
No. 19-0210

Commonwealth of Ames
Court of Appeals

COMMONWEALTH OF AMES,

Appellee,

v.

PATRICK FINLEY,

Appellant.

ON APPEAL FROM A FINAL JUDGMENT
OF THE SUPERIOR COURT, BEVERLY COUNTY

JOINT APPENDIX

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COMMONWEALTH OF AMES

Beverly, ss.

SUPERIOR COURT
DEPARTMENT
OF THE TRIAL COURT

Commonwealth of Ames,

v.

Patrick Finley,

Defendant.

Criminal Action No. 19-0112

INDICTMENT

At the Superior Court holden at the City of Volantis, within and for the County of Beverly, for the transaction of criminal business.

The Grand Jurors for the Commonwealth of Ames on their oath present the following charges:

COUNT ONE

Patrick Finley, on or about September 2, 2018 at Volantis, in the County of Beverly did violate Ames Gen. Laws ch. 265, § 60(a) in connection with the death of Victor Malone.

A TRUE BILL

Yvonne Teasley and Rose Zuckerman
Assistant Attorneys General

/s/ Robinson Ashe, III
Grand Jury Foreperson

Date: January 10, 2019

COMMONWEALTH OF AMES

Beverly, ss.

SUPERIOR COURT
DEPARTMENT
OF THE TRIAL COURT

Commonwealth of Ames,

v.

Patrick Finley,

Defendant.

Criminal Action No. 19-0112

MOTION TO DISMISS

Defendant Patrick Finley hereby moves to dismiss the indictment against him pursuant to the First Amendment to the United States Constitution. The First Amendment prohibits the Commonwealth from prosecuting Mr. Finley because of his speech, and, in addition, the law that he is charged with having violated is unconstitutional, either on its face or as applied to the circumstances of this case. See State v. Melchert-Dinkel, 844 N.W.2d 13, 23-24 (Minn. 2014). Accordingly, the indictment against Mr. Finley should be dismissed with prejudice.

Respectfully submitted,

PATRICK FINLEY

/s/ Jesse Vasquez

Jesse Vasquez, Esq. (BBO No. 836392)

Schweikart and Cokely, LLP
1313 River Road
Ashemark, Ames 78311
617-555-0685

Date: February 20, 2019

COMMONWEALTH OF AMES

Beverly, ss.

SUPERIOR COURT
DEPARTMENT
OF THE TRIAL COURT

Commonwealth of Ames,

v.

Patrick Finley,

Defendant.

Criminal Action No. 19-0112

ORDER DENYING MOTION TO DISMISS

It is hereby ordered that Defendant's motion to dismiss is hereby denied. The Court concludes that the First Amendment does not make the underlying criminal statute unconstitutional, and the indictment charging the Defendant only seeks to prosecute speech integral to a crime. See Commonwealth v. Carter, 474 Mass. 624, 636 & n.17 (2016). This denial is without prejudice to Defendant's ability to renew this argument after trial, as necessary.

/s/ Henry M. Thomas
Hon. Henry M. Thomas

Date: February 28, 2019

COMMONWEALTH OF AMES

Beverly, ss.

SUPERIOR COURT
DEPARTMENT
OF THE TRIAL COURT

Commonwealth of Ames,

v.

Patrick Finley,

Defendant.

Criminal Action No. 19-0112

DECLARATION OF MISTRIAL

It is hereby ordered that the first trial of the above-captioned matter is declared to be a mistrial. Two jurors having been excused for cause with the assent of all parties during the pendency of this trial, only eleven jurors remained to try this matter, below the twelve-juror minimum. As such, the clerk will set this matter down for a second jury trial.

/s/ Henry M. Thomas
Hon. Henry M. Thomas

Date: April 5, 2019

COMMONWEALTH OF AMES

Beverly, ss.

SUPERIOR COURT
DEPARTMENT
OF THE TRIAL COURT

Commonwealth of Ames,

v.

Patrick Finley,

Defendant.

Criminal Action No. 19-0112

MOTION FOR JUDGMENT AS A MATTER OF LAW

Defendant Patrick Finley hereby moves for judgment as a matter of law at the close of the Commonwealth's evidence.

Respectfully submitted,

PATRICK FINLEY

/s/ Jesse Vasquez

Jesse Vasquez, Esq. (BBO No. 836392)

Schweikart and Cokely, LLP

1313 River Road

Ashemark, Ames 78311

617-555-0685

Date: June 11, 2019

COMMONWEALTH OF AMES

Beverly, ss.

SUPERIOR COURT
DEPARTMENT
OF THE TRIAL COURT

Commonwealth of Ames,

v.

Patrick Finley,

Defendant.

Criminal Action No. 19-0112

RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW

Defendant Patrick Finley hereby moves for judgment as a matter of law at the close of all evidence.

Respectfully submitted,

PATRICK FINLEY

/s/ Jesse Vasquez

Jesse Vasquez, Esq. (BBO No. 836392)

Schweikart and Cokely, LLP

1313 River Road

Ashemark, Ames 78311

617-555-0685

Date: June 12, 2019

COMMONWEALTH OF AMES

Beverly, ss.

SUPERIOR COURT
DEPARTMENT
OF THE TRIAL COURT

Commonwealth of Ames,

v.

Patrick Finley,

Defendant.

Criminal Action No. 19-0112

ORDER ON MOTION FOR JUDGMENT AS A MATTER OF LAW

The motions of Defendant for judgment as a matter of law at the close of the Commonwealth's evidence and at the close of all evidence is hereby denied without prejudice to the Defendant's renewal of such motion at the conclusion of trial.

/s/ Henry M. Thomas
Hon. Henry M. Thomas

Date: June 12, 2019

COMMONWEALTH OF AMES

Beverly, ss.

SUPERIOR COURT
DEPARTMENT
OF THE TRIAL COURT

Commonwealth of Ames,

v.

Patrick Finley,

Defendant.

Criminal Action No. 19-0112

**MOTION FOR JUDGMENT AS A MATTER OF LAW OR, IN THE
ALTERNATIVE, FOR A NEW TRIAL**

Defendant Patrick Finley hereby moves for judgment as a matter of law notwithstanding the jury's verdict. In the alternative, and in the interest of justice, he further moves that the Court vacate the jury's verdict against him and order a new trial in this matter. As grounds for this motion, Defendant submits that (1) no reasonable finder of fact could have returned a verdict in the Commonwealth's favor, (2) the First Amendment bars any of the claims in this suit, both because the statute Mr. Finley is charged with having violated is unconstitutional and the prosecution itself improperly criminalizes speech, and (3) the Commonwealth impermissibly used a peremptory strike during the second trial to eliminate a juror, Juror 1, on the basis of her religion.

Accordingly, Defendant requests that this Court vacate the jury's verdict and either enter judgment on her behalf or order a new trial.

Respectfully submitted,

PATRICK FINLEY

/s/ Jesse Vasquez

Jesse Vasquez, Esq. (BBO No. 836392)

Schweikart and Cokely, LLP

1313 River Road

Ashemark, Ames 78311

617-555-0685

Date: June 20, 2019

COMMONWEALTH OF AMES

Beverly, ss.

SUPERIOR COURT
DEPARTMENT
OF THE TRIAL COURT

Commonwealth of Ames,

v.

Patrick Finley,

Defendant.

Criminal Action No. 19-0112

**ORDER ON MOTION FOR JUDGMENT AS A MATTER OF LAW OR, IN
THE ALTERNATIVE, FOR A NEW TRIAL**

The renewed motion of Defendant for judgment as a matter of law is hereby denied. His motion for a new trial is likewise denied.

There was sufficient evidence produced at trial to sustain the jury's verdict. I likewise deny this motion as it relates to Defendant's First Amendment defense.

As to Defendant's post-trial renewal of the *Batson* objection regarding Juror 1, I likewise deny the motion for two reasons. First, no Supreme Court case has yet extended *Batson* to religion-based peremptory strikes, and thus I find no legal basis for the Defendant's motion. I likewise conclude, as I did at trial, that the Commonwealth did not strike the juror because of the juror's religion, but because

of her religious beliefs. Accordingly, Defendant has not carried his *prima facie* burden under *Batson*, and even if he had done so, I would find that the Commonwealth has offered a neutral explanation for its challenge to Juror 1.

/s/ Henry M. Thomas
Hon. Henry M. Thomas

Date: June 28, 2019

COMMONWEALTH OF AMES

Beverly, ss.

SUPERIOR COURT
DEPARTMENT
OF THE TRIAL COURT

Commonwealth of Ames,

v.

Patrick Finley,

Defendant.

Criminal Action No. 19-0112

JURY VERDICT

Did the Commonwealth prove beyond a reasonable doubt that Patrick Finley knew that Victor Malone was thinking about, considering, or planning suicide, that Patrick Finley intentionally directed, counseled, or incited Victor Malone to commit suicide, and that Victor Malone committed suicide?

Yes: X

No:

/s/ Erin Silver
JURY FOREPERSON

Date: June 14, 2019

EXCERPTS OF TRANSCRIPTS OF SECOND TRIAL

Jury Empanelment

Examination of Juror Number 1 at sidebar

THE CLERK

Juror Number 1 having been sworn, please approach the bench at sidebar for questioning.

THE COURT

Good morning, you are Juror Number 1, correct?

JUROR

Yes, that's right judge. Good morning.

THE COURT

I am going to ask you a handful of questions, and then the attorneys are going to have a chance to ask you some follow up questions based on your answers to my questions or to your answers on the jury questionnaire form that you filled out. The purpose of these questions is to make sure you can stand indifferent in this case and examine the facts fairly and impartially and to apply the law as I give it to you.

First, I read to you earlier a brief description of the case. Have you read or heard anything about this case from any source?

JUROR

No.

THE COURT

Given this brief description of the facts that I gave, is there anything about this case that would cause you to believe that you could not consider the evidence fairly and impartially according to the law?

JUROR

No.

THE COURT

Do any of you know me or any member of my staff on any basis, social, professional or otherwise? Or do you know any of the attorneys or any of the witnesses in this case?

JUROR

No.

THE COURT

Do you know the Defendant, Patrick Finley?

JUROR

No.

THE COURT

Have you or any members of your family, including brothers, sisters, parents or children, or close friends, ever been the victims of criminal conduct?

JUROR

No.

THE COURT

Have you or any members of your family ever been convicted of a felony?

JUROR

No.

THE COURT

Have you or any members of your family or close friends ever served in the capacity of law enforcement officer?

JUROR

No.

THE COURT

There will be witnesses called during this trial who are members of law enforcement and who may have been in that profession for a number of years. Would you give greater or lesser weight to their testimony solely because of their employment and experience in law enforcement?

JUROR

No.

THE COURT

Have any of you or members of your family been a party or witness in any litigation?

JUROR

No. At least not that I'm aware of.

THE COURT

Do any of you or any of the members of your family have any legal training?

JUROR

My grandfather growing up, I think he was a lawyer. He was a tax attorney, as I remember. It was a long time ago.

THE COURT

How close were you to your grandfather?

JUROR

Not very. He's been dead since I was a little girl.

THE COURT

Is there anything about your grandfather's legal training that would influence your ability to be fair and impartial?

JUROR

No.

THE COURT

I will instruct you what the law is at the conclusion of the case. If selected as a juror, you will take an oath to follow the law. Does you think you would have trouble following the law even if you may disagree with it?

JUROR

No.

THE COURT

In a criminal case the burden of proof is that the government needs to prove its case beyond a reasonable doubt. Do you think you'd have any difficulty in holding the government to its burden and following the law on this burden of proof?

JUROR

No. That's fine.

THE COURT

Here are some principles of law that we'll apply in this case. The fact that an indictment has been filed raises no presumption whatsoever of the guilt of the defendant. The government must satisfy you beyond a reasonable doubt of the guilt of the defendant. The defendant does not have any obligation to testify or to produce any evidence and you may not draw an adverse inference if the defendant chooses not to testify. The defendant is presumed to be innocent until his guilt is established beyond a reasonable doubt. You must wait until all of the

evidence has been presented before making up your mind as to the innocence or guilt of the defendant. Do you think you would have any difficulty following these principles of law?

JUROR

No.

THE COURT

Is there anything else in your background that might make it tough for you to serve fairly and impartially as a juror in this case?

JUROR

I don't know. I mentioned this on my questionnaire, but I'm a Catholic nun. I know from what you said that this case has to do with suicide. My religion and I have strong doctrinal beliefs about suicide. And I also have some strong beliefs about punishment, that punishment belongs to divine authorities, not to worldly authorities, so I honestly don't know how I feel about sitting in judgment of my fellow man or sending another person to jail.

THE COURT

I'm sure that the attorneys might have some questions for you about that answer on your questionnaire, but let me ask some follow up first. I obviously don't want you to check your religious beliefs at the door in order to be a juror. That's not what we do. It is important to have a cross-section of people from the

community serving on this jury, people of all religions, creeds, and so on. I want you to understand first that punishment is not given to the jury in a case like this. What punishment, if any, a defendant faces is up to me to determine if and only if there's a conviction. Juries don't hand down sentences, they don't send people to jail. In fact, I'll instruct the jury that it shouldn't consider punishment at all when determining whether the prosecution has proven its case beyond a reasonable doubt. Does that make sense?

JUROR

Yes. I understand that.

THE COURT

And can you follow those instructions to put aside, to not consider punishment in assessing the facts of the case?

JUROR

Yes, I think I can do that.

THE COURT

You don't sound too certain. You sound like you're wavering, and I don't want to make you uncomfortable. Are you sure you can put aside your emotions and your sympathies and just assess the facts of the case fairly and impartially without regard to any sentence a defendant may or may not receive?

JUROR

I understand what you're saying, yes.

THE COURT

And you understand that jurors aren't being asked their views on suicide, right? We'd just be asking you to evaluate the facts and apply the law as I give it. Is that fair?

JUROR

Yes, I can do that.

COURT

I'm going to allow the parties to ask some follow up here. Ms. Zuckerman, you may proceed.

MS. ZUCKERMAN

Good morning, ma'am. My name is Rose Zuckerman, and I represent the Commonwealth in this case. I wanted to ask you some follow-up questions about what you wrote on your form and what you just said about your religious convictions. How, if at all, do you think that those beliefs would affect how you view the evidence that is put before you?

JUROR

How I view the evidence? I obviously believe that telling the truth is important, but I don't think that my religious beliefs would affect how I look at evidence.

MS. ZUCKERMAN

Very good. Let me ask you a similar question. How, if at all, do you think your religious views would affect how you think about this case, given that this case is about a suicide, and I know you said you had some strong religious beliefs about suicide?

JUROR

That is right. That's my belief, my religious conviction, that's my religious training to become a nun, that's what I believe. It is who I am as a religious person.

MS. ZUCKERMAN

Yes, I understand. Now what I'm asking is if that would influence how you feel about the case, would make you more likely or less likely to believe one side or the other, or to impartially consider the evidence that is put to you?

JUROR

That's difficult to say. My beliefs are my beliefs. My religion is my religion. But impartiality, yes, I can do that.

MS. ZUCKERMAN

And I know you said you had some thoughts about punishment. Would you be more or less likely to find someone guilty or not guilty because of those beliefs about punishment?

JUROR

That's also a really difficult question. I know what the judge said, that it is for him to pass a sentence, not the jury. My beliefs tell me not to sit in judgment of others, especially those who sin. But I understand my role here is not to send someone to jail, that's the judge's job.

MS. ZUCKERMAN

Thank you. Your honor, I have nothing further for this juror.

MR. VASQUEZ

Your honor, I don't have any follow-up for this juror.

THE COURT

Alright, I'm going to ask the juror to step aside so I can talk to the attorneys here for a moment.

Any strikes for cause?

MS. ZUCKERMAN

Yes, the Commonwealth would move to strike this juror for cause because she said she cannot be impartial.

THE COURT

I don't think that's actually what she said. She specifically told me that she could be fair and impartial. I can follow up with her again. Excuse me, could you please come here for a moment, I want to ask you another question.

Do you think that as a juror you can fairly and impartially consider the evidence and render a verdict?

JUROR

I think the answer is yes. It will be difficult, but not impossible for me, based on my religion and my beliefs and my views on punishment. But I can do it.

THE COURT

Alright, thank you very much. Can you step aside and give us another moment?

Ms. Zuckerman, I overrule the Commonwealth's objection to this juror, and I find her indifferent and able to serve.

Are there any peremptories for this juror?

MS. ZUCKERMAN

Yes, I want to use a peremptory on this juror.

THE COURT

Alright, I'll direct the clerk to –

MR. VASQUEZ

Hold on a second, Your honor. I want to object to the use of this peremptory on *Batson* grounds. It is clear that the Commonwealth is using this peremptory because of Juror 1's religion. And religion is a protected class.

MS. ZUCKERMAN

Now hold on. I resent the implication that –

THE COURT

Alright, everybody hold on for a moment. Let's not get heated. I want to hear some more about this. Mr. Vasquez, I always understood that *Batson* only applied to strikes based on race or gender. Does it apply to religion-based or belief-based strikes?

MR. VASQUEZ

Well, I think it is an open issue, Your honor. But it is clear what's going on. She's using a traditionally protected category, religion, to remove someone from the jury. And I don't think this is necessarily the first time this has happened in the case. Before this second trial, I went and looked at the Commonwealth's peremptory challenges from the first trial, and the Commonwealth eliminated five people, all of whom had surnames that are traditionally associated with people who are Catholics, as I recall some Irish and Italian and Hispanic sounding last names. So we need to be very careful here.

THE COURT

I didn't notice that during the first trial, to be honest, so I don't want to put too much into what happened during the first trial, when nobody brought this to my attention. I don't recall having any dialogue with any jurors about religion, so let's not read too much into things, especially where you aren't making a national origin

or a race-based *Batson* objection. But let me ask the Commonwealth. Let me assume without deciding that the defense has satisfied its minimal threshold burden under step one of *Batson*. What's the basis for the peremptory here?

MS. ZUCKERMAN

It is simple, Your honor. The Commonwealth wants her off the jury because her beliefs make it impossible for her to fairly evaluate the evidence here. Her religion – she has some hesitations about punishment. You heard her hesitations in her answers, how she's unsure if she can pass judgment, especially given her views on suicide and punishment, two things integral to this case. This is a juror who cannot be fair. And I don't know what the defense is implying about having eliminated people from the first trial who have traditionally Catholic last names. As the Court observed, this isn't something that came up before. All three of us were here at the first trial, and religion never came up once at sidebar during jury selection.

And as for the Court's question about whether *Batson* even applies under these circumstances, I don't believe that the Supreme Court has ever extended *Batson* beyond race-based and gender-based strikes, so I'm not even so sure that *Batson* applies under circumstances like this.

THE COURT

I don't recall any mention of religion during the first trial's empanelment. Here's what I'm going to do. I'll allow the Commonwealth to use a peremptory here, as I find her explanation isn't seeking to eliminate this juror because of her religious identity, but because of her beliefs and how that would impact this trial. And I'm not sure that *Batson* even applies here. I'm skeptical of that. Perhaps Mr. Vasquez, you can convince me otherwise after trial. But I will caution the Commonwealth to tread lightly in this area, and I will note the defense's objection here.

Juror 1, we're going to excuse you. Please see the clerk and she'll give you some paperwork.

Direct Examination of witness Trooper Christine Pettit by Rose Zuckerman

Q: Can you please state your name for the record?

A: My name is Christine Pettit.

Q: Where do you work?

A: For the Ames State Police.

Q: How long have you worked for the State Police?

A: About a decade.

Q: What job do you have with the State Police?

A: I'm a trooper, and I'm currently assigned to work in the State Police cybercrimes division. I've been doing that about five years.

* * *

Q: Trooper Pettit, as part of your work with the State Police, were you called in to assist with a death investigation on September 3, 2019?

A: Yes, I was.

Q: Where did you first go that day?

A: I was on duty early that morning, and I went to the Botany Bay Bridge.

Q: When you arrived, were there other police officers at that location?

A: Yes, there were about a half dozen or so other police officers, mostly from the local police department. They were all there conducting an investigation into a death.

Q: You mentioned a death investigation. Did you observe a deceased person when you arrived?

A: Yes, I did. There was a middle-aged man on the rocky shore along Botany Bay directly under the bridge. He was dead and the local police officers had cordoned off his body.

Q: Was there any ID on the body?

A: Yes, there was. He had a driver's license in the name of Victor Malone. The photo on the license appeared to match the deceased. He also had a medical ID bracelet on his left wrist that had the name Victor Malone on it.

Q: What else, if anything, did you observe on the body of the man who appeared to be Victor Malone?

A: He had some car keys, some money in his wallet, and a cell phone in the pocket of his pants.

Q: Now you mentioned that you were in cybercrimes, Trooper Pettit. Why were you brought in for this investigation?

A: Primarily for that cellphone. I did a full forensic analysis of that phone as part of the investigation into the death.

Q: What steps did you take to investigate that cellphone that was found on Mr. Malone?

A: I did three things. First, I made a static copy of the contents of the phone so that we could preserve the phone's contents and so I could then examine those contents without damaging any of the evidence. Second, I examined those contents, reviewing call logs, text messages, and the like. Finally, I subpoenaed and obtained phone records for this phone and other phones to complete my analysis.

Q: Alright, let me ask you about your analysis of the phone. You said you reviewed call logs and text messages. For the evening before your investigation started, were any calls or text messages sent from this phone?

A: Yes. At 11:05 p.m. this phone was involved in one telephone call, the duration of which was about 5 minutes long. After the conclusion of the call, there were a number of text messages sent between the phone found on Mr. Malone and one other phone.

Q: Let's start with the phone call. Do you know what number was dialed?

A: Yes. The phone from Mr. Malone's body was used to dial a telephone number 888-555-5252.

Q: Are you able to determine what was said on that telephone call from your analysis?

A: No, I am not. Just when the call was made, how long it lasted, things like that.

Q: Now the text messages, you said a number of those were sent after the conclusion of the call. With what number was this phone texting?

A: The same number. There were a number of text messages sent between the phone from Mr. Malone and the -5252 number I mentioned a moment ago.

Q: Were you able to determine the contents of these text messages?

A: Yes, I was.

Q: Can you read the contents of these messages to the jury?

A: Yes. At 11:10, there was an outgoing text message that said, "Thanks for speaking with me Patrick. This is really hard." A reply came back, "I know Victor, but you know what you want to do, so do it. You told me yourself! Jump!" Then, an outgoing message, "I'm scared. I'm so confused." A reply then was sent that said, "Of course it is scary, nothing important is easy. You told me how you feel. Time to go. Do it!" A second reply was also sent, saying "Go ahead and jump. End your worries. That's why you called me, to help you realize your dreams. Jump!" After that message was sent, there was a break of about six minutes in length, when an outgoing message was sent that said, "I'm still here. I don't know what to do. Please help." A reply was then received that said, "I am helping. Just like you asked me. You told me what you wanted to do, and I told you how to do it. You're on the bridge and your salvation is below." Again, a second reply was received, and it said, "The only way to evolve is to jump. Be a

shining light and DO IT! Don't leave now." One last outgoing message was sent a minute after that. It said, "thank you for showing me the way past the edge of the bridge. Goodbye Patrick." That was the last message from that evening.

Q: Were you able to determine to whom the -5252 number belonged?

A: Yes, I subpoenaed the phone records belonging to the phone from Mr. Malone and for the -5252 phone number. The -5252 phone number was registered in the name of a Patrick Finley who lives here in Ames.

Direct Examination of witness Jay J. Jones by Yvonne Teasley

Q: Can you please state your name for the record?

A: Good morning, I'm Jay J. Jones.

Q: Where do you work?

A: I'm a detective with the Volantis city PD. Been doing that for almost 18 years now.

Q: Do you work in a particular unit or division of the police department?

A: Yeah, I am a detective in homicide. Anytime a person dies under suspicious circumstances in city limits, we get the call.

Q: Did you become involved in a death investigation on September 3, 2019?

A: Yes.

Q: Where did you begin your investigation?

A: Yeah, I was dispatched to the Botany Bay Bridge that morning. A patrolman that works with VPD found a dead guy just along the road that runs under the bridge. The body was along the shoreline in some rocks near the bay itself.

Q: What did you do when you arrived?

A: I first helped the patrol officer block off the area. We had some crime lab and photography folks coming down in a bit to assist with the investigation if we

needed it. But after we secured the scene, I took a look around and began my preliminary investigation.

Q: What did that consist of?

A: I do a preliminary look at the body, I try to identify the body, all without disturbing the scene.

Q: Were you able to identify the body?

A: Yes, we made a preliminary ID of the body as Victor Malone, a city resident, based on ID papers we found on him and a medical bracelet he was wearing. We had no reason to doubt that's who it was.

Q: And based on your initial investigation, did you reach any preliminary conclusions on the manner of death?

A: At that stage, very preliminary. Based on my view of the scene, the location of the body under the bridge – and this is a bridge where we see lots of suicides each year – I was pretty sure right off the bat that this was a jumper, a suicide. I mean, I still needed to do a complete investigation, but that was what this looked like.

Q: Now Detective, as part of your investigation, did you survey the scene on top of the bridge?

A: Yes, of course.

Q: Why?

A: Well, as my working hypothesis was that this was a suicide, I wanted to have a look around on top of the bridge to see if there was any evidence that would confirm or refute that theory.

Q: What did you observe on the top of the bridge that morning?

A: I found a bunch of leaflets, paper flyers.

Q: And what was on these leaflets?

A: Like I said before, the city has a bad suicide problem on the Botany Bay Bridge. We get a number of jumpers each year. Now the city has installed help phones along the bridge to provide assistance for folks who are suicidal. And there are some non-profit anti-suicide groups who often are a presence on the bridge to hand out literature and to lend a hand. The leaflets I found were like that, only the exact opposite. It was a flyer encouraging people to jump, to commit suicide. There were dozens of them I found up there. All printed up on hot pink paper.

Q: What information was printed on these papers you found?

A: It said at the top, "Considering Suicide?" Under that in big letters it said "Jump!" and "I can help." Then there was a phone number, 888-555-5252, and the flyer said to call if you needed assistance with committing suicide.

Q: What did you make of these flyers?

A: Seriously? At first, I thought it was some kind of fraternity prank or something. But then Trooper Pettit examined Mr. Malone's cellphone and saw that he had actually called the number from the leaflet.

Q: Did you eventually interview Patrick Finley?

A: Yes, after Trooper Pettit's investigation, we invited Mr. Finley down for an interview with me.

Q: When did this interview occur?

A: A little more than a week after Mr. Malone's death.

Q: Yes or no, did you talk to the defendant about the leaflets or the flyers that you found?

A: Yes.

Q: What did he tell you about them?

A: I mean right away, he said that they were his. He wrote them, and he said that he had passed them out the day of Mr. Malone's death.

Q: Did he say why he had done so?

A: Why he handed them out at the bridge? Yes, he did. He told me that he has certain beliefs, like a religion or a philosophy, is how he described it. He believed in something called "evolution." He didn't think of it in terms of like Darwin or anything like that. He believed that people had the capacity to "shine" –

that's the word he used a lot. And the only way to evolve into a shining light, to achieve a higher form of existence, was to die. He was very clear he didn't believe in murder or killing someone or helping someone to die who wasn't spiritually ready to do so, but that when someone was ready to die, that it was incumbent upon him to help that other person out, to help them evolve, essentially.

Q: Did he say how he wanted to help people in this way?

A: He did. Again, he said he wanted to assist people with their evolution, to become shining lights. And he said if someone approached him and said that they were ready to die, Mr. Finley thought it was his job, his duty to assist with that evolution, to help them die.

Q: Did the defendant tell you about what he did at the bridge that day?

A: Yeah, he told me that he handed out a bunch of those pink leaflets to pedestrians on the bridge and he taped a few up around the bridge area.

Q: Did you ask him if he had met a Victor Malone that day?

A: I showed him a photo of Mr. Malone. Mr. Finley said he didn't see anyone that fit that description on the bridge that day. He was sure he didn't meet Mr. Malone face-to-face.

Q: Did the defendant tell you if he spoke with Mr. Malone?

A: Yes, he remembered speaking with Mr. Malone by telephone and sending text messages with him that day.

Q: What did Mr. Finley say he told Mr. Malone?

A: Well, Mr. Malone said he got Mr. Finley's number from one of the flyers that was taped up at the bridge. Mr. Finley recalled briefly explaining his rather unique theory of evolution to Mr. Malone. Mr. Finley told me that he counseled Mr. Malone to go to the edge of the bridge, think of evolving, think of becoming a shining light, and then to jump to his death.

Q: And did the defendant say anything about the text messages from his phone?

A: Again, he agreed that he sent those messages to Mr. Malone. No doubt about it. And he said he did it to help assist with Mr. Malone's evolution, his death.

Q: Did Mr. Finley provide a written statement when he met with you at the police station?

A: Yes, I asked him if he'd write out a statement and sign it so that we had his side of the story accurately. He readily agreed.

Q: Detective, I'm going to provide you with a copy of what has been marked into evidence as Exhibit 1. Do you recognize this document?

A: Yes, I do.

Q: What is Exhibit 1?

A: This is the written statement that Mr. Finley gave us.

Q: Did you see him write this document?

A: I did.

Q: And sign it?

A: Also, yes, I did. That's his signature at the bottom of the page.

Q: Detective, can you read this statement aloud for the jury?

A: Yes.

My name is Patrick Finley. I am writing this document of my own free will and volition. I am writing it so that the police and everyone else can know my beliefs and my story, and also what happened when I spoke to a person I only briefly knew, a shining light name I knew as "Victor."

The afternoon of the day that I received a call from Victor, I spent leafletting at the Botany Bay Bridge. I often go places throughout the city where I expect there will be pedestrians about so that I can preach my beliefs to them, so I can share my philosophy with people yearning to be free. My philosophy is simple: I believe that people in their mortal bodies are trapped. The only way that people can evolve to a higher plane of existence, to a higher spiritual level, is through the crucible of death. Death is not something to be feared, I believe, but it is to be celebrated. Most people are happy enough in this realm of existence, but some are profoundly unhappy, and I want to help free them of their unhappiness. When

someone is ready to evolve, to become a “shining light,” I want to lend a hand. If that means helping someone take their own life so that they can evolve, I view that as a blessing that I can provide – friendly encouragement, how-to advice, things like that. I know these beliefs are not widely held, that they are controversial and unpopular, but I’ve never concerned myself with what these negators think. I don’t think I’m a monster, just someone looking to spread my sincere beliefs through communication, dialogue, and honesty.

This day up on the Botany Bay Bridge was no different. I spent about an hour or so handing out my leaflets. These leaflets were my mission statement, an invitation for people to join my cause, to adopt my beliefs. Usually, I would just hand these leaflets out. Most times, people would politely ignore me. Sometimes, I would get derisive looks or nasty comments from less evolved people whom I engaged in conversation. I don’t recall anything out-of-the ordinary happening that day.

Importantly, these leaflets had my phone number on them. I wanted people who were curious about my philosophy of evolution to call me anytime. I would only infrequently get calls, so I was surprised that night that I got a call from a man who identified himself as Victor. I don’t think I had ever met or spoken to him before.

I only spoke to Victor for a few minutes, as I recall. It was clear to me that he was a lost, vulnerable, and profoundly unhappy person. He told me of his suffering, his plight on this plane of existence. He told me he came to the bridge because he was thinking of ending this suffering when he saw my flyer. I told him my philosophy on evolution and shared with him my beliefs on how death allowed people to become shining lights, to transcend the pain on this mortal plane. I told him that if he was ready to jump, that I would be there to provide any support I could, no different than a medical doctor assisting with end-of-life care to an ill patient. Victor thanked me for my help, and I hung up.

We had some text messages after that. I encouraged him to do what he had already come to the bridge to do. Now the police tell me that Victor went through with it and jumped off the bridge to his death. When they told me this, I was happy for Victor. He has, in my view, evolved. He is a shining light. I hope that he is happier now – I believe that he is.

Signed, Patrick Finley

Cross Examination of witness Jay J. Jones by Jesse Vasquez

Q: Detective Jones, you have nothing to suggest that Mr. Malone and Mr. Finley physically met in person on September 2, 2018, correct?

A: That's right. I have nothing to suggest that they met in person that day.

Q: And there's no evidence, for instance, that Mr. Finley physically pushed Mr. Malone off that bridge, right?

A: I'd agree with that. This was a suicide as far as I could tell.

Q: So Mr. Malone jumped to his own death?

A: Yes, he did.

Q: And there's no evidence that Mr. Finley physically handed a leaflet to Mr. Malone, correct?

A: That's correct.

Q: Now, you understood that Mr. Finley wrote these leaflets, correct?

A: Yes.

Q: And it is your understanding from speaking with Mr. Finley that he was the one who published these leaflets, right?

A: Yes.

Q: And these leaflets, as you say, expressed my client's religious or philosophical beliefs?

A: That's what he told me, yes. And from speaking with Mr. Finley, I don't doubt the sincerity of his, um, rather unusual beliefs.

Q: As a police officer, you don't have a problem with anyone handing out leaflets in the city do you?

A: No. That's generally fine so long as nobody's trespassing on private property or littering or something like that.

Q: Let me ask it differently. Have you ever arrested or ticketed someone for handing out literature?

A: No, of course not.

Q: Do you know of any cases from the police department where someone has been arrested or ticketed for passing out papers or leafletting?

A: Not that I'm aware of. I mean, if someone is just peacefully passing out leaflets, we're not going to get involved I don't think.

Q: And have you or anyone else in the police department ever arrested someone for expressing their religious or philosophical beliefs?

A: I don't know how to answer that, I'm sorry. I've never arrested someone for speaking about their religion, if that's what you're asking me.

COMMONWEALTH OF AMES

Beverly, ss.

SUPERIOR COURT
DEPARTMENT
OF THE TRIAL COURT

Commonwealth of Ames,

v.

Patrick Finley,

Defendant.

Criminal Action No. 19-0112

JUDGMENT AND ORDER OF SENTENCE

Judgment hereby enters in favor of the Commonwealth, and a guilty verdict on Count I against Defendant Patrick Finley is hereby entered in the record and incorporated in this judgment.

Per the order of Court, Defendant Patrick Finley is hereby remanded to the custody of the Ames Department of Correction to serve a sentence of incarceration in a state prison not to exceed 24 months.

/s/ Ernesto Martinez
Clerk of Court

Date: June 28, 2019

COMMONWEALTH OF AMES

Beverly, ss.

SUPERIOR COURT
DEPARTMENT
OF THE TRIAL COURT

Commonwealth of Ames,

v.

Patrick Finley,

Defendant.

Criminal Action No. 19-0112

NOTICE OF APPEAL

Defendant Patrick Finley hereby gives notice that he appeals from the final judgment against him. In addition to appealing from this order of final judgment, he also specifically appeals from the following adverse orders that support this judgment: (1) the denial of his motion to dismiss and motion for judgment notwithstanding the verdict on the basis of his First Amendment rights and (2) the denial of Defendant's *Batson* challenge to the Commonwealth's use of its peremptory strikes.

Respectfully submitted,
PATRICK FINLEY

/s/ Jesse Vasquez
Jesse Vasquez, Esq. (BBO No. 836392)
Schweikart and Cokely, LLP

1313 River Road
Ashemark, Ames 78311
617-555-0685

Date: July 11, 2019

COMMONWEALTH OF AMES

Beverly, ss.

COURT OF APPEALS

Commonwealth of Ames,

Appellee

v.

Patrick Finley,

Appellant.

Appeal No. 19-0210

PROCEDURAL ORDERS ON APPEAL

The Court hereby orders that the parties address only the following questions in their appellate briefs:

- (1) Whether the First Amendment protects Defendant's actions that are the subject of the indictment, or whether the Commonwealth's criminal statute, Ames Gen. Laws ch. 265, § 60, is unconstitutional?
- (2) Whether the Commonwealth's use of a peremptory challenge on Juror 1 during the second trial of this matter was a violation of *Batson v. Kentucky*, 476 U.S. 79 (1986)?

/s/ Emily Valentine
Clerk of Court

Date: November 15, 2019

RELEVANT STATUTES, RULES, AND AUTHORITIES

Ames Gen. Laws ch. 265, § 60 provides:

(a) A person shall be incarcerated in the state prison for not more than 10 years if

(1) he or she knows that another person is thinking about, considering, or planning suicide,

(2) he or she intentionally directs, counsels, or incites the other person to commit or attempt to commit suicide, and

(3) that other person does commit or attempt to commit suicide.

(b) This section shall not apply to a medical treatment lawfully administered by, or in a manner prescribed by, or to medical advice provided by a licensed physician.

Laws on suicide

The Commonwealth of Ames has no law criminalizing suicide.

JURY QUESTIONNAIRE EXCERPT FROM SECOND TRIAL

Juror No.: 1

Name: Aurora Vescovi

Age: 58

Education: College

Occupation: Nun

Result: Peremptory Prosecution

TABLE OF JURY QUESTIONNAIRES FROM FIRST TRIAL

| Juror Number | Name | Age | Education | Occupation | Result |
|--------------|-------------------|-----|------------------------|-----------------------|------------------------|
| 1 | Frances Kemp | 55 | College | Archivist | Seat 1 |
| 2 | Laurie Jackson | 43 | Post-Collegiate Degree | Journalist | For Cause |
| 3 | Jenna LaRocca | 33 | College | Musician | Peremptory Prosecution |
| 4 | Jan Spears | 75 | College | Military | Peremptory Defense |
| 5 | Carey Nicholson | 24 | High School | Car Sales | Seat 2 |
| 6 | Rod Barker | 65 | High School | Retired | For Cause |
| 7 | Andrea Bishop | 71 | College | Retired | For Cause |
| 8 | Pam Buckley | 80 | College | Photographer | Peremptory Defense |
| 9 | Noah Hutchinson | 67 | College | Computer Engineer | For Cause |
| 10 | Angela Baggio | 56 | High School | Retired | Peremptory Prosecution |
| 11 | Enoch Pope | 80 | Post-Collegiate Degree | Professor | Seat 3 |
| 12 | Michelle Bright | 38 | High School | Student | For Cause |
| 13 | Mayra Grant | 47 | Post-Collegiate Degree | Accountant | Seat 4 |
| 14 | Ervin Waller | 33 | Post-Collegiate Degree | Architect | Peremptory Defense |
| 15 | Ahmad Rogers | 50 | High School | Construction | Seat 5 |
| 16 | Lily Singh | 76 | College | Choreographer | For Cause |
| 17 | Kimberly Chapman | 68 | College | Police Officer | For Cause |
| 18 | Lydia Willis | 26 | High School | Cashier | For Cause |
| 19 | Gene Schmitt | 25 | Post-Collegiate Degree | Retired | For Cause |
| 20 | Deidre Kirk | 65 | High School | Clerk | For Cause |
| 21 | Faith David | 30 | High School | Student | Peremptory Defense |
| 22 | Charity Dixon | 19 | College | Real Estate Developer | For Cause |
| 23 | Geneva Shah | 72 | College | Funeral Director | For Cause |
| 24 | Napoleon Medina | 24 | College | Dietician | Seat 6 |
| 25 | Lorna Jensen | 48 | College | Teacher | For Cause |
| 26 | Rory Mendez | 34 | College | Retired | For Cause |
| 27 | Jodie Knox | 42 | High School | Fishing | For Cause |
| 28 | Corrine Hicks | 51 | Post-Collegiate Degree | Attorney | Seat 7 |
| 29 | Quinn O'Laughlin | 23 | Post-Collegiate Degree | Psychiatrist | Peremptory Prosecution |
| 30 | Johnson Estes | 71 | Post-Collegiate Degree | Small Business Owner | For Cause |
| 31 | Earline Glover | 42 | High School | Electrician | For Cause |
| 32 | Ines Cantu | 41 | College | Human Resources | For Cause |
| 33 | Nany Villegas | 19 | College | Park Ranger | Seat 8 |
| 34 | Neva Harding | 48 | College | Florist | Peremptory Defense |
| 35 | Jordan Zuniga | 53 | High School | Landscaper | For Cause |
| 36 | Troy Sloan | 30 | Post-Collegiate Degree | Dentist | Seat 9 |
| 37 | Scottie Nichols | 37 | College | Wedding Planner | Seat 10 |
| 38 | Quentin Jacobson | 23 | Post-Collegiate Degree | Economist | For Cause |
| 39 | Renato Page | 55 | Post-Collegiate Degree | Chemist | For Cause |
| 40 | Lorraine Melendez | 71 | College | Firefighter | Peremptory Prosecution |
| 41 | Joel Drake | 56 | High School | Personal Trainer | For Cause |
| 42 | Vickie Cherry | 58 | College | Meteorologist | For Cause |
| 43 | Ava Warren | 36 | High School | Retired | For Cause |

| Juror Number | Name | Age | Education | Occupation | Result |
|--------------|------------------|-----|------------------------|------------|------------------------|
| 44 | Yvonne Blanchard | 65 | Post-Collegiate Degree | Editor | Seat 11 |
| 45 | Weston Pearson | 75 | College | Consultant | For Cause |
| 46 | Art Hunt | 20 | High School | Student | Seat 12 |
| 47 | Rudolph D'Angelo | 60 | High School | Tailor | Peremptory Prosecution |
| 48 | George Hardy | 42 | High School | Retired | For Cause |
| 49 | Russell Hughes | 21 | Post-Collegiate Degree | Retired | For Cause |
| 50 | Elisa Vance | 72 | College | Auctioneer | Seat 13 Alternate |