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August 21, 2015

RE: MICHELLE CARTER, INDICTMENT NO. 15YO0001NE

In regards to the above-captioned matter I have enclosed:

- Commonwealth's Response to Defendant's Motion to Dismiss;
- Certificate of Service.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "OJ Murphy", with a long, sweeping horizontal line extending to the right.

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COMMONWEALTH OF MASSACHUSETTS

Bristol, SS.

NEW BEDFORD JUVENILE COURT
INDICTMENT NO. 15YO0001NE

COMMONWEALTH V.)
)
MICHELLE CARTER)

COMMONWEALTH’S RESPONSE TO DEFENDANT’S MOTION TO DISMISS

FACTS

(a) Background.

A Bristol County Grand Jury issued an indictment charging Michelle Carter with involuntary manslaughter. The indictment was based on the following facts.

In 2012, Conrad Roy met Carter, and at some point, apparently, they formed an online romantic relationship, which primarily occurred through online and cell phone communication. Grand Jury Proceedings Transcript [hereinafter “GJ”] 1/22 at 32, 21, GJ 2/4 at 37-38, 22-23, 25, 2/5 at 22. The relationship was discrete: Conrad’s best friend, Tom Gammel, was unaware of it. GJ 2/4 at 20, 25, 27, GJ 2/5 at 18.

From at least July 6 to July 12, 2014, Carter assisted Conrad’s suicide by counseling him to overcome his doubts, devising a plan to run a combustion engine within his truck in order to poison him with carbon monoxide, and by directing him to go back in his truck after he exited it, when he became frightened that the plan was working.

(b) Carter assisted Conrad in committing suicide by counseling him to overcome his doubts and pressuring him to commit suicide in the short-term.

Carter assisted Conrad’s suicide by counseling him to overcome his doubts. Her counsel took the form of positive direction, where she told him that he was “strong” enough to execute the suicide plan and that he would be happy once he was dead. GJ 2/5 at 67 (Carter: “Straight to heaven guided by God.” Conrad: “And I will be happy again.” Carter: “Yes, you will, (smiley face).”), 68 (“there is

no way you can fail . . . You're strong . . . I love you to the moon and back and deeper than the ocean and higher than the pines, too, babe, forever and always. It's painless and quick."), 72 (Conrad: "I'm sorry. Carter: "For what?" Conrad: "Just doing this and everything. Like, I just had one life and I'm blowing it." Carter: "Don't be sorry, Conrad."), 69 ("You are my beautiful guardian angel forever and ever (smiley face) I'll always smile up at you knowing that you aren't far away."), 52 ("I would never judge you.").

Similarly, she convinced him that his suicide would not afflict his parents with emotional distress:

CARTER: I think your parents know you're in a really bad place. I'm not saying they want you to do it but I honestly feel like they can accept it.

They know there is nothing they can do. They've tried helping. Everyone's tried, but there is a point that comes where there isn't anything anyone can do to save you, not even yourself.

And you've hit that point and I think your parents know you've hit that point. You said your mom saw a suicide thing on your computer and she didn't say anything. I think she knows it's on your mind and she's prepared for it.

Everyone will be sad for a while but they will get over it and move on. They won't be in depression. I won't let that happen. They know how sad you are, and they know that you are doing this to be happy and I think they will understand and accept it. They will always carry you in their hearts.

CONRAD: Aww. Thank you, Michelle.

CARTER: They will move on for you because they know that's what you would have wanted. They know you wouldn't want them to be sad and depressed and be angry and guilty. They know you want them to live their lives and be happy. So they will for you. You're right. You need to stop thinking about this and just do it because over turning always kills, over thinking.

CONRAD: Yeah, it does. I've been thinking about it for too long.

CARTER: Always smile, and, yeah, you have to just do it. You have everything you need. There is no way you can fail. Tonight is the night. It's now or never.

GJ 2/5 at 88-89. She also told him that she would support his family when he was gone. GJ 2/5 at 99.

She also counseled him to overcome his fear of death:

CARTER: [D]on't be scared. You already made this decision and if you don't do it tonight you're gonna be thinking about it all the time and stuff all the rest of your life and be miserable.

You're finally going to be happy in heaven. No more pain. No more bad thoughts and worries. You'll be free.

It's okay to be scared and it's normal. I mean, you're about to die. I would be concerned if you weren't scared, but I know how bad you want this and how bad you want to be happy. You have to face your fears for what you want.

GJ 2/5 at 87. And, in numerous exchanges, she advised him that he should not be inhibited by his fear that a botched suicide attempt might incapacitate him. For instance:

CARTER: . . . if you don't think about it, you won't think about failing. You'll just do it and then thinking you'll succeed.

CONRAD: Right. That's what I'm talking about. I read so much about failed attempts gone wrong that it's gotten me discouraged.

CARTER: Yeah, exactly, so stop doing that. There is more success than there are failures.

CONRAD: Are you kidding me?

CARTER: You have to look at it that way and people only fail because they have the same mindset as you. Thinking they'll fail.

CONRAD: I really want to believe you.

CARTER: Why don't you.

GJ 2/5 at 55. See also GJ 2/5 at 48-49 (When Conrad stated that he was concerned that if the CO2 did not kill him, he might become incapacitated, Carter stated "If you do it right and listen to what that guy said in the article, it will 100 percent work. It's not that hard to mess up."), 54-55 (Conrad: I really don't know what to do. Like, I'm afraid of failing and causing way more damage to myself and looking like a fool for the rest of my life, ugh. Carter: You can't be afraid to fail. You weren't afraid the first time. Why are you afraid now. Conrad: I just did it. I didn't think. I just did it. Carter: Well,

maybe not thinking is the way to go. Conrad: True. Carter: Yeah. Because if you don't think about it, you won't think about failing. You'll just do it and then thinking you'll succeed.”).

In addition, Carter pressured Conrad to commit suicide in the short-term. On one occasion, when Conrad went to a Sears store in order to buy a generator with a combustion engine, he and Carter text messaged each other:

CONRAD: Guess who is here.

CARTER: Who? Wait, here? Wait, where?

CONRAD: Jesus.

CARTER: Ha ha, it's meant to be.

CONRAD: Literally, there is a guy walking around in a Jesus costume.

CARTER: Ha, ha, ha. It's a sign it's your calling.

GJ 2/5 at 82. See also GJ 2/5 at 88 (Carter: “there is a point that comes where there isn't anything anyone can do to save you, not even yourself. And you've hit that point and I think your parents know you've hit that point.”), 89 (“Tonight is the night. It's now or never.”), 98 (“This time is right and you’re ready.”). On at least one occasion, she used the prospect of getting him help to pressure him. GJ 2/5 at 99 (“You just need to do it, Conrad, or I'm gonna get you help.”).

Carter was personally frustrated that Conrad delayed committing suicide:

Well . . . I guess [that I am frustrated], just because you always say you are gonna do it but you don't, but last night I know you really wanted to do it and I'm not mad. Well, I mean kind of, I guess, just because you always say you're gonna do it . . . but you don't but last night I knew you really wanted to and I'm not mad.

GJ 2/5 at 74-75. See also GJ 2/5 at 93 (Carter: **“You're not joking about this or bullshitting me, right? . . . I just want to make sure you're being serious. Like I know you are, but I don't know. You always say you're gonna do it, but you never do. I just want to make sure tonight is the real thing.”**) (emphasis added).

She frequently admonished him for making excuses and complained that he was “never going to do it.” For example, when Conrad was discussing siphoning carbon monoxide into his truck, she stated, “But I bet you're gonna be like 'oh, it didn't work because I didn't tape the tube right or something like that.' I bet you're gonna say an excuse like that . . . you seem to always have an excuse.” GJ 2/5 at 44-45. See also GJ 2/5 at 69 (Carter: “Do you have the generator?” Conrad: “Not yet LOL.” Carter: “WELL WHEN ARE YOU GETTING IT?” Conrad: “Now.” Carter: “Okay.”) (emphasis in original), GJ 2/5 at 71 (Carter: “You better not be bullshitting me and saying you gonna do this and then purposely get caught. Conrad: No, none of that. Carter: Okay, good.”). She pressured him not to procrastinate:

CONRAD: How was your day?

CARTER: When are you doing it?

CONRAD: Since you don't get your snapchat anymore, I sent them to you.

CARTER: (Smiley face) My day was okay. How was yours?

CONRAD: Good.

CARTER: Really?

CONRAD: Yes.

CARTER: That's great. What did you do?

CONRAD: Ended up going to work for a little bit and then just looked stuff up.

CARTER: When are you gonna do it? Stop ignoring the question

????

GJ 2/5 at 51 (emphasis added). See also GJ 2/5 at 63 (“**You can’t keep pushing it off, though. That’s all you keep doing.**”), 65 (Conrad: “I’m gonna do it soon . . . I have the key so I'm going to get the generator in a few hours.” Carter: “**A few hours isn't soon, ha ha.**”), 51 (when Conrad expressed a plan to commit suicide on a Saturday night, Carter responded, “**Today is only Monday.**”), 52 (“**Are you doing it tonight?**”), 49 (“**do some research tomorrow**”), 60-61 (“**what**

time are you gonna do it because I can't stay up past 12:00. Remember?"), 81 (**"There is no point in waiting anymore."**), 83 (Carter: **"Do you have any [other generators] at work that you can go and get?"** Conrad: "Yeah, probably, ha ha." Carter: **"GO GET ONE."**) (all emphasis added).

All of Carter's counsel and encouragement was given despite the fact that she was aware Conrad had previously attempted suicide, GJ 2/5 at 45-46, 47-48, 50, 54-55, had a history of anxiety and depression, GJ 2/5 at 51-52, and received counseling, 2/4 at 60.

(c) *Carter assisted Conrad to commit suicide by developing a plan to poison him with carbon monoxide.*

Carter assisted Conrad by devising a plan to commit suicide through using a combustion engine to poison himself with carbon monoxide. Her efforts included advice on the plan's technical aspects. On July 6, Conrad proposed siphoning carbon monoxide from his truck's exhaust pipes into the cabin of his truck. GJ 2/5 at 44-45. Carter responded:

Yeah, it will work. If you emit 3200 ppm of it for five or ten minutes you will die within a half hour. You lose consciousness with no pain. You just fall asleep and die. You can also just take a hose and run that from the exhaust pipe to the rear window in your car and seal it with duct tape and shirts, so it can't escape. You will die within, like, 20 or 30 minutes all pain free.

GJ 2/5 at 45. During the same string of text messages, Conrad proposed the idea of "purchas[ing] a CO tank and a regulator and a feeding tube to directly go into [his] lungs." GJ 2/5 at 48. Later that day, he told Carter that the plan with his truck would not work because his truck had a diesel engine, which produce low carbon monoxide levels. GJ 2/5 49, 46. She responded, "if it doesn't emit CO, then it won't work." GJ 2/5 47. She then advised, "So you need the tank thing or a different car? . . . do some research tomorrow." GJ 2/5 at 49. See also GJ 2/5 at 48 (Carter: "I think [ingesting carbon monoxide] is the best way. It will work and it's painless and fast.").

The next day, Conrad indicated that the carbon monoxide poisoning plan would not work because he was unable to obtain a carbon monoxide tank, and did not want to use his parent's car to

generate carbon monoxide. GJ 2/5 at 56. She answered, “Well, there is more ways to make CO. Google ways to make it.” GJ 2/5 at 56. The conversation continued:

CONRAD: OMG.

CARTER: What?

CONRAD: Portable generator. That's it.

CARTER: That makes CO?

CONRAD: Yeah. It's an internal combustion engine.

CARTER: Do you have one of those?

CONRAD: There is one at work.

CARTER: Well, how would you get it home?

CONRAD: It's portable. I could carry it.

CARTER: Oh, right. Ha ha.

CONRAD: I was thinking turning it on in my truck and passing out asleep.

CARTER: Does it emit enough CO?

CONRAD: You're a genius.

CARTER: I know. Do they still give off a lot of it though. Did they fix it after that article called them out?

CONRAD: It emits more than cars.

CARTER: Are you positive?

CONRAD: December 2013, pretty recent.

CARTER: You could take that in your truck and take some Benadryls just in case.

CONRAD: Yeah, I'm gonna fall asleep and peacefully die.

CARTER: Yeah, that's the best way.

CONRAD: See, I knew you would help me find a better way. It's so easy. All I need to do is get it, fill it with gas, and boom.

CARTER: Yup, ha ha. It's that simple.

CONRAD: Well, as soon as I get to work tomorrow, I'm going to find the generator and look up the model and make sure and that's a government web site. I sent you the pic, too.

CARTER: Okay. Ha, ha, then it must be true, then. So if the model works are you gonna take it home and do this tomorrow?

CONRAD: Yup.

GJ 2/5 at 56-58. Later, Conrad asked Carter if she thought this plan would work, she replied:

Yes, I think it will work. You say generators produce a lot of CO, so you just turn it on in your car, take some Benadryls before just in case and then you'll breath it in and pass out and die very quickly and peacefully with no pain at all. There is no way you can fail.

GJ 2/5 at 61.

On July 9, Conrad took a generator from his father's storage area, GJ 2/5 70, 61, but he could not get it to work, GJ 2/5 at 73-76. From that point through July 10, Carter provided an array of possible solutions. See GJ 2/5 at 76 ("Did you read the manual?"), 76 ("You don't think you'll be able to [fix the generator] and the people at the stores know how. Just ask them and say it's for your work."), 77 ("if you can't fix [the generator] what are you gonna do? Buy a new one?"), 78 ("You don't think you'll be able to, and the people at those stores know how. Just ask them and say it's for your work."), 80 ("Just Google how to fix a portable generator and a lot of stuff comes up. I checked."), 80-81 (Carter: "Oh my God, go to Sears. They sell [generators]. They can help." Conrad: "Really?" Carter: "Yeah." Conrad: "Where did you find out if they could help." Carter: "They sell them and there's a department in Sears that fixes machines and stuff, so give it a try." Conrad: "They sell a brand new one for \$135. It's a cheap one but it will probably work." Carter: "That's not that expensive. Wanna go buy it? Yeah, it will -- just make sure it produces enough of it."), 82 (Ask [the Sears staff] how to fix [the generator], Conrad."). She also suggested alternative methods of producing carbon monoxide; she "read on line you can make CO from candles and glass." GJ 2/5 81-82, But, she maintained, "a gas machine would probably be better." GJ 2/5 at 83.

Only July 10, because the generator continued to malfunction, Carter advised Conrad to obtain a different “gas machine.” GJ 2/5 at 83.

CARTER: Do you have any at work that you can go and get?

CONRAD: Yeah, probably, ha ha.

CARTER: GO GET ONE.

CONRAD: Ha ha. I really want to get this fucking generator going. It's perfect.

CARTER: Well, you said you can't.

CONRAD: There's got to be another way.

CARTER: So what are you gonna do?

CONRAD: Kill myself.

CARTER: Well, can you see if there is another gas machine.

CONRAD: There is actually another generator at my dad's house.

CARTER: Can you get it?

CONRAD: Possibly.

GJ 2/5 at 83.

Thereafter, Conrad proposed using a water pump with a gas engine, instead of his father's generator:

CONRAD: [B]oth [the water pump and generator] work and [the water pump is] easier because I don't have to do any maintenance.

CARTER: Maintenance?

CONRAD: Like putting gas, oil.

CARTER: Oh, well what's the pump thing do? I see, ha ha. Well, in my opinion I think you should do the generator because I don't know much about the pump and with the generator you can't fail.

CONRAD: It's a water pump but I guess I'll just use the generator.

CARTER: Yeah, just use that. I don't trust the pump.

GJ 2/5 at 86.

In addition to helping Conrad develop a plan to use a combustion engine to generate the deadly carbon monoxide, Carter assisted him by suggesting ways that he could conceal the preparation and execution of his suicide attempt from his parents. She advised, “don't, like, fix [the generator] at home so your parents will see.” The conversation continued:

CONRAD: I'm at my mom's house. They won't think anything.

CARTER: So she could tell your dad.

CONRAD: I got, like, an hour. At least I bought new parts.

CARTER: They'll ask why you want to fix it so bad. What do you mean you have an hour.

CONRAD: Till they get home.

GJ 2/5 at 79. See also GJ 2/5 at 94 (Carter suggesting that Conrad could lie to his mother about where he was going so that she would not interfere with him leaving her house in order to commit suicide), 61 (“how are you going to get the keys [to the shop where the generator is located] without [your father] seeing?”).

Similarly, Carter advised Conrad that when he attempted suicide, he should drive his truck to an area where no one would interfere with or report him. GJ 2/5 at 44, 66 (“Don't do it in the driveway. You will be easily found.”), 70 (Carter: “Find a spot.” Conrad: “I don't know. I'm thinking a public place. If I go somewhere private they may call cops.” Carter: “Well, then someone will notice you.”), 72 (“Do you think you will get caught? I mean, it only takes 30 minutes; right?”), 90 (“Just park your car and sit there and it will take, like, 20 minutes. It's not a big deal.”). And, when he stated that he might abandon the plan due to his fear that the carbon monoxide might harm a potential rescuer or passerby, Carter counseled him not to worry because: “They will see the generator and know you died of CO. But I also don't think that they will breathe enough to be injured because they will see

you and they will pull you out. They will probably call 911. If you lock the door, someone will call 911.” GJ 2/5 at 89.

Carter also proposed alternative “painless” and effective suicide methods, in case carbon monoxide poisoning proved infeasible:

Oh, okay. Well I would do the CO. That honestly is the best way and I know it's hard to find a tank so if you could use another car or something, then do that. But next I'd try the bag or hanging. Hanging is painless and takes like a second if you do it right.

GJ 2/5 at 56.

(d) Conrad's Suicide.

On the morning of July 12, at 4:19 AM, Carter messaged Conrad:

You can't think about it. You just have to do it. You said you were gonna do it. Like I don't get why you aren't.

CONRAD: I don't get it either. I don't know.

CARTER: So I guess you aren't gonna do it then.

All that for nothing. I'm just confused. Like you were so ready and determined.

CONRAD: I am gonna eventually. I really don't know what I'm waiting for but I have everything lined up.

CARTER: No, you're not, Conrad. Last night was it. You kept pushing it off and you say you'll do it, but you never do. It's always gonna be that way if you don't take action. You're just making it harder on yourself by pushing it off. You just have to do it. Do you want to do it now?

CONRAD: Is it too late? I don't know. It's already light outside. I'm gonna go back to sleep. Love you. I'll text you tomorrow.

CARTER: No. It's probably the best time now because everyone is sleeping. Just go somewhere in your truck and no one is really out there right now because it's an awkward time. If you don't do it now you're never gonna do it, and you can say you'll do it tomorrow, but you probably won't.

Tonight? Love you.

CONRAD: Thank you.

CARTER: For what. Are you awake?

CONRAD: Yes.

CARTER: Are you gonna do it today?

CONRAD: Yes.

CARTER: Like in the day time?

CONRAD: Should I?

CARTER: Yeah, it's less suspicious. You won't think about it as much and you'll get it over with instead of wait until the night.

CONRAD: Yeah then I will. Like where? Like I could go in any enclosed area.

CARTER: Go in your truck and drive in a parking lot somewhere, to a park or something. Do it like early. Do it now, like early.

CONRAD: Didn't we say this was suspicious?

CARTER: No. I think night is more suspicious, a kid sitting in his car turning on the radio. Just do it. It wouldn't be suspicious and it won't take long.

CONRAD: Okay. I'm taking Holly for a walk.

CARTER: Okay.

CONRAD: I don't know why I'm like this.

CARTER: Sometimes things happen and we never have the answers why.

CONRAD: Like, why am I so hesitant lately. Like two weeks ago I was willing to try everything and now I'm worse, really bad, and I'm LOL not following through. It's eating me inside.

CARTER: You're so hesitant because you keeping over thinking it and keep pushing it off. You just need to do it, Conrad. The more you push it off, the more it will eat at you. You're ready and prepared. All you have to do is turn the generator on and you will be free and happy. No more pushing it off. No more waiting.

CONRAD: You're right.

CARTER: If you want it as bad as you say you do it's time to do it today.

CONRAD: Yup. No more waiting.

CARTER: Okay. I'm serious. Like you can't even wait 'till tonight. You have to do it when you get back from your walk.

CONRAD: Thank you.

CARTER: For what?

CONRAD: Still being here.

CARTER: I would never leave you. You're the love of my life, my boyfriend. You are my heart. I'd never leave you.

CONRAD: Aw.

CARTER: I love you.

CONRAD: Love you, too.

CARTER: When will you be back from your walk?

CONRAD: Like, five minutes.

CARTER: Okay. So you gonna do it?

CONRAD: I guess.

CARTER: Well, I want you to be ready and sure. What does that mean?

CONRAD: I don't know. I'm freaking out again. I'm over thinking.

CARTER: I thought you wanted to do this. This time is right and you're ready. You just need to do it.

You can't keep living this way. You just need to do it like you did the last time and not think about it and just do it, babe. You can't keep doing this every day.

CONRAD: I do want to but I'm like freaking for my family I guess. I don't know.

CARTER: Conrad, I told you I'll take care of them. Everyone will take care of them to make sure they won't be alone and people will help them get through it. We talked about this and they will be okay and accept it. People who commit suicide don't think this much. They just could do it.

CONRAD: I know. I know. LOL. Thinking just drives me more crazy.

CARTER: You just need to do it, Conrad, or I'm gonna get you help. You can't keep doing this everyday.

CONRAD: Okay. I'm gonna do it today.

CARTER: You promise?

CONRAD: I promise, babe. I have to now.

CARTER: Like right now?

CONRAD: Where do I go?

CARTER: And you can't break a promise. And just go in a quiet parking lot or something.

CONRAD: Okay.

CARTER: Go somewhere you know you won't get caught. You can find a place. I know you can. Are you doing it now?

GJ 2/5 at 95-101.

Later that afternoon, the conversation continued,

CONRAD: I'm determined.

CARTER: I'm happy to hear that.

CONRAD: I'm ready.

CARTER: Good because it's time, babe. You know that. When you get back from the beach you've gotta go do it. You're ready. You're determined. It's the best time to do it.

CONRAD: Okay, I will.

CARTER: Are you back?

CONRAD: No more thinking.

CARTER: Yes. No more thinking. You need to just do it. No more waiting.

CONRAD: On way back. I know where to go now.

CARTER: Where?

CONRAD: A parking lot. There is going to be no cars there at 9:00. So that's when I'll be found.

CARTER: Okay, perfect. When will you be home?

CONRAD: Ten minutes. Ha ha, that's perfect.

CARTER: Okay. And, well, yeah, I don't know.

CONRAD: Like, I don't want to kill anyone else with me.

CARTER: You won't.

CONRAD: When they open the door they won't know it's odorless and colorless.

CARTER: You're over thinking. They will see the generator and realize you breathed in CO too.

CONRAD: So should I keep it in the back seat or front?

CARTER: In the front. You could write on a piece of paper and tape it on saying carbon monoxide or something if you're scared.

CONRAD: I was thinking that but someone might see it before it actually happens.

CARTER: Well, wait, the generator is gonna be on because you'll be passed out, so they'll know you used carbon monoxide. Dead. It's not loud is it?

CONRAD: Not really, LMAO.

CARTER: Okay, good. Are you gonna do it now?

GJ 2/5 at 101-03.

At 5:08 PM, Conrad returned from the beach and text messaged Carter:

CONRAD: I'm home.

CARTER: Okay.

CONRAD: Ah.

CARTER: What?

CONRAD: I don't know. I'm stressing.

CARTER: You're fine. It's gonna be okay. You just gotta do it, babe. You can't think about it.

CONRAD: Okay. Okay. I got this.

CARTER: Yes, you do. I believe in you. Did you delete the messages?

CONRAD: Yes. But you're going to keep messaging me.

CARTER: I will until you turn on the generator.

CONRAD: Okay. Well, I'm bringing my sisters for ice cream.

CARTER: So will you do it when you get back?

CONRAD: Yup, I'll go right there.

CARTER: Okay.

CONRAD: Love you.

CARTER: I love so much.

CONRAD: (Smiley face).

CARTER: 33.

CONRAD: Ha ha. What are you doing?

CARTER: Nothing really. Just resting.

CONRAD: Okay. Ha, ha I'm procrastinating.

CARTER: Yeah, ha ha, I know. Are you back?

CONRAD: Yup.

CARTER: So it's time?

CONRAD: Oh, it's been time.

CARTER: Are you gonna do it now?

CONRAD: I just don't know how to leave them, you know.

CARTER: Say you're gonna go the store or something.

CONRAD: Like, I want them to know that I love them.

CARTER: They know. That's one thing they definitely know. You're over thinking.

CONRAD: I know I'm over thinking. I've been over thinking for a while now.

CARTER: I know. You just have to do it like you said. Are you gonna do it now?

CONRAD: I still haven't left yet, ha ha.

CARTER: Why?

CONRAD: Leaving now.

CARTER: Okay. You can do this.

CONRAD: Okay. I'm almost there.

GJ 2/5 at 103-105. That last text message, sent at 6:25 PM, is the last text message that Conrad sent. See GJ 2/5 at 105.

At about the same time, Conrad left his mother's house, claiming that he was going to visit his friend Aryanna. GJ 1/22 at 31-32. Instead, he drove to the Fairhaven K-Mart parking lot. GJ 1/22 at 38, 2/5 at 6-7. At 6:28 PM, Conrad called Carter and talked to her for 43 minutes. GJ 2/5 at 106. Around 7:12 PM, Carter called Conrad and their phones connected for 47 minutes. GJ 2/5 at 106. At some point during that call, Conrad got out of the car "because [the carbon monoxide poisoning] was working and he got scared." GJ 2/4 at 60. Carter "fucken told him to get back in." GJ 2/4 at 60.

When Conrad did not come home, his mother searched for him and reported him missing. GJ 1/22 at 34-37, GJ 2/5 at 5-6. On July 13, police discovered his body within his truck, parked in the Fairhaven K-Mart parking lot. GJ 1/22 at 38, 2/5 at 6-7. He had used a combustion engine to fill his truck's cabin with carbon monoxide. GJ 2/5 at 10-12.

In the immediate aftermath of Conrad's death, Carter sent text messages implying that she had no knowledge of the incident. For instance, on the night of Conrad's death, she text messaged Conrad's sister, asking "Do you know where you brother is?" GJ 1/22 at 31. The sister was surprised that Carter had her phone number. GJ 2/5 at 30. The following morning, Carter text messaged Conrad's mother and asked her if she knew where Conrad was, but made no mention of the fact that she knew Conrad had committed suicide in the K-Mart parking lot. GJ 2/4 at 42, GJ 1/22 at 39. Conrad's mother informed Carter that "they [had] been looking for him the past few hours and they can't find him." GJ 2/4 at 42. Likewise, Carter text messaged her friend Samantha Boardman:

he just called me and there was a loud noise like a motor and I heard moaning like someone was in pain and he wouldn't answer when I said his name. I stayed on the phone for like 20 minutes and that's all I heard.

I think he just killed himself . . . I'm so fucken stupid. The generator he got the other day I think that was the noise I heard. I just looked it up. They emit carbon monoxide. I think he poisoned himself with it and it's all my fault because I should have knew he

was going to do that and I should have stopped him. I kept trying to call and there was no answer. I think he did it. I don't even know what to do right now.

GJ 2/4 at 48-49.

From July to December, Carter text messaged Conrad's mother, telling her that Conrad loved her and that his death was not her fault. GJ 1/22 at 40-45, 2/5 at 28. She never stated that she had been communicating with Conrad the night that he took his life. GJ 1/22 at 41.

When the police were investigating the suicide, they spoke with Carter. She told them that she had intended to report Conrad's suicide plans to his mother, but that she could not because she did not have his mother's contact information. GJ 2/5 at 35. She further told the police that, unknowingly, she was talking to Conrad during his suicide, and when their phones disconnected, she did not think much of it. GJ 2/5 at 35. When the police obtained and analyzed Carter's phone, they noticed she had deleted the messages between her and Conrad sent after July 12 at 7PM. GJ 2/5 at 42.

(e) Carter's text messages with Samantha Boardman.

On July 10 and 11, prior to Conrad's suicide, Carter sent text messages to Samantha claiming that Conrad was missing and that she was afraid he was committing suicide. At 3:04 PM on July 10, Carter text messaged Samantha:

I texted his mom 'cause I was getting really worried. Like, he always texts me in the morning and he didn't and he stopped answering last night so I asked her where he was and she said they have been looking for him for the past few hours and they can't find him.

GJ 2/4 at 42-43. Yet, at the same time, Carter was text messaging Conrad, discussing how to fix the broken generator he had taken from his father's storage area. GJ 2/5 at 80. Extraction Report of Conrad Roy's Cell Phone [hereinafter "Extraction Report"] 17. Later that day, at 5:30 PM, Carter text messaged Samantha again, asking

Is there any way a portable generator can kill you somehow because he said he was getting that and some other tools at the store. He said he needed to replace the

generator at work and fix stuff. I didn't really think anything of it but he didn't go to work today so I don't know why he would have got that stuff.

GJ 2/4 at 44.

A similar exchange occurred the next night, July 11, at about 11:15 PM, where Carter text messaged Samantha:

I'm confused. I'm going to talk to his mom tomorrow morning and I'll let you know but don't be sorry. It's my fault. I mean, I should have did something. I just didn't think he was serious because he always says stuff and I just didn't think anything of it. But, yeah, I want to believe that. He told me he wouldn't do anything without telling me. Just in case something did happen, I'm thankful that our last words were I love you . . .

I was supposed to save him. He needed me. I let him down. I should have knew what he was saying was suspicious and I should have called his mom or someone. I could have prevented this.

GJ 2/4 at 46-47. Later, at about 11:35 PM, Carter text messaged Samantha, "I know I can't help him no matter how many times I try but I could have prevented him from missing which could end up being his death." GJ 2/4 at 47. Earlier that night, at about 9:30 PM, Carter text messaged Conrad, telling him to be careful not to wake up his mother when he snuck out of her house on his way to commit suicide. GJ 2/5 at 95; Extraction Report 8 at 209.

On July 13, after Conrad's death, Carter text messaged Samantha, "Just talked to his sister. He's dead. He committed suicide," 2/4 at 49, and that "Police found him in his truck. He died from carbon monoxide poisoning from a generator. He died while talking to me on the phone." GJ 2/4 at 50. And, on July 14, Carter text messaged Samantha:

I don't know how I'm supposed to get through this. I can't function. I haven't eaten. I just completely shut down. I do blame myself. It's my fault. I was talking to him while he killed himself. I heard him cry in pain. I should have known. I should have done something.

GJ 2/4 at 50.

On July 20, however, Carter adjusted her original statement wherein she claimed that she did not know Conrad was going to commit suicide. She text messaged Samantha:

And that night I knew he was going to do it and a part of me thought he wasn't going to like always but when he stopped talking to me on the phone, like, I knew he did it, and a couple of days before leading up to it I guess I kind of let him do it. I started giving up because whatever I said I knew I couldn't change his mind so we talked about it and about how I'll take care of his family when he's gone and all of that.

Like, to him it seemed like I was okay with him dying but I wasn't. Like, I didn't think he was actually going to do it, you know. Like, I said stuff to make him realize how stupid he was being and I tried to convince him not to but I think I just made it easier for him?

I knew he was in the K-mart fucken parking lot. I knew he was going to use the generator to inhale carbon monoxide. I knew it all. But I didn't think he would actually go through with it or that it would work, and that's why I feel like it's all my fault because I knew what he was going to do but I didn't call anyone to stop him.

GJ 2/4 at 52. Carter continued,

It's just hard because, like, I was the only one that knew and I, like, said yesterday everyone talks about how they wished he had someone to talk to and told what he was feeling to and I was that person so I'll always feel guilty about it.

Like, I'm the reason everyone was in that church yesterday. But you're right. He was just going to do it another time and I'm thankful for talking about everything we did know knowing he was going to die. It's just you think I'm a bad person for doing what I did?

. . . yeah, that's exactly what I wanted. I didn't want to be mad at him anymore because I knew he was going to do it so I knew yelling at him wouldn't help. I wanted him to die knowing that I accepted it and that I loved him.

I was the last person he talked to so I feel special that I had that moment with him? It's hard to accept it now that it actually happened but I know he's finally happy. I told him it was okay to do it because he was miserable and I knew he would always be in pain and I just couldn't stand to see him like that anymore.

I told him he'd be free and happy in heaven. I wanted him to leave knowing he wasn't selfish for doing it.

GJ 2/4 53-54.

On July 21, Carter text messaged Samantha:

I just got off the phone with Conrad's mom about 20 minutes ago and she told me that detectives had to come to go through his things and stuff. It's something they have to do with suicides and homicides and she said they have to go through his phone and see if anyone encouraged him to do it on text and stuff.

Sam, they read my messages with him I'm done. His family will hate me and I can go to jail.

GJ 2/4 at 55. When Samantha responded that the police were unlikely to tell Conrad's family about Carter's encouragement unless "it was like really bad bullying," Carter answered,

Yeah, that's what I'm hoping. Like, I hope they see that he had his mind set on it. Like, it may seem like I wanted him to do it but I didn't at all. You know I loved him.

Like, I read the thing online where it said if you agree with the person then it makes them realize how stupid they're being and so they'll stop it but it didn't work and I just I don't know. I hope that the cops don't see it that way. Like, I didn't bully him or anything? So you don't think that they'll really tell his family?

GJ 2/4 at 56-57.

Carter continued to discuss Conrad's death with Samantha into the fall months. On September 15, she text messaged:

Sam, his death is my fault. Like, honestly I could have stopped it. I was the one on the phone with him and he got out of the car because he was working and he got scared and I fucken told him to get back in, Sam, because I knew he would do it all over again the next day and I couldn't have him live that way the way he was living anymore. I couldn't do it. I wouldn't let him.

And therapy didn't help him and I wanted him to go to McLeans with me when I went but he would go in the other department for his issues but he didn't want to go because he said nothing they would do or say would help him or change the way he feels.

So I, like, started giving up because nothing I did was helping and but I should have tried harder. Like, I should have did more. And it's all my fault because I could have stopped him but I fucken didn't and all I had to say was I love you and don't do this one more time and he'd still be here.

And he told me he would give me signs to know he was watching over me but I haven't seen any. And I just I don't know. I'm sorry about this rant. I just need to get it off my chest that it's finally all starting to sink in?

GJ 2/4 58-60. On September 30, Carter text messaged Samantha, discussing how she was uncomfortable with a unit of her psychology class, which discussed suicide:

I'm grateful for that and yeah, I'm going to talk to [the psychology teacher] about what she thinks I should do on Thursday. And though because I told him it was okay to do it, Sam. I helped ease him into it and told him I was okay. I was talking to him

on the phone when he did it. I could have easily stopped him or called the police but I didn't. It's hard to understand because you've never helped someone with a suicide.

GJ 2/4 at 63.

(f) Carter sought attention for Conrad's death.

In the days following Conrad's death, Carter sought sympathy and attention. On July 18, she attended Conrad's wake. GJ 1/22 at 40. Shortly after, she published Facebook posts about Conrad, GJ 2/4 at 18, 21, and created a Facebook event page for a fundraising baseball tournament that she organized in Conrad's memory, GJ 1/22 at 50, 2/4 at 21; GJ Exhibit 2. It read:

Hey everyone, as some of you already know my boyfriend Conrad Roy recently passed away on July 13. He suffered from mental illness and depression. Conrad's death was a wake-up call for me. I want to speak out to fight the public stigma and to give a clearer picture of what mental illness is all about. Even though I could not save my boyfriend's life, I want to put myself out there to try to save as many other lives as possible, and if I can through my experiences shed light on a way out of a difficult situation that I know so many people are going through, then that is what I need to do.

GJ 2/4 at 22. The tournament was ultimately held in Plainville and was mainly attended by Carter's friends and family. GJ 1/22 at 52.

Conrad's friend Tom learned about the tournament, and in August, asked to participate. GJ 1/22 at 51. He also asked Carter why she was holding the tournament in Plainville, a town considerably remote from Conrad's home. Tr. 2/4 at 24. She answered, "[i]t's in my town, ha, ha," GJ 2/4 at 25, and that she "didn't know how to organize it in [Mattapoisett because she] didn't know anyone [there] and it was going to be a long drive to keep going back and forth," GJ 2/4 at 25-26. When Tom proposed holding a tournament in Mattapoisett, Carter became upset. GJ 2/4 at 26. Similarly, when Tom proposed moving the Plainville tournament to Mattapoisett, she responded, "I can't change it, like, I already have made it up here and I have people advertising here and supporting it and I'm sure everyone will come from your town . . . Like, this was my idea. I created it to be here." GJ 2/4 at 26-27. Later, when Tom shared the Facebook event through his Facebook account, Carter contacted him

and asked, "You're not taking credit for my idea though; right? LOL." He responded, "No. I'll credit you if you really want." Carter texted back, "Ha, ha. Well, I mean, I'm hosting it. Like, it's my idea. But you're like my co-captain now." GJ 2/4 at 29. When Tom asked Carter how many times she had met Conrad in person, Carter answered,

I know what we had and he does too. He was the most special and important person in my life and he told me the same. He told me everything about why he killed himself and all that he was feeling. We were end game. We both knew it. He didn't need to tell anyone that . . . I don't think anyone will ever understand what Conrad and I had so much. I don't expect you to either.

GJ 2/4 at 27.

At the tournament, Tom noticed that Carter was acting strange and seeking attention. GJ 2/4 at 30. Conrad's sisters "felt uncomfortable . . . because they didn't know anyone. It wasn't in [their] home town." GJ 1/22 at 52.

Carter did in fact receive attention from the tournament. On September 1, she text messaged Samantha:

A girl I made friends with from McLean messaged me today and said she's been discharged for about a month but she's been having a really hard time.

She saw my Homers for Conrad being on Facebook and she messaged me saying she's on the verge of killing herself and she asked if I could help her because she saw that I'm like an advocate for mental illness now and I want to help save people any way I can. So I helped her and she said I saved her life. Just hearing that makes me feel like I can do so much more that I'm going to do something good like it's all worth it if you know?

GJ 2/4 at 58.

ARGUMENT

I. THE MANSLAUGHTER INDICTMENT IS SUPPORTED BY SUFFICIENT EVIDENCE THAT CARTER CAUSED CONRAD’S DEATH BY WANTONLY AND RECKLESSLY ASSISTING HIM IN POISONING HIMSELF WITH CARBON MONOXIDE.

(a) Standard of Review.

To issue an indictment, a “grand jury must hear sufficient evidence to establish the identity of the accused, and probable cause to arrest [her]” for the crime charged. *Commonwealth v. Walczak*, 463 Mass. 808, 816 (2012) (quoting *Commonwealth v. McCarthy*, 385 Mass. 160, 163 (1982)). “Probable cause requires sufficient facts to warrant a person of reasonable caution in believing that an offense has been committed.” *Walczak*, 463 Mass. at 817. The standard “calls for something definite and substantial, but not a prima facie case of the commission of a crime, let alone proof beyond a reasonable doubt.” *Id.* Thus, the standard is “considerably less exacting than a requirement of sufficient evidence to warrant a guilty finding.” *Id.* (quoting *Commonwealth v. O’Dell*, 392 Mass. 445, 451, 466 N.E.2d 828 (1984)). Ultimately, an indictment is sufficient if the grand jury was presented with probable cause of each element of the charged crime. *Id.*

“Involuntary manslaughter 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.” *Commonwealth v. Life Care Ctrs. Of Am., Inc.*, 456 Mass. 826, 836 (2010). In order to prove involuntary manslaughter under a theory of wanton or reckless conduct, the Commonwealth must show that (1) the defendant’s conduct was intentional; (2) the conduct was wanton or reckless; and, (3) the conduct caused the victim’s death. *Id.* at 832. Evidence that a defendant assisted and encouraged a victim to commit suicide is sufficient to support the charge. See *Persampieri v. Commonwealth*, 343 Mass. 19, 22-23 (1961).

- (b) Carter intentionally committed wanton or reckless conduct when she told Conrad to get back in the truck, directed him to information on producing carbon monoxide through a combustion engine, and counseled him into committing suicide.**

The evidence presented to the grand jury also established probable cause that Carter acted with the requisite intent. First, the intent required to prove involuntary manslaughter is “the intent to perform the act that causes death and not the intent that a death occur.” *Life Care Ctrs.*, 456 Mass. at 836. That is, “reckless conduct does not require that the actor intend the specific result of his or her conduct, but only that he or she intended to do the reckless act.” *Id.* Carter’s forceful assistance and counsel over the course of a week leaves little doubt that she intended her actions. See *supra*, FACTS §§ (b), (c). Her intention is further demonstrated by her ploys for attention after Conrad’s death, see *supra*, FACTS § (f), and her July 10 and 11 messages to Samantha, wherein she lied that, prior to Conrad’s death on the night of July 12, he was missing and she feared he was committing suicide. GJ 2/4 at 42-43, 44, 46-47. Carter does not contend otherwise.

There was also sufficient evidence that Carter’s conduct was wanton or reckless. Wanton or reckless conduct is “intentional conduct . . . involv[ing] a high degree of likelihood that substantial harm will result to another.” *Commonwealth v. Pugh*, 462 Mass. 482, 496 (2012) (quoting *Commonwealth v. Welansky*, 316 Mass. 383, 399 (1944)). It is

determined based either on the defendant’s specific knowledge or on what a reasonable person should have known in the circumstances. If based on the objective measure of recklessness, the defendant’s actions constitute “wanton or reckless conduct . . . if an ordinary normal [woman] under the same circumstances would have realized the gravity of the danger.” If based on the subjective measure, i.e., the defendant’s own knowledge, “grave danger to others must have been apparent and the defendant must have chosen to run the risk rather than alter [her] conduct so as to avoid the act or omission which caused the harm.”

Id. at 496-97. The act causing death must be undertaken in disregard of probable harm to others in circumstances where there is a high likelihood that such harm will result. *Life Care Ctrs.*, 456 Mass.

at 836. The requirement of “wanton or reckless conduct” may be satisfied by either the commission of an intentional act or an intentional omission where there is a duty to act. *Pugh*, 462 Mass. at 497.

(1) *Carter’s actions were wanton and reckless.*

Evidence of Carter’s commissions demonstrates probable cause that she acted wantonly or recklessly under the objective and subjective standards. In *Persampieri*, the defendant’s “conduct could be found to be criminally wanton or reckless,” where he assisted and encouraged his wife’s suicide:

His wife was emotionally disturbed, she had been drinking, and she had threatened to kill herself. The [defendant], instead of trying to bring her to her senses, taunted her, told her where the gun was, loaded it for her, saw that the safety was off, and told her the means by which she could pull the trigger. He thus showed a reckless disregard of his wife’s safety and the possible consequences of his conduct.

343 Mass. at 23. Indeed, determining whether a defendant’s actions are wanton or reckless involves consideration, not only of the defendant’s actions, but the specific circumstances. *Felix F. v. Commonwealth*, 471 Mass. 513, 518-19 (2014). In discussing *Commonwealth v. Catalina*, 407 Mass. 779, 790, n. 12 (1990), the *Felix F.* Court noted that “the defendant’s knowledge that the heroin was highly potent and that the recipient had a low tolerance and a prior overdose were considered in connection with the inherent dangerousness of the drug.” *Id.*

In the instant matter, the facts and circumstances presented to the grand jury established probable cause that Carter’s conduct was wanton or reckless. She knew that Conrad had previously attempted, and was “predisposed” to suicide, Def. Memo 10, and also, that he was was considering suicide once again. GJ 2/5 at 45-46, 54. Specifically, she knew that he sought a painless and effective suicide method. GJ 2/5 at 56. Moreover, she was his confidant and romantic interest, GJ 1/22 at 32, 45-48, and she had specific knowledge that her relationship with Conrad was one of the reasons he had not yet committed suicide, GJ Ex. 6 at 2 (“without you and my family I’d be long gone”). Despite her

knowledge and relationship, she aggressively counseled and pressured him to commit suicide and assisted in planning and carrying out the suicide.

Taking the objective approach, a normal ordinary woman in Carter's position would appreciate the danger in advocating that carbon monoxide poisoning is a painless and effective way of committing suicide to a suicidal teen; assisting him in devising a plan to obtain a combustion engine in order to commit suicide; counseling him to commit suicide when he expressed doubt; and, when the teen went to abandon his suicide attempt upon realizing that he was being poisoned by carbon monoxide, exhorting him to finish the job. See *Persampieri*, 343 Mass. at 23.

It is equally clear that the conduct was reckless or wanton under the subjective approach. According to Carter, she "knew [Conrad] was going to do it," and on the night of his suicide, she "could have stopped him" by telling him to abandon the plan. GJ 2/4 at 58-60. She also revealed that she knew the danger of her actions when she lied to police, GJ 2/5 at 35; stated that "[if the police] read my messages with him I'm done. His family will hate me and I can go to jail," GJ 2/4 at 55; asked him to delete the messages she sent him, GJ 2/5 at 104; deleted the messages that he sent her, GJ 2/5 at 42; and where, after his death, she asked his family if they knew where he was, but never disclosed the information that she knew about his suicide, GJ 1/22 at 41, 31, 39. Ultimately, probable cause of wanton or reckless conduct was established "in the concerted action and cooperation of [Carter] in helping to bring about [Conrad's] foolish act." *Commonwealth v. Atencio*, 345 Mass. 627, 629 (1963).

Contrary to the defense's argument, there is no requirement that a wanton or reckless act consist of a "physical act of force." Def. Memo 4. It has long been held that wanton or reckless behavior is "intentional *conduct* . . . which conduct involves a high degree of likelihood that substantial harm will result to another." *Welansky*, 316 Mass. at 399 (emphasis added). See also *Commonwealth v. Pagan*, 471 Mass. 537, 547 (2015) (cases cited). The "words 'wanton' and 'reckless' . . . express a difference in the degree of risk and in the voluntary taking of risk so marked." *Welansky*, 316 Mass.

at 399. They do not, in contrast, require the Commonwealth to demonstrate that an act was even partly physical in nature. *Id.* Indeed, “[w]anton or reckless conduct amounts to what has been variously described as indifference to or disregard of probable *consequences* to [another] *or the rights of that other*.” *Id.* (emphasis added) (citing *Warren v. Pazolt*, 203 Mass. 328, 347 (1909) (trustees can be “recklessly indifferent” to the trust’s interests)).

The question of whether conduct is wanton or reckless thus hinges on whether the action created a high degree of risk, not whether it was physical. For instance, in *Catalina*, the defendant was wanton or reckless for providing the victim heroin, not because he handed her a tangible product, but because the “the injection of heroin into the bloodstream of a human being constitutes a substantial and unjustifiable risk of death.” 407 Mass. at 791. Compare *Welansky*, 316 Mass. at 399 (“[Wanton or reckless conduct [is] indifference to or disregard of probable *consequences* to [another] *or the rights of that other*.”). See also *Commonwealth v. Strickland*, 87 Mass. App. Ct. 46, 57, n.14 (“If the defendant truly believed [the victim] was engaging in self-injurious behavior . . . then leaving tools and other instruments all over the house with which [she] could harm herself was strong proof of wanton or reckless behavior.”); *Commonwealth v. Hendricks*, 452 Mass. 97, 103-105 (2008) (engaging in high-speed nighttime car chase with police while three year old was in back seat constituted wanton or reckless behavior).

In its attempt to demonstrate the contrary, the defense reads the *Pugh* decision out of context. Def. Memo at 3-4. While the defendant’s “commission” in that case did involve “physical acts to dislodge the fetus,” the *Pugh* Court in no way implied that a purely physical act is necessary to support a finding of a wanton or reckless commission. 462 Mass. at 497. Rather, the Court stated that “the inquiry as to reasonable conduct is central to whether the defendant acted recklessly.” *Id.* Ultimately, the defense’s argument that Carter’s behavior was not wanton or reckless is a petition to decriminalize her conduct because she acted upon the victim through the use of a cell phone. This

Court should decline that proposal. See *Commonwealth v. Connolly*, 454 Mass. 808, 836 (2009) (the law must account for changes in technology).

Moreover, evidence that someone – *possibly* Carter, according to the defense – told Conrad that she did not want him to commit suicide in the month before his death does not render the myriad of evidence that she did want him to commit suicide insufficient to support the indictment. To the extent that the evidence conflicts, it merely affects the evidence’s weight at trial. *Commonwealth v. Scesny*, 472 Mass. 185, 196, n. 22. (2015). Contrast Def. Memo 10-11.

(2) *Carter’s failure to alleviate the risk created by her actions was wanton and reckless.*

In addition, there was probable cause to believe that Carter was wanton or reckless through omission, where she failed to take reasonable steps to alleviate the risk that her conduct created. “If an individual’s actions create a life-threatening condition, there is a duty to take reasonable steps to alleviate the risk created, and the failure to do so may rise to the level of recklessness necessary for involuntary manslaughter.” *Life Care Ctrs.*, 456 Mass. at 832. In *Commonwealth v. Levesque*, for example, squatters were wanton or reckless by accidentally starting a fire in an abandoned warehouse, because they took no action to put out the fire or notify authorities even though it was highly foreseeable that firefighters would respond and be placed at risk of serious harm. 436 Mass. 443, 449-453 (2002).

By directing Conrad to obtain a “gas machine” and assisting and pressuring him to commit suicide, GJ 2/5 at 83, Carter created a life-threatening condition. She therefore had a duty to take reasonable steps to alleviate the risk that she created. *Levesque*, 436 Mass. at 449-53. And according to Carter, she “could have easily stopped [Conrad] or called the police but [she] didn’t.” GJ 2/4 at 63. Indeed, in the days leading up to the suicide, she could have easily discharged her duty to alleviate the risk she that created by alerting someone that Conrad had obtained a combustion engine, which he planned to use to poison himself. See GJ 2/5 at 83 (Carter knew Conrad had combustion engine 2 days before his death). Alternatively, she could have discharged the duty on the night of the suicide,

by notifying authorities that he was attempting suicide in the K-Mart parking lot. GJ 2/4 at 52 (Carter knew Conrad was in the K-Mart parking lot, committing suicide). Cf. *Levesque*, 436 Mass. at 450-51 (“We are not faced with the situation of a mere passerby who observes a fire and fails to alert authorities; the defendants started the fire and then increased the risk of harm from that fire by allowing it to burn without taking adequate steps either to control it or to report it to the proper authorities.”). See also *Webstad v. Storini*, 83 Wn. App. 857, 866 (1996) (a duty exists “to avoid acts or omissions that lead another person to commit suicide [where that conduct] directly or indirectly deprive[s] that person of the command of his or her faculties or the control of his or her conduct”).

In arguing that there was insufficient evidence that Carter’s omissions caused Conrad’s suicide, the defense unfairly parses the record. Def. Memo 14. To be sure, if authorities were alerted once Carter instructed Conrad to reenter his truck, it is possible that the prospect of his survival may have remained unclear. But Carter had days to report that Conrad had a combustion engine, and on the night of the suicide, hours to warn authorities that he was in the midst of performing the deed.

(c) There is probable cause to believe that Carter caused Conrad’s suicide.

The grand jury evidence established probable cause that Carter caused Conrad’s death by telling him to “get back in,” when he exited his truck after becoming scared that the carbon monoxide poisoning was working; leading him to discover that combustion engines produce carbon monoxide and directing him to drive to a parking lot and run that engine in the cabin of his truck; and, by repeatedly counseling and pressuring him to commit suicide in the week leading up to his death, even when he expressed reservation. Her actions, viewed collectively or independently, support the indictment.

An act is a cause of a victim’s death if the act, in a natural and continuous sequence, results in death, and without the act, death would not have occurred. *Commonwealth v. Rhoades*, 379 Mass. 810, 825 (1980). Where a defendant is charged with involuntary manslaughter, evidence that she assisted and encouraged a victim to commit suicide is sufficient to prove that her actions caused the

death, and therefore, more than sufficient to establish probable cause of that element. *Persampieri*, 343 Mass. at 22-23.

Indeed, a defendant can cause a victim's death by influencing and enabling him to take his own life. The instant case is strikingly similar to *Persampieri*, where the Supreme Judicial Court found that there was sufficient evidence to support an involuntary manslaughter conviction. 343 Mass. at 22-23. There, the defendant assisted and encouraged his wife to commit suicide. *Id.* at 22-23. After returning home from a social gathering, the defendant informed his wife that he intended to file for divorce. *Id.* at 22. The wife, who had been drinking whiskey and was in a fragile emotional state, "plead for another chance," as she had on previous occasions. When the defendant was unreceptive, she told him that she was going to commit suicide. *Id.* The defendant

reminded her that she had attempted suicide on two prior occasions and said she was "chicken -- and wouldn't do it." He then told her to go and get the .22 caliber rifle that was in the kitchen. Thereupon she went into the kitchen and got the gun and a bullet, came back into the living room, and unsuccessfully tried to load the gun. At her request, the [defendant] loaded the gun for her, at which time he noticed the safety "was off." He handed the gun back to his wife and "she put . . . [it] between her legs with the butt . . . on the floor and the muzzle or barrel against her forehead." The [defendant] "kept looking at the safety on the gun and saying to himself that the gun could go off." His wife tried to reach the trigger and told the [defendant] that she could not reach it. He said "Why don't you take off your shoes, then maybe you can reach the trigger." She then removed her right shoe and the gun discharged, wounding her. The [defendant] summoned aid, but his wife died on the following day.

Id. at 22-23. The facts "were sufficient . . . to have warranted a jury in returning a verdict of manslaughter" and thus, more than sufficient probable cause of causation. *Id.* at 23. Likewise, in *Atencio*, the Court held that the defendants' participation in a game of Russian roulette "could be found to be a cause and not a mere condition" of the victim's death. 345 Mass. at 629. "There may have been no duty on the defendants to prevent the deceased from playing. But there was a duty on their part not to cooperate or join with him in the 'game.'" *Id.* at 630. See also *Commonwealth v. Tolan*, 453 Mass. 634, 648-49 (2009) (cases cited).

The grand jury thus had a sufficient basis to believe that Carter caused Conrad's suicide. See *Atencio*, 345 Mass. at 629-30. Carter did: She admitted to causing Conrad's death in numerous text messages. In a message that she sent to her friend Samantha, Carter revealed that she was talking to Conrad on the phone while he was running the combustion engine in his truck, and when he realized that it was working, he exited the truck and told her that he was scared. GJ 2/4 at 60. Then, while Conrad was in a suicidal state, suffering the effects of carbon monoxide poisoning, and perhaps under the influence of Benadryl, see GJ Ex. 3 at 5, GJ 2/5 at 57, Carter told him to "get back in," GJ 2/4 at 60. Cf. *Persampieri*, 343 Mass. at 22-23 (when wife was intoxicated and in a fragile emotional state, defendant told her that she was too "chicken" to commit suicide, and directed her to get a rifle). In her own words:

[Conrad's] death was my fault. Like, honestly I could have stopped it. I was the one on the phone with him and he got out of the car because he was working and he got scared and I fucken told him to get back in . . . because I knew he would do it all over again the next day and I couldn't have him live that way the way he was living anymore . . . it's all my fault because I could have stopped him but I fucken didn't and all I had to say was I love you and don't do this one more time and he'd still be here.

GJ 2/4 at 60. Likewise, on September 30, she text messaged Samantha, "*I helped ease him into it and told him I was okay*. I was talking to him on the phone when he did it. I could have easily stopped him or called the police but I didn't." GJ 2/4 at 63 (emphasis added). See also GJ 2/4 at 53 (Carter: "I'm the reason everyone was in that church yesterday."). Cf. *Rhoades*, 379 Mass. at 825 (an act is a cause of death if it results in death, and without which death would not have occurred).

The evidence also established probable cause of causation where it showed that Carter's assistance is what enabled Conrad to produce carbon monoxide in the first place. Cf. *Atencio*, 627 Mass. at 630 (defendant caused victim to shoot himself by participating in Russian roulette). A review of their text message discussion reveals that Carter led Conrad to use an internal combustion engine. Namely, when Conrad told Carter that he had no means of producing carbon monoxide, she replied: "there is more ways to make CO. Google ways to make it." GJ 2/5 at 56. About 7 minutes

later, Extraction Report 33 at 919-20, Conrad responded: “OMG . . . portable generator that’s it . . . yeah! it’s an internal combustion engine.” GJ 2/5 at 56-57. Contrary to the defense’s instant assertion, Def. Memo 12, both Conrad and Carter credited the idea of using a combustion engine to Carter:

CONRAD: You're a genius.

CARTER: I know.

CONRAD: See, I knew you would help me find a better way. It's so easy. All I need to do is get it, fill it with gas, and boom.

CARTER: Yup, ha ha. It's that simple.

GJ 2/5 at 56-58. Moreover, when he could not get the generator he had taken from his father’s storage area to work, she directed him to obtain a different “gas machine.” GJ 2/5 at 83. Thereupon, he procured the water pump that ultimately brought about his death. See GJ 2/5 at 86.

Carter’s assistance caused Conrad’s suicide by influencing his actions in other respects. She encouraged him to “take [the combustion engine] in [his] truck and take some Benadryls just in case.” GJ 2/5 at 57. And, on the day of the suicide, she directed him to drive to a “parking lot” during the daytime, when his suicide would be “less suspicious.” GJ 2/5 at 96, 99. Later that day, Conrad replied, “I know where to go now . . . A parking lot.” GJ 2/5 at 102. Ultimately, he committed suicide in a parking lot at about 7:00 PM on a summer evening, by running an internal combustion engine in his truck. GJ 2/5 at 7-12. An autopsy revealed that he had Benadryl in his system. GJ Ex. 3 at 5.

In addition, there is probable cause to believe that Carter’s repeated counseling caused Conrad’s death. He greatly valued her instruction and told her that she and his family were the reasons he had not committed suicide a long time ago. GJ Ex. 6 at 2. In fact, in his suicide note to her, he stated that her counsel was instrumental to his suicide:

Michelle, . . . you taught me how to be strong and carry on . . . I’m sorry about everything. I am messed up I guess. I wish I could express my gratitude but I feel brain dead. I love you and appreciate your effort and kindness towards me.

GJ Exhibit 5.

Despite knowing that she was one of Conrad's reasons for not committing suicide, Carter repeatedly counseled him to take his own life. The fact that her counsel was a cause of death is particularly apparent from text messages that the two exchanged on the day of the suicide. That morning, Carter sent several text messages pressing him not to hesitate and to commit suicide that day. GJ 2/5 at 96-99. Conrad initially raised a number of doubts, GJ 2/5 96-99, including his concern that his other reason for living, his family, would be harmed, GJ 2/5 99. After Carter continued to pressure him, however, he eventually replied, "Okay. I'm gonna do it today . . . I promise, babe. I have to now." GJ 2/5 at 99.

In addition to the text messages she sent that day, she repeatedly counseled him to commit suicide during the preceding week. During that time, Carter, who knew that Conrad sought a painless means of death, advocated that carbon monoxide poisoning was the "best way" for him to commit suicide because it was painless and effective. See, e.g., GJ 2/5 at 56. She also told him that he had the strength to commit suicide, GJ 2/5 at 68; that he would be happy once he did, GJ 2/5 at 67; and that his parents and friends would understand his decision, GJ 2/5 at 88-89. In addition, she pressed him to make a decision in the short-term, on account that he was past the point of recovery, advising, "there is a point that comes where there isn't anything anyone can do to save you, not even yourself. And you've hit that point and I think your parents know you've hit that point." GJ 2/5 at 88. See also GJ 2/5 at 82, 85, 88, 89.

Viewed conversely, these facts provide a factual basis to conclude that without Carter's encouragement, Conrad would not have committed suicide. Her counsel convinced him to move past his doubts about the plan, his reservations that his death would harm his loved ones, and that additional time for reflection would not improve his situation.

To summarize, the grand jury was presented evidence that Carter led Conrad to procure a combustion engine, which produced carbon monoxide. She then suggested that he drive to a parking

lot during the day and run that engine within his truck. When Conrad followed this advice, became afraid that it was working, and removed himself to a safe area, she told him to get back in the truck and finish the job. These actions each “could be found to be a cause and not a mere condition” of Conrad’s death, *Atencio*, 345 Mass. at 629, especially given that Conrad professed that fact, see GJ Exhibit 5. While Carter may have had no duty to prevent Conrad from planning his own suicide, she had a duty “not to cooperate or join with him.” *Id.* at 630. There is sufficient evidence to prove Carter caused Conrad’s death, and therefore, more than sufficient probable cause to support the indictment. See *Walczak*, 463 Mass. at 817.

In its memorandum, the defense argues that there is no evidence that Carter caused Conrad’s death because he obtained and ran the combustion engine himself, when she “was in an unknown location, presumably far away and on a phone.” Def. Memo 14-15, 4, 7. On the same basis, the defense seems to argue that Conrad’s actions constitute an intervening event, insulating Carter from criminal liability. Def. Memo 15. Specifically, it contends that there was no evidence that Carter “provided the means” or “set into action” the events which led to the suicide. Def. Memo at 14-15.

But involuntary manslaughter’s causation element has no “proximity” requirement. *Life Care Ctrs.*, 456 Mass. at 832. Contrast Def. Memo 14-15. Simply stated, “to say that one event was a proximate cause of another means that it was . . . one with a sufficient connection to the result.” *Paroline v. United States*, 134 S. Ct. 1710, 1719 (2014). Thus, in determining whether a defendant caused a victim’s death, the focus is on whether the risk created by the defendant was sufficiently connected to the victim’s death, not whether the defendant was in the victim’s proximity when his death occurred. *Id.* See, e.g., *Catalina*, 407 Mass. at 791 (causation evidence sufficient where victim overdosed on heroin upon returning home, after purchasing heroin from the defendant at a local sandwich shop).

And insofar as the defense argues that Conrad’s suicide was an intervening event, that claim is “untenable.” *Catalina*, 407 Mass. at 791. Suffice to say, a person should reasonably foresee that

death from carbon monoxide poisoning may result where she led a teen, who she knew was suicidal and seeking a painless suicide method, to discover that combustion engines can be used to induce a peaceful death by carbon monoxide poisoning; counseled him to use that engine to commit suicide, even after he told her that she was one of the reasons he had not yet committed suicide; convinced him not to abandon the plan when he expressed doubts; and admonished him to “get back in” his truck, after he realized that the poison was setting in. See *id.* (person who furnishes drug to another, who voluntarily consumes it and dies as a result, may be liable for manslaughter because consumption of the drug was a foreseeable consequence of his actions).

In any event, the defendant has at-best established that there is a factual dispute as to whether Conrad’s suicide was an intervening event. Therefore, the question of whether the suicide was an intervening event is for the jury. *Kent v. Commonwealth*, 437 Mass. 312, 320 (2002). To survive the motion to dismiss, the grand jury evidence need only establish probable cause that Carter caused Conrad’s death, which it did in a variety of ways. See *supra*, pp. 32-34.

Throughout its argument, the defense also contends that because Conrad wanted to commit suicide, Carter’s conduct cannot be considered a cause. See Def. Memo 7-8, 9-10, 11-12, 13. That Conrad previously attempted suicide and may have had a “predisposition” to do so, Def. Memo 10, does not render Carter’s contributions to his successful attempt irrelevant to the issue of causation. See *Persampieri*, 343 Mass. at 22-23 (defendant convicted of manslaughter where wife committed suicide, and had attempted suicide in the past); *Catalina*, 407 Mass. at 790, n. 12 (defendant caused victim’s death by giving her heroin, where he knew she had a low tolerance and had a history of overdosing). In fact, Conrad only successfully committed suicide once Carter became involved, which along with his suicide note, suggests that her advice and encouragement were instrumental to the outcome.

Similarly, the grand jury was not required to find that Conrad was the sole cause of his own suicide simply because, as opposed to speaking with him in person, Carter was on the phone in a

different town when she told him to get back in his truck. Def. Memo 14-15. To the contrary, the fact that she told him to continue poisoning himself once he had inhaled carbon monoxide and exited the truck supports a strong inference that the decision to take Conrad's life was not his alone.

II. THE GRAND JURY WAS PRESENTED WITH SUFFICIENT EVIDENCE THAT CARTER IS A YOUTHFUL OFFENDER.

The defense argues that there was insufficient evidence that Carter was a youthful offender because there was no evidence that she inflicted serious bodily harm. Def. Memo 15-16. Citing cases which all discuss whether a battery charge is sufficient to support a youthful offender indictment, it contends that serious bodily harm can only be inflicted by a "touching," an element of battery. Def. Memo 16-17. As the instant facts demonstrate, that is not the case. Moreover, involuntary manslaughter plainly involves the risk of serious bodily harm and is sufficient to support a youthful offender indictment. *Walczak*, 463 Mass. at 829. Ultimately, the success of the defense's second argument is tied to that of its first.

III. CARTER'S RIGHT TO FREE SPEECH DOES NOT REQUIRE THAT THE INDICTMENT BE DISMISSED.

Carter also contends that her assistance and counsel were protected by the First Amendment and Article 16's free speech safeguards. Def. Memo 17-22. It is a well-established tenet of constitutional law that the mere occurrence of some verbal expression in connection with one's conduct does not trigger constitutional speech protections. "There are certain well-defined and narrowly limited classes of speech that are not protected because they are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that whatever meager benefit that may be derived from them is clearly outweighed by the dangers they pose." *O'Brien v. Borowski*, 461 Mass. 415, 422 (2012) (internal citation omitted). As expressed by the Supreme Court, "We cannot accept the view that an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea." *United States v. O'Brien*, 391 U.S. 367, 376

(1968). Indeed, “violence or other types of potentially expressive activities that produce special harms distinct from their communicative impact are entitled to no constitutional protection.”

Commonwealth v. Robicheau, 421 Mass. 176, 183 (1995) (citing *Roberts v. United States Jaycees*, 468 U.S. 609, 628 (1984)).

To that end, speech generated in connection with illegal activities is not entitled to constitutional protection. *United States v. Williams*, 553 U.S. 285, 303 (2008). The law of threats provides a useful analogy. “The First Amendment does not protect conduct that threatens another.” *Commonwealth v. Sholley*, 432 Mass. 721, 727 (2000). Where a defendant is charged with threatening a victim, she is not charged with “merely using offensive speech,” but for “conduct that placed the victim in reasonable apprehension of imminent serious physical harm.” *Robicheau*, 421 Mass. at 183.

Likewise, freedom of speech provisions do not protect fighting words, or “personal insults that are so personally abusive that they are plainly likely to provoke a violent reaction and cause a breach of the peace.” *Borowski*, 461 Mass. at 423.

Carter is not charged with merely discussing the merits of suicide, but for engaging in a course of wanton or reckless conduct that caused Conrad to commit suicide. Her instruction to get back in the truck, which occurred while she knew that he was in a depressed suicidal state and under the effects of carbon monoxide poisoning, was by no means an “essential part of any exposition of ideas,” and was clearly outweighed by the dangers that it posed. *Id.* at 422. Therefore, her communication was not mere offensive speech, but a verbal act instrumental in the commission of the crime of manslaughter. Compare *Persampieri*, 343 Mass. at 23 (defendant committed manslaughter where, “instead of trying to bring [his wife] to her senses, [he] taunted her, told her where the gun was, loaded it for her, saw that the safety was off, and told her the means by which she could pull the trigger,” thus showing a reckless disregard of her safety and the possible consequences of his conduct). Similarly, her relentless assistance and counsel, whereby she led Conrad to procure a combustion engine, occurred while she knew that he was in a suicidal state. Ultimately, her

communications were not mere expressions on the merits of suicide, but wanton and reckless conduct that caused Conrad's death.

The authority that the defendant relies on is unpersuasive and inapposite. Def. Memo 17-18. In *Melchert-Dinkel*, the Minnesota Supreme Court held that a statute which prohibits assisting, advising, or encouraging another to commit suicide is a content-based restriction prohibited by the First Amendment. 844 N.W. 2d 13, 19-20 (2014). That holding is inapplicable here. Namely, the Court reasoned that the First Amendment exception that permits the restriction of "speech or writing used as an integral part of conduct in violation of a valid criminal statute," did not apply because there was no valid statute criminalizing suicide. *Id.* at 19. Unlike the defendant in *Melchert-Dinkel*, Carter is not being charged for violating a statute that prohibits suicide or assisting suicide, but with manslaughter, a crime prohibited by statute in Massachusetts. G.L. c. 265, § 13 (2015). Moreover, the record demonstrates that the objective of Carter's communications was not merely to persuade Conrad to commit the non-statutorily prohibited act of suicide, but to bring about manslaughter in order to attract attention and sympathy for herself. See *supra*, FACTS § (f). Contrast *Melchert-Dinkel*, N.W. 2d at 19-20. Her speech was thus an "an integral part of conduct in violation of a valid criminal statute," and does not enjoy freedom of speech protection.

When taking the defenses' approach of ignoring the evidence that Carter assisted and counseled Conrad's suicide and thereby assuming that she merely supported him -- which the grand jury was certainly not required to do -- the *Melchert-Dinkel* Court's reasoning is unpersuasive in this case. Even if explaining how to commit suicide can be considered a legitimate and protected form of speech, pressuring someone to commit suicide is something quite different. Such advocacy, rather than providing helpful information, pushes someone who is vulnerable and has yet to make up his mind to make an irreversible decision. See *supra*, FACTS §§ (b), (c). See Sheryl Cobb, *Suicide, Speech, and the Constitution*, DORF ON LAW, Apr. 16, 2014 (available at www.dorfonlaw.org/2014/04/suicide-speech-and-constitution.html).

IV. THE MANSLAUGHTER STATUTE IS NOT UNCONSTITUTIONALLY VAGUE.

In its final argument, the defense contends that G.L. c. 265, § 13 is unconstitutionally vague because it does not expressly prohibit “encouraging or advising” suicide. Def. Memo 24. “A statute is unconstitutionally vague if men of common intelligence must necessarily guess at its meaning. If a statute has been clarified by judicial explanation, however, it will withstand a challenge on grounds of unconstitutional vagueness.” *Commonwealth v. Crawford*, 430 Mass. 683, 689 (2000) (citation omitted).

General Laws ch. 265, § 13 does not define manslaughter’s elements, but sets out the scope of punishment for manslaughter convicts. G.L. c. 265, § 13 (2015). The elements of manslaughter are derived from common law. *Commonwealth v. Rodriguez*, 461 Mass. 100, 106-07 (2011). Because the conduct constituting manslaughter is well-established, see *Welansky*, 316 Mass. 399, there is no issue of vagueness. And as demonstrated in Argument I, *supra*, pp. 26-36, the defense is incorrect where it argues that “[a] review of the case law on involuntary manslaughter under this statute does not reveal any precedent that this type of claim has ever been made.” Def. Memo 24. See, e.g., *Persampieri*, 343 Mass. at 22-23.

Carter was therefore on notice that causing death by intentional wanton or reckless conduct is a punishable offense. *Crawford*, 430 Mass. at 689. In fact, Carter was aware that her conduct was prohibited: She lied to police about her conversations with Conrad, GJ 2/5 at 35; deleted her messages with Conrad, GJ 2/5 at 42; asked him to delete her messages to him, GJ 2/5 at 104; and told Samantha that if the police discovered her messages with Conrad, she would go to jail, 2/4 at 55.

CONCLUSION

This Court should find that the Commonwealth's grand jury presentation established probable cause that Carter committed involuntary manslaughter and deny the defense's motion to dismiss.

Respectfully Submitted,


A handwritten signature in black ink, appearing to read 'Owen J. Murphy', with a long horizontal flourish extending to the right.

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Certificate of Service

I hereby certify that I have today served upon the defendant, the Commonwealth's Resonse to Defendant's Motion to Dismiss and a certificate of service to:

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