



Digital communications, bullying and suicide

Question: You wrote a column last year about a Massachusetts criminal case involving a high school student who was convicted of involuntary manslaughter by a youthful offender based on texting and phone call activity in which she encouraged another teenager to commit suicide. You had mentioned in the article that the case was going to be appealed. I am a school counselor and try to track issues related to teen suicide and bullying. Do you have any new information about the result of this case?

Answer: Yes. The Massachusetts Supreme Judicial Court published its decision upholding the conviction Feb. 6.

It may be useful to briefly review the history of this case before drawing conclusions relevant to counselors. On July 13, 2014, Conrad Roy III ended his life by carbon monoxide poisoning in his truck. According to the facts that came out at trial, Michelle Carter had allegedly encouraged Roy, who had a history of depression and mental health treatment, to follow through on his threats to end his life. The majority of their communications occurred via text messages and phone calls. On the night of Roy's death, Carter urged Roy, who had expressed anxiety about carrying out his plan and actually exited his vehicle, to get back in the truck and finish his attempt to die by suicide. (For a more complete explanation, see the actual legal opinion at law.justia.com/cases/massachusetts/

supreme-court/2019/sjc-12502.html and the eighth edition of *The Counselor and the Law: A Guide to Legal and Ethical Practice*, published earlier this year by the American Counseling Association and co-authored by me and Burt Bertram.)

In August 2017, the trial judge sentenced Carter to 15 months of incarceration, but the sentence was stayed (i.e., postponed) pending appeal by the defense. On March 15, 2018, the Massachusetts Supreme Judicial Court, the highest court in the commonwealth, announced that it would hear the case on appeal. In its recent decision, the court held that the evidence proved that Carter's wanton and reckless conduct caused Roy's death by suicide. The court was not swayed by the defense's argument that Carter's conduct was protected by the First Amendment (freedom of speech). Although the defense has stated that it may try to take the case to the Supreme Court of the United States, only 3% to 5% of cases that go to the nation's highest court are actually accepted under what is called a "writ of certiorari." Therefore, it is likely that the Massachusetts Supreme Judicial Court's decision will stand.

As discussed in last year's column on this topic, this case does not raise issues of malpractice or ethics violations committed by counselors or other mental health professionals who may have been involved in the actual care or treatment of either the teenage victim, Roy, or the defendant, Carter. It is important

for counselors to note that many states, unlike Massachusetts, have statutes making it a lesser crime than involuntary manslaughter to encourage or assist another person to die by suicide.

This case underscores the need for counselors, especially school counselors, to work with students, faculty and parents so that all fully understand the implications of digital communications and possible liability for texting or social media postings that may seriously harm a third party. Additionally, the *Commonwealth v. Carter* case serves as a caveat for school counselors who are aware of cyberbullying activity on the part of their clients and choose to do nothing or ignore their schools' anti-bullying policies and procedures. ♦

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