drug. There is nothing in the plain language of the statute to suggest that the legislature intended for liability to hinge on the fentanyl user's intent. In accordance with this reading, the prosecution need only establish that the defendant distributed fentanyl to another person and that the person died because of that same fentanyl. Whether the person intended to end their life is irrelevant.

¶57 This interpretation is consistent with the legislature's purpose in amending the statute to add the proximate cause charge enhancers. In response to the

increased number of overdose deaths in Colorado, the General Assembly sought to provide heightened penalties for defendants whose unlawful distribution of fentanyl “leads to the death of another person.” *See* Ch. 225, sec. 1(2)(b), 2022 Colo. Sess. Laws 1625, 1626. Nowhere in the statute itself or in the corresponding legislative declaration does the General Assembly indicate that it intended to differentiate between accidental and intentional overdose fatalities. *See* Ch. 225, sec. 1(1)(b), 2022 Colo. Sess. Laws 1625, 1625 (“The increase in the number of *overdose* deaths in Colorado demands a comprehensive response . . . designed to reduce the risks of harm to *all* people.” (emphases added)); *see also* § 18-18-405(2)(a)(III).

¶58 Thus, section 18-18-405 criminalizes a defendant’s act of distributing fentanyl that causes a death—intentional or otherwise—such that the distribution itself is the proximate cause.

### **III. The Act of Distribution Was the Proximate Cause of Bowen’s Death**

¶59 The question before us is whether Beverly’s distribution of fentanyl was the proximate cause of Bowen’s death. In other words, the issue turns on whether the act of distribution “began a chain of events the natural and probable consequence of which was the victim’s death,” *Saavedra-Rodriguez*, 971 P.2d at 225, or instead whether “the causal link between conduct and result is so attenuated that the consequence is more aptly described as mere fortuity,” *Paroline v. United States*,

572 U.S. 434, 445 (2014). In my opinion, Beverly's alleged act of distributing a fatal dosage of fentanyl is not so attenuated that Bowen's death can be attributed to mere chance. Rather, the unlawful distribution of fentanyl initiated the causal chain without which the decedent's injury would not have occurred. *See Stewart*, 55 P.3d at 121.

¶60 The approach adopted by the majority suggests that when a person does not communicate their specific intended usage to a distributor, that person's subsequent misuse of fentanyl cannot have been foreseeable. Indeed, the majority references the trial court's finding that Beverly could not have reasonably foreseen that Bowen would misuse the fentanyl sold to him. Maj. op. ¶ 15. Again, I must reiterate that illicit fentanyl has no proper use. *Any* illegal drug use is a misuse.

¶61 At the hearing before the trial court, the coroner testified about the danger inherent to fentanyl usage, noting that "it takes smaller amounts . . . of [fentanyl] to reach those thresholds that cause death."<sup>6</sup> He further testified that in cases involving illicit drugs, there is no way for the person taking the fentanyl to know how much of the drug is contained in a given pill: "There could be no fentanyl,

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<sup>6</sup> Beverly is accused of selling the decedent \$90 worth of fentanyl pills. While the defense's witness was reluctant to speculate on the precise amount of fentanyl required to produce the concentration observed in Bowen, he did note that Bowen had ingested an "exceptionally large amount" of the drug.

there could be no active compounds at all. Or there could be lethal levels that even with a single pill could cause death.”<sup>7</sup>

¶62 Indeed, national laboratory testing performed by the Drug Enforcement Agency (“DEA”) in 2023 – the year of Bowen’s death – indicated that seven out of every ten counterfeit prescription pills contained a potentially lethal dose of fentanyl.<sup>8</sup> Dep’t of Just. Drug Enf’t Admin., *Fake Pills Fact Sheet* (Sept. 2023), [https://www.dea.gov/sites/default/files/2024-01/DEA-OPCK\\_FactSheet\\_September\\_2023-rdf.pdf](https://www.dea.gov/sites/default/files/2024-01/DEA-OPCK_FactSheet_September_2023-rdf.pdf) [https://perma.cc/NQT4-NYW6].

The DEA report further notes that a mere two milligrams of fentanyl is considered a deadly dose. *Id.* It therefore stands to reason that where a defendant sells a sufficiently high quantity of fentanyl, they are selling a lethal dose.

¶63 The danger inherent in unsupervised fentanyl use is further apparent from recent trends in drug overdoses in Colorado. The number of fentanyl-related

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<sup>7</sup> Relatedly, the coroner conceded that he has “no way of knowing” how many pills would result in the concentration of fentanyl observed in Bowen. Even in cases where pills are recovered, “We could test those, but it doesn’t mean that the pills that they ingested had those same levels of fentanyl.” Referencing drugs that are manufactured illegally, the coroner testified that, “when you test them, they’re dramatically different from one pill to the next. From one person to the next, even within the same bag.”

<sup>8</sup> More recent data from the DEA demonstrates that counterfeit pills remain highly lethal, with five out of every ten pills with fentanyl containing a potentially lethal dose. Dep’t of Just. Drug Enf’t Admin., *Fake Pills Fact Sheet* (Nov. 2024), [https://www.dea.gov/sites/default/files/2024-11/DEA-OPCK\\_FactSheet\\_November\\_2024.pdf](https://www.dea.gov/sites/default/files/2024-11/DEA-OPCK_FactSheet_November_2024.pdf) [https://perma.cc/2X6T-4WQM].

deaths reached a record high in 2023. *See* Christine Demont, *Trends in Fatal and Nonfatal Drug Overdoses in Colorado*, Colo. Dep't of Pub. Health & Env't (June 21, 2024), [https://coag.gov/app/uploads/2024/08/Fatal\\_and\\_Nonfatal\\_Drug\\_Overdose\\_Trends\\_SATF.pdf](https://coag.gov/app/uploads/2024/08/Fatal_and_Nonfatal_Drug_Overdose_Trends_SATF.pdf) [<https://perma.cc/8UVR-HB6H>] (accounting for both unintentional and intentional drug poisonings). In looking to the total number of drug overdose deaths in Colorado for that year, more than half were attributable to fentanyl. *Id.* Bowen took an inherently dangerous drug that was provided to him, with no way of knowing the dosage, which directly caused his death. Whether he did so with the intention of ending his life is irrelevant to the question of whether his death was foreseeable to Beverly.

¶64 Beverly's alleged act of distribution exposed Bowen to a recognizable and high degree of risk of harm, the "natural and probable consequence" of which was death by overdose, such that evidence of intended usage should be excluded. *See Saavedra-Rodriguez*, 971 P.2d at 225. Bowen's death would have been foreseeable to anyone who illegally sold him fentanyl, particularly where the quantity sold was capable of leading to a fatality. Indeed, some courts have recognized that a purchaser's death is *always* a foreseeable result of the illegal distribution of fentanyl; this is certainly true where the distribution is of a lethal amount. *See United States v. Jeffries*, 958 F.3d 517, 521 (6th Cir. 2020) ("Use of a Schedule I or II controlled substance is inherently dangerous. Death to the drug user is therefore

always foreseeable when a defendant . . . distributes . . . those substances.”).<sup>9</sup> Accordingly, when the use of fentanyl results in death, “the causal link between the defendant’s proscribed conduct and the death is simply not ‘so attenuated’ as to preclude criminal liability.” *Id.* (quoting *Paroline*, 572 U.S. at 445).

#### IV. Conclusion

¶65 Notwithstanding the intent underlying a decedent’s death, whenever a lethal quantity of fentanyl is distributed in violation of section 18-18-405, death is a reasonably foreseeable result of the proscribed conduct. Here, Beverly is accused of distributing fentanyl to Bowen immediately before his death from fentanyl intoxication. Whether Bowen intended to end his own life by taking the fentanyl sold to him is irrelevant; the act of distribution was the proximate cause of Bowen’s death as a matter of law. Hence, I respectfully dissent.

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<sup>9</sup> The position in *Jeffries* is consistent with those adopted by other jurisdictions that have considered the issue of foreseeability in fentanyl-related deaths. *See, e.g., State v. Price*, 135 N.E.3d 1093, 1114 (Ohio Ct. App. 2019) (finding that whether the victim was suicidal would not change the fact that the victim took drugs furnished by the defendant and died as a result); *see also Baker v. State*, No. 2469, 2021 WL 3052916, at \*4–6 (Md. Ct. Spec. App. July 20, 2021) (unpublished opinion) (same).