

CASE COMMENT

SUICIDE BY TEXT: THE CASE OF MICHELLE CARTER

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INTRODUCTION

The use of technology to commit crime has become an ideal way for some. The use of technology has led to the incorrect assumption that misconduct online is not traceable. Technological crimes have impacted almost every field of the law including family law, business law and tax law. During the summer of 2016, the Supreme Judicial Court of Massachusetts affirmed an indictment against a youthful offender for her participation in the suicide of another teen. This article analyzes the impact of the first ever indictment against a defendant solely based on text messages and verbal communication between the defendant and the victim.

FACTS

On July 13, 2014, Conrad Roy was found deceased in a parked car located in a local store parking lot.¹ The Medical Examiner determined that Roy died after inhaling carbon monoxide filtering into the truck through a gasoline powered water pump.² In 2011, Roy received treatment for mental health issues and in 2013, he unsuccessfully attempted to commit suicide through overdosing on acetaminophen.³

During the course of the investigation detectives discovered telephone and text messages between the victim and Michelle Carter.⁴ Due to the fact that the victim and the defendant lived in separate cities, their communication occurred primarily through text messages and telephone calls.⁵ The context of their communication caused law enforcement to

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1. Commonwealth v. Carter, 474 Mass. 624, 625 (2016).
2. *Id.*
3. *Id.*
4. *Id.* 625-26.
5. *Id.*

look further into their relationship.⁶ Officers discovered that the defendant and the victim had been dating off and on since 2011 and were dating at the time of the victim's death in 2014. During their relationship, the focus of much of their communication centered around suicide. The defendant was aware of the victim's mental illness and previous suicide attempt.

The defendant encouraged and instructed the victim on how to kill himself, eased his doubts about committing suicide and got angered when he delayed in committing the act. The defendant expressed disappointment and threatened to seek unwanted medical help for the victim when the victim would contemplate delaying his suicide plan. Even on the day the victim committed suicide, the defendant texted the victim four times saying "You just have to do it."⁷ The defendant went as far as to talk with the victim on the phone as he sat in the truck and demanded that he get back in when the victim had second thoughts and exited the vehicle.⁸

PROCEDURAL HISTORY

The defendant was indicted as a youthful offender on the charge of involuntary manslaughter under Chapter 119, Section 54, of the Massachusetts General Laws.⁹ To indict a juvenile as a youthful offender evidence must be shown that establishes probable cause that the defendant was a juvenile between the age of fourteen and eighteen at the time of the underlying offense, and that if the underlying offense was committed by an adult it would be punishable by prison time and the underlying offense involves the infliction or threat of serious bodily harm.¹⁰ The defendant moved to dismiss the youthful offender claim however the motion was denied. The court held that the defendant was seventeen at the time of the offense, the charge of involuntary manslaughter is punishable by prison time if committed by an adult and the comments made by the defendant involved the infliction of bodily harm.¹¹

Based on the conduct of the defendant prior and after the victim's death the court ruled that the actions of the defendant were enough to warrant an indictment for involuntary manslaughter and affirmed the

6. *Id.*

7. *Id.* at 628.

8. *Id.* at 629.

9. *Id.* at 624.

10. *Id.*

11. *Id.* at 625.

decision of the lower court.¹² During their investigation, law enforcement found several messages between the defendant and her friend Samantha Boardman that gave a clear indication of the defendant's level of participation in the victim's suicide. The defendant sent a message to Boardman saying "Sam, the police read my messages with him I'm done. His family will hate me and I can go to jail."¹³ The defendant also confessed to Boardman that she could have easily stopped the victim from committing suicide or called the police but chose not to.

INSTANT CASE

This case came before the Supreme Judicial Court of Massachusetts as an appeal for the denial of a motion to dismiss an indictment against the defendant, Michelle Carter.¹⁴ The issue in the instant case is whether the evidence was sufficient enough to warrant an indictment for involuntary manslaughter when the defendant's action did not extend beyond words.¹⁵ The defendant argued that the state did not provide the grand jury with sufficient evidence to return an indictment.¹⁶ To be convicted of the crime involuntary manslaughter the state must show that the conduct in question was either wanton or reckless, or was the result of a wanton or reckless failure to react.¹⁷ The defendant argues that since she did not provide the instrument for the victim to use to commit suicide and because she was not physically present at the time of the suicide, she did not cause his death.¹⁸ She further argues that solely encouraging someone verbally to commit suicide regardless of how forcefully could never overcome someone's will to live and thus cannot be considered reckless or wanton behavior.

The court completely disagreed with the defendant's argument on the basis that the court has never required that a defendant commit a physical act in order to be indicted for involuntary manslaughter. The court determined that as opposed to establishing a standard for where on the spectrum between verbal and physical acts involuntary manslaughter should fall, there should be a case by case determination.¹⁹ In this case however the court held that the defendant's guilt turned on the fact that in those final fatal moments, the victim attempted to get out of the truck

12. *Id.*

13. *Id.* at 629.

14. *Id.*

15. *Id.* at 624.

16. *Id.* at 625.

17. *Id.* at 630-31.

18. *Id.* at 632.

19. *Id.* at 634.

but was commanded by the defendant to get back in, to which he complied, ultimately succumbing to his death.²⁰ The court reasoned that based on the intimate relationship between the defendant and the victim, and the coercive nature of the defendant's conduct leading up to the victim's suicide were enough to find probable cause for an indictment of involuntary manslaughter.

With respect to the defendant's argument that verbally encouraging someone to commit suicide is not sufficient to warrant a conviction, the court also asserted that they have previously returned an involuntary manslaughter conviction against a defendant in a case where the victim's death was self-inflicted. In *Persampieri v. Commonwealth*, the defendant told his wife that he was going to divorce her and she threatened to commit suicide.²¹ With the prior knowledge that his wife attempted suicide twice before, the defendant taunted the victim calling her a "chicken" and teasing that she wouldn't go through with it.²² Instead of trying to talk his wife out of the fatal act, the defendant brought his wife a rifle, loaded it for her and directed her on the proper way to fire it.²³ For these reasons the court concluded that the defendant was guilty of involuntary manslaughter by exhibiting a reckless disregard for the safety of his wife.

BACKGROUND

Although currently more than forty states have statutes criminalizing assisted suicide, the statutes were a response to the advent of physician assisted suicide. Nonetheless, bringing and winning such cases are considered a rarity in our judicial system.²⁴ The criminalization of those who assist another in committing suicide, particularly using technology, is a rather recent phenomenon and is still a hotly contested topic. Prior to modern medicine most people died without medical intervention and the notion of the right to die was nonexistent.²⁵ Following World War II and the accompanying expansion of modern technology, the "right to die" movement was born.²⁶

20. *Id.*

21. *Persampieri v. Commonwealth*, 343 Mass. 19, 23 (1961).

22. *Id.* at 22.

23. *Id.*

24. Stephanie Silfer, *Is it a Crime to Encourage Suicide*, CBS NEWS (March 3, 2015, 6:00 AM), <http://www.cbsnews.com/news/is-it-a-crime-to-encourage-suicide-unusual-massachusetts-case-of-conrad-roy-and-michelle-carter/>.

25. Anthony Lim, *The Right to Die Movement: From Quinlan to Schiavo* (May 2005) (unpublished third year paper, Harvard Law School) (on file with the Harvard Law School LEDA system).

26. *Id.*

The first decision in this area was handed down in 1976 in the case in *Re Quinlan*.²⁷ On April 15, 1975, Karen Quinlan stopped breathing for two fifteen minute periods.²⁸ The lack of oxygen resulted in severe brain damage and caused Quinlan to enter a persistent vegetative state.²⁹ After a period of time, Quinlan's family decided to remove her respirator however, her physician refused. Quinlan's physician asserted that she was not brain dead and removing her respirator would result in her death and would be a violation of medical standards, practices and ethics.³⁰

Quinlan's father took the case to court and argued that the constitutional right to privacy and free exercise of religious belief coupled with the right to be free from cruel and unusual punishment gave him the right to remove Quinlan's life sustaining technology.³¹ The trial court denied the claims of Quinlan's father however on appeal the court held that the state's interests in the sanctity and preservation of human life did not outweigh Quinlan's constitutional right to privacy.³² The court instead presented a sliding scale standard for these types of cases where the states interests decreases and the individual's right to privacy increases, as the degree of bodily invasion increases and the prognosis worsens.³³

The right to die movement lead to an era of physician assisted suicide. Dr. Kevorkian was a Michigan based pathologist and has become known as the poster boy for physician assisted suicide. Kerkorkian has been credited with assisting over one hundred individuals in their endeavor to commit suicide.³⁴ Due to the fact that Michigan lacked any statute criminalizing physician assisted suicide, Kevorkian managed to allude criminal charges for multiple years.³⁵ Kevorkian began to push the limits of physician assisted suicide of terminally ill patients and began assisting those who were not terminally ill.³⁶ Kevorkian's reign ended when he crossed the line of physician assisted suicide and euthanized a patient who simply had amyotrophic lateral sclerosis resulting in a second degree murder conviction in 1999.³⁷

Advocates of physician assisted suicide needed someone who could bring more credibility to their cause and found their savior in Dr. Timothy Quill. Dr. Quill was a supporter and participant in physician assisted

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.* at 24.

33. *Id.* at 25.

34. *Id.* at 68.

35. *Id.*

36. *Id.* at 72.

37. *Id.* at 75.

suicide but took a more compassionate approach to the practice unlike his predecessor Kevorkian. Dr. Quill published an article entitled “Death with Dignity” detailing his involvement in one of his patients’ suicide.³⁸ Quill wrote about a patient that suffered from cancer and as her prognosis worsened she wished to die with dignity.³⁹ Quill initially tried to convince his patient to consider other options such as home hospice care but to no avail and eventually wrote his patient a prescription for a lethal dose of barbiturates.⁴⁰ Four months after Quill’s article was published he was brought before the grand jury for his involvement in his patients suicide however, the grand jury did not indict him. The influence of Quill’s article encouraged other physicians to admit their assistance with patients’ committing suicide and ultimately lead to the topic becoming part of open discussions and generally destigmatized.

The impact of physician assisted suicide lead to the passing of the Death with Dignity Act (DWDA) of 1997.⁴¹ The DWDA is the first law in our American history that permits physicians to assist in their patients’ suicide under certain conditions.⁴² The DWDA allows terminally ill patients in the state of Oregon to obtain a prescription from their physician for a self-administered lethal medication.⁴³ To qualify under this act, a patient must be an adult, an Oregon resident, capable and terminally ill.⁴⁴ A patient must have less than six months to live, be a competent adult, make the request orally and in writing then have it approved by more than one physician.⁴⁵ After approval, the patient must wait fifteen days and then make a subsequent request.⁴⁶

The assistance in another person’s suicide by anyone other than a physician is strictly forbidden and illegal. Although the assistance by anyone other than a physician in their suicide is illegal, courts have yet to find an adequate solution for bringing individuals to justice. With the increasing use and availability of technology, it has become easier for individuals to exert influence over others without being physically present with them. The greatest problem being faced by prosecutors is what charge to bring against such an individual as the current law does

38. *Id.* at 80.

39. *Id.* at 82.

40. *Id.* at 83.

41. *Id.* at 105.

42. *Id.* at 94.

43. *Id.* at 106.

44. *Id.* at 109-10.

45. *Is Suicide Illegal? Suicide Laws by Country*, Mental Health Daily: Mental health blog, <http://mentalhealtdaily.com/2014/07/24/is-suicide-illegal-suicide-laws-by-country/> [hereinafter *Is Suicide Illegal?*].

46. Anthony Lim, *The Right to Die Movement: From Quinlan to Schiavo* (May 2005) (unpublished third year paper, Harvard Law School) (on file with the Harvard Law School LEDA system).

not account for those who virtually assist another in committing suicide. For instance, the first case to reach a Federal Court based on the virtual influence of a person over another's actions ultimately resulted in dismissal of all charges. The case involved a mother who along with her daughter bullied one of the daughter's classmates, ultimately leading to the victim committing suicide.⁴⁷ The mother was charged with both felony and misdemeanor violations of the Computer Fraud and Abuse Act, however the jury only found the mother guilty of the lesser misdemeanor.⁴⁸ On appeal, a Federal Judge dismissed the case and vacated the conviction based on the rationale that a conviction under this charge was "unconstitutionally vague" and could result in innocent internet users being convicted of misdemeanor offenses.⁴⁹

ANALYSIS

Currently 45 states have laws against assisted suicide and participation can result in charges ranging from manslaughter to murder.⁵⁰ Physician assisted suicide is currently legal only in 5 states, Oregon, Washington, Colorado, Montana, Vermont and California who has newly legalized the practice as of June 9, 2016. Although the practice of assisted suicide has recently gained some traction within the United States it is in no way legal for a person who is not medically trained to assist another in committing suicide.

Although it is criminal to assist another in committing suicide, obtaining a successful conviction against a person for this crime is not only rare but extremely challenging for prosecutors. For instance, a former nurse in Minnesota was charged with intentionally seeking out depressed people in other parts of the world through suicide chat rooms and not only encouraged but advised two people on the manner in which they should take their lives.⁵¹ After a long court battle and a suspended prison sentence, the nurse was ultimately sentenced to probation.⁵²

A retired Massachusetts superior court judge commented to a local media outlet that he was surprised that the state filed charges against the

47. United States v. Drew, 259 F.R.D. 449, 452 (C.D. Cal. 2009).

48. *Id.* at 452-53.

49. Keegan Hamilton, *Acquitted "Cyber Bully" Lori Drew Finds Herself a Victim of Online Tormenters*, RiverFront Times, <http://www.riverfronttimes.com/newsblog/2009/08/31/acquitted-cyber-bully-lori-drew-finds-herself-a-victim-of-online-tormenters#>.

50. State by State Guide to Physician Assisted Suicide, (Oct. 05, 2015), <http://euthanasia.procon.org/view.resource.php?resourceID=005104>.

51. Associated Press, *Suicide Fetish Nurse gets Jail for Convincing Two People to Take Their Lives*, NY Daily News (October 15, 2014, 8:49 PM), <http://www.nydailynews.com/news/crime/suicide-fetish-nurse-jail-convincing-people-lives-article-1.1975842>.

52. *Id.*

defendant, Michelle Carter.⁵³ The case against the defendant was one of first impression and a difficult charge to obtain an indictment for. A district court judge from the state also remarked that the case against the defendant would be difficult to prove since she didn't put the "instruments in his hand."⁵⁴ To date, Massachusetts has not legalized physician assisted suicide and a recent attempt to pass a bill that would allow physician assisted suicide did not pass within the government.

The court correctly decided this case because with the increasing technology phenomenon, citizens need to be held accountable for their technological actions. With the increased use of text messaging and telephone conversations it is a lot easier to hold a false belief that your conduct is harmless. As the defendant in the case argued, mere words through a telephone should never overcome our own free will. Even though the defendant did not physically place the instrument in the victim's hand it is clear from the facts that the defendant had a clear intention of ensuring that the victim went through with his suicide.

In this case, with these facts, the court made the right decision to indict the defendant. Indicting the defendant was undoubtedly the right choice however, the court should have instead charged the defendant with voluntary manslaughter or murder. The primary difference is the intent of the offender and it is clear that the defendant intended to use any means necessary to ensure the victim followed through with his plan on committing suicide. It is obvious from the text messages sent by the defendant that she intended to push the victim into taking his life. Although the victim was contemplating suicide and alone committed the fatal act, he showed multiple signs of doubt which the defendant effectively soothed. Additionally, the defendant often encouraged the victim to delete the text messages between the two, a fact proving the level of knowledge the defendant had of her actions. Furthermore, it is evident that the defendant was aware her actions were immoral and potentially criminal based on the messages she sent her friend soon after law enforcement began investigating the victim's death.

Finding a defendant liable for the death of a victim who commits suicide when the defendant is not present is a difficult task. Although courts rely on involuntary manslaughter when charging someone in an assisted suicide, with the advent of technology and its future implications, courts should consider the defendant's intent prior to indicting a defendant. In the facts of this case the court should have charged the defendant with voluntary manslaughter or murder. One of the determining factors in measuring the defendant's culpability should be their intent. Another determining factor should be the specific facts in the

53. *Id.*

54. *Id.*

case with regards to the defendant's involvement in the victim's suicide. Finally, the court should take into account whether the defendant attempted to prevent the victim's suicide or attempted to intervene during the commission of the act.

CONCLUSION

This is not a typical case of assisted suicide in which the person's intent is to help relieve another from their pain and suffering associated with a terminal illness.⁵⁵ This is a case about a teenager who pushed her depressed yet otherwise healthy boyfriend into taking his own life. This case is unique based on the fact that the defendant committed her crime solely through the use of technology yet falsely believed that would be her greatest defense. The defendant like many others believe that their online conduct will somehow be concealed or inconspicuous when in fact such communication is not only documented but can easily be made public. For instance, this past month a mother has been charged with the murder of her one-year-old son. Not only did this mother murder her child but she filmed the entire incident and sent it to the child's father who did nothing to prevent the peril of his young son. Through further investigation into the content of text messages exchanged between the two on that fateful day, the father has also been arrested although he was not present during the incident.

Although the law is catching up with defendant's who commit crimes with the use of technology, there are still many loopholes left that need to be addressed. Additional laws and safeguards need to be in place, especially in cases where the defendant only has access to the victim solely through the technology.

55. *Is Suicide Illegal?*, *supra* note 45.

