

STATE OF MINNESOTA  
COUNTY OF RICE

DISTRICT COURT  
THIRD JUDICIAL DISTRICT

State of Minnesota,  
Plaintiff,

Court File No. 66-CR-10-1193  
Case Type: Crim/Traf Mandatory

v.

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, ORDER FOR JUDGMENT,  
AND MEMORANDUM**

William Francis Melchert-Dinkel,  
Defendant.

The above-entitled matter came before the undersigned Judge of District Court for a Settlement Conference on February 17, 2011 and a Court Trial on February 24, 2011, at the Rice County Courthouse in Faribault, Minnesota. Defendant appeared at both proceedings personally and with his attorney Terry A. Watkins. Rice County Attorney G. Paul Beaumaster appeared at both proceedings for the State.

Defendant is charged with two counts of advising and encouraging suicide, felonies in violation of Minn. Stat. § 609.215, subd. 1.

On February 3, 2011, Defendant filed a motion waiving his right to a jury trial and requesting the Court's permission for Defendant to enter a *Lothenbach* plea pursuant to Minn. R. Crim. P. 26.01, subds. 3 and 4.<sup>1</sup> At the hearing on February 17, 2011, Defendant decided to proceed with a court trial on stipulated facts pursuant to subdivision 3 of Rule 26.01, in order to preserve his right to challenge a conviction based upon sufficiency of the evidence.<sup>2</sup> The Court

<sup>1</sup> Proceedings under Rule 26.01, subd. 4, are often referred to as a *Lothenbach* plea after the decision in *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980).

<sup>2</sup> There is a distinction between a *Lothenbach* plea and a court trial on stipulated facts pursuant to Rule 26.01, subd. 3. *State v. Riley*, 667 N.W.2d 153, 158 (Minn. Ct. App. 2003) *rev. denied* (Minn. Aug. 12, 2003). A *Lothenbach* plea allows a Defendant to preserve only pretrial issues for appeal, and a Defendant may not later challenge the sufficiency of the State's evidence. *Id.* at 157 (citing *State v. Busse*, 644 N.W.2d 79, 88 (Minn. 2002)). Unlike *Lothenbach*, in a trial on stipulated facts pursuant to Rule 26.01, subd. 3, Defendants do not concede guilt. Defendants may challenge the sufficiency of the State's evidence, and can "raise issues on appeal the same as from any trial to the court". *Id.* at 158 (citing Minn. R. Crim. P. 26.01, subd. 3); see also *State v. Voss*, Nos. A 10-504, A 10-505, Feb. 15, 2011 (Unpublished Decision).

informed Defendant of his trial rights, which Defendant personally waived. The Court received the State's evidence contained in Exhibit 1<sup>3</sup> without objection and by stipulation of Defendant. The Court allowed final oral arguments by each party on February 24, 2011.

Based on the files, records, and proceedings herein, the Court makes the following:

## FINDINGS OF FACT<sup>4</sup>

### I. Procedural History

1. Defendant William Francis Melchert-Dinkel is charged by formal Complaint, dated April 23, 2010, with two counts of advising and encouraging suicide, felonies in violation of Minn. Stat. § 609.215, subd. 1.
2. Count 1 alleges that "On or about July 27, 2005, within the County of Rice, defendant William Francis Melchert-Dinkel did advise, encourage, or assist another in taking the other's own life, to-wit: did advise and encourage Mark Drybrough, of Coventry, UK, using internet correspondence, and Mark Drybrough did take his own life."
3. Count 2 alleges that "On or about March 9-10, 2008, within the County of Rice, Defendant William Francis Melchert-Dinkel did advise and encourage another in taking the other's own life, to-wit: did advise and encourage Nadia Kajouji of Ottawa, Ontario, Canada using internet correspondence and Nadia Kajouji did take her own life.
4. The parties appeared for a Rule 11 Omnibus Hearing on August 27, 2010. Defendant sought the following relief:
  - a. Suppression of his statement to police and the evidence obtained therefrom;
  - b. Dismissal of counts 1 and 2 on the grounds that Minn. Stat. § 609.215, subd. 1, is unconstitutionally vague under the United States and Minnesota Constitutions;

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<sup>3</sup> Exhibit 1 [the stipulated facts exhibit] consists of 958 pages of Bates Stamped documents and ten CD or DVD discs labeled A through J.

<sup>4</sup> Exhibit 1 contains numerous documents, reports, photos and computer files. The documents and files referenced in the Findings of Fact and Memorandum, are the evidence the Court deems most relevant. Other documents or files in Exhibit 1 which are not referenced in the Findings of Fact, while possibly relevant, are deemed non-determinative to the outcome of this case.

- c. Dismissal of counts 1 and 2 because Defendant's conduct constituted speech protected by the United States and Minnesota Constitutions; and
  - d. Dismissal of counts 1 and 2 due to lack of probable cause.
5. By written Omnibus Order dated November 8, 2010, the Court denied Defendant's Rule 11 motions.
6. Also at the Rule 11 Hearing, Defendant's counsel moved for a psychological evaluation of Defendant pursuant to Rule 20.02, which the Court granted.
7. On November 19, 2010, Defendant waived his motion to suppress his statements to police and the evidence obtained therefrom. Defendant pleaded not guilty to both counts and waived his right to a speedy trial under Rule 11.09.
8. Defendant filed a motion with the Court on November 19, 2010, under Rule 17.06, subd. 3, to dismiss counts 1 and 2 for lack of jurisdiction pursuant to Article I, Section 6 of the Minnesota Constitution and Minn. Stat. § 609.025.
9. On December 13, 2010, Defendant moved, pursuant to Rule 28.03, for the Court to certify to the Court of Appeals the Court's denial of Defendant's claim that his speech was protected by the United States and Minnesota Constitutions.
10. By written Order dated December 16, 2010, the Court denied Defendant's motion to dismiss for lack of jurisdiction and his request for certification of the pre-trial issues to the Court of Appeals.
11. On February 3, 2011, Defendant filed a motion to submit the case to the Court pursuant to Minn. R. Crim. P. 26.01, subd. 4, and *State. v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980). Defendant submitted an Affidavit waving his right to a jury trial.
12. A hearing was held on February 17, 2011. Defendant revised his motion and asked for a court trial on stipulated facts pursuant to Minn. R. Crim. P. 26.01, subd. 3. Defendant personally informed the Court that he consulted with his attorney regarding his Constitutional rights, including a right to a jury trial, prior to submitting his motion for a court trial pursuant to Rule 26.01, subd. 3. Defendant personally acknowledged on the record the existence and waiver of the following rights:

- a. The right to a jury trial by twelve persons in which Defendant would be presumed innocent and the State would have the burden of proving guilt beyond a reasonable doubt;
- b. The right to have a trial by jury or to the court in which Defendant could testify;
- c. The right to require the State's witnesses to testify in open court and to cross-examine those witnesses; and
- d. The right to call witnesses on behalf of the defense and to require or compel such witnesses to appear with a subpoena if necessary.

Defendant indicated that he was giving up his right to a trial voluntarily and without duress or any concern and that he had time to consult with his attorney before waiving his right to a trial by jury or to the court.

13. The parties appeared before the Court on February 24, 2011 to present closing oral argument. Both parties submitted written closing memoranda to the Court prior to presenting oral argument.
14. Prior to the closing arguments, the Court asked the parties whether Tabs K and L in Exhibit 1 were found on Defendant's computer. Tab K was an online article from the Ottawa Citizen newspaper dated February 25, 2009, regarding the investigation of Nadia Kajouji's death. Tab L was a legal analysis of aiding and abetting suicide from <http://intranet/legalweb/d6771.htm>. The parties stipulated that the documents did not come from the computer of Defendant or either of the alleged victims. The Court informed the parties that it would not consider Tabs K and L in rendering its decision.

## **II. Findings of Fact as to Count 1 – Alleged Victim Mark Drybrough**

15. On March 25, 2008, Sergeant William Haider, a police officer with the Saint Paul, Minnesota Police Department, assigned to the Minnesota Internet Crimes Against Children Taskforce ("MICAT"), received an email from Celia Blay, [c\\_a\\_blay@hotmail.com](mailto:c_a_blay@hotmail.com), Halfway Cottage, Waltham Road, White Waltham,

Maidenhead Berks, UK, SL6 3JD, reporting an “online predator using deception to manipulate parties to commit suicide by hanging.” Exh. 1, Page 39.<sup>5</sup>

16. In a second email on March 25, 2008, Celia Blay informed Sergeant Haider that she suspected the “online predator” was Bill Francis Melchert-Dinkel (the Defendant), as identified through public information websites. Exh. 1, Page 40.
17. On March 26, 2008, Sergeant Haider received an email from Celia Blay that contained various emails used by Defendant. The emails provided were: *falcongirl12@gmail.com*; *falcongirl507@yahoo.com*; *li\_dao05@yahoo.com*; and *falcon\_girl\_507@hotmail.com*. Ms. Blay stated that Bill Francis Melchert-Dinkel used the above email addresses in an online newsgroup titled alt.suicide.holiday. Exh. 1, Page 40.
18. On May 27, 2008, preservation letters and subpoenas for subscriber information were sent to Yahoo! by the MICAT for various email addresses believed to be used by Defendant. Email address *li\_dao05@yahoo.com* was included in the request to Yahoo!. Ex 1, Pages 58, 693, and 712.
19. On May 28, 2008, Celia Blay again contacted Sergeant Haider and sent copies of chat logs copied from an Internet Relay Chat channel which indicated:
  - a. On May 15, 2007 “falcongirl” [one of defendant’s internet names] said that she was a 31 year of age female from Minnesota planning on committing suicide by hanging.

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<sup>5</sup> Ms. Blay’s personal investigation also led to police obtaining statements or email copies from other persons who had communicated with Defendant through the internet, including:

- a. Katherine Berkley – who had conversed with “Li Dao” [Defendant] from 2004 through Jan.2009; Contact was through Instant messaging or email; she believed that Li Dao was a young female in her 20’s. In 2005 Defendant [as Li Dao] advised Berkley how to commit suicide by hanging and requested use of the web-cam to record the death. See, Exh.1, page 101-102
- b. Melissa McClintock – Defendant gave advice about committing suicide by hanging Exh.1, page 106
- c. Carlos Diaz- Defendant gave advice about committing suicide by hanging and the importance of practicing hanging beforehand. Exh.1, page 107-08
- d. Neil Forks- Numerous emails from Oct. 20 to 22, 2006 with advice about committing suicide by hanging and instructions on how to tie the knot. Exh 1, page 108-113
- e. Nicole Namaste- Defendant gave advice about committing suicide by hanging and other “pre-planning” of personal affairs. Exh.1, page 114 to 117
- f. Cami Hohertz- 2007 contact with “Li Dao” advising suicide by hanging. Defendant told Cami that he would wait for her and they could “go together”.

- b. On May 16, 2007 falcongirl said she is an RN working night shift in a Minneapolis hospital ER.
  - c. On May 24, 2007, falcongirl said she would consider committing suicide along with someone else, “not in person as in a pact, but on the internet type thing.” Exh.1, page 74.
20. Yahoo! responded that the email address *li\_dao05@yahoo.com* was registered to MS LI DIO, Faribault, MN 55021. The account was created on December 20, 2004 and listed *wdinkel@charter.net* as an alternate email for the account. The account was accessed from two Internet Protocol (“IP”) Addresses: 69.24.165.31 and 216.114.236.7. Both IP Addresses resolved to Hickory Tech Corp. Exh. 1, Pages 58 and 719.
21. MICAT issued a subpoena to Hickory Tech Corp. for the subscriber/user information for IP Address 216.114.236.7. On June 18, 2008, Hickory Tech Corp. informed MICAT that the account holder of IP Address 216.114.236.7 was William & Joyce Melchert-Dinkel, 510 Littleford Land, Faribault, MN 55021-3117, (507) 334-8883; *joymd55@hickorytech.net*; *wdinkel@hickorytech.net*; Username: joymd55; MAC Address: 00:11:11:48:e2:98. Exh. 1, Pages 58 and 763.
22. On August 5, 2008, Mili Popovic, Coroners’ Officer for the Coroner’s Office, Divisional Police Headquarters, Little Park Street, Coventry, UK, sent Sergeant Haider transcripts of emails and files obtained from the computer of Mark Drybrough, date of birth April 13, 1973, date of death July 27, 2005. Exh. 1, Page 436.
23. The following are email messages or group chartroom posts that are determined to be most relevant to count 1<sup>6</sup>:

- a. **Date: June 8, 2005** 10:11:41<sup>7</sup>  
From: Mark Drybrough, <retrospook@ntlworld.com>  
To: con.wow@virgin.net  
Subject: looking for advice

Hi Concow

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<sup>6</sup> The Court has not edited the spelling and grammatical errors found in the email or chat room messages taken from Exhibit 1.

<sup>7</sup> Email from Mark Drybrough to an unknown person with the email address *con.wow@virgin.net*.

Hope you don't mind me emailing you. It's a selfish email. I've a debilitation condition, I can't walk further than a mile or so without being in agony and sick for weeks, I haven't the strength to tie a noose. It's not an irrational decision for me to take my own life, it's a slow painful death or a relatively quick one. Like a few people on the newsgroup I'm thinking 4.5g of Phe [unintelligible]

Exh. 1, Page 438

b. **July 1, 2005**<sup>8</sup>

From: li\_dao05@yahoo.com

To: "spooky" retrospook@ntlworld.com

Subject: Re: hanging with no access to height

depending on how tall you are, preferable under 6 feet tall, you can easily hang from a door using the knob on one side to tie the rope to, sling it over the top of the door, attach the noose or loop to yourself then step off and hang successfully. If you are a bit tall you can still do a partial suspension hanging that way by having the noose extend fairly high up and attaching it to yourself, then lowering yourself into a sitting position or kneeling down so you hang that way. It is very effective I have tried it 5 times now with very good results so I am using it for certain when I go. Unconsciousness occurred in about 10-15 seconds if it does not occur then you need more neck tension and try again. Unconsciousness is in 10-15 seconds or so, brain death in 4 minutes after unconsciousness and death in 1 minute? hope this helps. If you have any questions please e-mail me back I'll get back to you asap? good luck? Li dao

Spooky wrote:<sup>9</sup>

**Does anyone have details of hanging methods** where there isn't access to anything high up to tie the rope to.

I've read that people have taken their own lives in jail, anybody know of inventive methods used, the ones you don't get to read in the paper.

Thanks.

Ex 1, Page 439-40 (emphasis added).

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<sup>8</sup> Email from Defendant to Mark Drybrough, in response to a chat room post by Mark Drybrough (see Note 9 *infra*).

<sup>9</sup> The original chat room post by Mark Drybrough referenced in Note 8 *supra*.

c. **Date: July 2, 2005 12:18:53 +0100** <sup>10</sup>  
From: Mark Drybrough <retrospook@ntlworld.com>  
To: "M" <Michel@zonnet.nl>  
Subject: Re: hanging with no access to height  
In-Reply-To <1120300516.521373.124110@g43g2000cwa.googlegroups.com>

Hi Michael,

>I've noticed that we have the same problem finding the right info. No  
>way of obtaining the rights meds online, only vague info in the ash and  
>asm, because people obviously are carefull in posting info.

You're right. It's difficult when you know there are people out there who could help but are too scared, it's understandable though. In an ideal world I'd be able to get hold of the right combination of drugs fairly quickly, I've learnt that ideally you find people who have already obtained them who live in your own country but that's a lot easier said than done ! I don't want to wait forever . .

>I understand you had some questions about suspension hanging. That  
>seems to be the only option for me too. All I know I found on the  
>internet, so I assume you found that as well.

I've found <http://www.deviantcase.com/methods/> and a few others. I'm not at all practical so really **I was looking for any information I hadn't come across before, step by step instructions or anything like that. I've never tied a noose before, theres always a first time.** I have a picture of how to tie a noose.

>I read that you were sent some info by mail. Could you pass me that info  
>please? O would appreciate that very much. I don't post that much in  
>asm and ash, I rather read what other write, and mail people for more  
>info . . . My name is Michael, and my email address is  
>Michel@zonnet.nl. I'm dutch.

No problem. I received two emails about hanging. I've received just one about drugs, as well as people who are scared there are people who will say anything to see what happens as a result, the 3<sup>rd</sup> email (about drugs) wasn't very useful. **The two people who wrote to me about hanging were kind to do so,** you've reminded me that I should thank them for their time. **Here are those two emails,** I'm sure the wouldn't mind you getting back to them.

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<sup>10</sup> Email, chat room, or instant message conversation between Mark Drybrough and an unknown person with the email address Michel@zonnet.nl. Statements from Michael@zonnet.nl are indented.



~~~~~ li\_dao05@yahoo.com<sup>11</sup>

Depending on how tall you are, preferable under 6 feet tall, you can easily hang from a door using the knob on one side to tie the rope to, sling it over the top of the door, attach the noose or loop to yourself then step off and hang successfully. If you are a bit tall you can still do a partial suspension hanging that way by having the noose extend fairly high up and attaching it to yourself, then lowering yourself into a sitting position or kneeling down so you hang that way. It is very effective I have tried it 5 times now with very good results so I am using it for certain when I go. Unconsciousness occurred in about 10-15 seconds if it does not occur then you need more neck tension and try again. Unconsciousness is in 10-15 seconds or so, brain death in 4 minutes after unconsciousness and death in 1 minute? hope this helps. If you have any questions please e-mail me back I'll get back to you asap? good luck? Li dao

~~~~~ hangtodie@goowy.com

Yes, I have experimented with such a method, and it works well. You tie the ligature, a rope or anything else that is strong enough, like strip of a sheet, a tie, a soft belt to anything strong, even low down. Then make a simple / easy noose in the other end. (see [www.ehow.com/how\\_7535\\_tie-noose.html](http://www.ehow.com/how_7535_tie-noose.html) or [www.answers.com/topic/noose](http://www.answers.com/topic/noose)). Put (liquid) soap all over the noose and the noose knot (to make it tighten more and stay tight). Put the noose high around your neck, and a folded cloth on your throat, pull the noose tight, then kneel down, facing away from the hanging point in such a way that the ligature is straight behind you, and pulled fairly tight, and put your hands on the floor in front of you, then put your legs completely on the floor, still supporting your upper body on your hands. Next take your hands off the floor and you will be hanging from the waist up. Your head should be well off the floor (you may have to experiment a little to get it right). You will feel weak, dizzy and very peaceful, pass out in seconds and die in 5-10 minutes. If you experiment, be careful, this method is very deadly. I will kill myself this way. Please, write to me soon. Martin.

Exh. 1, Page 497-98 (emphasis added).

- d. **Date: July 2, 2005 03:35:16 -0700** <sup>12</sup>  
From: "M" <Michel@zonnet.nl>  
To: "spooky" <retrospook@ntlworld.com>

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<sup>11</sup> Defendant's email to Mark Drybrough embedded in Mark Drybrough's electronic communication with Michael@zonnet.nl.

<sup>12</sup> Email or chat room message from Michael@zonnet.nl to Mark Drybrough.

Subject: Re: hanging with no access to height

Hi there,

I've noticed that we have the same problem finding the right info. No way of obtaining the rights meds online, only vague info in ash and asm, because people obviously are carefull in posting info. I understand you had some questions about suspension hanging. That seems to be the only option for me too. All I know I found on the internet, so I assume you found that as well. I read that you were sent some info by mail. Could you pass me that info please? I would appreciate that very much. I don't post that much in asm and ash, I rather read what other write, and mail people for more info. . . My name is Michael, and may email address is Michael@zonnet.nl. I'm dutch.

Thanks

spooky wrote:<sup>13</sup>

Does anyone have details of hanging methods were there isn't access to anything high up to tie the rope to.

I've read that people have taken their own lives in jail, anybody know of inventive methods used, the ones you don't get to read in the paper.

Thanks

Exh. 1, Page 442

- e. **Date: July 18, 2005 07:25:58 -0700**<sup>14</sup>  
Message-ID: <1121696758.752519.22860@g44g2000cwa.googlegroups.com>  
Reply-To: <11216889907.273261.295360@g47g2000cwa.googlegroups.com>

Spooky : As a verteran nurse I have found that, as a rule, overdosing is at best very unpredictable and unsure because of so many factors. If you are very serious about dying, I too agree that suspention **hanging is by far the best and surest method to do, and it is the method I am using also. If you have and questions please feel free to write me or if you just need to talk also. good luck . . .** sincerely . . . Li Dao 25 f Minnesota

Exh. 1, Page 459 (emphasis added).

- f. **Date: July 19, 2005 16:33:51 -0700**<sup>15</sup>  
From: li dao <li\_dao05@yahoo.com>

<sup>13</sup> Chat room post by Mark Drybrough referenced in Notes 8 and 9 *supra*.

<sup>14</sup> Email, chat room post, or instant message from Defendant to Mark Drybrough.

<sup>15</sup> Email from Defendant to Mark Drybrough.

Subject: a little more  
To: Mark Drybrough <retrospook@ntlworld.com>

Mark I just saw you post on the methods board in regards to using ratchets and all that crap to help hang you dont need all that of course just a sturdy knot is very much all one needs. In fact once unconsciousness is achieved then the body relaxes naturally and the pressure on the rop/neck actually greatly increases causing death. There is always some muscle tightening before unconsciousness no matter how relaxed the person is but afr they go out then all is said and done very quickly?got to go to bed for a while before work now,,,,talk to you tomorrow hun?\*\*\*hugs\*\*Li

Mark Drybrough <retrospook@ntlworld.com> wrote: li dao wrote: <sup>16</sup>

Mark [sic]: Sorry to keep bothering you but when I am tired I forget stuff sometimes hun?.anyey, I was going to ask if there is a time line involved with your desire to die. IS it soon that need/want to or whenever?? **for me I want to very badly and plan to soon but wilol stay here for you as long as possible.** I have had several other friends I have communicated with that are suicidal. The most interesting was a friend also in England that I had communicated with for several weeks. **One night two weeks ago he asked if I could be with him when he died, obviously that was not possible physically due to the distance, but?unbeknowned to be he had a web cam aand asked if he could hang himself to death while I watched him on the web cam. At first I thought he was mad crazy, and wanted to spectticle and such but after antoher hour of talking I realized he lived alone yada yada and did noty want to die alone?in the end I watched him go and it was very peaceful and I was pretty pleased I could make this guys last moments special for him?anyay, you see we are all differene thtat is for sure. We are not alone and I don't want you to think that either. **I'll be hee to write to you as I can and be here for you?.**please write when you can..\*\*\*hugs\*\* Li**

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Hi Li <sup>17</sup>

I'll write something longer tomorrow I hope. My life situation is that I became ill with glandular fever many years ago and never really recovered, I became weak and it's like having the flue all the time, just recently I've had a breakdown and

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<sup>16</sup> Email from Defendant to Mark Drybrough.

<sup>17</sup> Email from Mark Drybrough to Defendant.

have recovered to some degree in that I no longer feel delusional. I feel like I', stuck in no mans land, I've realised now that it's been so long and my situation hasn't improved, the physical weakness and pain getting worse. There's something gone wrong with my mind and it's struck and won't change, I can't help feeling impatient all the time, sometimes I have difficulty talking with people. It's a rational choice to me, that I end it, I know it won't get better but nobody I know will accept that it's true and they say good things on my behalf, so I don't mention it as much as possible, then I feel alone in having to keep it to myself. Nobody close to me allow me the permission to die.

The idea of living more than 3 months into the future is painful to me, I can't imagine it and don't want to think about it. **I havn't set a date for my suicide though each day is as good as the next for going ahead with it**, and even though it's not a life for now I can manage a day at a time.

Exh. 1, Page 455-56 (emphasis added).

- g. **Date: July 19, 2005 15:56:48 -0700**<sup>18</sup>  
From: li dao <li\_dao05@yahoo.com>  
Subject: I understand  
To: retrospook@ntlworld.com

Mark: Thank you for writing back and geing able to be honest and trustfull with me. I hope to be a friend at the end for you asyou are for me also. I look forewords to hearing from you more when you get a chance. Ill be resting now before work then Ill be back on line tomorrow morning. Rest good . . . **\*\*hugs\*\***  
Li

Exh. 1, Page 457

- h. **Date: July 19, 2005 19:38:36 +0100**<sup>19</sup>  
From: Mark Drybrough <reterspook@ntlworld.com>  
To: li\_dao05@yahoo.com  
Subject: Re: cheap overdoes alternatives ?

Li\_dao05@yahoo.com wrote:<sup>20</sup>

Spooky : As a verteran nurse I have found that, as a rule, overdosing is at best very unpredictable and unsure because of so many factors. If you are very serious about dying, **I too agree that suspention hanging is by far the best and surest method to do, and it is the method I am using also. If you have and questions**

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<sup>18</sup> Email from Defendant to Mark Drybrough.

<sup>19</sup> Email from Mark Drybrough to Defendant.

<sup>20</sup> Email from Defendant to Mark Drybrough.

**please feel free to write me or if you just need to talk also.** good luck . . . .  
sincerely . . . Li Dao 25 f Minnesota

Hi Li Dao,<sup>21</sup>

I've got a noose hanging in my room, and I've been slowly dropping myself putting on more weight but I've yet to have anything like falling unconscious from doing that. One time I had my head pounding, I must have put on nearly enough pressure then let go and lots of blood rushed to my head, it just hurt and I sat for 30 minutes with adrenalin flowing through my system from rear and excitement, but my confidence was knocked a little thinking can I really manage this, maybe I can't and maybe I should think of overdosing instead since it's a lot easier to take some pulls. If I took some pills it would have to be sure, which rules everything I've to me at this time out. **I've had the noose around my neck about 5 times now, but only 2 times did I feel close to being ready** . . I had red marks all around my neck both times which has meant I can't see my mum and dad until it clears up.

Feel free to get in touch with me anytime about anything you want, it was nice to have heard from you.

Mark (32 m coventry, uk)

Exh. 1, Page 499 (emphasis added).

- i. **Date: July 20, 2005 20:54:30**<sup>22</sup>  
From Mark Drybrough <retrospook@ntlworld.com>  
To: li dao <li\_dao05@yahoo.com>  
Subject Re: Hi Mark

I've not forgotten that I havn't got back to you today, I', sorry. I think it's brave of you and good that you are able still to work even if it is just because you have to. I've had a day of feeling depressed but this happens and it doesn't usually last that long, because of it I'm finding it difficult to be talkative I hope you understand.

Exh. 1, Page 500

- j. **Date: July 22, 2005 08:01:59 -0700**<sup>23</sup>  
From: li dao li\_dao05@yahoo.com  
Subject: Hey Mark

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<sup>21</sup> Email from Mark Drybrough to Defendant in response to Defendant's email referenced in Note 20 *supra*.

<sup>22</sup> Email from Mark Drybrough to Defendant.

<sup>23</sup> Email from Defendant to Mark Drybrough.

To: retrospook@ntlworld.com

I hope I is not too late, that you are still here. Please write and let me know. **I am here to care and help you?** Li

Exh. 1, Page 467 (emphasis added).

- k. **Date: July 23, 2005 11:30:08 +0100** <sup>24</sup>  
From: Mark Drybrough <retrospook@ntlworld.com>  
To: li dao <li\_dao05@yahoo.com>  
Subject: RE: Hey Mark

Hi Li,

I'm still here, I've had a few days where I've been feeling very ill, physically and mentally. I'm not very good at thinking of things to say. It was good of you to write back, thankyou. I get scared when I'm about to do it, I don't want to lie to you. **I keep holding on to the hope that things might change.** Caught between being suicidal and considering it. Same old story ! I'm dying but slowly, day by day. I don't want to waste anyones time. **If you want someone who's suicidal, I'm just not there yet.** You either do it or you don't, and I don't and havn't. I used to being alone. Sorry. I admire your courage, I wish I had it.

Exh. 1, Page 500-01 (emphasis added).

- l. **Date: July 27, 2005** Li Dao sent Mark Drybrough an email asking "Are you alright, Mark?" This email was sent after Mark Drybrough was discovered to have committed suicide. Exh.1, Page 75.

24. The Coroner's Post Mortem Report from the Pathology Department of Walsgrave Hospital in Coventry, UK, stated that Mark Drybrough, date of birth April 13, 1973 died at 16.29 hours on July 27, 2005. The deceased was found hanging at home with a rope attached to a loft ladder on July 27, 2005. The external examination "showed a deep ligature groove 1cm wide in the upper part of the neck, 9.5cm above the sternal notch which was rising towards the left and to the back of the neck." The cause of death was listed as asphyxia due to hanging. Exh. 1, Page 538-39.

### **III. Findings of Fact as to Count 2 – Alleged Victim Nadia Kajouji**

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<sup>24</sup> Email from Mark Drybrough to Defendant.

25. Sometime in the spring or summer of 2008, Sergeant Haider contacted the Ottawa Police Service in Ontario, Canada, to investigate a possible connection between Defendant and a Canadian suicide victim. Exh. 1, Page 91.
26. Sergeant Haider received copies of reports in regards to the suicide investigation of Nadia Kajouji, date of birth August 6, 1989. Exh. 1, Page 91.
27. A forensic examination by the Ottawa Police Service was conducted on Nadia Kajouji's computer. Exh. 1, Page 277. In addition to the forensic examination, the Ottawa Police conducted internet searches regarding Nadia Kajouji's suicide. The Ottawa Police determined that Nadia Kajouji had an MSN account and screen name of Tearawayface. Exh. 1, 339. The forensic examination of Nadia Kajouji's computer revealed online chat logs between Tearawayface and *falcon\_girl\_507@hotmail.com*.<sup>25</sup> Exh. 1, Page 278.
28. On May 27, 2008, Sergeant Haider sent preservation letter and subpoena to MSN Services for MSN account *falcon\_girl\_507@hotmail.com*. Exh. 1, Pages 694 and 703. MSN Services answered the subpoena and stated that the *falcon\_girl\_507@hotmail.com* account holder accessed the account via IP Address 216.114.236.7. Exh. 1, Page 706-07.
29. As found above, IP Address 216.114.236.7 is registered to Defendant. Exh. 1, Pages 58 and 763.
30. The internet searches by the Ottawa Police Service regarding Nadia Kajouji's suicide revealed a posting from screen name Tearawayface on [http://www.nnseek.com/e/alt.suicide.methods/2008\\_3\\_1.html](http://www.nnseek.com/e/alt.suicide.methods/2008_3_1.html). Exh. 1, Page 339. Sergeant Haider captured the posting at the above-mentioned website, which reads as follows:
- A request for advice  
Author: tearawayface  
**Date: March 1, 2008 16.57**
- I have lived with severe depression for as long as I can remember and it only worsens as I seek treatment and help. **I have not attempted suicide in the past because I am terrified of failing** – the attention it would garner, the “rehabilitation: process would be more than I could bear. I just want a quick out.

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<sup>25</sup> Defendant's email address.

I live alone in Ontario, Canada. I have very little money and I do not drive. I am currently on Zopiclone and CipraleX and I know better than to think either of these would be worth trying to overdose on. I have considered slitting my wrists/jugular and in fact have 3 razor blades sitting on my desk as I write this, but I read on Wikipedia that only approximately 1% % of suicide attempts through slit wrists are successful, which are far from good enough odds for me. Plus, I don't have a bathtub, just a stand-up shower. Right now I think my best bet would be hypothermia – except I live in a city and would probably be found quite quickly – or jumping. Splattering myself across a sidewalk somewhere doesn't seem very considerate, though.

Ideally, **I would like my suicide to look like an accident** but this is highly improbable given that friends and family know that I suffer from depression. I do not intend to leave a note or say goodbye. I just want to leave quietly and be at rest.

**What should I do? What would have the highest chance of success?** Walking in front of a train? Snorting a bunch of crack and mixing it with prescription meds and alcohol? Jumping in the river with rocks in pockets?

I noted responses / postings from others recommending suicide methods and posting encouraging victim to get help and not commit suicide.

Exh. 1, Page 94 (emphasis added).

31. Chat logs between Defendant (*falcon\_girl\_507@hotmail.com*, screen name “Cami”) and Nadia Kajouji, were recovered from Nadia Kajouji's computer, and read as follows:

**March 6, 2008** – Start time: 02:14:09 P.M. End time: 03:18:55 P.M.

Nadia: hey

Cami: hi!

Cami: how ru odin?

Nadia: I'm okay. Tired, but okay. Thanks for emailing me

Nadia: How are you?

Cami: umm not too good hun still suicidal pretty bad

Cami: u?

Nadia: Well, the same. So tell me your story.

**Cami:** severe depression for 12 years?meds therapy, yoga, prayers?nothing has helped me get any better so about 8 months ago I started looking for methods to let go with and since ive seen every method used possible at work as a emergency ward nurse I know what does and don't work **so that is why I chose hanging to use ive tried it in practice to see if it hurt and how fast it worked and it was not a bad experience.**

Nadia: So when are you going to catch the bus?

Cami: I would like to soon u?



Nadia: I am planning to attempt this Sunday.

Cami: wow ok you want to use hanging too? Or can u?

**Nadia: I'm going to jump**

Cami: well that is ok but most people puss out before doing that plus they don't wanna leave a terribly messy mess for others to clean up

Nadia: I want it to look like an accident. There's a bridge over the river where there's a break in the ice. The water is really rough right now and it should carry me back under the ice so I can't come up for air. And if drowning doesn't get me, hopefully hyperthermia will.

**Cami: ok otherwise I was gonna suggest hanging but if want a accident looking scene then ok**

Nadia: I'll have my skates on. Hopefully it'll look like I fell through somewhere upstream

**Cami: k I hope it works :(**

Nadia: me too. I've never attempted before. I'm going to try at about 3am when there's the least chance of people being around

Cami: oh ok

Nadia: I considered train jumping?like, at the subway, but I thought this would be better

Cami: umm yeah

**Cami: if you wanted to do hanging we could have done it together on line so it would not have been so scary for you**

**Cami: but I think youll do fine**

Cami: its ok it was just a though cause I know how scary it is

Nadia: Well if I puss out, I think we should do that

Cami: ok that sounds good

Cami: im off Monday too

Cami: I can die then easily or any time for that matter I want to bad

Cami: i want to bad

Cami: want\*

Nadia: Is there anything you want to do before you go? I'm trying to get my affairs in order . . . cleaning up my room, paying off my loan:

Cami: well

Cami: ive got everything really ready to go . . . my mom will get my insurance and money so there will be no worries there . . . I owe really nothing to anybody and ive got my funeral shit all taken care of.

Cami: i got rope and stuff ready

Cami: do you have a web cam?

Nadia: yes

Cami : ok well IF it comes down to hanging I can help you with it with the cam?proper positioning o the rope is very important as I have found out but we'll cross that path when/if comes to that hun

Cami: proper\*

Nadia: Thank you

Cami: :)

Cami: that method for me is so fast and certain i cant think of no ohter way for me

Cami: that is why im so into that

Cami: i dont want to feel nothing

Nadia: yeah. who do you think will find you?

Cami: my mom calls or comes each day so if i dont answer then shell come and find me . . . she knows im quite depressed and will die of my depression so she will know why.

**Cami: i . . . hope im being a help to you in some way**

Nadia: yes it's a big relief to be able to talk to someone about it

Cami: kewl thanx

Cami: im not trying to tell you how to do it just my experiences and opinions that all

Nadia: I understand. We want what's best for each other

Cami: yes very much so

**Cami: and I don't want you to fail ever! And end up messed up**

Nadia: that would be the worst

Cami: omg yes i see that happna lot : (

Nadia: what sort of stuff have you seen

Cami: im not trying scre you dont get me wrong

Cami: ive seen tons of failed overdoses and bad wrist cuttings and some jumpers fail and many many gunshots that didnt work

Nadia: wow you would think that a gun would be pretty foolproof

**Cami: in 7 years ive never seen a failed hanging that is why i chose that**

Cami: not really cust thye kick really bad and miss the target : (

Cami: not pretty

Nadia: oh wow

Cami: uh huh

**Cami: how old ru?**

**Nadia: 21**

**Cami: ok 31 here so we know what we are doin**

Nadia: yeah it's been quite a while

Cami: me too hun

Cami: im ready

Nadia: where are you from?

Cami: Minneapolis Minnesota

Cami: u?

Nadia: Ottawa Ontario

Cami: oh ok kewl  
Cami: yeah it has gotten bad for me since the holidays ive not gotten out of it for a long time  
**Cami: would die today if we could but I will wiat and see how it goes for you**  
**Nadia: that is very kind. Thank you.**  
Cami: : )  
Cami: welcome  
Cami: do you have something to use for hanging if you choose to do that with me?  
Nadia: no I would have to go buy it  
**Cami: ok that isn't hard to find or get just getting the knot/noose position needs a little help which is can do if we get there**  
Cami: u ok?  
Cami; this i s a lot to think about  
**Nadia: Yeah it feels good being able to be honest with someone**  
**Cami: yes and im honest with you**  
Nadia: Instead of having to pretend I'm ok and make excuses  
Cami: ive done that for years : (  
Cami: cant anymore  
Nadia: are you going to write a note?  
Cami: no my family knows why . . . it wont change or make things any better if I worte notes  
Cami: wrote\*  
Nadia: i agree  
Cami: (F)  
Cami: i want to be found and in decent shape so i can be viewd by my co workers and fiends  
Cami: that is fair to them  
Nadia: that's true. drowned bodies are pretty gruesome looking aren't they? They get all bloated and dicoloured?  
Cami: yes . . . terrible  
Cami: to be honest  
Cami: pplus trauma from the fall  
Cami: ive seen it happen here in the mississippi river  
Cami: many times  
Nadia: my parents don't live in this city, so how will that work? My family lives about a 6 hour drive away.  
Cami: well . . . if they find you in the river . . . they will have to somehow identify you . . . that can take time for sure . . . then they have to find parents . . . that can take more time . . . then they have to come identify you . . more time . . . then they take you back to your home town

Cami: so most likely no viewing or anything due to time and trauma  
Cami: if you are carried away in the river current they may never find you or maybe a long time later way down stream  
Cami: the further waay the harder to identify  
Cami: you would be a missing person until found  
Cami: found\*  
Cami: that is why im keeping everything here at my home  
Cami: easy for mom  
Nadia: Yeah. Well I'm sure they'll find me because I'm not jumping in the actual river, I'm jumping in the canal, it won't take me too far. I guess I should have my wallet in a zippered pocket so I have some ID on me  
Cami: um yeah  
Cami: would help ID the body to start the process  
Nadia: who will pick up the stuff in my apartment?  
Cami: your family  
Cami: they will have to be responsible for everything hun  
Cami: im gonna pack my stuff up pretty good have doen a lot already  
Cami: so when I die they will just have to do what they want with it : 0  
Cami: if u die in your apartment instead you can do a lot of that  
Cami: depends on what happens  
Nadia: yeah. that's the one thing about trying to make it accidental. i can't pack  
Cami: ok  
Cami: it wont make too much difference I gues if it is accidental looking or not  
Cami: hanging v. jumping  
Cami: unless it is for personal reasons  
Nadia: there are a lot of people in my life who would feel responsible . . . my parents included . . . they don't understand depression, or how I feel  
Cami: ok i do understand that  
Cami: seriously  
Cami: mine do understand  
Cami: so it is easier for me  
Cami: i do understand hun  
**Cami: I will be here starting at about 8 am Monday if u need me**  
Cami: I don't work that day but do the rest of the week so I need to die that day  
**Nadia: Do you have a cell phone? My number is 613-668-5627. If you try texting me on Monday, and it doesn't go through,**

**that means I jumped, because I plan to have my cell phone on me when I do it**

Cami: I don't have cell my bro has it on the road he drives but ill be on line?if you are here then I know you are here if you are not then ill know

Nadia: okay

**Cami: if you are still here (I hope not for your sake) then try to come on early Monday so we can do it if you want to**

**Nadia: okay. What sort of rope, etc will need?**

**Cami: if you to a home depot or Mendars[sic] or any kind of home improvement store?get yellow nylon rope about 8 feet or about 3.5 meters and about ? inch thick or about 3 cm that is all you need and look around apartment for somewhere to hang from?. I can help you with the cam when you need to**

Nadia: ok

Cami: 2 cm is thick enough

Cami: as you are not too heavy

Cami: do you smoke? i need one bad

Cami: : ( )

Nadia: yeah ive been smoking a lot lately

Nadia: i smoke pot too

Cami: i cant because of my job

Cami: get tested alot

Nadia: oh really?

Cami: you wanna have a cig with me?

Cami: if you got your cam workin

Nadia: i dont have any : ( need to pick some up

Cami: oh ges that sux

Cami: i ahte that when i run out

Nadia: yeah cause i hate leaving the house to get more

Cami: i know

Cami: ok

Cami: what u thinking about?

Nadia: that I should get up and get dressed instead of sitting around but i just done feel like it

Cami: yeah me neither

Cami: but i gotta go to the store in a while

Nadia: scary

Cami: and get smokes and food : (

Cami: yeah

Cami: it is scary

Cami: ru gonna be around tonite to talk maybe? Ill be on line later tonite like around 8 or so

Nadia: I will for sure

Cami: ok maybe we can talk then

Cami give though to everything we talked about love  
Nadia: I definitely will  
Nadia: thank you again  
**Cami: im just tryin to help you do what is best for you not me  
your welcome**  
Cami: ill be on later and if anything comes up e-mail me  
Nadia: okay talk to you soon  
Cami: ok bye bye

**March 6, 2008** – Start Time 8:39:46 P.M. End Time 9:37:28 P.M.

Cami: hi?how ru doing?  
Nadia: been better. How was your day?  
Cami: umm ok I guess since we talked? I went to the store and got  
stuff smokes food and popo then had dinner now just sittin here  
suicidal as always  
Nadia: hmm someone is at the door brb  
Cami: ok  
Cami: ill b here  
Cami: im still here  
Nadia: hey  
Cami: im here hun  
Nadia: was the super, apparently she' shaving the painters in  
Wednesday. Whatever.  
Cami: oh  
Cami: how you feelin now?  
Nadia: really low  
Cami: yeah me too  
Cami: really suicidal too  
Nadia: have you told anyone your plans?  
Cami: no one that is close to me that could interfere in any way  
Nadia: good  
Cami: yes  
Cami: I have to keep it to myself and they will know why when it  
happens  
Nadia: and hopefully they will understand  
Cami: I had my roper out after we talked today?Iwanted to put it  
on to feel it on me  
Nadia: are you scared?  
Cami: oh no not at all im confident it will work just fine  
Nadia: I'm glad to hear that  
Cami: ru?  
Nadia: Not yet. I feel at peace.

**Cami: if u are . . . i hope i can help you in any way i can**

**Nadia: good that is a good feeling**

Nadia: the pain will be temporary, then it will be over

Cami: :)

Cami: with my hanging it is painless and unconsciousness is so fast

Nadia: how long does it take?

Cami: when I did it in practice it was 10 seconds

Nadia: wow

Cami: :)

Cami: honestly it felt like going to sleep for a operation

Nadia: that is a really good way to go

Cami: yes it has replaced overdosing as the number one method in the usa

Nadia: my doctor is very afraid I will try to overdose

Cami: yeah most docs are

Nadia: she wont put me on anything stronger than 5mg of zopiclone

Cami: yeah that wont do shit to die with

Nadia: if only it were so simple

Cami: :(

**Cami: I wish e coth could die now while we are quietly in or homes tonite :)**

**Cami: nice thought**

**Nadia: it is a nice thought**

Nadia: since I deecided that I will go this weekend, I have felt much better.

Cami: great im at peace too

Cami: and if I cant die with you I will shortly after that

**Nadia: we are together in this**

**Cami: yes I promise**

**Cami: Monday will be my day**

Cami: wish it were tonite im really at peace with it

Nadia: who are you leaving behind?

Cami: just my mom and brotheer

Cami: brotheer\*

Cami: \shit

Cami: brother\*

Cami: and a few close relatives

Nadia: yes I'm not close with my realtives either. My mom, and my father I'm leaving behind

Nadia: that's pretty much it

Cami: ok

Cami: I wan to send you a pic of me now before we die

Cami: I want u to see who I really am

Nadia: okay  
Cami: ill send it to your addy you have on here  
Nadia: ill take a pic with my webcam to show you?one sec  
Cami: ok  
Cami: I sent mine  
Cami: hope you get it  
Nadia: I got it. Im sending mine now  
Cami: :)  
Nadia: I'm glad I have a face to your name now :)  
Cami: yes it is easier now  
Cami: hope to see your pic  
Nadia: I sent it to your yahoo. Did you get it?  
Cami: just a sec  
Cami: what addy did you send it to hun?  
Nadia: falcongirl2@hotmail.com  
Cami: humm ok  
Cami: didn't get it  
Cami: its ok  
Cami: ill wait till u use the web cam  
Nadia: k  
Cami: what u doin/thinking hun?  
**Nadia:** I'm going through my computer files, deleting things I don't want people to find after I'm gone. **I must say, I'm feeling a lot better now that I can talk to you**  
**Cami: thanx hun**  
**Cami: it makes me feel better too knowing i wont die alone**  
**Nadia: you won't**  
Cami: even if it on different days or whatever we can  
Cami: you wont either  
Nadia: i know. ill be thinking of you  
Cami: im still here if u need me  
Nadia: what are you doing? What are you thinking?  
Cami: im just watchin tv . . . goin over and over in my mind how it will be to be free of the depression and hoplessness and how that final moment attached tot eh rope ready to step off thte stool will be like  
Nadia: i wonder how it will feel to actually die  
Cami: nice  
Nadia: yes

**March 9, 2008** – Start Time: 6:56:46 P.M. End Time: 7:07:57 P.M.

Cami: hi  
Nadia: hey  
Cami: how ru doin?



**Nadia: I'm good. I'm glad that things are going to end tonight.**

Nadia: I'll be back in five minutes through, brb

Cami: kk

Nadia: back

**Cami: so you think youll be all done tonite?**

**Nadia: yup for sure**

**Cami: ok**

**Nadia: I've got all my affairs in order. I'm feeling confident**

Nadia: how was your weekend?

Cami: worked all weekend?I think tomorrow will be it

Nadia: well you will not be alone

Cami: I know hun

Nadia: I want to go know, But there are too many people up and about

Cami: I wish e could of together but I understand why

Nadia: im going to have to wait a couple hours

Cami: k

Cami: did you get rope in case you need back plan

Cami: bacy up\*

Cami: back\*

Nadia: no I didn't. there is a store close by if I need to

Cami: ok

Exh. 1, Pages 122 to 156 (emphasis added).

32. Nadia sent an email to her roommate at 01:43:16 on March 10, 2008, which stated

so I just wanted to say that I'm disappointed that you made plans to live with other people next year, because as you know, I did want to get a place with you. I would have appreciated if you said right off the bat that you didn't want to live with me, instead of avoiding the issue and leaving me hanging for over a month. I feel like you went behind my back and it hurts that you couldn't do me that very small courtesy because I do consider a friend.

I've been through a lot this year and this is just one more thing that adds to the stress in my life. I just wanted you to know that.

I wanted to tell you this in person, but it sounds like some drama is going on.

Anyways, im going to brave the elements and go out for a bit of a skate I think. i have to go to rynes place first because i think i left my gloves there. i will talk to you when i get back.

Exh. 1, Page 219

33. According to the Ottawa Police Service Reports, Nadia Kajouji, date of birth August 6, 1989, was reported missing on March 11, 2008. Her body was found in the Riedeau River on April 20, 2008. Exh. 1, Page 413. She was wearing cold weather clothing and

had ice skates on her feet when her body was found. Exh. 1, Page 413. The coroner determined that Nadia Kajouji died of drowning or hypothermia from cold water immersion. Exh. 1, Page 426.

34. Detective Marc-Andre Sheehy of the Ottawa Police Service reviewed the contents of Nadia Kajouji's computer. Exh. 1, Page 273. Officer Sheehy reviewed the correspondence between Nadia Kajouji and Defendant (email address *falcon\_girl\_507@hotmail.com*) and was concerned that Defendant was suicidal. Officer Sheehy traced Defendant's IP address to the City of Mankato, MN, and contacted authorities there. Exh. 1, Page 278.
35. On May 7, 2008, Officer Uday Jaswal of Ottawa Police Service spoke to Officer Jeff Kosanda of the Faribault Police Department. Officer Kossanda spoke to Defendant earlier that day. Defendant called Officer Jaswal at 12:53 p.m. Defendant informed Officer Jaswal that his wife was a surgical nurse that does not use the home computer, but Defendant's daughters used the computer. Defendant stated that his daughters used the screen name *falcongirl* and would have medical knowledge because of his wife's work as a surgical nurse. Officer Jaswal explained the nature of his investigation, including the conversation between *falcongirl* and Nadia Kajouji, and that Nadia had been found dead. Defendant said he was concerned about the alleged behavior of his daughters and would address their issues. Exh. 1, Page 309-10.

#### **IV. Findings of Fact as to Counts 1 and 2 – Both Alleged Victims**

36. On January 7, 2009, Sergeant Haider along with Commander Neil Nelson with the Saint Paul Police Department and the MICAT, and Detective Tony Kuchinka of the Faribault Police Department, met with Defendant at his home in Faribault, Minnesota. Sergeant Haider and Commander Nelson interviewed Defendant about his involvement with alleged online encouragement or aiding of suicides. Exh. 1, Pages 84 and 903.
37. Defendant informed police that he visited and participated in Yahoo! or Google chat rooms dedicated to suicide methods. Exh. 1, Page 904. Defendant used screen names such as *Falcongirl* or *Li Dao*. Exh. 1, Page 905. Defendant visited and participated in

these websites from 2004 or 2005 until Christmas time in 2008. Exh. 1, Page 906. Later in the interview, Defendant stated that he only visited the Google chat room titled "ASH.Methods." Exh. 1, Page 905.

38. Defendant stated that he answered questions people had in the chat rooms regarding suicide methods, and that he viewed his role as an "advocate" for those who wished to commit suicide. Exh. 1, Page 913. Defendant acknowledged that he assisted persons who wished to commit suicide, but stated those persons would have committed suicide without his assistance. Exh. 1, Page 913.
39. Defendant stated that he advised approximately five people in online chat rooms on how to commit suicide who later disappeared from the chat rooms, presumably because they committed suicide, though some of those persons reappeared in chat rooms under different screen names. Exh. 1, Page 917. Later in the interview, Defendant said that the only people he knew who committed suicide were the people from Canada and England. Exh. 1, Page 925.
40. Defendant stated that he had conversations about suicide with someone from England named Mark Drybrough. Exh. 1, Page 918. Defendant did not initially remember Mark Drybrough's name or specific details about his conversations with him, but eventually stated he remembered Drybrough because someone posted about his death on the ASH.Methods chat room. Exh. 1, Page 919. Specifically, someone posted a news article about Drybrough's death and the story stated that someone in the United States assisted him through the internet. Exh. 1, Page 919. Defendant said he was the person referenced from the United States because the story used his screen name ("handle") li dao. Exh. 1, Page 919.
41. Defendant admitted to entering a suicide pact with a woman from Ottawa, Canada. Defendant stated that the woman ended up jumping into a frozen river, which was not the method of suicide they discussed. Defendant learned that the woman died when he was contacted by the Ottawa Police. Exh. 1, Page 915.
42. Defendant admitted to chatting with many other people online about suicide, and that he entered into approximately five suicide pacts with people. To his knowledge, the only

people he made pacts with who committed suicide were the man in England and the woman in Canada. Exh. 1, Page 925.

43. Defendant stated that he was obsessed with suicide and death. Exh. 1, Page 936.
44. Later in the interview, the police asked Defendant to bring his wife into the room and explain what was happening. Defendant said to his wife “[o]h I just got into a lot of discussions talking and talking and thinking that I was, being an advocate or helper, or or, God or something or another. These people were very hurting and very upset.” Exh. 1, Page 944.

Based upon the above Findings of Fact, the Court makes the following:

### **CONCLUSIONS OF LAW**

1. As to count 1, the Court finds beyond a reasonable doubt that:
  - a. Defendant, William Francis Melchert-Dinkel intentionally advised and encouraged Mark Drybrough, of Coventry, England, date of birth April 13, 1973 in taking his own life;
  - b. Mark Drybrough did in fact take his own life on or about July 27, 2005;
  - c. Defendant’s conduct took place between July 1, 2005 and July 27, 2005;
  - d. Defendant’s encouragement and advice imminently incited the suicide of Mark Drybrough and was likely to have that effect; and
  - e. Defendant’s actions took place in Faribault, Rice County, Minnesota.
2. As to count 2, the Court finds beyond a reasonable doubt that:
  - a. Defendant, William Francis Melchert-Dinkel intentionally advised and encouraged Nadia Kajouji, date of birth August 6, 1989, of Ottawa, Ontario, Canada, in taking her own life;
  - b. Nadia Kajouji did in fact take her own life on or about March 10, 2008;
  - c. Defendant’s conduct took place between March 6, 2008 and March 9, 2008;
  - d. Defendant’s encouragement and advice imminently incited the suicide of Nadia Kajouji and was likely to have that effect; and
  - e. Defendant’s actions took place in Faribault, Rice County, Minnesota.
3. Defendant is guilty of Counts 1 and 2 of the Complaint.
4. The attached memorandum is incorporated herein and made a part of this Order.

Based upon the above Findings of Fact and Conclusions of Law, the Court makes the following:

**ORDER FOR JUDGMENT**

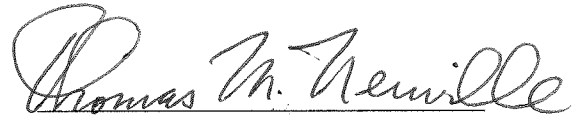
1. The Court Orders Judgment of Conviction against Defendant, William Francis Melchert-Dinkel, with respect to Counts 1 and 2 of the Complaint.

**IT IS FURTHER ORDERED**

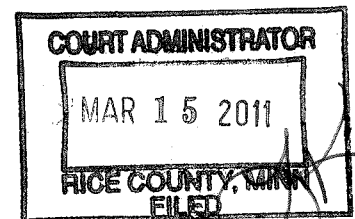
1. Defendant shall appear on **May 4, 2011, at 10:30 a.m.**, at the Rice County Courthouse in Faribault, Minnesota for a Sentencing Hearing.
2. Rice County Community Corrections shall prepare a Pre-Sentence Report prior to the date of Sentencing. Defendant shall schedule his pre-sentence investigation interview with Rice County Community Corrections within seven (7) days of this Order.

Dated: March 15, 2011

BY THE COURT:



Thomas M. Neville  
Judge of District Court



## MEMORANDUM

### I. MINNESOTA'S AIDING SUICIDE STATUTE

To be guilty of violating Minn. Stat. § 609.215, subd. 1, one must:

- a. Intentionally and directly advise, encourage, or assist the taking of another's life; and
- b. That person must in fact take his or her own life; and

When the advice, encouragement, or assisting is done through speech alone, such speech must imminently incite the suicide and be likely to have that effect.

### II. FACTUAL RECORD

The parties submitted a voluminous Exhibit of Stipulated Facts in this case. The Court has not considered Tabs K and L, since these materials are media articles for the most part, and were not on Defendant's computer. Many of the documents and reports included in Exhibit 1 are irrelevant, duplicative, or impossible to interpret. Therefore, the Court has cited evidence in this decision which supports its finding of Defendant's guilt beyond a reasonable doubt. Defendant stipulated to the accuracy of this evidence and to the Court's consideration of any evidence which is included in Exhibit 1. Evidence which is not cited in this Memorandum or the Findings of Fact is deemed non-material to the Court's decision.

### III. FIRST AMENDMENT DEFENSE

This Court considered Defendant's challenge to the constitutionality of the assisted suicide statute in its omnibus order on November 8, 2010.<sup>26</sup> The Court found that:

1. The State has a compelling interest in preserving all human life. *Washington v. Glucksberg*, 521 U.S. 702, 728 (1997); *State v. Brown*, 689 N.W.2d 796, 799 (Minn. Ct. App. 2004) *rev. denied* (Minn. Dec. 13, 2005).

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<sup>26</sup> See the following excerpt taken from the Court's November 8, 2010 Omnibus Order:

Speech that constitutes aiding and abetting criminal conduct is not entitled to First Amendment Protection. *U.S. v. Moss*, 604 F.2d 569, 571 (8th Cir. 1979) *cert. denied* (U.S. Feb. 19, 1980). The court cited the Supreme Court's decision in *Brandenburg v. Ohio*, 395 U.S. 444 (1965), distinguishing "speech which merely advocates law violation and speech which incites imminent lawless activity," the latter not protected by the First Amendment. *Id.* at 571.

2. Suicide is not a fundamental liberty interest which is protected by the Due Process or Equal Protection clause of the Fourteenth Amendment. *Glucksberg*, 521 U.S. at 728; *Vacco v Quill*, 521 U.S.793, 799 (1997).
3. Preventing persons from assisting or encouraging suicide is rationally related to the State's interest in preserving human life.
4. Speech which directly encourages or assists, and imminently incites the act of suicide, falls outside the protection of the First Amendment.
5. Minnesota's assisted suicide statute which prohibits advising and encouraging suicide, is unrelated to the suppression of free expression and, if properly limited, is not greater than is necessary to further the State's interest.

The Court reaffirms its conclusions of law in the November 8, 2010 omnibus order. The Court finds that the State met its burden to prove that the assisted suicide statute is constitutional and that Defendant's speech was not protected by the First Amendment.

**a. The State's Burden of Proving Constitutionality**

In the Court's omnibus order, this Court stated that the party challenging the constitutionality of a statute has the burden of proving that the statute is unconstitutional by proof beyond a reasonable doubt.<sup>27</sup> However, since it is undisputed that Defendant's only participation in the suicides of Mark Drybrough and Nadia Kajouji was through speech, the Court needs to clarify its previous finding concerning who bears the burden of establishing the constitutionality of the statute.

In *State v. Crawley*, 789 N.W.2d 899, 903 (Minn. Ct. App. 2010), the Minnesota Court of Appeals said that in deciding a legitimate free speech challenge, it is the State which must bear the burden of proving constitutionality of the statute. The Court finds that the State has done so.

**b. Defendant's Speech is Categorically Unprotected by the First Amendment**

Several categories of speech form have traditionally and exclusively received an exemption from First Amendment protection. *Chaplinsky v. New Hampshire*, 315 U.S. 568,

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<sup>27</sup> See page 15 of the Court's Omnibus order dated November 8, 2010.

571-72 (1942). Some of these categories include obscenity, “fighting words,” and defamation.<sup>28</sup> Another category of exceptions justifying content or viewpoint discrimination applies when “secondary effects” justify the regulation without reference to the content of the speech. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 389 (1992) (citing *Renton v. Playtime Theaters, Inc.*, 475 U.S. 41, 52 (1986)). Additionally, the Supreme Court has distinguished speech that is public versus private, finding First Amendment protection is strongest for public speech. *Snyder v. Phelps, Westboro Baptist Church, et al.*, 131 S. Ct. 1207, 1215 (2011). The Court finds that Defendant’s speech falls in the category of speech that is exempt from First Amendment protection.

### **i. Fighting Words**

The Court finds that Defendant’s speech imminently incited the victims to commit suicide, and can be described as “Lethal Advocacy,” which is analogous to the category of unprotected speech known as “fighting words” and “imminent incitement of lawlessness.”

“Fighting words,” which by their very utterance inflict injury or tend to incite an imminent breach of the peace, are not entitled to protection under the First Amendment. Such words are not an essential part of any exposition of ideas, and are of such slight social value as a step to the truth, that any benefit that might be derived from them is clearly outweighed by the societal interest in order and morality. *R.A.V.*, 505 U.S. at 383.

The United States Supreme Court used a more categorical approach to determining the extent of First Amendment protection in *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969), which stated that speech can only be punished if it is “directed to producing imminent lawless action and is likely to have this effect.”

The Minnesota Supreme Court, in *Matter of the Welfare of S.L.J.*, 263 N.W.2d 412, 419 (Minn. 1978), ruled that if a statute being scrutinized [disorderly conduct] punished more than “fighting words,” then it must be either struck down as overbroad or construed narrowly to make it constitutional. In *S.L.J.*, the Court ruled that uttering “pigs” to police, while vulgar, insulting and offensive, did not make the speech criminal in nature. The court limited the application of

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<sup>28</sup> Dan Farber, *The Categorical Approach to Protecting Speech in American Constitutional Law*, 84 IND. L.J. 917, 920-25 (2009)



Minnesota's disorderly conduct statute to "fighting words"- as it related to speech. Likewise, this Court narrowly construes the assisted suicide statute, to make it constitutional, by limiting the statute's application to words which "imminently incite the violent act of suicide, and are likely to have this effect." *See, Brandenburg (supra)*

Encouraging and advising suicide through speech is the same as inciting a fight or an assault with words. Words which imminently incite another to commit suicide constitute "Lethal Advocacy", and are not a protected form of speech under the First Amendment.

## **ii. Secondary Effects**

Assisting or encouraging suicide through speech can also be prohibited due to the "secondary effect" of the speech, that is, the death of another person by suicide. The government has the right to restrict speech which advises or encourages suicide to foster the government's compelling interest to protect lives of its citizens who are especially vulnerable to suicidal tendencies. For example, the State can prohibit the possession or dissemination of pornographic live performances by minors.<sup>29</sup> Such prohibition is permissibly justified to prevent harm to the minors involved, not to restrict the expressive aspect of the activity. The First Amendment also allows for regulation of speech in other settings, such as when speech is targeted by a restriction narrowly tailored to achieve a compelling governmental interest. *Burson v. Freeman*, 504 U.S. 191, 211 (1992). Protecting and preserving life is a compelling State interest and the assisted suicide statute is narrowly tailored to achieve the State's compelling interest in protecting life.

## **iii. Public v. Private Speech**

Recently, the U.S. Supreme Court discussed First Amendment protection in the case of *Snyder v. Phelps, Westboro Baptist Church, et al.*, 131 S. Ct. 1207 (2011). While the Court's holding in *Westboro* is narrow, the Court restated that the First Amendment protection applies to speech which is primarily public in nature. *Id.* at 1215. Speech on matters of *public concern* is at the heart of the First Amendment protection. *Id.* (emphasis added). The First Amendment reflects "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open." *Id.* The *Westboro* case involved malicious and socially

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<sup>29</sup> Minnesota has such a statute. See Minn. Stat. § 617.247.

unacceptable speech, which the plaintiffs alleged constituted intentional infliction of emotional distress. The Court defined “public speech” as speech which:

- can “be fairly considered as relating to any matter of political, social, or other concern to the community.” *Id.* (citing *Connick v. Myers*, 461 U.S. 138, 145 (1983)), or
- is “a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public.” *Id.* at 1216.

The speech involved in this case was not public in nature. The speech directed towards the victims in this case was not the subject of general interest or value and concern to the public. It cannot be fairly considered a matter of political, social, or other concern to the community.

As Justice Alito stated in dissent in *Westboro*, “[o]ur profound national commitment to free and open debate is not a license for vicious verbal assault.” *Id.* at 1222, (Alito, J., dissenting).

Neither of the victims in this case was a public figure. If Defendant had a strong opinion about the moral, religious, or political topic of suicide or assisted suicide, the First Amendment ensures that he would have almost limitless opportunity to express his view. Defendant may write articles on the topic of suicide. He could create videos and audio recordings and circulate them. He may speak to individuals and groups in public forums and in other private venues that wish to accommodate him. He may appear on television, speak on the radio, and post messages on the internet as long as his speech is of a public nature as determined by all of the circumstances in the case. However, in this case, Defendant focused his advice and encouragement on two vulnerable and depressed victims in a private setting (direct emails and electronic chats). He was not merely advocating a political, moral, or social philosophy.

The Court has carefully considered Defendant’s First Amendment challenge to the assisted suicide statute in Minnesota. This Court is satisfied Defendant’s conduct constituted “Lethal Advocacy”. Defendant’s speech encouraged and imminently incited two persons to commit suicide. Their suicides were a foreseeable result of the Defendant’s speech. This type of encouragement to commit suicide was the type of conduct the statute was intended to prohibit. The statute is focused on preventing suicide rather than quelling free expression, and the statute is narrowly tailored to achieve the State’s compelling interest to protect human life. Defendant’s

speech was private, was directed toward specific victims, and was foreseeable to have the intended effect (suicide). For these reasons, Defendant's speech was not protected by the First Amendment.

**c. Minnesota's Assisted Suicide Statute is Analyzed in a Similar Manner to the Aiding and Abetting Statute (Minn. Stat. 609.05)**

The State of Minnesota decriminalized the offense of "attempted suicide" in 1963. 1963 Minn. Laws page no. 1246. The state did so because it recognized that persons who attempt suicide are vulnerable, prone to depression or other mental illness, and/or subject to terminal illness or longstanding pain and hopelessness. Criminalizing their conduct, in effect, criminalized the victim. Even though the underlying conduct of attempted suicide is no longer a crime, application of the assisting suicide statute (Minn. Stat. § 609.215, subd. 1) is analyzed in a similar manner as the aiding and abetting statute under Minn. Stat. § 605.05.

For example, in *State v Merrill*, 428 N.W.2d 361, 367 (Minn. 1988), the Minnesota Supreme Court determined that active participation is not required for "accomplice" liability under Minn. Stat. § 609.05. However, there must be a knowing role in the commission of a crime by the Defendant, who takes no steps to thwart the crime. Mere presence at the scene of a crime does not prove aiding and abetting because inaction, knowledge and passive acquiescence does not rise to the level of criminal culpability. *State v Russell*, 503 N.W.2d 110, 114 (Minn. 1993). However, where both speech and presence are involved, accomplice liability can be proven. *In re the Welfare of J.P.L.*, 359 N.W.2d 622, 624 (Minn. Ct. App. 1984) (held that a juvenile was guilty of aiding or advising theft by doing nothing more than telling his friend to "take the toy truck.").

Minn. Stat. § 609.215 uses the word "encourages" suicide, whereas Minn. Stat. § 609.05 does not, with respect to aiding other criminal conduct. The Legislature's use of the word "encouragement," is broad in scope and application, and clearly contemplates that certain speech may constitute a violation of the statute.

The word "encourage" "[i]n criminal law, [means] to instigate; to incite to action; to give courage to; to inspirit; to embolden; to raise confidence; to make confident; to help; to forward; to advise. *Black's Law Dictionary*, 364 (abridged 6<sup>th</sup> ed. 1991). The concept of

“encouragement” is generally accomplished through speech. By contrast, the use of the word “assist” means to “[t]o contribute effort in the complete accomplishment of an ultimate purpose intended to be effected by those engaged.” *Id.* at 80. The word “advise” means “to give an opinion or counsel, or recommend a plan of action.” *Id.* at 35.

The wording of the assisted suicide statute makes clear that the Legislature intended broader application to acts that assist suicide than for acts which aid and abet other crimes, and intended that speech alone can constitute a violation.

#### **IV. DEFENDANT ENCOURAGED AND ADVISED THE VICTIMS TO COMMIT SUICIDE**

There is no doubt that the defendant advised and encouraged both Mark Drybrough and Nadia Kajouji to commit suicide. Among other things, Defendant:

- a. Spoke directly to each victim privately and not as part of a group or internet “chat room”.
- b. Sought out each victim individually, and did not communicate with them by chance.
- c. Gave explicit advice to each victim concerning the method by which they could complete their suicide, and discouraged other methods of suicide.
- d. Represented himself as a veteran female nurse and based his medical advice on emergency room experience with numerous victims of suicide attempts.
- e. Gave each victim courage and confidence to complete the suicide by showing empathy with their decision to commit suicide, and fraudulently promised to take his own life contemporaneously with the victims.

Defendant’s encouragement and advice imminently incited the suicide of each victim, and that result was foreseeable.

In the case of Mark Drybrough, the suicide occurred within four to five days after Defendant’s last communication with the victim. Death was by hanging as recommended by Defendant. Defendant’s encouragement emboldened Mark Drybrough to commit suicide even though Drybrough stated in his last e-mail that “he wasn’t there yet.” Defendant participated in a suicide pact with Nadia Kajouji, and actively affirmed her suicide plans.

Both suicides occurred within days of Defendant's final communication with the victims. Defendant knew that each suicide was foreseeable and imminent. There is no evidence of any intervening or superseding cause which was independent of Defendant's encouragement and advice.

Defendant's confession to police on January 7, 2009 further proves his guilt. Defendant assumed a false name and gender to gain sympathy and confidence with each victim. Defendant lied about his own experiences and suicidal fantasies. Defendant admitted that he counseled others to commit suicide, which certainly made the suicide deaths of Mark Drybrough and Nadia Kajouji more foreseeable by Defendant. Defendant's desire to remain covert and anonymous (i.e. using an assumed false name and identity) proves that his actual purpose was to induce people to commit suicide. This is confirmed by Defendant's preoccupation with hanging and with trying to convince his victims to allow him to watch their death on web cam. Actually witnessing a victim's suicide could serve no purpose other than to satisfy Defendant's own morbid excitement of witnessing the death of another.

Defendant never tried to discourage either victim from committing death by suicide, or question the morality or judgment of the act. Rather, the facts indicate repeated and relentless encouragement by Defendant to complete the suicide.

The Court is satisfied that the facts stipulated to by Defendant establish each and every element of the crime beyond a reasonable doubt.

**a. Predisposition of Victim is Not a Defense**

Defendant argues that his actions did not constitute direct advice, encouragement, or assistance to commit suicide by either victim, because the victims were predisposed to commit suicide and would have done so without Defendant's assistance or encouragement. Specifically, Defendant claimed that Mark Drybrough was mentally ill and suffering from the effects of glandular fever. Defendant claimed that Nadia Kajouji suffered from mental illness and depression and was dealing with the hurt of a break-up and miscarriage, and had other relationship problems with friends prior to taking her life. These arguments are irrelevant because predisposition of the person who commits suicide is not a defense to Minn. Stat. §

609.215. The predisposition of a suicide victim actually makes the victim more vulnerable to encouragement or advice, and their death more imminent and foreseeable.

On July 1, 18, and 19, Defendant responded to Mark Drybrough's inquiry about how to hang himself. Defendant gave explicit instructions, stating, "If you are very serious about dying, I too agree that suspension hanging is by far the surest method to do." (Exh. 1, Page 459); "A sturdy knot is very much all one needs." (Exh. 1, Page 456); and "Depending on how tall you are, preferably under six feet tall, you can easily hang from a door using a knot on the side to tie the ropes to, sling over the top of the door, attach the noose or loop to yourself then step off and hang successfully." (Exh. 1, Page 497-98). Defendant asked Mark Drybrough when he wanted to die, and if it would be soon, because Defendant wished to die soon, but would hold on for as long as possible for Mark Drybrough. (Exh. 1, Page 456). After receiving instructions from Defendant, Drybrough informed Defendant that he had tried hanging. (Exh. 1, Page 499). Four to five days after his last conversation with Defendant, Drybrough committed suicide by hanging himself. The evidence demonstrates that Defendant's encouragement was a contributing factor in bringing about Drybrough's suicide.

Defendant formed a suicide pact with Nadia Kajouji (Exh. 1, Page 146). Throughout his conversation with Nadia Kajouji, Defendant confided his intentions to commit suicide himself, in an attempt to comfort and gain Kajouji's trust. (Exh. 1, Page 143-151). Defendant steadfastly tried to convince Kajouji to choose suicide by hanging, rather than jumping off a bridge. Defendant stated that if Nadia was still around on Monday ("I hope not for your sake"), they would commit suicide together. (Exh. 1, Page 137). A few hours after talking to Defendant, Kajouji committed suicide by jumping into a frozen river. The facts clearly demonstrate that Defendant's encouragement contributed to bringing about Nadia Kajouji's suicide.

Defendant argued that there was a lag time between his last conversation with Mark Drybrough and his suicide (approximately four days). However, when the Court finds that the speech must imminently incite suicide, it is not necessary that the suicide take place immediately after Defendant's encouragement or advice. "Imminent" is defined as: "Near at hand; mediate rather than immediate; close rather than touching; impending." (*Black Law's Dictionary*, 514 (abridged 6<sup>th</sup> ed. 1991)).

**b. Intent that the Victims Actually Commit Suicide is Not Required**

Defendant also argued that he had to intend that the victims actually commit suicide in order to be convicted. However, the Court finds that the intent element relates only to the intent to advise or encourage. As long as the victim's actual suicide flows imminently from intentional encouragement, all that is necessary to establish the second element of the offense is that a person actually commit suicide.<sup>30</sup>

Nevertheless, even if Defendant is correct in arguing that he needed to intend the death by suicide itself, the Court also finds that Defendant did, in fact, intend the result. It is evident from Defendant's conversations with both victims that he intended to hasten their suicide by telling the victims that he would commit suicide immediately after they did. Defendant's intent is further proven by his pattern of communications with other potential suicide victims from 2005 to 2009. *See* Note 5 *supra*. Defendant's pattern was to promote suicide by hanging. Defendant often suggested that he be allowed to witness the person's death by internet web cam. This evidence establishes beyond a reasonable doubt that Defendant intended that both Mark Drybrough and Nadia Kajouji commit the act of suicide itself.

Defendant gauged the willingness of both victims to commit suicide. Defendant wrote to Mark Drybrough, "[i]f you are very serious about dying, I too agree that suspension [sic] hanging is by far the best and surest method to do so." After several conversations, Defendant wrote to Drybrough to tell him that he was "here to care and help [him]" (Exh. 1, Page 467). Defendant knew that Drybrough was serious about committing suicide and, from the evidence of advice and encouragement, there is no doubt that the defendant intended his actions and words to induce Drybrough to commit suicide.

Defendant continuously encouraged Nadia Kajouji to consider hanging as a method for taking her own life. (Exh. 1, Page 122-29). When Miss Kajouji informed Defendant that she was going to jump off a bridge with her skates on, Defendant affirmed her decision by saying, "I hope it works." (Exh. 1, Page 125). Defendant agreed upon a time for both him and Miss Kajouji to commit suicide and stated that, if Miss Kajouji was still alive on the following

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<sup>30</sup> This is similar to Minn. Stat. § 609.195 for Third Degree Murder. Death need not be intended, but must be proximately caused by intentionally committing an act which is "eminently dangerous" or by selling controlled substances which causes death of another. It is the cause, not the result, which must be intended.

Monday morning (saying “I hope not for your sake”), they could both use hanging to commit suicide. (Exh. 1, Page 137). Kajouji told Defendant that she had felt much better knowing that she was going to commit suicide in the upcoming weekend. (Exh. 1, Page 146). Miss Kajouji said that she and Defendant “were together in this” to which Defendant replied, “Yes, I promise.” (Exh. 1, Page 146). On the evening of March 9, 2008, Miss Kajouji told Defendant that she was “glad things were going to end tonight.” (Exh. 1, Page 152). Defendant stated that he wished they could die together but he understood that Miss Kajouji needed to go that night. (Exh. 1, Page 153). Therefore, Defendant clearly knew that Miss Kajouji was going to take her own life. Nevertheless, he continued to encourage her to do so by claiming that he was going to take his own life as well. This evidence proves not only Defendant’s act to encourage Miss Kajouji to take her own life, but also his intent to incite the suicide itself.

In his statement to police on January 7, 2009, Defendant stated the following:

1. *Officer:* “Why do you say it [encouraging suicide] isn’t right?”

*Defendant:* “Because, you know, if you look back in retrospect, you know, **you should never – you don’t ever – encourage anybody to – ever ever ever, you know – do something against themselves.** On the same hand they are looking for – a person asking a question and you got any type of a knowledge – do you have a right or...is it right, wrong, or otherwise just to ignore it or you just give them, you know, give them – you know – tell them what you know and what you don’t know...and when I... – you know, I knocked it off quite a long time ago. Even just getting involved with any kind of bullshit like that....**it is just not right to do. And so I came to the conclusion myself that...**I don’t want anything to do with that kind of...discussion or activity or whatever **because...morally, ethically, legally, or whatever the case is – it’s just not cool. It’s horrible, it’s just terrible. And to engage in discussions such as they are are just not appropriate.**” (Exh. 1, Page 907).

2. *Officer:* “And so as a nurse, how did you feel about advising...a stranger on the internet about methods of committing suicide?”

*Defendant:* “Basically, you want me to come perfectly honest? I felt that ...a role an advocate as a nurse that – I have seen hundreds of people die in my day and...**I felt that**



**whoever the hell, you know, you were talking to...was going to do it regardless if I talked to them or not.** Period. That was [what] they are going to do it. They are going to do whatever it takes. And so, **therefore...as a nurse/nurturing role or whatever the case may be, I wanted to just...be with them in their time of need** and....that is basically it. **Just to be an advocate for someone who is all along depressed, is at the end of their rope, wants to die and is going to do it come hell or high water.”** (Exh. 1, Page 909-910).

3. *Officer:* Now you, you said you were a simple contributor. How would you categorize yourself now?

*Defendant:* **An accessory.**

*Officer:* **An accessory to what?**

*Defendant:* **Ah probably to somebody ending their life.** Or other people ah, there may be multiple people, I may be the only one. I don't know. And I'm just saying that right now it feels absolutely horrible and that's why I decided that you know. (Exh. 1, Page 917).

4. Defendant admitted that he had a suicide pact with Nadia Kajouji but claimed that he had been going through depression and stuff himself and that he was going to “knock this off and get some help ....” (Exh. 1, Page 915).

5. Defendant admitted to police that he saw himself as an “advocate” for those who wished to end their lives (Exh. 1, Page 913) and that his communications with the victims were made in an “advisory” role. (Exh. 1, Page 944).

## V. CONCLUSION

The Court finds beyond a reasonable doubt that Defendant intentionally encouraged and advised Mark Drybrough to commit suicide; that Mark Drybrough committed suicide by hanging on or about July 27, 2005;<sup>31</sup> that Defendant's actions imminently incited Mark Drybrough to commit suicide; and Defendant's actions were likely to have that effect.

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<sup>31</sup> The coroner's post-mortem report from the pathology department of Walls Grave Hospital in Coventry, U.K. (Exh. 1, Page 538) is sufficient evidence that Mark Drybrough committed suicide.

The Court also finds beyond a reasonable doubt that Defendant intentionally encouraged and advised Nadia Kajouji to commit suicide; that Nadia Kajouji committed suicide by jumping into the Riedeu River on or about March 10, 2008;<sup>32</sup> that Defendant's actions imminently caused Nadia Kajouji to commit suicide; and Defendant's actions were likely to have that effect.

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<sup>32</sup> The police report from the Ottawa Police Department states that Nadia was found on the bank of the Riedeu River wearing her ice skates. (Exh. 1, Page 426). This is consistent with the way that Miss Kajouji herself told Defendant how she would commit suicide on March 9, 2008.