

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

SUFFOLK, ss.

DAR No.  
Appeals Court No. 2021-P-0441

COMMONWEALTH OF MASSACHUSETTS,  
Appellant,

v.

INYOUNG YOU  
Defendant-Appellee

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**APPLICATION OF DEFENDANT INYOUNG YOU  
FOR DIRECT APPELLATE REVIEW**

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## **TABLE OF CONTENTS**

The Request .....	3
Prior Proceedings .....	4
Statement of the Case .....	6
Issues of Law Presented by the Appeal .....	10
Argument .....	11
I. The Court Correctly Found that there was No Probable Cause for the Offense of Manslaughter by Omission .....	11
II. The Court Erroneously Found Probable Cause for the Offense Of Manslaughter by Commission .....	14
A. The Evidence Before the Grand Jury of a History of Verbal Emotional Abuse Did Not Establish Probable Cause of Proximate Cause.....	17
B. If the Requirement of Probable Cause Could be Satisfied By Accumulated Emotional Abuse, the Offense Would be Unconstitutionally Vague and Overbroad as Applied, Violating Due Process, the First Amendment, and Articles 12 and 16 .....	20
III. The Indictment is Duplicitous, Violates Article 12, and Must be Dismissed in its Entirety Even if There was Probable for the Commission Offense.....	23
IV. The Commonwealth is Not Entitled to Proceed to Trial on an Offense as to which the Grand Jury Did Not Have Probable Cause.....	26
Reasons for Granting Direct Appellate Review .....	27

## THE REQUEST

This is the request of the defendant, pursuant to M.R.A.P. 11, assented to by the Commonwealth, that the Court order direct appellate review of the Commonwealth's appeal, Appeals Court No. 2021-P-0441, from an order of the Superior Court granting partial relief on her motion to dismiss an indictment. She seeks direct appellate review because of the importance of the issues, and, in the interests of judicial economy and orderly litigation, the need to obtain at one time a final resolution of all the issues raised by the Commonwealth's appeal. No briefs have yet been filed in the Appeals Court. As noted, **the Commonwealth assents to this request.** It agrees that direct appellate review is warranted; its assent does not mean that it is in agreement with defendant's arguments on the merits.<sup>1</sup>

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<sup>1</sup> Defendant is also submitting a petition under c.211, §3 to the Single Justice, requesting that her affirmative claims which are complementary to the Commonwealth's appellate arguments be reserved and reported to the full court. **The request for the reservation and report is likewise assented to by the Commonwealth.** As will be apparent from the discussion below, various arguments that defendant presents in direct response to the Commonwealth's appeal, if accepted by the Court, would also support affirmative relief. For example, the Commonwealth contends that it is entitled to present the *omission* charge to the trial jury even if there was no probable cause for that offense in the grand jury. A premise for that contention is the argument that the court below did correctly find probable cause for the *commission* offense. If that premise is wrong, then defendant would be entitled to dismissal of the indictment in its entirety. The reservation and report is requested in order to enable the Court to grant the complete relief if warranted by its conclusions on the underlying issues in this appeal.

Once again, this Court is presented by the “incredibly complex” question of how to apply the common law standard of involuntary manslaughter to a self-inflicted death allegedly caused by the wholly verbal intervention of another. *See Commonwealth v. Carter*, 474 Mass. 624 (2016)(*Carter I*)(review of probable cause in the grand jury) and 481 Mass. 352, 363 (2019)(*Carter II*)(appeal of conviction). In the *Carter* case, the Court upheld prosecution and conviction where a suicide was induced by the contemporaneous command of the person’s girlfriend, overwhelming his free will. The Commonwealth’s case here is instead based upon a pattern of verbal emotional abuse of defendant’s boyfriend occurring over a lengthy period of time, allegedly depriving him of his will to live. The defendant submits that the underlying theory of the Commonwealth in this case amounts to an unwarranted and problematic extension of the ruling in the *Carter* case, one that raises very significant issues of criminal and constitutional law.

### **PRIOR PROCEEDINGS<sup>2</sup>**

The defendant, Inyoung You, was indicted on one count of manslaughter for the May 20, 2019 death by suicide of her boyfriend of one and one-half years, Alexander Urtula, when he jumped from the roof of the Renaissance Parking Garage adjacent to the Northeastern University campus. In this single count, the Commonwealth seeks to charge Ms. You on two factual theories. It alleges that

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<sup>2</sup> The docket entries are found in Attachment A.

the defendant committed manslaughter *by commission* by “overwhelm[ing] Urtula’s will to live” through repeated verbal abuse during an 18 month period until May 20, 2019. It alleges that she then, on the morning of May 20, committed manslaughter *by omission* when, once realizing that Urtula was actually about to commit suicide, she took insufficient steps to prevent him from doing so.

The defendant moved to dismiss the indictment under *Commonwealth v. McCarthy*, 385 Mass. 160 (1982) on the ground that there was insufficient evidence before the grand jury to constitute probable cause for either offense. After reviewing the evidence the court ruled on January 13, 2021 that there was a lack of probable cause for the omission charge, but there was probable cause for the commission offense. She therefore ordered that “the motion is allowed as to the Commonwealth’s theory of manslaughter by omission, and denied as to the Commonwealth’s theory of manslaughter by commission.” Memorandum of Decision and Order on Defendant Inyoung You’s Motion to Dismiss the Indictment (the “Order”)(Attachment B)

Both parties then moved to reconsider. The Commonwealth objected to the partial dismissal on the additional ground that “so long as the Commonwealth presented sufficient evidence to the grand jury that the defendant is guilty of the crime charged under *any* theory . . . the Commonwealth is free to proceed to trial” under *both* theories, even if there was no probable cause for the other.

Commonwealth's Motion to Reconsider (Attachment C), pp. 1-2 (first emphasis in original). For her part, the defendant renewed her motion to dismiss the entire indictment, contending that the two offenses may not be charged in a single count and that the indictment as drawn created the risk that the defendant could be convicted of an offense for which the grand jury did not find and did not have probable cause. Defendant's Renewed Motion to Dismiss the Indictment in its Entirety (Attachment D).

On March 23, 2021 the court denied both motions. The Commonwealth noticed its appeal the next day, and it was entered on the Appeals Court docket on May 19, 2021. No briefs have yet been filed and no date for argument scheduled.

## **STATEMENT OF THE CASE**

### **Evidence before the Grand Jury**

The Superior Court judge summarized the evidence before the grand jury as follows:

Ms. Young and Mr. Urtula were both students at Boston College. They were in a romantic relationship from the Fall of 2018 until Mr. Urtula's death on May 20, 2019, a period of one and a half years. The relationship was volatile throughout. From the end of 2018 until a few days before the suicide, Mr. Urtula resided at his parents' home in New Jersey as well as his brother's home in New York, with Ms. You still in Boston. During that time the relationship was carried

on remotely, almost exclusively via constant text messaging, with 75,000 texts between March 2019 and May 20, 2019. The messages contained “a continual stream of insults and verbal abuse by You to Urtula, regularly laced with vulgar epithets and violent imagery.” (Order, p. 6). As rehearsed by the court:

The consistent overall theme of the texts is berating every aspect of Urtula's intelligence, appearance, behavior, and worthiness to be her boyfriend. You repeatedly told Urtula he was stupid or "an idiot," ugly and fat, and "worthless." Urtula, in stark contrast, repeatedly told You how much her words hurt him, how inadequate she made him feel, and how hard he was working to try to please her. He began to refer to himself as her "slave," stating "You own me: All of me; You have complete control of me emotionally and physically: And you dictate my happiness." You reinforced this theme, by accusing him of not being a good enough slave. This dynamic appeared only to intensify over the last two months of Urtula's life.

. . . .

As related by the court, You's texts continually asserted emotional dominance over Urtula, insisting on his isolation from his friends. She would often threaten to kill herself. And she would talk of Urtula killing himself. "You regularly berated Urtula about some perceived flaw she saw in him or his performance as her boyfriend, constantly calling him "worthless," paired with the refrain, "go fucking kill yourself. You also tied Urtula's perceived misbehavior to her own unhappiness, leading Urtula to the conclusion that his death would make her happy." *Id.*

On May 19, 2019 Urtula traveled back to Boston with his parents for his graduation the following day. That night he stayed with Ms. You in her dormitory.

The next morning,

at 7:05 am he left her room and took an Uber to the Renaissance Garage. AT 7:39 am he texted her, "Tm not talking to anyone. I won't ever again. I'm happy I got to spend my last night with you. I love you inyoung until my last breath." In an ongoing exchange Urtula next responded, at 7:43 a.m.: "Im not going to be anywhere inyoung this is goodbye forever. I love you. This isn't your fault it's mine." And, moments later: "I'm far away on a tall place and Im not gonna be here for long. Im leaving everyone."

The Commonwealth's position is that it was at the moment of this text message exchange that You understood what Urtula was planning to do.

You began at this point to tell Urtula to "STOP," To be precise, she texted: "ALEX WHAT ARE YOU FUCKING DOING, IF U FUCKING LOVE ME STOP IF YOU EVER FUCKING loveD ME stop," She received three more messages from Urtula. In the following exchange: Urtula: "I did love you just not well enough": You: "UR GONNA FUCKING LEAVE ME TO NOTHING: Urtula: "Good bye"; You: "STOPT Urtula: "You'll have everything once I'm gone." You sent Urtula 115 more text messages in the next 49 minutes, all of which remained unread. By the defense's count You used the word "stop" 14 times in these texts, and the word "don't" 10 times, all between 7:43 am and 8:33 am.

Because Urtula had turned his location service back on in response to her texts, You knew where he was. She called Urtula's brother, and gave him the location by texting a photo of it. The brother told You to call 911, but she did not. At 8:04 am she got into an Uber herself. and arrived at the Renaissance Parking Garage at approximately 8:30 am. She passed a Northeastern University police officer, someone at the Ruggles MBTA busway, and a third individual, but reportedly stated only that she was looking for a guy, and asked how to get into the parking garage. One of these witnesses



described her as appearing "frantic." You took the elevator to the roof of the garage; Urtula looked at her and jumped.

Finally, the grand jury heard from a physician said to be an expert in "suicidology and psychological autopsies." His opinion was that "but for the emotional abuse of Urtula by You (characterized by this witness as 'incessant, sadistic, humiliating [and] abusive') Urtula would not have committed suicide." (Order 9.) "In the physician's opinion, You's 'constant sadistic attacks wore Alexander Urtula down and deprived him of his free will . . . .By the end he felt worthless and compelled to suicide . . . . By May 20<sup>th</sup>, his will to live had been totally destroyed by the abusive conduct of You." *Id.*

### **The Probable Cause Rulings of the Superior Court**

The Superior Court judge found no probable cause as to manslaughter by omission, but found that the grand jury did have probable cause for the commission offense.

As to omission, the court found that there was no probable cause to believe "that You 'intentionally failed to act' with disregard to the probable harm to Urtula." (Order, p. 11). She summed up the Commonwealth's argument to be that "in the hindsight judgment of the prosecution, You should have summoned help instead of doing what she did, or in addition to doing what she did to attempt to prevent Urtula's death." She concluded, "that is not the law." *Id.*

As for commission, the arguments in the court below largely revolved around the question of the proper interpretation and application of the two opinions in *Commonwealth v. Carter* upholding the indictment and then the conviction. The defendant argued that the defining basis of the *Carter* decision was its reliance on the defendant's contemporaneous instruction to her boyfriend to commit suicide, a feature that was lacking here. The court, however, accepted the Commonwealth's interpretation of *Carter*, that is, that the particular facts of that case do not establish a limit on criminal liability and that proximate cause may be satisfied by a showing of "overbearing a victim's will to live" over time, without any requirement of "strict temporal proximity." (Order, at 15).

### **ISSUES OF LAW PRESENTED BY THE APPEAL**

On its appeal, the Commonwealth will argue that, contrary to the finding of the court below, there was probable cause for manslaughter by omission. It will also argue that, even if there was no probable cause for omission, the alleged offenses of commission and omission are merely different theories for the same offense and therefore, the finding of probable cause for commission alone entitles it to present the whole case to the trial jury. The defendant argues, contrary to the Commonwealth's premise (and contrary to the ruling of the court below), that there was no probable cause for commission. The defendant argues further that on the facts of this case the alleged offenses of commission and omission are actually

separate offenses which should not have been joined in a single count, and that joinder here results in a violation of Article 12 and the principle of duplicity, thus requiring not only dismissal of the omission charge but the commission charge as well.

In sum, the following issues are implicated by either the Commonwealth's appeal or the defendant's defense against it:

1. Whether the Superior Court judge erred in holding that the Grand Jury did not have evidence constituting probable cause that Ms. You committed manslaughter by omission.
2. Whether, even if the court correctly concluded there was no probable cause for the omission offense, the finding of probable cause for the commission offense authorizes the Commonwealth to take the omission claim to trial as well.
3. Whether the Superior Court judge erred in holding that the Grand Jury had evidence constituting probable cause that Ms. You committed manslaughter by commission, requiring the judge to dismiss that charge as well.
4. Whether the indictment is defective by reason of Article 12 of the Declaration of Rights as well as the principle of duplicity, thus requiring the dismissal in its entirety.

## **ARGUMENT**

### **I. The Court Correctly Found that there was No Probable Cause for the Offense of Manslaughter by Omission.**

The offense of involuntary manslaughter is defined as “an unlawful homicide unintentionally caused by wanton and reckless conduct,” *Commonwealth v. Catalina*, 407 Mass. 779, 789 (1990), that is, conduct “involving a high degree

of likelihood that substantial harm will result to another.” *Commonwealth v. Welansky*, 316 382, 399 (1944). It can be based upon either of two theories: either (1) wanton or reckless conduct or (2) wanton or reckless failure to act. *Commonwealth v. Life Care Ctrs. of Amer. Inc.*, 456 Mass. 826, 832 (2010). What is wanton or reckless is “determined based either on the defendant’s specific knowledge or on what a reasonable person should have known in the circumstances,” *Commonwealth v. Pugh*, 462 Mass., 482, 496-497 (2012). If based on the objective measure of recklessness (i.e., what defendant should have known), 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 actual 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.* (citations omitted).

The court below correctly concluded that the grand jury had no probable cause that the defendant committed manslaughter by omission. In the first place, Ms. You did not fail to act. She *did* act. She texted him to “STOP.” In a frenzied and continuous barrage of texts she pleaded with him not to do it, that she loved him, and that she did not want him to kill himself. She scrambled to the scene to try to stop him in person, calling him over and over as she went. She called his

brother and forwarded Mr. Urtula's location. To prove manslaughter by omission, the Commonwealth must show that the failure to act was intentional, *Commonwealth v. Welansky*, 316 Mass. 383 (1944); *Commonwealth v. Pugh*, *supra* at 497, and there was no intent not to act here. Her only intent was to save him.

The Commonwealth's theory is that instead of doing what she did, or in addition to it, she should have called 911, or should have stopped to enlist a Northeastern police officer as she rushed to the roof of the garage or should have alerted two bystanders she passed on the ground floor. The Commonwealth cited no authority below for the proposition that a person who seriously tries to prevent a death is guilty of homicide because she could have made a better choice of means. The offense of manslaughter is reserved for those who make no effort at all. *See Commonwealth v. Levesque*, 436 Mass. 443, 451 (2002) (squatters who accidentally started fire took no action "*either* to control it or to report it to the proper authorities;" emphasis added); *Compare State v. Wheeler*, 496 A.2d 1382, 1391 (R.I. 1985)(decision to take person to detoxification center or home and not to hospital was not a basis for criminal liability "however much hindsight might call that determination a mistake of judgment").

Finally, the Superior Court Judge correctly found that there was no proof of causation in fact, i.e that the deceased would not have died absent the defendant's

failure to act, as is required in a manslaughter by omission case. *See Commonwealth v. Pugh, supra* (reversing manslaughter conviction for the death of an infant after failing to seek medical assistance for an unattended birth). Here there was no evidence that had Ms. You sought the intervention of the police or anyone else, that Mr. Urtula would not have jumped to his death.<sup>3</sup>

## **II. The Court Erroneously Found Probable Cause for the Offense of Manslaughter by Commission.**

In the *Carter* case, the defendant, Ms. Carter, was prosecuted for manslaughter for successfully urging her boyfriend, Mr. Roy, to go through with a suicide after he had started but then got cold feet. She contended, in both appeals, that she could not have proximately caused the death as suicide is a voluntary act; that she was being punished for pure speech in violation of the First Amendment; and that the common law offense, as applied to her conduct, was unconstitutionally vague as it provided no fair warning of what was prohibited.

The Court rejected all of Carter’s arguments. It focused on “those final moments, when the victim had gotten out of his truck, expressing doubts about killing himself,” the defendant, “virtually present” by cellphone throughout, *Carter*

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<sup>3</sup> In fact, as the Commonwealth conceded, the evidence was that when 911 was called by Mr. Urtula’s family – who had been alerted by defendant – the police did not respond at all. “The victim’s family also called 911 two times on their way to the parking garage, but no one was ever dispatched to the area (Tr. 7/22/19:64).” Commonwealth’s Opposition, p. 13

II at 367, “instructed him to get back in[.]” *Carter II* at 359. The critical component was the “coercive quality of that final directive” which “overwhelmed whatever willpower the eighteen year old victim had to cope with his depression, and that but for the defendant’s admonishments, pressure and instructions, the victim would not have gotten back into the truck and poisoned himself to death.” *Carter I* at 636. “Her verbal communications with him in the last minutes of his life . . . carry more weight than mere words, overcoming any independent will to live he might have had.” *Id.* at 634. Thus, the instruction to her boyfriend to kill himself was “speech integral to [a course of] criminal conduct” not protected under the Constitution. *Carter II*, at 367. Likewise, “the facts supported the conclusion that “the defendant’s command to the victim in the final moments of his life to follow through on his suicide” was a direct, causal link to his death. *Carter I*, at 636. Rejecting, as well, the vagueness argument, the Court pointed to cases which had long made clear that intentionally advising, encouraging or aiding a person to commit suicide was punishable, including any speech involved, and thus provided sufficient fair warning that what Carter had done was prohibited. *See Persampieri v. Commonwealth*, 343 Mass. 19 (1961)(defendant taunted, advised and assisted wife to commit suicide); *Commonwealth v. Atencio*, 345 Mass. 627 (1963) (defendants participated in game of “Russian roulette); *Commonwealth v. Bowen*,

13 Mass. 356 (1816)(defendant “harangued” inmate in adjoining cell to hang himself).

Ms. You contends that the decision below and the Commonwealth’s theories which underlie this prosecution represent a serious misreading and unwarranted extension of the *Carter* decision. This case differs from *Carter* in the most fundamental way, as it is not based upon a final directive to commit suicide. Rather, it is premised upon a novel theory of **accumulated emotional abuse** which eroded Mr. Urtula’s self-esteem over an 18 month period, leading to his deep unhappiness and, ultimately, the loss of his will to live. As the Commonwealth explained in the court below, it is the long-term aggregation of degrading speech, “the entirety of the . . . relationship . . . from beginning to end,” which is “integral to the Commonwealth’s theory . . . [as to] how the defendant engaged in the criminality in this case.”<sup>4</sup> Under its theory, involuntary manslaughter may be proved through a post hoc review by a psychiatrist of a person’s life-a so-called “suicide autopsy”-which would demonstrate how a long-term pattern of verbal emotional abuse ultimately led to suicide.

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<sup>4</sup> See Excerpt of trial court argument, p. 39 (Attachment E).



**A. The Evidence Before the Grand Jury of a History of Verbal Emotional Abuse Did Not Establish Probable Cause for Proximate Cause.**

In the *Carter* case, this Court held that “verbal conduct in appropriate circumstances could ‘overcome a person’s willpower to live, and therefore . . . be the cause of a suicide.’” *Carter II*, at 359. The Commonwealth takes from this phrase the idea that involuntary manslaughter can be proven by *any* pattern of verbal emotional abuse which causes a person to suffer a deep depression and, ultimately, a lack of the will to live -- without there being any need for an immediate connection between the offensive act and the final result. This is the fundamental flaw in the Commonwealth’s theory and in the decision of the court below. Without the close connection between conduct and outcome there can be no limit to which suicides -- always the product of terrible misery -- can be candidates for criminal culpability. The essential error in the Commonwealth’s reasoning is the failure to recognize how crucial to the Court’s holding in *Carter* was the confluence of Ms. Carter’s coercive act with her boyfriend’s actual attempt -- a directive made at the “precise moment” he was wavering over whether he should do it. *Carter II*, at 362. That immediacy is what established proximate cause.

To commit involuntary manslaughter, one must commit an act that was both the “but for” cause and the proximate, or legal, cause of the death. Proximate

cause is “a cause, which, in the natural and continuous sequence, produces the death.” *Commonwealth v. Rhoades*, 379 Mass. 810, 824-25 (1908). “The term ‘proximate’ is used in contrast to the term ‘remote.’” *Commonwealth v. McLeod*, 394 Mass. 727, 735 (1985). It “entail[s] a closer relationship between the result and the intended conduct than proximate causation in tort law.” *Commonwealth v. Diaz*, 19 Mass. App. Ct. 29, 36-37 (1984). See e.g. *Bridge v. Phoenix Bond & Indemnity Co.*, 553 U.S. 639, 654 (2008)(discussion of proximate cause under federal law: the “direct-relation requirement”).

The main point of requiring a non-remote, direct connection between act and result – close both in time and circumstance -- is to exclude the possibility that independent factors caused the death. This is particularly crucial where the death is the result of self-infliction. The most immediate cause is not the act of the defendant, but that of the deceased who, to state the obvious, is not available to explain his motivations. The independent volition of the deceased must be ruled out. But, exploring the mind of the dead to determine exactly what brought him to the point of suicide is, to say the least, a daunting exercise, if it is possible to accomplish at all.<sup>5</sup> Science has yet to discover a reliable forensic method for

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<sup>5</sup> “Anyone other than the deceased is capable *only of harboring an opinion* as to whether any of these reasons were the whole or partial grounds for his suicide. . . but because no one will ever know the dead man's final mental state, it is only an opinion.” *Scholz v. Bos. Herald, Inc.*, No. SUCV201001010, 2013 WL 4081413, at \*10 (Mass. Super. Mar. 29, 2013), judgment entered sub nom. *Scholz v. Bos.*

making such a finding. In the *Carter* case, the Court was able to find proximate cause where Ms. Carter, who was in simultaneous communication with Mr. Roy as he wavered in his planned suicide, right then ordered him to finish it, which he did. In that circumstance, there could be little doubt about what drove the victim over the edge: there was simply no room in this tight scenario to credit any other factor -- whether independent thinking of Mr. Roy, or the intervention of anyone else, or anything else.

This case presents the diametrically opposite situation. At the point that Mr. Urtula was poised to jump, Ms. You was not urging him on but desperately trying to stop him. Thus, the Commonwealth has turned to a different -- unprecedented -- approach. It alleges not that a contemporaneous act caused the suicide, but that it was caused by months of verbal erosion of his happiness and self-esteem, robbing him of his will to live. But this leaves open a myriad of questions. Among them: Was Mr. Urtula coerced to kill himself, or did he make a choice to end his misery -- and how is it possible to tell which? And if it was a matter of choice, does the Commonwealth contend that this satisfies proximate cause? If so, is not every suicide that follows a deeply unhappy relationship a potential candidate for manslaughter prosecution?

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*Herald Inc* (Mass. Super. 2013), and aff'd sub nom. *Scholz v. Delp*, 473 Mass. 242, 41 N.E.3d 38 (2015) (emphasis added).

The Commonwealth's theory wholly ignores the fact that in *Carter*, both the trial judge and this Court rejected the idea that proximate cause could be found solely in a course of conduct which had rendered a victim vulnerable to suicide. In the short weeks prior to his death, Carter made Roy promise that he would kill himself, downplayed his fears about it, repeatedly chastised him for his indecision, and helped him plan how, where, and when he would do it. *Carter II*, at 355-56. But despite Mr. Roy's "fragile mental health," prior "suicidal thoughts" and multiple suicide attempts, followed by weeks of pushing and planning by Ms. Carter, "***this behavior did not cause his death.***" *Id.* at 357, (emphasis added). Instead, the victim was "the cause of his own suicidal actions and reactions" all the way until the "precise moment" of the final command. *Id.* at 362. It was only the immediate relation between the action and the result which made the proximate connection self-evident and undeniable.

**B. If the Requirement of Probable Cause Could be Satisfied by Accumulated Emotional Abuse, the Offense Would Be Unconstitutionally Vague and Overbroad as Applied, Violating Due Process, the First Amendment, and Articles 12 and 16.**

As noted above, involuntary manslaughter requires proof that the defendant had either actual ("subjective") or constructive ("objective") knowledge that her act would create "*a high degree of likelihood*" of death or grave bodily injury. *Commonwealth v. Carrillo*, 483 Mass. 269, 276 (2019)(emphasis added). "The risk of harm must be more than a possible or unreasonable risk." *Id.*

There was no basis here to charge defendant with subjective knowledge of that danger. There was no evidence that she was ever aware of any plan for or attempt at suicide by Mr. Urtula. In fact, it was not until Mr. Urtula was in place and about to jump that he let her know. As the Commonwealth conceded, it was only at that point, when Mr. Urtula texted his intentions, “that [s]he understood what Urtula was planning to do.” (Order, at 8). And, at that point, everything she did and said was to try to prevent him from doing it.

Accordingly, the case can only rest upon a finding that at some earlier point, Ms. You *should have known* that that he was highly likely to kill himself on account of her verbal assaults. At what point? Emotional cruelty is morally intolerable, but not itself a crime. When and how is a domestic partner on sufficient notice that her insults and humiliations have not only created mental distress, but the high risk of death? How does the law provide fair warning as to which words and insults are too toxic to be used, and when?

The “should have known” standard does not provide an ascertainable standard of guilt in the context of a pattern of abusive speech by one who neither intended a death to occur nor subjectively appreciated the seriousness of the risk that it would. Thus, to use it as a defining element of the crime would make the offense unconstitutionally vague as applied, *see e.g. Papachristou v. Jacksonville*, 405 U.S. 156 (1972); *Thornhill v. Alabama*, 310 U.S. 88 (1940); *Commonwealth v.*

*Quinn*, 439 Mass. 492 (2003); *Commonwealth v. Arthur*, 420 Mass. 535 (1995), since it would “prescribe conduct ‘in terms so vague that [persons] of common intelligence must necessarily guess at its meaning.’” *Commonwealth v. Sefranka*, 382 Mass. 108, 110 (1980), quoting *Connally v. General Constr. Co.*, 369 U.S. 385, 391 (1926).

Nor would the Commonwealth’s broad definition of the offense provide an administrable standard for police, prosecutors, judges, or juries to sort out, after a death, what was merely antagonistic, hurtful, or otherwise objectionable conduct from that which is criminal, and at what point the defendant should have known that what she was doing was lethal. Criminal offenses must be “cabined” by bright lines outlining their limits. *Commonwealth v. Pugh*, 462 Mass. 482, 508 (2012). Otherwise, “[d]rawing the line between what is lawful and what is criminal conduct . . . would be left “to individual law enforcement officials and judges.” *Id*

Likewise, its amorphous nature would render it potentially applicable to all sorts of lawful, indeed protected, behavior which might be seen to have precipitated a suicide, making the offense constitutionally overbroad as well. *See e.g. Commonwealth v. A Juvenile*, 363 Mass. 580, 587-595 (1975); *O’Brien v. Borowski*, 461 Mass. 415, 421 (2012). In this case alone, within the thousands of interactions between You and Urtula over a year and a half there were a vast range of communications, some benign, others offensive, still others cruel and painful.

Much of it was undeniably protected under the First Amendment and Article 16.

“Vulgar, profane, offensive or abusive speech is not, without more, subject to criminal sanction.” *Commonwealth v. A Juvenile*, 368 Mass. 580, 589 (1975).

It is true that the *Carter* court found no problem of vagueness or overbreadth. But that is because one who intends to bring about a suicide, and actually knows that it is about to happen, can hardly complain that she could not have known that death was highly likely to occur. Thus, as the Court pointed out, there was venerable authority for punishing Carter for exactly what she did, since every one of the prior cases cited -- *Persampieri*, *Atencio*, and *Bowe* -- involved the intentional encouragement of the suicidal act.

**III. The Indictment is Duplicitous, Violates Article 12, and Must be Dismissed in Its Entirety Even if There was Probable Cause for the Commission Offense.**

**Duplicity**

Defendant contends that the indictment here is invalid because it is duplicitous, that is, that it charges “separate offenses in a single count.”

*Commonwealth v. Barbosa*, 421 Mass. 547, 553, n. 9 (1995). *See e.g.*,

*Commonwealth v. Symonds*, 2 Mass. 163 (1806); *Commonwealth v. Fuller*, 163

Mass. 499 (1895). Offenses are separate and distinct from another either because

they involve separate conduct at different times, *e.g.* *Fuller*,<sup>6</sup> or because each offense requires proof of an additional fact which the other does not.

*Commonwealth v. Jones*, 388 Mass. 387, 392-93 (1981). The offenses of manslaughter by commission and manslaughter by omission, as alleged here, are wholly distinct. While the parties and the Court refer to these different proposed bases of culpability as “theories,” these are not just different aspects of the same conduct. The commission offense is based solely upon acts by defendant taken **before** May 20, and **before** she knew that Mr. Urtula was actually taking steps to commit suicide. The omission theory is based upon everything that happened **after** the point at which she had gained that knowledge, and what she did or did not do from then on. Moreover, each offense has an element which the other lacks: the essence of one is action; the essence of the other is refusal to take action. The fact that, according to the Commonwealth’s allegations, both sets of acts – or non-acts – were causes of the same death, does not make them aspects of the same crime. Thus, for example, one can be convicted of both manslaughter and motor vehicle homicide for causing the same death, since each offense requires proof of

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<sup>6</sup> An exception would be where the indictment alleges “a single continuing offense occurring at several times and places over a period of time.” *E.g.*, *Commonwealth v. Goodman*. 9 mass. L. Rptr. 318, \*4. \*9 (1998). This requires acts of the same general character “actuated by a continuing criminal intent.” While this could be applied to the many alleged acts constituting the commission offense up to May 20, it clearly cannot as to the conduct on May 20 itself, because both the conduct and intent in issue was categorically different than what preceded that date.



an element that the other does not. *See e.g. Commonwealth v. Jones*, supra; *Commonwealth v. Buckley*, 76 Mass. App. 123, 125 (2016).

### **Article 12**

Article 12 guarantees:

The right of individual citizens to be secure from an open and public accusation of crime, and from the trouble, expense and anxiety of a public trial, before a probable cause is established by the presentment and indictment of a grand jury, in the case of high offenses[.]

*Jones v. Robbins*, 8 Gray 329, 347-349 (1857). This means that in order for the Commonwealth to bring a person to trial for a felony, a grand jury must have issued an indictment charging the crime, and that the charge must be supported by evidence before the grand jury amounting to probable cause.

In *Commonwealth v. Barbosa*, 421 Mass. 547 (1995), the defendant was indicted in a single count for the sale of drugs on a particular date. The grand jury and then the trial jury heard evidence of two separate sales occurring on the same date. The defendant was then convicted of the one count. On appeal, the defendant contended that he had been denied his constitutional right to indictment because it was not possible to determine which offense the grand jury credited and thus whether defendant was convicted of an offense for which grand jury had found probable cause. This Court agreed, because the defendant “may have been ‘held to answer’ for a crime not set forth in the indictment.” *Id.* at 553. This principle applies directly here. There is no way from the face of the indictment to

determine whether the grand jury found probable cause as to the commission offense, the omission offense, or both.<sup>7</sup> Indeed, the prosecutor instructing the grand jury here expressly advised that “should you find probable cause for either [theory] or both, then that would . . . require you to return a true bill. . . . [T]he one indictment is about either theory.” GJ (10/22/2019), at 001623. The court below has found that the omission offense lacked a showing of probable cause. But since it is impossible to determine whether the jury rested its bill of indictment on the offense for which there was probable cause or the one for which there was not, Article 12 requires dismissal of the indictment in its entirety.

**IV. The Commonwealth is Not Entitled to Proceed to Trial on an Offense as to which the Grand Jury Did Not Have Probable Cause.**

Remarkably, the Commonwealth contends that even if the court correctly ruled that the grand jury lacked probable cause for the omission offense, it is entitled to proceed to trial on that theory. Indeed, under the Commonwealth’s view, it would be perfectly acceptable to obtain a conviction based solely on facts which were never endorsed by the grand jury at all. This would turn on its head the Article 12 requirement that a person may not be held to answer for a crime not founded on a showing of probable cause. For this extreme proposition, the

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<sup>7</sup> For the same reason, it cannot be said that the offense or offenses the grand jury intended to charge have been “fully and plainly, described to” the defendant, as required by Article 12.

Commonwealth relies on two Appeals Court cases, *Commonwealth v. Riley*, 73 Mass. App. Ct. 721 (2009), and *Commonwealth v. Clayton*, 63 Mass. App. Ct. 608 (2005), which held that that the *Barbosa* ruling does not apply to separate legal theories which underlie culpability for a single crime, as opposed to separate crimes. Those cases, however, are inapposite, as they involve single crimes. As we have discussed above, the commission and omission charges here are more than bare theories. To be sure, they represent “theories” of culpability – but these are factual theories which describe separate and distinct criminal conduct.

### **REASONS FOR GRANTING DIRECT APPELLATE REVIEW**

This case meets all the criteria for Direct Appellate Review. It involves novel and important questions of substantive and procedural criminal law, including significant issues under the First Amendment and Due Process Clause of the United States Constitution, as well as Articles 12 and 16 of the Declaration of Rights. Each of these issues is important enough in its own right to warrant direct review by this Court. Given the *Carter* rulings, there is a need to clearly draw the bounds of criminal liability for verbal conduct which results in emotional distress and, eventually, in self-harm. Does the law provide any limiting principle for the assignment of culpability for a self-inflicted death committed in the wake of emotional harm produced by verbal abuse? If so, is that limitation defined by the type of facts relied upon in the *Carter* case?

In addition, there is a strong practical interest in resolving the issues raised in the case at the current stage, because a failure to do so would unduly complicate the case going forward and will undoubtedly prolong the litigation. The rationale underlying the general reluctance to allow interlocutory review is the desire to avoid piecemeal litigation and delay. In this case, allowing such review here will actually avoid both problems. Indeed, if the issues presented by this case are not definitively resolved **before** trial they will be potential “poison pills,” embedded into the structure of the case and threatening future reversal and retrial, no matter how fair and how “textbook” a trial occurs. Not to determine these questions now would lay the foundation for serious complications and delay.

Respectfully Submitted,

INYOUNG YOU,  
By her attorneys,

/s/ Max D. Stern

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### **CERTIFICATE OF SERVICE**

I, Max D. Stern, hereby certify that on this 5<sup>th</sup> day of August, 2021, one copy of the foregoing was served via email upon counsel of record for the Commonwealth of Massachusetts: ADA Cailin Campbell at [cailin.campbell@state.ma.us](mailto:cailin.campbell@state.ma.us); ADA Caitlin Grasso at [Caitlin.grasso@state.ma.us](mailto:Caitlin.grasso@state.ma.us), One Bulfinch Place, Boston, MA 02114.

/s/ Max D. Stern  
Max D. Stern

## **EXHIBIT A**

# 1984CR00617 Commonwealth vs. You, Inyoung

- Case Type:
- Indictment
- Case Status:
- Open
- File Date
- 10/18/2019
- DCM Track:
- C - Most Complex
- Initiating Action:
- MANSLAUGHTER c265 §13
- Status Date:
- 10/22/2019
- Case Judge:
- Locke, Hon. Jeffrey A
- Next Event:
- 09/23/2021

[All Information](#)
[Party](#)
[Charge](#)
[Event](#)
[Tickler](#)
[Docket](#)
[Disposition](#)

## Party Information

**Suffolk County District Attorney**  
- Prosecutor

Alias

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- Attorney
- Grasso, Esq., Caitlin K
- Bar Code
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- Phone Number
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[More Party Information](#)

**You, Inyoung**  
- Defendant

Alias

### Party Attorney

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[More Party Information](#)

#### American Civil Liberties Union of Massachusetts - Other interested party

Alias

**Party Attorney**

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- American Civil Liberties Union of Massachusetts
- 211 Congress St
- Boston, MA 02110
- Phone Number
- (617)482-3170

[More Party Information](#)**Party Charge Information**

- You, Inyoung
- - Defendant
- Charge # 1:  
265/13/A-0 - Felony      MANSLAUGHTER c265 §13
- Original Charge
- 265/13/A-0 MANSLAUGHTER c265 §13 (Felony)
- Indicted Charge
- Amended Charge

**Events**

Date	Session	Location	Type	Event Judge	Result
10/22/2019 09:30 AM	Criminal 1		Motion Hearing	Cannone, Hon. Beverly J	Held as Scheduled
10/29/2019 02:00 PM	Magistrate's Session	BOS-7th FL, CR 705 (SC)	Conference to Review Status	Curley, Edward J	Held as Scheduled
11/22/2019 09:00 AM	Magistrate's Session	BOS-7th FL, CR 705 (SC)	Arraignment	Curley, Edward J	Held as Scheduled
01/21/2020 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Pre-Trial Conference		Held - Under advisement
02/20/2020 02:00 PM	Criminal 6		Pre-Trial Conference	Roach, Christine M	Held as Scheduled
04/09/2020 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Motion Hearing	Locke, Hon. Jeffrey A	Canceled
05/19/2020 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Pre-Trial Hearing		Canceled
09/24/2020 02:30 PM	Criminal 6		Conference to Review Status	Roach, Christine M	Rescheduled
10/15/2020 12:00 PM	Criminal 6		Conference to Review Status	Roach, Christine M	Held - Under advisement
10/22/2020 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Final Pre-Trial Conference		Canceled



<a href="#">Date</a>	<a href="#">Session</a>	<a href="#">Location</a>	<a href="#">Type</a>	<a href="#">Event Judge</a>	<a href="#">Result</a>
11/09/2020 09:00 AM	Criminal 6	BOS-9th FL, CR 906 (SC)	Jury Trial		Canceled
01/12/2021 02:00 PM	Criminal 6		Conference to Review Status		Rescheduled
01/14/2021 02:00 PM	Criminal 6		Conference to Review Status		Rescheduled
01/28/2021 02:00 PM	Criminal 6		Conference to Review Status		Rescheduled
02/09/2021 02:00 PM	Criminal 6		Conference to Review Status	Ullmann, Hon. Robert L	Rescheduled
02/09/2021 02:15 PM	Criminal 6		Conference to Review Status	Ullmann, Hon. Robert L	Held as Scheduled
06/28/2021 09:30 AM	Criminal 6		Conference to Review Status	Ullmann, Hon. Robert L	Held as Scheduled
09/23/2021 02:00 PM	Criminal 6		Conference to Review Status	Ullmann, Hon. Robert L	

### Ticklers

<a href="#">Tickler</a>	<a href="#">Start Date</a>	<a href="#">Due Date</a>	<a href="#">Days Due</a>	<a href="#">Completed Date</a>
Pre-Trial Hearing	11/22/2019	05/20/2020	180	
Final Pre-Trial Conference	11/22/2019	11/02/2020	346	04/30/2020
Case Disposition	11/22/2019	11/16/2020	360	
Under Advisement	01/21/2020	02/20/2020	30	02/20/2020
Under Advisement	10/15/2020	11/14/2020	30	01/13/2021

### Docket Information

<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Image Avail.</a>
10/18/2019	Attorney appearance On this date 10/18/2019 Grasso, Esq., Caitlin K added for Suffolk County District Attorney		
10/18/2019	Indictment(s) returned	1	Image
10/18/2019	Commonwealth Caitlin K Grasso, Esq.'s Motion for an arrest warrant filed	2	
10/18/2019	Endorsement on Motion for an arrest warrant , (#2.0): ALLOWED		
10/18/2019	Commonwealth Caitlin K Grasso, Esq.'s Motion to seal indictment and arrest warrant filed	3	
10/18/2019	Endorsement on Motion to seal indictment and the arrest warrant, (#3.0): ALLOWED		
10/21/2019	Issued outside of WMS: Indictment Warrant (secret/paper warrant ONLY) issued on 10/21/2019 for You, Inyoung		
10/22/2019	Commonwealth Caitlin K Grasso, Esq.'s Motion to vacate impoundment order related to the arrest warrant and unseal the indictment filed with affidavit of the Commonwealth	4	Image
10/22/2019	Endorsement on Motion to vacate impoundment order related to the arrest warrant and unseal the indictment, (#4.0): ALLOWED		Image
10/22/2019	Defendant not in court. Case brought forward. Motion Hearing held. After hearing, Commonwealth's motion filed and ALLOWED.  Cannone, J. - J. Pardi, ACM - C. Grasso, ADA - 9:47 AM FTR		
10/22/2019	Issued: Straight Warrant issued on 10/22/2019 for You, Inyoung		
10/22/2019	Recalled: Indictment Warrant (secret/paper warrant ONLY) cancelled on 10/22/2019 for You, Inyoung		

<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Image Avail.</a>
10/29/2019	Issued this date:  Summons to Defendant Sent On: 10/29/2019 15:26:53		
10/29/2019	Defendant not in court Case brought forward at Commonwealth's request Warrant remains outstanding Conference to Review Status Held as Scheduled Case continued by agreement to 11/22/19 at 9:00am, re: Arraignment, Magistrate Session, CTRM 705 Summons to Issue  E. Curley, MAG M. Pierce, DAC G. Ogus, ADA FTR 3:17 PM		
11/18/2019	Commonwealth 's Motion to Vacate/Withdraw the Arrest Warrant (filed)	5	<a href="#">Image</a>
11/18/2019	Endorsement on Motion to Vacate/Withdraw the Arrest Warrant (filed), (#5.0): ALLOWED		<a href="#">Image</a>
11/18/2019	Recalled: Straight Warrant cancelled on 11/18/2019 for You, Inyoung		
11/22/2019	Attorney appearance On this date Steven Kim, Esq. added as Private Counsel for Defendant Inyoung You		
11/22/2019	Court inquires of Commonwealth if abuse, as defined by G.L. c. 209A, § 1, is alleged to have occurred immediately prior to or in connection with the charged offense(s).		
11/22/2019	Court finds abuse is alleged in connection with the charged offense. G.L. c. 276, § 56A. **FILED UNDER SEAL**	6	<a href="#">Image</a>
11/22/2019	Defendant arraigned before Court.		
11/22/2019	Defendant waives reading of indictment		
11/22/2019	Plea of not guilty entered on all charges.		
11/22/2019	Issued on this date:  Mittimus in Lieu of Bail Sent On: 11/22/2019 10:20:22	7	<a href="#">Image</a>
11/22/2019	Commonwealth Caitlin K Grasso, Esq.'s Notice of Appearance of Counsel (Filed)	8	<a href="#">Image</a>
11/22/2019	Steven Kim, Esq.'s Notice of Appearance (Filed)	9	<a href="#">Image</a>
11/22/2019	Finding and Order on Bail:  (Filed)  Judge: Fentress, Michelle	10	<a href="#">Image</a>
11/22/2019	Commonwealth files the statement of the case.  Judge: Fentress, Michelle	11	<a href="#">Image</a>
11/22/2019	Commonwealth 's Notice of Discovery - First (Filed)	12	<a href="#">Image</a>
11/22/2019	Commonwealth 's Motion for Protective Order with Order attached (Filed)	13	<a href="#">Image</a>
11/22/2019	Endorsement on Motion for Protective Order, (#13.0): ALLOWED "ALLOWED without prejudice. Subject to further review." M. Fentress, MAG  Judge: Fentress, Michelle		<a href="#">Image</a>
11/22/2019	Bail warnings read		
11/22/2019	Bail set at \$50,000.00 Surety, \$5,000.00 Cash. COB: 1. Surrender Passport prior to release Set without prejudice  Judge: Fentress, Michelle		
11/22/2019	Conditions of release on bail: Other Special Condition 1. Surrender Passport prior to release 2. Remain in Massachusetts 3. Check in with Probation via phone by weekly		

<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Image Avail.</a>
11/22/2019	Case assigned to: DCM Track C - Most Complex was added on 11/22/2019		
11/22/2019	Defendant comes into court. Hearing Re: Arraignment held. - After hearing, Protective Order: ALLOWED until further judicial review  > Case becomes Track C by agreement: 1. Pre-Trial Conference on the date of 1/21/20 at 2:00 PM (Criminal 6, CTRM 906) 2. Pre-Trial Hearing on the date of 5/19/20 2:00 PM (Criminal 6, CTRM 906) 3. Final Pre-Trial Conference on the date of 10/22/20 at 2:00 PM (Criminal 6, CTRM 906) 4. Presumptive Trial on the date of 11/09/20 at 9:00 AM (Criminal 6, CTRM 906)  M. Fentress, MAG - S. Picardo, ACM - C. Grasso, ADA - S. Kim, Atty - FTR (9:42 AM)		
11/22/2019	Docket Note: Passport surrendered this day to the Criminal Clerk's Office		
11/22/2019	The following form was generated:  Release from Custody Order Sent On: 11/22/2019 11:02:30	14	<a href="#">Image</a>
12/05/2019	Defendant 's Submission of Affidavit of Counsel (filed)	15	<a href="#">Image</a>
01/21/2020	Defendant 's Motion to Vacate Protective Order	16	<a href="#">Image</a>
01/21/2020	Commonwealth 's Motion for Amended Protective Order filed	17	<a href="#">Image</a>
01/21/2020	Commonwealth 's Notice of Discovery (II) filed	18	<a href="#">Image</a>
01/21/2020	Opposition to paper #16.0 Defendant's motion to vacate Protective Order filed by Suffolk County District Attorney	19	<a href="#">Image</a>
01/21/2020	Defendant 's Motion for notice and preservation of witness' data and input devices for potentially exculpatory information and for disclosure of account information filed with affidavit in support thereof	20	<a href="#">Image</a>
01/21/2020	Defendant comes into court. Pre-Trial Conference held as scheduled. After hearing, case taken under advisement.  Further orders of the court: -Protective order remains in effect until ruling RE: Motion. -Commonwealth to file supplemental affidavit by 1/31/2020 (Out of Court filing date) -Defense to file Rebuttal by 2/14/2020 (Out of Court filing date)  Case continued by agreement to 2/20/2020 RE: Further Pre-Trial Conference/ Possible Conditions on Bail Hearing at 2:00 PM in Criminal 6 (CtRm 906) (Defendant's presence is NOT waived)  Roach, RAJ - D. Harvey, ACM - G. Grasso, ADA - S. Kim, Atty - 2:12 PM FTR		
01/28/2020	Other 's Submission of Memorandum Amicus Curiae of The American Civil Liberties Union of Massachusetts, Inc. in support of Motion to Vacate Protective Order filed with attached exhibits	21	<a href="#">Image</a>
01/31/2020	Commonwealth 's Motion to withdraw it's motion for a protective order filed	22	<a href="#">Image</a>
01/31/2020	Opposition to paper #20.0 Defendant's motion to preserve digital evidence not in Commonwealth control filed by Suffolk County District Attorney	23	<a href="#">Image</a>
02/04/2020	Endorsement on Motion to withdraw it's motion for a protective order, (#22.0): ALLOWED "Motion to withdraw motion for protective order (paper #13 and #17) is hereby ALLOWED following hearing on 1/21/2020 and both parties' requests for further briefing. The court is not ruling on the merits of either side's position -- past or future. As with all protective order rulings in the homicide session, it stands until any further orders of the court. The protective order is vacated as of today." (Roach, RAJ) (Copy of Endorsement sent to S. Kim, Atty and C. Grasso, ADA via US Mail)		<a href="#">Image</a>
02/04/2020	Endorsement on Motion for Amended Protective Order, (#17.0): Withdrawn "This motion has been withdrawn by the Commonwealth by the motion filed on January 31st, 2020, Paper #22." (Roach, RAJ) (Copy of Endorsement sent to S. Kim, Atty and C. Grasso, ADA via US Mail)		<a href="#">Image</a>
02/04/2020	Endorsement on Motion to Vacate Protective Order, (#16.0): DENIED "Following hearing on 1/21/2020, and both parties' requests for further briefing, the motion is DENIED As Moot. Please see endorsements on Papers #13 and #22. The Protective Order, entered 11/22/2019 is VACATED effective today." (Roach, RAJ) (Copy of Endorsement sent to S. Kim, Atty and C. Grasso, ADA via US Mail)		<a href="#">Image</a>
02/04/2020	Endorsement on Motion for Protective Order, (#13.0): Other action taken "Pursuant to the Commonwealth's Motion filed 1/31/2020 (Paper #22), this Protective Order is now VACATED." (Roach, RAJ) (Copy of Endorsement sent to S. Kim, Atty and C. Grasso, ADA via US Mail)		<a href="#">Image</a>

<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Image Avail.</a>
02/04/2020	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Steven Kim, Esq. Attorney: Caitlin K Grasso, Esq.		
02/14/2020	Defendant 's Motion to modify conditions of release filed with affidavit in support thereof	24	<a href="#">Image</a>
02/20/2020	Event Result:: Pre-Trial Conference scheduled on: 02/20/2020 02:00 PM Has been: Held as Scheduled 2:09pm Deft Comes into Court hr re: Conditions of Bail held P#24 After Hearing Conditions of Bail set at arraignment on 11/22/19 remain the same Deft. must file a Motion to Travel with the Court if she wishes to leave Mass. HrRe: Rule14 Motion Paper#20 After hearing Motion is Denied Without Prejudice Paper #20 is ordered IMPOUNDED Deft. to File Motion to Dismiss by 3/6/20 Commonwealth to file Opposition by 3/20/20 Cont to 4/9/20 re: Motion to Dismiss and Disc compliance (VI, 906) at 2pm  Christine M Roach, Presiding Appeared: ADA/ C. Grasso, Atty/ s. Kim, Atty/ H. Cooper M. Regan, Assistant Clerk Magistrate FTR		
02/20/2020	Attorney appearance On this date Howard Cooper, Esq. added as Private Counsel for Defendant Inyoung You		
02/20/2020	Defendant Howard Cooper, Esq.'s Notice of Appearance , Filed	25	<a href="#">Image</a>
02/20/2020	Defendant 's Motion for Notice and Preservation of Witness' Data Input Devices for Potentially Exculpatory Information and For Disclosure of Account Information, Filed This Motion replaces Impounded Motion paper #20	26	<a href="#">Image</a>
02/20/2020	Commonwealth 's Notice Of Discovery, Third, Filed	27	<a href="#">Image</a>
02/20/2020	Pre-trial conference report filed  Judge: Roach, Christine M Applies To: Suffolk County District Attorney (Prosecutor); You, Inyoung (Defendant); Cooper, Esq., Howard (Attorney) on behalf of You, Inyoung (Defendant); Kim, Esq., Steven (Attorney) on behalf of You, Inyoung (Defendant)	28	<a href="#">Image</a>
02/20/2020	Endorsement on Motion , (#24.0): DENIED Denied without Prejudice. The Court will consider Modifying the conditions of release pursuant to 1) a specific travel request 2) a specific new residential address outside Massachusetts		<a href="#">Image</a>
02/20/2020	Endorsement on Motion , (#26.0): DENIED Following hearing Denied without Prejudice  Judge: Roach, Christine M		<a href="#">Image</a>
03/06/2020	Defendant 's Motion to Impound the Motion to Dismiss	29	<a href="#">Image</a>
03/06/2020	Defendant 's Motion to Dismiss the Indictment (Motion to Impound Pending)	30	<a href="#">Image</a>
03/06/2020	Defendant 's Memorandum in Support of her Motion to Dismiss the Indictment ***SEALED PURSUANT TO COURT ORDER***	31	
03/23/2020	Commonwealth 's Motion to Extend Time for Filing Opposition to the Defendant's Motion to Dismiss, filed	32	<a href="#">Image</a>
03/23/2020	Attorney appearance On this date Caillin Campbell, Esq. added as Attorney for the Commonwealth for Prosecutor Suffolk County District Attorney		
03/25/2020	Event Result:: Motion Hearing scheduled on: 04/09/2020 02:00 PM Has been: Canceled For the following reason: By Court due to Covid-19 Christine M Roach, Presiding Staff: Michelle Fentress, Assistant Clerk Magistrate		
03/25/2020	Endorsement on Commonwealth's Motion to Extend Time for Filing Opposition to the Defendant's Motion to Dismiss, (#32.0): ALLOWED Motion Hearing date to be rescheduled.		<a href="#">Image</a>

<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Image Avail.</a>
03/25/2020	Defendant 's Motion to Unseal Her Motion to Dismiss the Indictment (Memorandum Incorporated) with attachments in support thereof	33	<a href="#">Image</a>
04/13/2020	Attorney appearance On this date Ruth A Bourquin, Esq. added for Other interested party American Civil Liberties Union of Massachusetts		
04/16/2020	Other 's Motion of The American Civil Liberties Union Of Massachusetts, INC. For Relief From Impoundment. w/Affidavit and Memorandum	34	<a href="#">Image</a>
05/15/2020	Endorsement on Defendant 's Motion to Unseal Her Motion to Dismiss the Indictment, (#33.0): Other action taken Defendant ordered to file particulars relating to (1) source of information in appendices (B) and (C); (2) index of specific reports and/or testimony defendant seeks to release from impoundment, all within thirty (30) days. Commonwealth ordered to file a response within forty-five (45) days.		<a href="#">Image</a>
05/15/2020	Endorsement on Motion of The American Civil Liberties Union Of Massachusetts, INC. For Relief From Impoundment, (#34.0): Other action taken Commonwealth ordered to file a response within thirty (30) days. Defendant may similarly file any response within forty five (45) days.		<a href="#">Image</a>
05/21/2020	The following form was generated: A Clerk's Notice was generated regarding endorsement on P#33 and sent to: Attorney: Howard Cooper, Esq.; Attorney: Steven Kim, Esq.; Attorney: Cailin Campbell, Esq.; and Attorney: Caitlin K Grasso, Esq. via e-mail.		
05/21/2020	The following form was generated: A Clerk's Notice was generated regarding endorsement on P#34 and sent to: Attorney: Howard Cooper, Esq.; Attorney: Steven Kim, Esq.; Attorney: Cailin Campbell, Esq.; Attorney: Caitlin K Grasso, Esq.; and Attorney: Ruth A Bourquin, Esq via e-mail.		
06/02/2020	Defendant 's Motion to Impound her Response to the Court's May 21, 2020 Order Regarding Ms. You's Motion to Unseal	35	<a href="#">Image</a>
06/02/2020	Defendant 's Response to the Court's May 21, 2020 Order Regarding Ms. You's Motion to Unseal her Motion to Dismiss the Indictment ***SEALED PURSUANT TO COURT ORDER***	36	
06/18/2020	Commonwealth 's Request for an extension of time (copy to Locke J)	37	<a href="#">Image</a>
06/18/2020	Endorsement on Commonwealth's Request for an Extension of Time, (#37.0): ALLOWED  Judge: Locke, Hon. Jeffrey A		
06/26/2020	The following form was generated: A Clerk's Notice was generated regarding endorsement on P#37 and sent to: Attorney: Howard Cooper, Esq.; Attorney: Steven Kim, Esq.; Attorney: Cailin Campbell, Esq.; and Attorney: Caitlin K Grasso, Esq. via e-mail.		
06/26/2020	Opposition to paper #33.0 Defendant's Motion to Unseal her Motion to Dismiss and Request for a Protective Order filed by Suffolk County District Attorney	38	<a href="#">Image</a>
06/26/2020	Opposition to paper #30.0 Defendant's Motion to Dismiss filed by Suffolk County District Attorney***SEALED PURSUANT TO COURT ORDER***	39	
07/09/2020	Defendant 's Motion to Impound Reply to the Commonwealth's Opposition to her Motion to Dismiss	40	<a href="#">Image</a>
07/09/2020	Defendant 's Reply to the Commonwealth's Opposition to her Motion to Dismiss ***SEALED PURSUANT TO COURT ORDER***	41	
09/22/2020	Event Result:: Conference to Review Status scheduled on: 09/24/2020 02:30 PM Has been: Rescheduled For the following reason: By Court prior to date Christine M Roach, Presiding Staff: Stacey Pichardo, Assistant Clerk Magistrate		
10/15/2020	Event Result:: Jury Trial scheduled on: 11/09/2020 09:00 AM Has been: Canceled For the following reason: By Court due to Covid-19 Christine M Roach, Presiding Staff: Stacey Pichardo, Assistant Clerk Magistrate		

<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Image Avail.</a>
10/15/2020	<p>Non-custody Defendant present via Zoom.</p> <p>Conference to review Status held via Zoom. Motion Hearing held via Zoom on the following motions:</p> <p>#29 Defendant's Motion to Impound the Motion to Dismiss;  #30 Defendant's Motion to Dismiss the Indictment (Motion to Impound Pending);  #33 Defendant's Motion to Unseal Her Motion to Dismiss the Indictment (Memorandum Incorporated) with attachments in support thereof;  #34 Motion of The American Civil Liberties Union Of Massachusetts, INC. For Relief From Impoundment. w/Affidavit and Memorandum.</p> <p>After hearing, Court takes the above motions under advisement. By agreement, this matter is continued to 1/14/2021 at 2:00PM in Courtroom 906 for Conference to Review Status re: Discovery.</p> <p>Further Orders of the Court:  1. Commonwealth to file Certificate of Compliance no later than 10/23/2020.</p> <p>Roach, RAJ - S. Pichardo, ACM - C. Grasson and C. Campbell, ADA (via Zoom) - S. Kim; H. Cooper; S. Basaria; and M Stern, Atty (via Zoom) - R. Bourquin for ACLU (via Zoom) FTR 2:00PM</p>		
10/23/2020	Suffolk County District Attorney files certificate of compliance.	42	<a href="#">Image</a>
11/10/2020	Defendant 's Submission Transcript from the October 15, 2020 Motion to Dismiss and Motion to Lift the Impoundment Hearing	43	
11/20/2020	<p>Event Result:: Conference to Review Status scheduled on:  01/14/2021 02:00 PM  Has been: Rescheduled For the following reason: By Court prior to date  Comments: This matter has been moved up to January 12, 2021 due to a scheduling conflict in Courtroom 906.  Christine M Roach, Presiding</p>		
11/20/2020	<p>Event Result:: Conference to Review Status scheduled on:  01/12/2021 02:00 PM  Has been: Rescheduled For the following reason: Other event activity needed  Comments: Defense counsel, Steven Kim, has a scheduling conflict on January 12; therefore, this matter is now rescheduled to January 28, 2021 at 2:00PM.  Christine M Roach, Presiding</p>		
01/13/2021	<p>MEMORANDUM &amp; ORDER:</p> <p>ON DEFENDANT INYOUNG YOU'S MOTION TO DISMISS THE INDICTMENTS (PAPER 30)</p> <p>Motion is ALLOWED as to the Commonwealth's theory of manslaughter by omission, and DENIED as to the Commonwealth's theory of manslaughter by commission.</p> <p>Judge: Roach, Christine M</p>	44	<a href="#">Image</a>
01/13/2021	<p>MEMORANDUM &amp; ORDER:</p> <p>ON IMPOUNDMENT AND SEALING OF PLEADINGS</p> <p>Judge: Roach, Christine M</p>	45	<a href="#">Image</a>
01/13/2021	Endorsement on , (#29.0): Other action taken Following hearing, Memorandum Paper 31 and Exhibits SEALED. The Motion itself (Paper 30) is not sealed but is public record." Roach, J.		<a href="#">Image</a>
01/13/2021	Endorsement on , (#30.0): Other action taken "Following hearing, Motion ALLOWED as to Manslaughter by omission and DENIED as to Manslaughter by commission. Please see Memorandum of Decision and Order of today's date." Roach, J.		<a href="#">Image</a>
01/13/2021	Endorsement on , (#33.0): DENIED "Motion to Unseal Memo and Exhibits DENIED, following hearing. Please see Rulings and Order on Impoundment of today's date." Roach, J.		<a href="#">Image</a>
01/13/2021	Endorsement on , (#34.0): DENIED "Following hearing, motion DENIED. Please see Rulings and Order on Impoundment of this date." Roach, J.		<a href="#">Image</a>
01/13/2021	Endorsement on , (#35.0): ALLOWED "Following hearing, Motion to seal Paper 36 is ALLOWED." Roach, J.		<a href="#">Image</a>
01/13/2021	Endorsement on , (#40.0): ALLOWED "Following hearing, Motion to seal Paper 41 is ALLOWED. Please see Ruling and Order on Impoundment of this date." Roach, J.		<a href="#">Image</a>
01/25/2021	Commonwealth 's Motion to Reconsider	46	<a href="#">Image</a>



<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr.</a>	<a href="#">Image Avail.</a>
01/27/2021	Event Result:: Conference to Review Status scheduled on: 01/28/2021 02:00 PM Has been: Rescheduled For the following reason: Court Order. Courtroom 906 is not available in the afternoon. Parties cannot accommodate a morning call. Matter to be rescheduled to a short date. Hon. Robert L Ullmann, Presiding Staff: Stacey Pichardo, Assistant Clerk Magistrate		
02/04/2021	Event Result:: Conference to Review Status scheduled on: 02/09/2021 02:00 PM Has been: Rescheduled For the following reason: Other event activity needed Comments: Time changed from 2:00PM to 2:15PM Hon. Robert L Ullmann, Presiding Staff: Stacey Pichardo, Assistant Clerk Magistrate		
02/09/2021	Defendant 's Motion to Impound	47	<a href="#">Image</a>
02/09/2021	Defendant 's Motion to Report Questions of Law to the Appeals Court	48	<a href="#">Image</a>
02/09/2021	Defendant 's Motion RENEWED Motion To Dismiss the Indictment in its Entirety	49	<a href="#">Image</a>
02/09/2021	Defendant 's Memorandum In Support of Her Renewed Motion to Dismiss, In Opposition to the Commonwealth's Motion to Reconsider, and In Support of Her Request to Report Questions of Law.	50	<a href="#">Image</a>
02/09/2021	Endorsement on , (#47.0): Withdrawn		<a href="#">Image</a>
02/09/2021	Non-custody Defendant present via Zoom.  Conference to review Status held via Zoom.  Further Orders of the Court: 1. Commonwealth shall file its opposition to the Defendant's Motion to Report Questions of Law no later than 2/16/2021, and 2. Defendant shall reply to the Commonwealth's opposition no later than 2/23/2021.  Ullmann, RAJ - S. Pichardo, ACM - C. Grasso and C. Campbell, ADA (via Zoom) - S. Kim; H. Cooper; S. Basaria; and M Stern, Atty (via Zoom) - FTR 2:25PM		
02/17/2021	Commonwealth 's Motion to Extend Time for Filing Response to Defendant's Motion to Report a Question of Law	51	<a href="#">Image</a>
02/17/2021	Endorsement on , (#51.0): ALLOWED "Allowed. Commonwealth's opposition due 3/2/2021. Defendant's reply brief due 3/9/2021." Ullmann, RAJ  Notice sent to all counsel of record via electronic mail on 2.17.2021.		<a href="#">Image</a>
03/03/2021	Opposition to paper #48.0 Commonwealth's Opposition to the Defendant's Motion to Report Questions of Law to the Appeals Court. filed by Suffolk County District Attorney	52	<a href="#">Image</a>
03/12/2021	Defendant 's Reply to the Commonwealth's Opposition to Defendant's Motion to Report	53	<a href="#">Image</a>
03/23/2021	Endorsement on , (#46.0): DENIED "Following review, Motion DENIED. Commonwealth v. Charles. 466 Mass. 63, 83-84 (2013)." Roach, J.  All parties of record notified via electronic mail on 3.24.2021.		<a href="#">Image</a>
03/23/2021	Endorsement on , (#48.0): DENIED "Following review, Motion DENIED. Commonwealth v. Giang, 402 Mass. 604, 607-608 (1988); Commonwealth v. Long, 428 Mass. 804, 808 (2019)." Roach, J.  All parties of record notified via electronic mail on 3.24.2021.		<a href="#">Image</a>
03/23/2021	Endorsement on , (#49.0): DENIED "Following review, Motion DENIED." Roach, J.		<a href="#">Image</a>
03/24/2021	Commonwealth 's Notice of Appeal	54	<a href="#">Image</a>
05/12/2021	Appeal: JAVS DVD/CD Received from OTS: Re:10/15/2020.		
05/19/2021	Notice of assembly of record sent to Counsel  Applies To: Cooper, Esq., Howard (Attorney) on behalf of You, Inyoung (Defendant); Campbell, Esq., Cailin (Attorney) on behalf of Suffolk County District Attorney (Prosecutor)		<a href="#">Image</a>
05/19/2021	Notice to Clerk J. Stanton of the Appeals Court of Assembly of Record		<a href="#">Image</a>

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
05/19/2021	Appeal: Statement of the Case on Appeal (Cover Sheet).	55	<a href="#">Image</a>
05/19/2021	Notice of docket entry received from Appeals Court In accordance with Massachusetts Rule of Appellate Procedure 10(a)(3), please note that the above-referenced case was entered in this Court on May 19,2021.	56	<a href="#">Image</a>
06/28/2021	Attorney appearance On this date Max Daniel Stern, Esq. added as Private Counsel for Defendant Inyoung You		
06/28/2021	Non-custody Defendant present via Zoom.  Conference to review Status held via Zoom. By agreement, this matter is continued to 9/23/2021 at 2:00PM for Conference to Review Status re: Appeal in Courtroom 906.  Ullmann, RAJ - S. Pichardo, ACM - C. Grasso and C. Campbell, ADA (via Zoom) - S. Kim and M Stern, Atty (via Zoom) - FTR 9:30AM		
07/29/2021	Defendant 's Assented to Motion to Grant Permission for Travel	57	<a href="#">Image</a>
07/29/2021	Endorsement on , (#57.0): ALLOWED "ALLOWED. Defendant shall provide the Probation Office with dates of her departure and return, and shall contact probation upon her return."		<a href="#">Image</a>

**Case Disposition**

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Active	11/22/2019	Locke, Hon. Jeffrey A



## **EXHIBIT B**

44

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUFFOLK SUPERIOR COURT  
DOCKET NO. 1984CR00617

COMMONWEALTH

v.

INYOUNG YOU

MEMORANDUM OF DECISION AND ORDER ON  
DEFENDANT INYOUNG YOU'S  
MOTION TO DISMISS THE INDICTMENT (Paper 30)

Introduction

Defendant Inyoung You is indicted on one count of Manslaughter for the death by suicide of her boyfriend of one and one-half years, Alexander Urtula, at approximately 8:30 a.m. on May 20, 2019. Mr. Urtula died after jumping from the roof of the Renaissance Parking Garage onto the lower busway of the Ruggles MBTA Station in the Roxbury neighborhood of Boston, adjacent to the campus of Northeastern University. He was scheduled to attend his graduation ceremony from Boston College that morning.

The Commonwealth alleges You caused Urtula's death pursuant to both theories of involuntary manslaughter: wanton and reckless "consistent and repeated psychological abuse [over the time of their relationship in 2018 and 2019, which] overwhelmed Urtula's will to live," proximately causing him to commit suicide; and her alleged failure to take reasonable steps on the morning of May 20, 2019, to alleviate the risk of his death when she had a duty to act. Commonwealth's Statement of the Case (Paper 11), at page 3.

The defendant has moved to dismiss the manslaughter indictment based on Commonwealth v. McCarthy, 385 Mass. 160 (1982), Commonwealth v. Carter, 474 Mass. 624 (2016)(Carter I), and Commonwealth v. Carter, 481 Mass. 352 (2019)(Carter II), arguing that the

evidence presented to the grand jury did not demonstrate probable cause to believe You caused Urtula's suicide within the parameters of the Carter cases, under either of the Commonwealth's theories. You also claims a prosecution pursuant to the allegations in this case, based exclusively on the verbal conduct of an alleged pattern of abusive speech, would violate the First Amendment of the United States Constitution and Article 16 of the Massachusetts Declaration of Rights, by criminalizing speech.

Following hearing October 15, 2020, and careful review of all briefing and supportive materials submitted to the court,<sup>1</sup> the Motion is **ALLOWED** as to the Commonwealth's theory of manslaughter by omission, and **DENIED** as to the Commonwealth's theory of manslaughter by commission.

#### Elements of the Charge

The parties agree in general terms on the elements of involuntary manslaughter, as well as on the body of Massachusetts case law that addresses causation in the context of suicide.

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 Amer., Inc., 456 Mass. 826, 832 (2010)(addressing corporate criminal liability for a series of negligent acts by nursing home employees), and cases cited. It can be proved under two theories, either (1) wanton or reckless conduct or (2) wanton or reckless failure to act. Life Care Ctrs., 456 Mass. at 832, citing Commonwealth v. Levesque, 436 Mass. 443, 451 (2002). That is, the wanton or reckless "act" may be "by way either of commission or of omission where there is a duty to act, which conduct involves a high degree of likelihood that substantial harm will result to another."

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<sup>1</sup> The court acknowledges and has reviewed in connection with its deliberations in this matter the pleadings of the American Civil Liberties Union of Massachusetts on the subjects of impoundment and freedom of speech. Paper 34.

Commonwealth v. Welansky, 316 Mass. 383, 399 (1944)(fire at nightclub with faulty wiring and lacking fire doors).

With respect to the omission theory, where an individual's "actions create a life-threatening risk to another, there is a duty to take reasonable steps to alleviate the risk. The reckless failure to fulfil this duty can result in a charge of involuntary manslaughter." Levesque, 436 Mass. at 450.<sup>2</sup> Further, with respect to the intent element of manslaughter, "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. . . . [W]hen we refer to the intent required to support a conviction of involuntary manslaughter, we refer to the intent to perform the act that causes death and not the intent that a death occur." Life Care Centers, 456 Mass. at 832; Levesque, 436 Mass. at 452; Welansky, 316 Mass. at 398 (focus is on the conduct that caused the result, not the resulting harm). Thus the Commonwealth bore the burden of presenting to the grand jury evidence sufficient to support probable cause that You's conduct was: intentional; wanton or reckless; and caused Urtula's death.

As fully addressed in Carter I and Carter II, and by the parties' thorough briefing here, there is a finite body of case law in Massachusetts on the charge of manslaughter where the death of the victim is self-inflicted. See Commonwealth v. Atencio, 345 Mass. 627, 629 (1963)(game of "Russian roulette"; although victim pulled the trigger on himself, other players could be held for their "helping to bring about the deceased's foolish act"); Persampieri v. Commonwealth, 343 Mass. 19, 22-23 (1961)(husband loaded gun for wife who was announcing she was going to commit suicide, and then gave her advice on how to reach the trigger); Commonwealth v.

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<sup>2</sup> Whether conduct is wanton or reckless "is determined based either on the defendant's specific knowledge or on what a reasonable person should have known in the circumstances." Commonwealth v. Pugh, 462 Mass. 482, 496-497 (2012), citing Welansky, 316 Mass. at 398-399; Levesque, 436 Mass. at 451-452.

Bowen, 13 Mass. 356, 356 (1816)(defendant in adjoining jail cell “repeatedly and frequently advised and urged” a convicted murderer to hang himself prior to being executed; jury instruction that “procuring a suicide by ‘advice or otherwise’ may constitute homicide”).

The obvious concern in any prosecution for manslaughter involving a suicide is the causation element. Defendant Carter argued in Carter I, on her appeal of the denial of her motion to dismiss (i.e., at the time her case was in the same posture as You’s case is here), that because she was not physically present when that victim killed himself, and (unlike, for example, in Persampieri) she did not provide the instrument he used, she did not “cause” his death. Carter I, 474 Mass. at 632. The Court disagreed with this interpretation of causation, stating: “We have never required in the return of an indictment for involuntary manslaughter that a defendant commit a physical act in perpetrating a victim’s death.” Id., at 633 and n.14. It then discussed the facts of the suicide cases cited above, concluding, “[t]hese cases elucidate that, because wanton or reckless conduct requires a consideration of the likelihood of a result occurring, the inquiry is by its nature entirely fact-specific. The circumstances of the situation dictate whether the conduct is or is not wanton or reckless. We need not – and indeed cannot – define where on the spectrum between speech and physical acts involuntary manslaughter must fall. Instead, the inquiry must be made on a case-by-case basis.” Id., at 634.

Carter also argued that “her words (spoken when she was miles away from the victim) could not be the cause of the victim’s death. Instead it was his [own] decision” that caused his suicide. Id. at 635. However, the Court found on the facts presented to the grand jury in that case “evidence that the defendant’s actions overbore the victim’s willpower,” thus providing probable cause to believe that the victim’s last steps in taking his life were not “an independent

or intervening act' that, at as a matter of law, would preclude his action from being imputable to her." *Id.*, citing *Atencio*, 345 Mass. at 629-630.

### Speech Issues

The SJC also analyzed in *Carter I* the argument that the manslaughter statute was unconstitutionally vague as applied to Carter's situation, and determined it was not. 474 Mass. at 631-632, note 11. It further ruled that the speech at issue there was not protected, because the Commonwealth had a compelling interest in the speech under the circumstances alleged. *Id.*, at 636, note 17.

### What the Grand Jury Heard Here

The grand jury heard testimony from a series of witnesses and received a significant volume of documentary evidence in this case. The following is a brief summation for purposes of the Motion.

Urtula and You both attended Boston College. They began dating in the fall of 2018. Friends testified it was a volatile relationship, characterized by You's constant demands for attention from Urtula, fits of rage against him, and threats by You of self-harm including suicide. Friends were also witness to extreme verbal abuse of Urtula by You, including her efforts to separate him from spending time with anyone but her.

The two broke up at the end of December, 2018, following several violent events involving parking garages. The first event occurred in connection with a student sponsored dance, when You ran into the same Renaissance Garage Urtula chose for his suicide, kicked a light pole and hurt her foot. The second two events occurred at a different parking garage on the Boston College campus. On December 12, 2018 during an argument with Urtula, You

threatened to commit suicide by jumping off that garage. She was stopped by Urtula's pulling her back off the ledge, and the Boston College police were called.

Urtula returned to New York City to live with his brother at the end of the Fall, 2018 semester because he had completed his coursework. You remained in the Boston area. Thus began an intensive interaction between Urtula and You by text message on an almost constant basis. Between March 2019, when the two "got back together," to the day of Urtula's death on May 20, 2019, they exchanged approximately 75,000 text messages. The content of these texts reveals a continual stream of insults and verbal abuse by You to Urtula, regularly laced with vulgar epithets and violent imagery. As described in the defendant's brief, "the messages belittled and demeaned Mr. Urtula in lurid fashion." Memorandum in Support of Motion (Paper 31), at page 5. Moreover, the messages continually demonstrate Ms. You's "insiste[nce] that she monopolize Mr. Urtula's time and attention and sought to isolate and control him." Id.

The consistent overall theme of the texts is berating every aspect of Urtula's intelligence, appearance, behavior, and worthiness to be her boyfriend. You repeatedly told Urtula he was stupid or "an idiot," ugly and fat, and "worthless." Urtula, in stark contrast, repeatedly told You how much her words hurt him, how inadequate she made him feel, and how hard he was working to try to please her. He began to refer to himself as her "slave," stating "You own me; All of me; You have complete control of me emotionally and physically; And you dictate my happiness." Memorandum in Opposition to Motion (Paper 39), at page 9; Statement of the Case (Paper 11), at page 4 (text message of 4/1/2019). You reinforced this theme, by accusing him of not being a good enough slave. Id. This dynamic appeared only to intensify over the last two months of Urtula's life. Three sub-themes stand out in the text messages.

First, You continually asserted emotional dominance over Urtula and increased her efforts to isolate him. She demanded Urtula no longer speak to or see his friends, to which he apparently agreed. This theme carried over to the morning of his death, when after Urtula spent the night with You and then left, supposedly to meet his family for the planned graduation, she immediately began texting him to know where he went, who he ran into or talked to, “whose room did u go to?” Paper 39, at page 8, note 11.

Second, You would frequently threaten to kill herself, in the context of persuading Urtula to respond to her immediately, in whatever way and on whatever topic she chose. She threatened to cast the blame on him by suicide note, if she did kill herself. Particularly in late May, 2019, this refrain was tied to the graduation ceremony, and You’s expressed rage that Urtula would inevitably see and enjoy his friends there, which would “disrespect me.” Paper 39, at pages 9-10, and note 12.

And third was the constant theme of Urtula’s killing himself. You regularly berated Urtula about some perceived flaw she saw in him or his performance as her boyfriend, constantly calling him “worthless,” paired with the refrain, “go fucking kill yourself.” You also tied Urtula’s perceived misbehavior to her own unhappiness, leading Urtula to the conclusion that his death would make her happy.<sup>3</sup> By the Commonwealth’s count, You “told the victim to kill himself no less than twenty-seven times” between March 29, 2019 and May 20, 2019, including two days before his suicide. Paper 39, at pages 6-7. Five days before Urtula died, You texted him an image of an actor who had committed suicide along with an article describing how he had jumped off a building. Id., at page 7, note 9.

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<sup>3</sup> “Inyoung please I’ll give you whatever you want . . . I’ll leave this fucking earth just please don’t do anything don’t hurt yourself anymore . . . so please I’ll get out of your life I’ll go die like you want. . . I’ll erase myself from this world. . . Please . . . I’ll go die for you . . . whatever will I make you happy.” Statement of the Case, Paper 11, at page 7 (text message of 4/11/19).



Urtula explained to You that “I asked you to stop so many times . . . I’m breaking down and I’m scared . . . I’m having the worst anxiety attack of my life . . . all the voices are so fucking loud and they all have your voice . . . the person I love the most in the world . . . they’re all telling me to die . . . and so did you. . . . I want you and the voices to stop . . . to stop telling me how worthless and pathetic I am. And how much I deserve to die. . . . You know what those voices say and how overwhelmed I get.” Id., at page 7; Paper 11 at page 8; (text message of 3/31/2019).

On May 19, 2019, the day prior to Urtula’s death, You and Urtula exchanged 1000 texts. The Grand Jury had access to all of the text messages. Grand Jury Exhibit 13.

Urtula lied to his family on the night of May 19, 2019, so that he could stay with You at her dormitory. His family was waiting for him at the Boston College stadium when he left You’s dorm room at approximately 7:05 a.m. on May 20, 2019, got into an Uber, and instead of going to the stadium went in the opposite direction to the Renaissance Garage. Urtula had apparently disabled the location service on his cellphone, which You immediately began to berate him about by text.

At 7:39 a.m., in response to her accusations that he was seeing or talking to other friends, Urtula texted: “I’m not talking to anyone. I won’t ever again. I’m happy I got to spend my last night with you. I love you inyoung until my last breath.” In an ongoing exchange Urtula next responded, at 7:43 a.m.: “I’m not going to be anywhere inyoung this is goodbye forever. I love you. This isn’t your fault it’s mine.” And, moments later: “I’m far away on a tall place and I’m not gonna be here for long. I’m leaving everyone.” Paper 39 at pages 11-12. The Commonwealth’s position is that it was at the moment of this text message exchange that You understood what Urtula was planning to do.

You began at this point to tell Urtula to "STOP." To be precise, she texted: "ALEX WHAT ARE YOU FUCKING DOING, IF U FUCKING LOVE ME STOP IF YOU EVER FUCKING loveD ME stop." She received three more messages from Urtula in the following exchange: Urtula: "I did love you just not well enough"; You: "UR GONNA FUCKING LEAVE ME TO NOTHING"; Urtula: "Good bye"; You: "STOP"; Urtula: "You'll have everything once I'm gone." You sent Urtula 115 more text messages in the next 49 minutes, all of which remained unread. Paper 39 at page 12. By the defense's count You used the word "stop" 14 times in these texts, and the word "don't" 10 times, all between 7:43 a.m. and 8:33 a.m. Paper 31 at page 7.

Because Urtula had turned his location service back on in response to her texts, You knew where he was. She called Urtula's brother, and gave him the location by texting a photo of it. The brother told You to call 911, but she did not. At 8:04 a.m. she got into an Uber herself, and arrived at the Renaissance Parking Garage at approximately 8:30 a.m. She passed a Northeastern University police officer, someone at the Ruggles MBTA busway, and a third individual, but reportedly stated only that she was looking for a guy, and asked how to get into the parking garage. One of these witnesses described her as appearing "frantic." You took the elevator to the roof of the garage; Urtula looked at her and jumped. Paper 39, at pages 13-14.

In addition to law enforcement witnesses, relatives and friends of Urtula, and the other civilians, the grand jury heard from a physician expert in "suicidology and psychological autopsies." Based on his review of materials in the case including the text messages, the physician offered the opinion that, but for the emotional abuse of Urtula by You (characterized by this witness as "incessant, sadistic, humiliating [and] abusive"), Urtula would not have committed suicide. Grand Jury Exhibit 40. The physician based his opinion in part on his

view that Urtula had virtually no risk factors for suicide other than being a young male, and that there had been a marked change in Urtula's mental state (friends said his entire personality changed) once he started to date You. The grand jury heard that Urtula was never suicidal before he started dating You. In the physician's opinion, You's "constant sadistic attacks wore Alexander Urtula down and deprived him of his free will . . . By the end he felt worthless and compelled to suicide. . . . By May 20<sup>th</sup>, his will to live had been totally destroyed by the abusive conduct of Inyoung You." Grand Jury Exhibit 40.

### **Discussion and Rulings**

#### **Manslaughter by Omission**

At oral argument on the Motion the Commonwealth explicitly took the position that, based on the defendant's long-term abuse of the victim, as of May 20, 2019, "she can't undo what she has started." See also, Opposition (Paper 39) at pages 24 and 25: "[G]iven the extreme circumstances of this case as the defendant had already set that end [the suicide] firmly in motion by her repeated and destructive urgings," his suicide was inevitable. That is, by May 20, 2019, it was "too late." But, if Urtula's suicide that day was inevitable, it is difficult to understand the Commonwealth's omission theory against You.

The Commonwealth is arguing that the actions You took between receiving Urtula's last text messages at 7:44 a.m. and arriving on the roof at approximately 8:30 a.m. were insufficient. Because, although You: repeatedly attempted to reach Urtula by text (their customary means of communication); repeatedly implored him to "STOP," and not persist with his plan; alerted his brother; and rushed to the location herself; she failed to call "911," or seek the help of any of the three people she encountered outside the parking garage, on her way up to the roof where Urtula was poised to jump. That is, the Commonwealth alleges You criminally failed in the duty she

owed Urtula because she did not “summon help.” Whether one employs a subjective or an objective standard to You’s perception of the risk of an active and imminent suicide plan in those forty-five minutes, I am not persuaded the Commonwealth presented probable cause to the grand jury that You “intentionally failed to act” with disregard to the probable harm to Urtula. Levesque, 436 Mass. at 452-453; Welansky, 316 Mass. at 398-399.

To rule otherwise would be to say that You should have acted better or differently than she did act in the minutes after she realized where Urtula was, and the meaning of his messages to her. The omission theory argues that, in the hindsight judgment of the prosecution, You should have summoned help instead of doing what she did, or in addition to doing what she did to attempt to prevent Urtula’s death. As best I can tell, however, that is not the law, here or elsewhere. Levesque, 436 Mass. at 450-451; Welansky, 316 Mass. at 399; Commonwealth v. Earle, 458 Mass. 341, 349-350 (2010)(mere mistake of judgment or gross negligence does not satisfy the manslaughter standard); State v. Sheeler, 496 Mass. 443, 451 (2002)(decision made about where to take a person suffering from a drug emergency not a basis for criminal liability, “however much hindsight might call that determination a mistake of judgment”).

The defense also correctly notes that the grand jury heard no evidence whatsoever to support the causation element on an omission theory. I am aware of no evidence on this record from which the grand jury could have drawn a reasonable inference that, had You sought intervention by others in those final moments instead of rushing to the garage roof herself, Urtula would not have jumped, and instead would have been saved. Defendant’s Reply (Paper 41), at page 5. Pugh, 462 Mass. at 500-501 (speculation that a baby might have survived childbirth if the defendant mother had summoned medical help for her delivery does not satisfy the Commonwealth’s burden as to causation by omission).

For these reasons the Motion is ALLOWED with respect to the Commonwealth's theory of manslaughter by omission.

Manslaughter by Commission

The defense ably reviews the two Carter decisions in detail. It then argues that "as the Carter court held, where the claim is that the death was a suicide brought about by speech of the defendant, the indispensable element is proof that the speech was itself inherently coercive and led directly to the inability of the victim to exercise free will," and states: "Nothing of the kind happened here." Paper 31 at pages 14-15. The problems with this argument are two-fold. First, Carter may be read differently. And second, the "circumstances of the situation" here, Carter I, 474 Mass. at 634, may also be read rather differently, in a manner that supports the Commonwealth's theory of the case.

By a variety of articulations, the defense argues that the Carter cases establish a "limiting principle," and that to allow for probable cause here would "so stretch the framework of Carter as to break it," by allowing for criminality in any toxic relationship if one of the parties commits suicide. That is, the defense argues: "Under the logic of the Commonwealth's prosecution here and the Commonwealth's general mandate to investigate deaths to determine criminal culpability, each time a person in Massachusetts commits suicide, a prosecutor could investigate that person's relationship with no standard by which to determine which conduct within the relationship was so emotionally abusive, so unkind, so unpleasant or so hurtful that it violated the law." Paper 31 at page 20.

At its core and most compelling point, the defense argument is that temporal limits are critical, because, "[i]f causation could be shown by weeks or months of a problematic relationships (sic), troubling thoughts and/or disturbing events, then a court would be put to the

impossible challenge of sorting out what thoughts were those that led to the death, an impossible task.” Paper 31 at page 15.<sup>4</sup> And further, in oral argument: “The first limiting principle is that as a legal matter under Carter the coercive directive must be proximate in a time where the victim is actively engaged in self-harm.”

I agree with the defense that some degree of temporal proximity is necessary to the causation element of voluntary manslaughter. However, I am not persuaded that “the crime of manslaughter is committed in connection with a suicide only if the defendant acts or fails to act at a moment where the decedent has either not begun or has broken the chain of suicidal causation by stopping and the defendant acts to overcome his will or fails to act after he returns to it.” Defendant’s Reply, Paper 41, at page 4.

Building on her premise for purposes of temporal causation, You goes on to argue that Urtula’s death by suicide is factually distinct from the death of the Carter victim in several significant ways. I agree this case is distinct in certain of its factual circumstances, as is true for each of the other reported suicide cases acknowledged above, but that is the very nature of this area of the law. Carter I, 474 Mass. at 634 (“the inquiry is by its nature entirely fact-specific”). What matters is whether the distinct facts presented here nonetheless permit a determination of probable cause.

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<sup>4</sup> You also cites cases addressing the foreseeability of suicide in the context of civil liability. Nguyen v. MIT, 479 Mass. 436, 455-457 (2018) (“limited circumstances creating a [civil tort] duty” of university non-clinicians to student; “knowledge of mere suicidal ideation, without any stated plans or intentions to act on such thoughts,” insufficient); Scholz v. Delp, 473 Mass. 242, 251 (2015) (defamation case; ascertaining reasons for suicide requires speculation; view may be expressed as to the cause; “rarely will it be the case that even those who were close to the individual will know what he or she was thinking and feeling when that final decision was made. While we can imagine rare circumstances in which the motivations for a suicide would be manifestly clear and unambiguous, this is not such a case.”). I have reviewed that authority, but find it is not helpful to this discussion of the parameters of criminal responsibility for suicide. To the extent the defense is arguing that grand jurors, as non-clinicians, cannot determine causation for purposes of probable cause to indict, I am not persuaded. Grand jurors routinely make similar judgments in other ambiguous death cases without expert testimony. I am not aware of Massachusetts authority requiring expert evidence at the grand jury stage.

You first argues there was “never any explicit directive from Ms. You [that Urtula kill himself] at the material time.” Second, she argues that with Urtula, unlike with the victim in Carter, “there never was an actual suicide attempt or even a plan to do so . . . until the very end.” And third, when “Ms. You suddenly found out what Mr. Urtula was intending to do, *she immediately and incessantly begged him to stop.*” Paper 31, at page 15 (emphasis in original). At bottom, the factual argument is that You, unlike Carter, did not tell her boyfriend to “get back in” at the last moment when she knew him to be wavering in his suicide plan. Carter II, 481 Mass. at 359; Paper 31, at pages 13 and 15.

The Commonwealth agrees that factual distinctions exist, but argues several of those distinctions only serve to strengthen probable cause in this case. For example, the victim in Carter was already suicidal before Carter entered his life. Here the grand jury heard evidence that Urtula was never the least bit suicidal before his relationship with You. The jurors also heard that all of Urtula’s reported suicidal ideation began in March, 2019, and was directly linked to: You’s relentless criticism and belittling of his capacity in their relationship; her explicit suggestions that his behaviors would cause her to harm herself (and thus, led to Urtula’s extreme anxiety, and his inference that You would be happier without him in the world); and her weekly if not daily declarations during this period that he kill himself.

Second, there was no evidence in Carter that the defendant was emotionally abusive to the victim outside their conversations about his potential suicide. Here, in contrast, the record before the grand jury was replete with evidence of constant and unrelenting emotional abuse by text message. And third, You repeatedly up until the day before his death told Urtula that he should die for the way he treated her. The Commonwealth characterizes this collective behavior

as being beyond “merely encourag[ing] the victim to commit suicide,” such that an immediately “final directive” of the sort that occurred in Carter “was not necessary.” Paper 39, at page 24.

As noted above, the Commonwealth also reads Carter differently as a matter of law. It argues Carter is not itself a case of limitation, nor is it an invitation to limit at the probable cause stage the factual circumstances supporting a manslaughter charge in a case involving suicide. The Commonwealth points out that in Carter I SJC quite explicitly stated it “need not – and indeed cannot – define where on the spectrum between speech and physical acts involuntary manslaughter must fall,” because that assessment must be made on a case-by-case basis. 474 Mass. at 634; Paper 39, at page 21.

With respect to You’s emphasis on the proximity in time to a victim’s suicidal act of any “final directive” by a defendant, the Commonwealth maintains that strict temporal proximity is not the test – rather, the focus should be on overbearing a victim’s will to live, and how, when, and to what extent that is accomplished by a defendant. Here it argues simply that You’s “unremitting campaign of abuse and urging of the victim to commit suicide” for two months before he did so, (otherwise characterized as “a prolonged, systemic, coercive campaign to isolate him from any support system, strip him of his free will, berate or humiliate him, tie his happiness to her demands, and repeatedly state[ing] that he should either kill himself or die”), meets the SJC’s view that “verbal conduct in appropriate circumstances could ‘overcome a person’s will to live, and therefore . . . be the cause of a suicide.’” Carter II, 481 Mass. at 359, quoting Carter I, 474 Mass. at 633; Paper 39, at pages 22, 24-25.<sup>5</sup>

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<sup>5</sup> The Commonwealth goes so far as to argue that You’s “repeatedly [telling] the victim that he deserved to die and that he should kill himself because of the way he treated her,” presents more “extreme circumstances” than Carter’s “merely encourage[ing] the victim to commit suicide.” Paper 39, at page 24. I need not and do not adopt that view for purposes of this Ruling.



The Commonwealth has the better of the argument for probable cause purposes on manslaughter by commission, as a matter of both law and fact. As in any criminal prosecution, the Commonwealth's burden for indictment is distinct from, and significantly lower than, that for conviction. Commonwealth v. Carrillo, 483 Mass. 269, 278 (2019)(heroin overdose; insufficient evidence at trial for conviction of dealer); Commonwealth v. Moran, 453 Mass. 880, 885-886 (2009)(standards for evidence to support an indictment and evidence to convict must not be conflated). All facts must be considered in the light most favorable to the Commonwealth, and the elements of the crime may be inferred from the facts and circumstances. The grand jury was entitled to draw reasonable inferences from all of the facts presented. These standards do not change simply because tragic suicide or verbal conduct are involved.

The grand jury heard more than sufficient evidence that You's relentless and longstanding verbal conduct was wanton and reckless; it heard sufficient evidence that Urtula was a person particularly vulnerable to You under the circumstances, and that You knew him to be so. The grand jury could also have drawn the reasonable inference from all the evidence before it, including from Urtula's own words in his text messages to You throughout March, April, and May, 2019, that his will to live became overpowered, and that it was You who intentionally accomplished that overpowering.<sup>6</sup> Nothing in the Carter decisions persuades me that Urtula's own act(s) on the morning of May 20 -- leaving You's room where they had spent the night together, and traveling directly to the garage roof from which he jumped -- were so

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<sup>6</sup> I agree a full assessment of the text messages may well seek to probe the meaning of the repeated and seemingly reckless references to killing, death, and suicide (which the defense characterizes merely as "taunts" by You), Paper 31, at page 16, as compared to clinical suicidal ideation and active suicide planning, which the defense characterizes as requiring "more than ideas." Id.; Paper 41, at page 2 and note 1. However, under all of the circumstances presented here, any such assessment would be the stuff of pre-trial and trial work, and does not defeat probable cause.

independent or intervening as to break this causal chain, and “preclude his action from being imputable” to You for purposes of probable cause. Carter I, 474 Mass. at 635.

### Speech Issues

You has made, both by oral argument and written pleadings, the same two speech arguments Carter made, to the effect that “a manslaughter charge . . . based upon accumulated verbal abuse” would violate free speech, and be unconstitutionally vague and overbroad. You has urged that the Carter decisions require we “calibrate the competing concerns of an involuntary manslaughter prosecution in the context of a suicide with the free speech considerations involved where there were no acts other than verbal or written acts,” and that in the free speech context it is particularly problematic to “leave it to the grand jury to know it when they see it.”

As the defense duly notes, however, the SJC rejected in Carter II Carter’s argument about criminalizing pure speech, stating “the only speech made punishable in Carter I was ‘speech integral to [a course of] criminal conduct,’” and “[t]he only verbal conduct punished as involuntary manslaughter has been the wanton or reckless pressuring of a vulnerable person to commit suicide, overpowering that person’s will to live and resulting in that person’s death,” based on a “systemic campaign of coercion.” Carter II, 481 Mass. at 367-368, citing Carter I, 474 Mass. at 636. As discussed above, that is exactly what the Commonwealth is alleging You did here. For purposes of the Motion before me there can be no question that the content of You’s speech was integral to the commission of the crime alleged.

You nonetheless argues that application of this law to the Commonwealth’s theory of this case insufficiently “cabins” the Carter holdings for free speech purposes. Paper 41, at pages 3-4. I respectfully disagree. Finally, as to the “notice” argument, that is, that citizens have not

properly been warned that repeated verbal encouragement to a vulnerable person that he take his own life exposes one to criminal prosecution, Carter II clearly holds that the Bowen decision provided such notice in 1816. 481 Mass. at 365.

Accordingly, the Motion is **DENIED** with respect to the Commonwealth's theory of probable cause for manslaughter by commission.

Conclusion

For all of these reasons, the Motion to Dismiss (Paper 30) is respectfully **ALLOWED** as to the theory of manslaughter by omission, and **DENIED** as to the theory of manslaughter by commission.

**SO ORDERED.**

Dated: January 13, 2021

A handwritten signature in black ink, appearing to read 'C. Roach', is written over a horizontal line.

Christine M. Roach

## **EXHIBIT C**

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUFFOLK SUPERIOR CRT  
NO. 1984CR000617

COMMONWEALTH

v.

INYOUNG YOU

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**COMMONWEALTH'S MOTION TO RECONSIDER**

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Now comes the Commonwealth in the above-captioned case and respectfully requests that this Honorable Court reconsider its January 13, 2020 ordering partially allowing the defendant's motion to dismiss. The Court ruled that the Commonwealth failed to present sufficient evidence before the grand jury that the defendant was guilty of manslaughter under an omission theory. Respectfully, the Court's parsing of the theories of manslaughter was legal error.

There has never been a requirement that “there be an exact match between the evidence presented at trial and that presented to the grand jury.” *Commonwealth v. Riley*, 73 Mass. App. Ct. 721, 730 (2009) (quoting *Commonwealth v. Clayton (No. 1)*, 63 Mass. App. Ct. 608, 612 (2005)). Indeed, “the Commonwealth need not present to the grand jury evidence of each theory under which the defendant may be found guilty at trial of the crime for which he is indicted.” *Clayton*, 63 Mass. App. Ct. at 612. Instead, so long as the Commonwealth presented sufficient evidence to the grand jury that the defendant is guilty of the crime charged under *any* theory, a motion to dismiss should be

denied, and the Commonwealth is free to proceed to trial where it can prove the indicted crime under any of its theories. *Riley*, 73 Mass. App. Ct. at 730. Put more simply, here, where the evidence presented to the grand jury established probable cause to believe that the defendant committed manslaughter by commission, the Commonwealth respectfully contends that the Court was not free to dismiss the indictment on the theory of omission. *See id.*

That is not to say that the grand jury did not hear sufficient evidence of manslaughter by omission. The Commonwealth asks the Court to revisit this ruling as well. As explained by the Supreme Judicial Court in *Commonwealth v. Levesque*, 436 Mass. 443, 444 (2002):

When testing the sufficiency of the evidence to sustain a grand jury indictment, we need not determine that the evidence would allow a reasonable person to find the conduct wanton or reckless beyond a reasonable doubt . . . we need only find the evidence sufficient for a grand jury to find probable cause that the crime charged has been committed by these defendants.

When considering an omission for purposes of manslaughter in the grand jury calculus the question is whether the omission was intentional and reckless. *Id.* at 452-453 (“[T]he grand jury needed to determine only that the defendants’ choice not to report the fire was intentional, not that the fire was intentionally set.”); *id.* at 453 (“The Commonwealth has presented sufficient evidence to allow a grand jury to conclude that the defendants’ choice not to report the fire was intentional and reckless.”).

Here, as articulated in the Commonwealth’s Memorandum in Opposition to the Defendant’s Motion to Dismiss, there was ample evidence that the

defendant's decision not to call authorities upon hearing the victim was located at the parking garage and imminently intending to take his own life was both intentional and reckless. Further, the defendant then walked past several people - including a police officer - when she arrived at the garage and chose to say nothing to any of them about her boyfriend who was threatening to take his own life inside the very garage she was entering. The Commonwealth contends, and the grand jury concurred that the defendant caused the victim to become suicidal; learned that the victim was going to commit suicide fifty-two minutes before the victim killed himself, knew his precise location and its significance, and never sought help for him despite the victim's brother specifically asking her to call 911; walked past a police officer when she got to the parking garage and said nothing - never told that member of law enforcement of the danger posed to the victim - and interacted with two other individuals on the ground floor of the parking garage - again without alerting them to the potential harm or requesting help - before she attempted to reach the roof. The defendant's actions after the victim's death also fully support that she not only was aware of the risk but that she completely appreciated her role in the victim's death and sought to conceal and minimize any appearance of her involvement. All of these factors support probable cause to believe that the defendant is guilty of manslaughter under a theory of omission as well. *See Levesque*, 436 Mass. at 453 (evidence established probable cause for manslaughter under an omission theory where defendants had motive to set fire, attempted and failed to put out the fire, were forced to abandon

rescue of their pets inside, possessed cell phone and walked past several stores and failed to call for help).

### **CONCLUSION**

For the foregoing reasons, the Commonwealth respectfully requests that this Honorable Court reconsider its decision allowing the defendant's motion to dismiss the omission theory of manslaughter, permitting the Commonwealth to move forward under both theories at trial

Respectfully submitted  
FOR THE COMMONWEALTH,

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January 25, 2021



**CERTIFICATE OF SERVICE**

I hereby certify, under the pains and penalties of perjury, that I have today made service defense counsel by sending a copy of this notice via first class mail and emailing ([steven@stevenkimlaw.com](mailto:steven@stevenkimlaw.com), [hcooper@toddweld.com](mailto:hcooper@toddweld.com), [mdstern@toddweld.com](mailto:mdstern@toddweld.com), sbasaria@toddweld.com) defendant's counsel:

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January 25, 2021

## **EXHIBIT D**

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUFFOLK SUPERIOR COURT  
DOCKET NO. 1984CR000617

COMMONWEALTH

v.

INYOUNG YOU

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**DEFENDANT'S RENEWED MOTION TO DISMISS  
THE INDICTMENT IN ITS ENTIRETY MEMORANDUM**

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The defendant moves that the court dismiss the above indictment in its entirety. In support, defendant says that the indictment is invalid because it is duplicitous and also because it violates the defendant's right to an indictment guaranteed by Article 12 of the Massachusetts Declaration of Rights, all as set forth in the accompanying memorandum.

Respectfully Submitted,  
INYOUNG YOU,  
By her attorneys,

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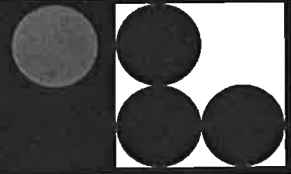
Dated: February \_\_, 2021

## **EXHIBIT E**

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## CERTIFICATE

I, on behalf of the Audio Transcription Center, do hereby certify that the following 76 pages embody a true and accurate transcript. Prepared by the Audio Transcription Center to the best of our abilities, it comprises the contents of 1 audio file provided to us by our client, Todd & Weld LLP. The audio contained a hearing concerning Commonwealth v Inyoung You, Docket Number 1984CR00617, Motions Hearing and Status Conference that took place on October 15, 2020.

11/6/2020

Date

*Sandy Poritzky*

Sandy Poritzky, Owner  
Audio Transcription Center

1 Commonwealth's theory that it is, then it is not  
2 protected by the First Amendment, uh (inaudible).

3 J: Okay. So you're saying -- excuse me, sorry to interrupt  
4 again but I need to slow you down. Are you saying that,  
5 uh, the Commonwealth's position is the entirety of the  
6 facts -- facts, relationship, the -- the entirety of the,  
7 uh, uh, the text relationship I should say, from  
8 beginning to end is, uh, not protected?

9 CAMPBELL: Correct.

10 J: All right. Thank you. Uh, so that's your response to  
11 the defendant's --

12 CAMPBELL: (inaudible).

13 J: Uh, speech arguments on both fronts.

14 CAMPBELL: Correct, correct, it is. And -- and, you know, I --  
15 I explain it much better in my written submission. I w--  
16 I won't repeat that here before Your Honor. Uh, but that  
17 is the Commonwealth's response (inaudible).

18 J: No, I just want to be sure that we all understood for the  
19 record that you're saying, uh, every bit of it, uh, is  
20 unprotected speech because it -- I h-- because the Court  
21 has to look at every bit of it as part of the causation  
22 analysis?

1 CAMPBELL: Correct. Correct. And it's integral to the way  
2 that the crime is charged, right? Uh, it's integral to  
3 the Commonwealth's theory that this is, uh, how the  
4 defendant engaged in the criminality in this case. Uh.

5 J: Well, I understand it's integral to the Commonwealth's  
6 theory, Ms. Campbell, that doesn't mean it's legitimate  
7 necessarily as a matter of law. And so that's what I'm  
8 trying to probe a little bit here. Why it is that the  
9 Commonwealth is saying that every text message for a  
10 period of years, uh, is unprotected speech.

11 CAMPBELL: I -- I disagree it's a period of years. Uh, in this  
12 instance what we have and what was presented to the grand  
13 jury, uh, was, uh, text messages over a period of 52  
14 days. Uh, so I -- I disagree that it is so extensive  
15 that it would count a number of years. Uh, but, uh, I  
16 would point to *Carter II* and I'll quote. It has never  
17 been deemed an abridgment of freedom of speech to make a  
18 course of conduct illegal merely because the conduct was  
19 in part initiated, evidenced, or carried out by means of  
20 language either spoken, written, or printed.

21 J: This wasn't in part. As I understand it this was in its  
22 entirety, right?



1 CAMPBELL: It was in its entirety. I would say that the abuse  
2 itself, uh, was physical. Uh, and I would say that to  
3 the extent the Commonwealth relies on an omission theory  
4 of manslaughter, it would be based on the physical act,  
5 uh, inaction of the defendant.

6 J: So could we move to the omission? Or is there more you  
7 want to tell me about commission?

8 CAMPBELL: We can move to the omission, Your Honor. Uh, moving  
9 to the omission, uh, I -- I think it's critical to -- to  
10 look, uh, at the defendant's failure to act. And the  
11 failure to act here is the failure to summon help. Uh,  
12 what can't be ignored in this case is that the only  
13 person in this instance who knew the d-- that the victim  
14 was suicidal was the defendant herself. And you have to  
15 look at what she did upon hearing, uh, from the victim  
16 himself that he was standing on top of a building, uh,  
17 and when she found his location, a location which was  
18 significant to their relationship, uh, what she failed to  
19 do. Uh, though she called the d-- the victim's brother,  
20 uh, the victim's brother did not have the knowledge that  
21 he was suicidal and was not familiar with the area  
22 because he was not from the Boston area. Uh, but not