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PENAL LAW

Penal Law § 125.15: New York Court of Appeals upholds second degree manslaughter conviction based on reckless conduct resulting in another person committing suicide

A person is guilty of manslaughter in the second degree¹ under section 125.15(3) of the New York Penal Law when he intentionally causes or aids another person in committing suicide.² Traditionally, cases dealing with one's criminal liability for the suicide of another have been limited to those in which the defendant was believed to have intentionally aided or assisted the suicidal individual in ending his or her life.³ Recently, however, the Court of Ap-

¹ N.Y. PENAL LAW § 125.15(3) (McKinney 1987). Manslaughter in the second degree is a class C felony. *Id.*

² *See id.* "A person is guilty of manslaughter in the second degree when . . . [h]e intentionally causes or aids another person to commit suicide." *Id.* It is an affirmative defense to intentional murder that the defendant intentionally aided, without the use of duress or deception, the victim in committing suicide, thereby reducing the offense to manslaughter. *See id.* § 125.25(1)(b).

A person is guilty of murder in the second degree when [w]ith intent to cause the death of another person, he causes the death of such person or of a third person; except that in any prosecution under this subdivision, it is an affirmative defense that . . . [t]he defendant's conduct consisted of causing or aiding, without the use of duress or deception, another person to commit suicide. Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of manslaughter in the second degree or any other crime.

Id.

A person therefore may be criminally liable for murder for the suicide of another in circumstances involving duress or deception, but when neither circumstance is present, may be liable only for manslaughter. *See id.*; *see also* Sue W. Brenner, *Undue Influence in the Criminal Law: A Proposed Analysis of the Criminal Offense of "Causing Suicide"*, 47 ALB. L. REV. 62, 75 (1982).

³ *See, e.g.*, *State v. Marti*, 290 N.W.2d 570 (Iowa 1980) (preparing and providing weapon for intoxicated and suicidal individual); *People v. Kent*, 41 Misc. 191, 83 N.Y.S. 948 (Sup. Ct. Monroe County 1903) (aiding, encouraging and assisting woman in committing suicide by cutting her throat). Generally, there are very few reported cases across the country in which a person has been prosecuted for his or her involvement in a suicide, and most of those involved terminally ill individuals, or "right to die" situations. *See, e.g.*, *Barber v. California*, 195 Cal. Rptr. 484 (1983) (issuing writ of prohibition against two doctors charged with murder and conspiracy to commit murder for acceding to requests of patient's family to discontinue life support); *People v. Roberts*, 178 N.W. 690 (Mich. 1920) (affirming defendant's conviction of murder in first degree for aiding suffering wife's suicide by providing her with arsenic laced drink). For an interesting case dealing with the issue of criminal liability for assisted suicide in New York, see *Lenhard v. Kirwan*, 53 A.D.2d 782, 384

peals in *People v. Duffy*⁴ held that a defendant may be convicted of second degree manslaughter under section 125.15(1) of the Penal Law for engaging in reckless conduct that results in another person committing suicide.⁵

In *Duffy*, the Court of Appeals considered, for the first time, whether section 125.15(3) of the Penal Law⁶ is the exclusive vehicle for prosecution when a defendant's acts contribute to another's suicide.⁷ The thirty-three year old defendant, Michael Patrick Duffy, met a heavily intoxicated seventeen year old, Jason Schuhle, on a street in the Village of McGraw, New York.⁸ Distraught over a recent break-up with his girlfriend, Schuhle accompanied the defendant, who had also been drinking, to the defendant's apartment where the two continued to drink.⁹ Schuhle repeatedly expressed his desire to kill himself and asked Duffy to shoot him.¹⁰ In response, Duffy challenged Schuhle to jump head first off the balcony of Duffy's second story apartment,¹¹ but Schuhle declined to do so.¹² Finally, tired of Schuhle's complaining and not believing

N.Y.S.2d 558 (3d Dep't 1976). In *Lenhard*, police officers seeking promotion to sergeant brought article 78 proceedings challenging the scoring of a multiple choice exam question. *Id.* at 559. The disputed question read,

A husband, in response to a plea of his incurably ill wife, intentionally brings her a lethal drug in order to aid her in ending a tortured existence. She takes it and dies. What is the highest degree of crime with which the husband can be charged:
A) Criminally negligent homicide, B) Manslaughter, 2nd Degree, C) Murder, D) None of the above.

Id. The plaintiffs asserted that the only correct answer was "murder," while the superintendent of the state police provided that the correct answer was "Manslaughter." *Id.* The Supreme Court, Special Term, granted a petition allowing credit to be given for both answers. *Id.* Appeal was taken, and the Appellate Division modified the judgment, providing that "murder" was the only answer to be given credit. *Id.* at 560.

⁴ 79 N.Y.2d 611, 595 N.E.2d 814, 584 N.Y.S.2d 739 (1992).

⁵ *Id.* at 613, 595 N.E.2d at 814, 584 N.Y.S.2d at 739.

⁶ N.Y. PENAL LAW § 125.15(3) (McKinney 1987).

⁷ *Duffy*, 79 N.Y.2d at 614-15, 595 N.E.2d at 815-16, 584 N.Y.S.2d at 740.

⁸ *Id.* at 613, 595 N.E.2d at 814, 584 N.Y.S.2d at 739.

⁹ *Id.*, 595 N.E.2d at 814-15, 584 N.Y.S.2d at 739-40. In his statement to New York State police, Duffy explained that Schuhle "didn't say to [sic] much. He was crying. I was just trying to calm him down." Appellants' Appendix at 4, 20, *People v. Duffy*, 79 N.Y.2d 611, 595 N.E.2d 814, 584 N.Y.S.2d 739 (1992) (No. 91-223).

¹⁰ *Duffy*, 79 N.Y.2d at 613, 595 N.E.2d at 815, 584 N.Y.S.2d at 739. See Appellants' Appendix at 4-5, 20-21, *Duffy* (No. 91-223). Schuhle's first words to Duffy were "kill me, please." *Id.* at 4, 20. During the time the two were together, Schuhle asked Duffy to kill him at least three or four times. *Id.* at 5.

¹¹ *Duffy*, 79 N.Y.2d at 613, 595 N.E.2d at 815, 584 N.Y.S.2d at 740. Duffy told Schuhle "three different times to jump over the porch railing." Appellants' Appendix at 5, 21. Duffy told Schuhle that "If you want to go that bad, to [sic] dive over the railing headfirst." *Id.*

¹² *Duffy*, 79 N.Y.2d at 613, 595 N.E.2d at 815, 584 N.Y.S.2d at 740.

that Schuhle really wanted to kill himself, Duffy retrieved a rifle and bullets, handed them to Schuhle, and urged him to "put the gun in his mouth and blow his head off."¹³ Schuhle did—and later died as a result of "the massive injuries he suffered."¹⁴

Duffy was indicted on two counts of second degree manslaughter.¹⁵ The first alleged that he "intentionally caused or aided Schuhle in committing suicide,"¹⁶ and the second alleged that he "recklessly caused Schuhle's death."¹⁷ At trial in county court, the jury acquitted him of the first count, but convicted him of the second count.¹⁸ The Appellate Division, Third Department, reversed the conviction as a matter of law, holding that "a person may be found guilty of manslaughter in the second degree for causing or aiding a suicide only when he or she acts intentionally."¹⁹

¹³ *Id.* Duffy stated to police: "I was tired of listening to him. . . . I was tired of dealing with him because I didn't even know the kid. . . . I told the kid, 'hey, I've got a gun in there, you can blow yourself away with that.'" Appellant's Appendix at 5. The events that followed were misleadingly described by Duffy in his first statement to the effect that he did not know how Schuhle obtained the ammunition or loaded the gun. *Id.* at 5-6. In an amended statement, Duffy later admitted that he "got sick of hearing his [Schuhle's] bitching and moaning about wanting to kill himself." *Id.* at 7. As a result, Duffy got up from where he was seated, picked up the bullets and threw them at Schuhle saying, "here are the f***ing bullets, go ahead and blow your f***ing head off." *Id.* Duffy, however, insisted that he "did not think he would do it." *Id.*

¹⁴ *Duffy*, 79 N.Y.2d at 613, 595 N.E.2d at 815, 584 N.Y.S.2d at 740.

¹⁵ *Id.*

¹⁶ *Id.* at 613-14, 595 N.E.2d at 815, 584 N.Y.S.2d at 740; N.Y. PENAL LAW § 125.15(3) (McKinney 1987).

¹⁷ *Duffy*, 79 N.Y.2d at 614, 595 N.E.2d at 815, 584 N.Y.S.2d at 740; N.Y. PENAL LAW § 125.15(1). "A person is guilty of manslaughter in the second degree when he recklessly causes the death of another person." *Id.*; see also *id.* § 15.05.

¹⁸ *Duffy*, 79 N.Y.2d at 614, 595 N.E.2d at 815, 584 N.Y.S.2d at 740.

¹⁹ 171 A.D.2d 900, 566 N.Y.S.2d 768 (3d Dep't 1991). The court further found that "[p]rosecution of [the] defendant for manslaughter in the second degree under . . . § 125.15(1) for recklessly causing a suicide is in direct conflict with . . . § 125.15(3) which requires a higher culpable mental state when a suicide is involved." *Id.* The court reasoned that since the jury determined that the defendant had not acted intentionally, he could not be convicted based on reckless conduct. *Id.* In a concurring opinion, Judge Weiss agreed with the majority to the extent that the conviction was reversed. *Id.* at 902, 566 N.Y.S.2d at 769 (Weiss, J. concurring). He contended, however, that § 125.15(1) is applicable and that the significant element is scienter, or "a showing that the defendant was aware of and consciously disregarded a substantial and unjustifiable risk." *Id.* Whether a defendant may be convicted rests on the degree of "diffuseness or separation between the defendant's recklessness and the actual performance of the act causing the death." *Id.* Judge Weiss argued that the intervention of intentional acts by Schuhle broke the causal connection between the defendant's acts and Schuhle's death, and therefore the conviction should be reversed. *Id.* This analysis would appear to have the same effect as the majority's, namely, precluding conviction based on reckless conduct when suicide is involved since the intentional suicidal act will always sever the causal connection.

The Court of Appeals reversed, unanimously concluding that a person may be convicted of second degree manslaughter for having engaged in reckless conduct which results in another person committing suicide.²⁰ Writing for the court, Judge Titone initially determined that the defendant's conduct "clearly fell within the scope of section 125.15(1)'s proscription against recklessly causing the death of another person."²¹ He found no discernable reason why the legislature would have wanted to limit criminal liability for causing a suicide to those instances in which the accused acted intentionally.²² The court observed that "[n]othing in the language or the legislative history of section 125.15(3) suggests that the Legislature intended to foreclose second degree manslaughter prosecutions for recklessly causing a suicide."²³

²⁰ *Duffy*, 79 N.Y.2d at 615, 595 N.E.2d at 816, 584 N.Y.S.2d at 741.

²¹ *Id.* at 614, 595 N.E.2d at 815, 584 N.Y.S.2d at 740. The court agreed with the prosecution's observation that "a person who, knowing that another is contemplating immediate suicide, deliberately prods that person to go forward *and* furnishes the means of bringing about death may certainly be said to have 'consciously disregard[ed] a substantial and unjustifiable risk' that his actions would result in the death of that person." *Id.* (emphasis in original).

²² *Id.* at 615, 595 N.E.2d at 816, 584 N.Y.S.2d at 741. The court elaborated, [a]n individual who—like defendant—consciously disregards a substantial and unjustifiable risk that his actions will lead to another person's killing him- or herself and thereby causes that person's death may be just as culpable as one who intentionally causes or aids another to commit suicide. . . . In the absence of a clear indication to the contrary, we are simply unwilling to ascribe to the Legislature an intent to criminalize the latter conduct while at the same time subjecting the former to no penal sanction at all.

Id. (citations omitted).

²³ *Id.* at 615, 595 N.E.2d at 815, 584 N.Y.S.2d at 740. There appears to be very little legislative history in connection with the revision of the Penal Law, with the exception of interim reports of the Revision Committee. *See* Interim Report of the State of New York Temporary Commission on Revision of the Penal Law and Criminal Code, N.Y. LEGIS. DOCS. No. 41 (1961); No. 8 (1963) and No. 14 (1964). The court reasoned that the legislature intended § 125.15(3) to serve as a means of prosecuting those who, while having intentionally caused or aided another person in committing suicide, were not as culpable as intentional murderers. *Duffy*, 79 N.Y.2d at 615, 595 N.E.2d at 816, 584 N.Y.S.2d at 740.

After concluding that *Duffy* could properly be charged under subsection one, the court focused on the issue of causation. *Id.* at 615-16, 595 N.E.2d at 816, 584 N.Y.S.2d at 741. The court pointed to the defendant's contention that his conduct was not a sufficiently direct cause of *Schuhle's* death because it was *Schuhle*, not *Duffy*, who loaded the rifle and pulled the trigger. *Id.* at 616, 595 N.E.2d at 816, 584 N.Y.S.2d at 741. The court explained that a person will be held criminally liable for conduct resulting in another's death when that conduct was an "actual contributory cause of death." *Id.* at 616, 595 N.E.2d at 816, 584 N.Y.S.2d at 741. It further noted that *Schuhle's* actions did not constitute an intervening cause which would relieve *Duffy* of responsibility as a matter of law, because, in light of the evidence, (namely, that *Schuhle* was depressed and suicidal) the jury could have rationally concluded that the risk of *Schuhle* doing what *Duffy* suggested was foreseeable. *Id.*; *see supra*

In holding that Duffy may properly be convicted for reckless manslaughter, the Court of Appeals concluded that section 125.15(3)²⁴ is not an exclusive vehicle for prosecution when death is the result of a suicide.²⁵ In general, a statutory prohibition of specified conduct will be the exclusive vehicle for prosecution only when that is the clear intent of the legislature.²⁶ An examination of the precursory provisions to the current section 125.15(3) and the related legislative history supports the holding of the Court of Appeals.²⁷

notes 9-13 and accompanying text. In deciding the issue of causation, the court relied heavily on *Anthony M. v. Cable*, 63 N.Y.2d 270, 471 N.E.2d 447, 481 N.Y.S.2d 675 (1984) in which a 12-year-old boy was convicted of second degree manslaughter in connection with his mugging of an 83 year old woman who subsequently died of a heart attack. *Id.* at 276, 471 N.E.2d at 449, 481 N.Y.S.2d at 678. Although neither party's expert could pinpoint the mugging as the cause of the heart attack, the woman's doctor expressed the opinion with a reasonable degree of certainty that the stress of the mugging and its physical and psychological repercussions were indirect causes of her death. *Id.* at 277, 471 N.E.2d at 449, 481 N.Y.S.2d at 678. The Court of Appeals upheld the conviction, noting that "even an intervening independent agency will not exonerate defendant unless 'the death is solely attributable to the secondary agency, and not at all induced by the primary one.'" *Id.* at 280, 471 N.E.2d at 452, 481 N.Y.S.2d at 680.

It appears that in holding § 125.15(1) applicable to the situation in *Duffy*, the Court of Appeals took the case out of the realm of the "suicide assistance statute." See generally George C. Garbesi, *The Law of Assisted Suicide*, 3 ISSUES L. & MEN. 93 (1987); Brenner, *supra* note 2, at 62; H. Tristram Engelhardt, Jr. & Michele Malloy, *Suicide and Assisting Suicide: A Critique of Legal Sanctions*, 36 Sw. L.J. 1003 (1982); Catherine D. Shaffer, Note, *Criminal Liability for Assisted Suicide*, 86 COLUM. L. REV. 348 (1986). Although New York's statute is not based upon it, the Model Penal Code has a separate suicide assistance statute:

§ 210.5 Causing or Aiding Suicide.

(1) *Causing Suicide as Criminal Homicide.* A person may be convicted of criminal homicide for causing another to commit suicide only if he purposely causes such suicide by force, duress or deception.

(2) *Aiding or Soliciting Suicide as an Independent Offense.* A person who purposely aids or solicits another to commit suicide is guilty of a felony of the second degree if his conduct causes such suicide or an attempted suicide, and otherwise of a misdemeanor.

MODEL PENAL CODE § 210.5 (1962).

The Court of Appeals held Duffy criminally liable for reckless manslaughter, not specifically for recklessly aiding or assisting a suicide. *Duffy*, 79 N.Y.2d at 613, 595 N.E.2d at 814, 584 N.Y.S.2d at 739.

²⁴ N.Y. PENAL LAW § 125.15(3) (manslaughter as intentionally aiding or assisting suicide).

²⁵ *Duffy*, 79 N.Y.2d at 612, 595 N.E.2d at 814, 584 N.Y.S.2d at 740.

²⁶ *Id.* at 613, 595 N.E.2d at 815, 584 N.Y.S.2d at 740; see *People v. Valenza*, 60 N.Y.2d 363, 457 N.E.2d 748, 469 N.Y.S.2d 642 (1983); *People v. Eboli*, 34 N.Y.2d 281, 313 N.E.2d 746, 357 N.Y.S.2d 435 (1974).

²⁷ See 3 REVISED STATUTES OF N.Y., pt. IV, ch. I, title II, art. 1, § 7 (Montgomery H. Throop ed., 7th ed. 1882). "Every person deliberately assisting another in the commission of

The predecessor to the current Penal Law tended to enumerate proscribed conduct.²⁸ Recognizing that "the increasing complexities of modern existence cannot be met with a static set of principles,"²⁹ the legislature revised the Penal Code to focus on state of mind, with levels of culpability resting heavily on whether conduct was intentional,³⁰ reckless,³¹ or criminally negligent.³² This approach has a broader reach, allowing prosecution in a wider variety of situations.

While suicide related crimes were contained in a separate article from homicide under the Penal Law of 1909,³³ the only express suicide statute in the revised law is found in section 125.15.³⁴ Since

self-murder shall be deemed guilty of manslaughter in the first degree." *Id.*; see also N.Y. PENAL LAW § 2304 (consol. 1909) (repealed 1965), ("A person who wilfully, in any manner, advises, encourages, abets, or assists another person in taking the latter's life, is guilty of manslaughter in the first degree.")

²⁸ N.Y. PENAL LAW § 1052 (consol. 1909) (repealed 1965).

²⁹ Interim Report of the State of New York Temporary Commission on Revision of the Penal Law and Criminal Code No. 41 (1962) at 7. "Other major phases of Penal Law legislation which suggest a need for thorough analysis and re-examination include our laws of homicide with their various degrees of murder and manslaughter, considered by some to be outmoded in certain important respects." *Id.* at 15.

³⁰ See N.Y. PENAL LAW § 15.05 (McKinney 1987) (defining culpable mental states). Section 15.05(1) defines "intentionally" as follows: "A person acts intentionally with respect to a result or to conduct described by a statute defining an offense when his conscious objective is to cause such result or to engage in such conduct." *Id.*

³¹ See *id.* § 15.05(2).

"Recklessly." A person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto.

Id.

³² See *id.* § 15.05(4).

"Criminal negligence." A person acts with criminal negligence with respect to a result or to a circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

Id.

³³ See N.Y. PENAL LAW §§ 1040-1055 (consol. 1909) (repealed 1965) (homicide statutes); see also *id.* §§ 2300-2306 (statutes relating to suicide).

³⁴ N.Y. PENAL LAW § 125.15 (McKinney 1987). Manslaughter in the Second Degree, under the Penal Law of 1909 consisted of a lengthy enumeration of instances for which a person could be held liable and provided as follows:

the degree of criminal liability is now more dependent on the defendant's state of mind, a person intentionally aiding a suicide could theoretically be prosecuted for murder.³⁵ Recognizing the lower degree of culpability associated with aiding a suicide, however, the legislature created a separate crime for intentionally aiding suicide — section 125.15(3). Thus, it is apparent that the legislature did not intend section 125.15(3) to be the exclusive penalty for suicide related crimes, but merely intended to prevent such crimes from being punished as murder.³⁶

It is submitted that in addition to the support legislative history lends to the *Duffy* decision, policy reasons justify the result reached by the court. The jury concluded that Duffy did not intentionally cause or aid Schuhle's suicide.³⁷ It is asserted, however, that his conduct was clearly criminal. Had Schuhle merely been injured, Duffy could have properly been convicted of reckless endangerment.³⁸ However, because New York's reckless endangerment statute does not apply when death results, the State is precluded from prosecuting Duffy under that section of the Penal

Such homicide is manslaughter in the second degree, when committed without a design to effect death:

1. By a person committing or attempting to commit a trespass or other invasion of a private right, either of the person killed, or of another, not amounting to a crime; or
2. In the heat of passion, but not by a dangerous weapon or by the use of means either cruel or unusual; or,
3. By any act, procurement or culpable negligence of any person, which, according to the provisions of this article, does not constitute the crime of murder in the first or second degree, nor manslaughter in the first degree.

N.Y. PENAL LAW § 1052 (consol. 1909) (repealed 1965).

Following this provision, the situations enumerated included, "woman producing miscarriage," "negligent use of machinery," "mischievous animals," "overloading passenger vessel," "persons in charge of steamboats," "persons in charge of steam engines," "acts of physicians while intoxicated," and "persons making or keeping gunpowder contrary to law." *Id.*

³⁵ N.Y. PENAL LAW § 125.25. Indeed, there are situations in which such a prosecution is justifiable, such as in the case of duress or deception. *Id.* § 125.25(1)(b); *see also supra* note 2.

³⁶ *But see* N.Y. PENAL LAW § 125.25(1)(b) (McKinney 1987) (providing for murder prosecution for suicide when duress or deception is involved). Research for this *Survey* has not located any New York caselaw in which a person has been prosecuted under § 125.25(1)(b).

³⁷ *People v. Duffy*, 79 N.Y.2d 611, 612, 595 N.E.2d 814, 814, 584 N.Y.S.2d 739, 740 (1992).

³⁸ *See* N.Y. PENAL LAW § 120.20 (McKinney 1987). "A person is guilty of reckless endangerment in the second degree when he recklessly engages in conduct which creates a substantial risk of serious physical injury to another person." *Id.*

Law.³⁹ Thus, if section 125.15(1) were not available in New York for prosecution of cases such as these, Duffy's actions would have gone unpunished. Should Duffy be free from liability because his victim died, when he would have been punished had Schuhle only been injured?⁴⁰ It would seem that the New York Legislature did not intend such an absurd result.

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³⁹ See *id.* (statute only contemplates serious physical injury); see also *id.* § 120.25 (reckless endangerment in first degree contemplates grave risk of death but is also inapplicable if death actually results.). But see *id.* § 125.20(4) (providing for conviction of Manslaughter in first degree if physical injury is intended and reckless conduct results in death). The *Duffy* facts, however, do not contain those circumstances. See *Duffy*, 79 N.Y.2d at 612, 595 N.E.2d at 814, 584 N.Y.S.2d at 739-40.

In a Maryland case upon similar facts, the defendant was charged with reckless endangerment. *Minor v. State*, 583 A.2d 1102 (Md. Ct. Spec. App. 1991), *aff'd*, 605 A.2d 138 (1992). Nelson Minor was convicted of reckless endangerment after he gave his brother a loaded shotgun and dared him to play Russian roulette. *Id.* at 1102. As in *Duffy*, the two had been drinking heavily, and the defendant did not believe that his brother would shoot himself. *Id.* The Maryland statute provides that "[a]ny person who recklessly engages in conduct that creates a substantial risk of death or serious physical injury to another person is guilty of the misdemeanor of reckless endangerment." MD. ANN. CODE art. 27, § 120 (1992).

⁴⁰ See *supra* notes 38-39 and accompanying text. Additionally, Duffy clearly would have had criminal liability if suicide was still classified as a felony as it had been in the past. See Shaffer, *supra* note 23, at 351. Duffy would properly have been prosecuted under New York's Criminal Solicitation and Criminal Facilitation statutes. See N.Y. PENAL LAW § 100.08 (McKinney 1987) (criminal solicitation in third degree). "A person is guilty of criminal solicitation in the third degree when, . . . with intent that another person . . . engage in conduct that would constitute a felony, he solicits, requests, commands, importunes or otherwise attempts to cause such other person to engage in such conduct." *Id.*; see also *id.* § 115.05 (criminal facilitation in second degree).

A person is guilty of criminal facilitation in the second degree when, believing it probable that he is rendering aid to a person who intends to commit a class A felony, he engages in conduct which provides such person with means or opportunity for the commission thereof and which in fact aids such person to commit such class A felony.

Id. However, since suicide is not proscribed, Duffy could not have been prosecuted as either a solicitor or facilitator. *Id.*