STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0563
A13-0564
A13-0565

State of Minnesota,
Appellant,

vs.

Final Exit Network, Inc.,
Respondent (A13-0565),

Lawrence Deems Egbert,
Respondent (A13-0564),

Roberta L. Massey,
Respondent (A13-0563).

Filed September 30, 2013
Affirmed in part, reversed in part, and remanded
Bjorkman, Judge

Dakota County District Court
File Nos. 19HA-CR-12-1721, 19HA-CR-12-1719, 19HA-CR-12-1718

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Considered and decided by Peterson, Presiding Judge; Stoneburner, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

These consolidated pretrial appeals concern the constitutionality of Minn. Stat. § 609.215, subd. 1 (2006), which criminalizes speech that "advises" and "encourages" another in taking the other's life. Appellant State of Minnesota argues that the district court erred by determining that criminalizing speech that "advises" suicide violates the First Amendment to the United States Constitution. By notices of related appeals, respondents argue that the district court erred by determining that the statute's provision relating to speech that "encourages" can be narrowly construed to be constitutional. Respondents also argue that the district court erred by concluding that probable cause supports the indictment charging them with violating Minn. Stat. § 609.215 (2006). We affirm in part, reverse in part, and remand.

FACTS

Respondent Final Exit Network, Inc. (FEN) is a Georgia non-profit corporation that provides its members end-of-life counseling and exit-guide services, which include information and support for members seeking to hasten their deaths. If a member is interested in exit-guide services, a first responder interviews the member by phone to gather information about the member's medical condition, family history, reasons for wishing to hasten death, and desired timing of death. The first responder also asks the member to submit a personal letter relating these facts, along with documentation of the

member's medical condition, and instructs the member to read the book *Final Exit* by Derek Humphry or watch the video *Final Exit.*

FEN's medical director, respondent Lawrence Egbert, reviews the first responder's interview notes and the member's medical documentation and personal letter and either approves or rejects the member's request for exit-guide services. If Egbert approves the request, FEN's case coordinator, respondent Roberta Massey, assigns exit guides according to the member's location. Both Egbert and Massey also serve as exit guides. The assigned exit guides contact the member, develop a relationship with him or her, and provide information about helium asphyxiation, FEN's recommended method of hastening death. The exit guides instruct the member to purchase two specific types of helium tanks from a party store, a plastic "hood," and plastic tubing with joints that allow the lines from each tank to connect to a single tube running into the hood. FEN requires that members have the physical ability to perform those tasks themselves and tells exit guides never to purchase or set up the materials for a member. Two exit guides are present for the death and may hold the member's hands, not only for support and comfort, but also to prevent involuntary jerking that could result in tearing the plastic hood. The exit guides remain with the member until they are certain that the member is dead. They then remove from the residence and discard the helium tanks, the tubing, the hood, and any materials related to FEN.

The charges at issue here stem from the alleged involvement of FEN, Egbert, and Massey in the death of 57-year-old Doreen Dunn. At the time of Dunn's death in May 2007, she had been living with chronic pain for more than a decade, as a result of various

medical conditions, and had discussed suicide with her husband, who opposed it. But there was no sign of suicide in Dunn's home, and her autopsy listed her cause of death as atherosclerotic coronary artery disease. Law enforcement subsequently received information linking FEN to Dunn's death. Internal FEN records indicate that Dunn became a FEN member in early 2007. Telephone and fax records reveal Dunn had regular contact with various FEN representatives throughout early 2007, including faxing a personal letter and medical documentation to Massey. Flight records and internal FEN records show that Egbert and exit guide Jerry Dincin made single-day roundtrip flights from their home states of Maryland and Illinois, respectively, to Minnesota on the day of Dunn's death. And FEN records note when Dunn died.

In May 2012, a grand jury returned a 17-count indictment charging Egbert and FEN with (1) advising, encouraging, or assisting another in committing suicide; (2) aiding and abetting the offense of advising, encouraging, or assisting another in committing suicide; (3) interfering with a body or death scene; and (4) aiding and abetting the offense of interfering with a body or death scene; and charging Massey with (1) advising, encouraging, or assisting another in committing suicide; (2) aiding and abetting the offense of advising, encouraging, or assisting another in committing suicide; and (3) aiding and abetting the offense of interfering with a body or death scene.[1]

[1] The grand jury also indicted Dincin on the same charges as Egbert and indicted FEN president Thomas "Ted" Goodwin on charges of aiding and abetting the two primary offenses. Dincin has since died, and the charges against him were dismissed; the district court held that Minn. Stat. § 609.215 is unconstitutional as applied to Goodwin and dismissed the charges against him.

Massey, Egbert, and FEN moved to dismiss the charges of advising, encouraging, or assisting another in committing suicide, arguing that the parts of the statute that criminalize advising and encouraging are facially overbroad in violation of the First Amendment, and that the evidence presented to the grand jury did not establish probable cause to support the charges. The district court granted the motions in part, holding that the prohibition on advising is unconstitutionally overbroad but that the prohibition on encouraging is not because it can be narrowly construed to impose a necessary restriction only on speech meant to induce another to commit suicide. The district court further concluded that the evidence presented to the grand jury established a reasonable probability that Egbert's conduct fell within the constitutional parameters of Minn. Stat. § 609.215 and denied Egbert's and FEN's motions to dismiss for lack of probable cause. The district court also held the evidence established a reasonable probability that Massey aided and abetted Egbert (and Dincin) in that conduct, and denied her motion to dismiss as to the aiding-and-abetting charge but dismissed the charge of advising, encouraging, or assisting another in committing suicide.

The state filed these pretrial appeals challenging the district court's ruling on the "advises" part of the statute. We consolidated the three appeals. Egbert, Massey, and FEN (collectively, respondents) filed a notice of related appeal challenging the district court's ruling with respect to the "encourages" part of the statute and the district court's denial of their motion to dismiss the indictments for lack of probable cause.

D E C I S I O N

I. Minn. Stat. § 609.215's criminalization of speech that "advises" and "encourages" another in taking the other's life infringes on protected speech and is facially overbroad.

The parties[2] challenge the district court's determinations that the criminalization of speech that "advises" is facially overbroad but the criminalization of speech that "encourages" can be narrowly construed to avoid overbreadth.[3] The constitutionality of a statute presents a question of law, which we review de novo. *State v. Crawley*, 819 N.W.2d 94, 101 (Minn. 2012), *cert. denied*, 133 S. Ct. 1493 (2013). Under the First Amendment, "esthetic and moral judgments" are for the individual to make, and the government generally may not restrict expression "because of its message, its ideas, its subject matter, or its content." *Brown v. Entm't Merchs. Ass'n*, 131 S. Ct. 2729, 2733 (2011) (quotations omitted). "Content-based restrictions of speech are presumptively invalid, and ordinarily subject to strict scrutiny." *Crawley*, 819 N.W.2d at 100 (footnote omitted) (citations omitted). Certain content-defined categories of speech, however, do

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[2] The state initiated this pretrial appeal and therefore must demonstrate that the asserted error will have a "critical impact" on the outcome of the case. *State v. Schmidt*, 612 N.W.2d 871, 875 (Minn. 2000). Respondents do not dispute that this requirement is satisfied. Because the district court's ruling prompted the district court to dismiss one charge against Massey and reduces the state's case to circumstantial evidence on narrowed charges, we agree.

[3] This court rejected a similar constitutional challenge to Minn. Stat. § 609.215 in *State v. Melchert-Dinkel*, 816 N.W.2d 703 (Minn. App. 2012), *review granted* (Minn. Oct. 16, 2012), which is currently pending before our supreme court. Accordingly, our decision in *Melchert-Dinkel* has only "minimal precedential value" to our analysis in this case. *Fabio v. Bellomo*, 489 N.W.2d 241, 245 n.1 (Minn. App. 1992), *aff'd*, 504 N.W.2d 758 (Minn. 1993); *see also Anderson-Johanningmeier v. Mid-Minnesota Women's Ctr., Inc.*, 637 N.W.2d 270, 276 (Minn. 2002) (noting that court of appeals is not a court of last resort as to the construction of statutes).

not receive the full protection of the First Amendment and may be regulated more freely. *See United States v. Stevens*, 130 S. Ct. 1577, 1584 (2010); *see also R.A.V. v. City of St. Paul*, 505 U.S. 377, 383, 112 S. Ct. 2538, 2543 (1992) (discussing regulation of unprotected speech).

As the state concedes, the prohibitions on intentionally advising and encouraging another in committing suicide are content-based restrictions on speech because "whether a person may be prosecuted under the statute depends entirely on what the person says." *See Crawley*, 819 N.W.2d at 101. We therefore consider (1) whether the First Amendment protects speech advising or encouraging another in suicide and, if so, (2) whether the criminalization of such speech survives strict scrutiny.

A. Protected vs. unprotected speech

First Amendment protection presumptively extends to all speech, from the "[w]holly neutral futilities" of private everyday life to the discomfiting array of public discourse. *See Cohen v. California*, 403 U.S. 15, 20-21, 25, 91 S. Ct. 1780, 1785-86, 1788 (1971) (alteration in original) (quotation omitted) (holding "distasteful" objection to military draft emblazoned on a jacket is protected speech); *see also United States v. Alvarez*, 132 S. Ct. 2537, 2551 (2012) (holding that "contemptible" false claim to Congressional Medal of Honor is protected speech); *Brown*, 131 S. Ct. at 2738 (holding that "disgusting" graphically violent video games sold to children are protected speech). Freedom of speech excludes only those "historic and traditional categories" of speech, "the prevention and punishment of which have never been thought to raise any Constitutional problem." *Stevens*, 130 S. Ct. at 1584 (quotations omitted). These "well-

defined and narrowly limited" categories of unprotected speech are obscenity, defamation, fraud, incitement, and speech integral to criminal conduct. *Id.*

The state acknowledges that speech intentionally advising or encouraging another in committing suicide does not fall within any of these traditional categories but urges us to recognize such speech as a new category of unprotected speech.[4] The state contends that speech advising or encouraging another in suicide has little social value and is comparable to the historically unprotected category of speech integral to criminal conduct because suicide is historically recognized as a "grievous public wrong akin to conduct statutorily identified as a crime." We are not persuaded.

First, the Supreme Court expressly rejected the cost-benefit analysis the state advocates. In *Stevens*, the government urged the Supreme Court to recognize depictions of animal cruelty as a new category of unprotected speech, arguing that recognition should turn on the use of a simple balancing test that weighs "the value of the speech against its societal costs." *Id.* at 1585. The Supreme Court rejected that proposal as "startling and dangerous," explaining that "[t]he First Amendment itself reflects a judgment by the American people that the benefits of its restrictions on the Government outweigh the costs. Our Constitution forecloses any attempt to revise that judgment simply on the basis that some speech is not worth it." *Id.*

[4] The state does not expressly challenge the district court's conclusion that speech encouraging another in taking the other's own life is protected speech. For the sake of clarity, however, we construe the state's argument to encompass both categories of speech.

Second, while the Supreme Court has stated that there may be "some categories of speech that have been historically unprotected [though] not yet . . . specifically identified or discussed as such in [Supreme Court] case law," *id.* at 1586, it cautioned that "new categories of unprotected speech may not be added to the list by a legislature that concludes certain speech is too harmful to be tolerated." *Brown*, 131 S. Ct. at 2734. Rather, the state must present "persuasive evidence" that the content-based speech restriction in question "is part of a long (if heretofore unrecognized) tradition of proscription." *Id.*; *see also Alvarez*, 132 S. Ct. at 2547 (declining to recognize new category of unprotected speech absent such evidence).

The state has not done so here. The state asserts only that speech intentionally advising or encouraging another in suicide is similar to speech integral to criminal conduct and therefore similarly unprotected. We disagree. While the Supreme Court has permitted clarification of traditionally unprotected categories of speech, *see Ginsberg v. New York*, 390 U.S. 629, 638, 88 S. Ct. 1274, 1279-80 (1968) (permitting adjustment of obscenity category to account for minors), it has rejected similar attempts to shoehorn new categories into traditionally unprotected categories of speech, *see Alvarez*, 132 S. Ct. at 2545 (rejecting argument that all false speech is unprotected because defamation and fraud are unprotected); *Brown*, 131 S. Ct. at 2734-35 (rejecting argument that graphic violence is unprotected because it is similar to obscenity). In short, the specific content-defined category of speech must itself be traditionally proscribed. We discern no such tradition with respect to speech advising or encouraging another in suicide. To the contrary, while assisting suicide is traditionally and broadly proscribed, *see generally*

Washington v. Glucksberg, 521 U.S. 702, 714-16, 117 S. Ct. 2258, 2264-65 (1997), few states join Minnesota in taking the additional step of criminalizing speech advising or encouraging another in the noncriminal act of taking one's own life.[5] *See* Cal. Penal Code § 401 (West 2010); La. Rev. Stat. Ann. § 14: 32.12 (West 2007); Miss. Code Ann. § 97-3-49 (West 2006); Okla. Stat. Ann. tit. 21, § 813 (West 2002); S.D. Codified Laws § 22-16-37 (2006); *Standford v. Kentucky*, 492 U.S. 361, 373, 109 S. Ct. 2969, 2977 (1989) (stating that "the primary and most reliable indication of [a national] consensus is . . . the pattern of enacted laws"). Accordingly, we discern no "long . . . tradition of proscri[bing]" speech that advises or encourages another in taking the other's life.

Because the state has not demonstrated that speech intentionally advising or encouraging another in the commission of suicide is traditionally unprotected speech, the prohibition of such speech in Minn. Stat. § 609.215 is invalid unless the state can demonstrate that it passes strict scrutiny. *See Brown*, 131 S. Ct. at 2738.

B. Strict scrutiny

A restriction on the content of protected speech passes strict scrutiny when it is (1) justified by a compelling government interest and (2) narrowly drawn to serve that interest. *Id.* A restriction is narrowly drawn when it is "actually necessary" to achieve the government's interest. *Alvarez*, 132 S. Ct. at 2549 (quotation omitted). That is, "[t]here must be a direct causal link between the restriction imposed and the injury to be

[5] Indeed, review of the history and evolution of criminal laws related to suicide reveals that criminalization of advising or encouraging another in suicide was based on a theory of aiding and abetting the then-crime of suicide. *See Glucksberg*, 521 U.S. at 715-16, 117 S. Ct. at 2264-65.

prevented," and the restriction must be "the least restrictive means among available, effective alternatives." *Id.* at 2549, 2551 (quotation omitted). A law that restricts substantially more or less speech than necessary fails this test. *See Brown*, 131 S. Ct. at 2738-42 (discussing overbreadth and underbreadth); *Stevens*, 130 S. Ct. at 1587 (stating that a law "may be invalidated as overbroad if a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep").

As to the first prong of the strict-scrutiny analysis, it is well established that the state has a compelling interest in preserving human life. *See Cruzan by Cruzan v. Dir., Mo. Dep't of Health*, 497 U.S. 261, 282, 110 S. Ct. 2841, 2853 (1990). This extends to preventing suicide and protecting vulnerable groups from suicidal impulses and undue influence, but the state also has an interest in protecting the individual's "dignity and independence at the end of life." *See Glucksberg*, 521 U.S. at 716, 730-31, 117 S. Ct. at 2265, 2272-73.

To determine whether Minnesota's prohibition of speech advising or encouraging another in suicide is necessary to serve the state's interests, we must first identify what speech the statute restricts. *See United States v. Williams*, 553 U.S. 285, 293, 128 S. Ct. 1830, 1838 (2008) (stating that "it is impossible to determine whether a statute reaches too far without first knowing what the statute covers"). We construe statutes de novo, with the goal of ascertaining and giving effect to the legislature's intent. *Crawley*, 819 N.W.2d at 102. We consider the statute "as a whole," giving words and phrases their plain and ordinary meaning. *In re Welfare of J.J.P.*, 831 N.W.2d 260, 264 (Minn. 2013).

The plain language of Minn. Stat. § 609.215 is broad, criminalizing any speech that "intentionally advises [or] encourages . . . another in taking the other's own life." While the statute does not define its terms, advise ordinarily means to "offer advice to," to counsel, or to inform. *See The American Heritage Dictionary* 25 (5th ed. 2011); *Webster's Third New Int'l Dictionary* 32 (unabr. 1993). And encourage means to "inspire with hope, courage, or confidence," to support, or to stimulate or spur on. *The American Heritage Dictionary* 587 (5th ed. 2011); *Webster's Third New Int'l Dictionary* 747 (1993). None of these definitions requires the speaker to take the active role in another's suicide that the term assists requires.[6] *See American Heritage Dictionary* 108 (5th ed. 2011) (defining assist as to give help, support, or aid to another); *Webster's Third New Int'l Dictionary* 132 (unabr. 1993) (defining assist as to perform some service for another). Nor does the statute require causation or even express promotion of suicide but only advising or encouraging another "in taking the other's own life." As written, therefore, Minn. Stat. § 609.215 criminalizes any and all expressions of support, guidance, planning, or education to people who want to end their own lives, whether from a public platform, such as a book, or in the private setting of a hospital room or family home. It likely criminalizes even patently political speech endorsing a right to die.

As the district court concluded, and the state now concedes, the state's interest in preventing suicide does not justify these extreme limitations on protected speech about suicide. No significant causal connection exists between the broad range of advising and

[6] We observe that several other states refer to aiding or facilitating suicide, e.g., N.J. Stat. § 2C:11-6 (West 2005) ("aids"); N.D. Cent. Code Ann. § 12.1-16-04 (West 2012) ("facilitates"), which we consider synonymous with assisting.

encouraging speech prohibited by Minn. Stat. § 609.215 and suicide. And the state could achieve its goals through less-restrictive means. To protect vulnerable people from being coerced or unduly influenced to commit suicide, the state could draft a statute that prohibits only that speech.[7] *See, e.g.*, Del. Code Ann. tit. 11, § 645 (West 2007) ("causes"); 720 Ill. Comp. Stat. Ann. § 5/12-34.5 (West 2013) ("coerces"); 18 Pa. Cons. Stat. Ann. § 2505 (West 1983) ("causes . . . by force, duress or deception"). And the state has already expressly prohibited assisting suicide, so restrictions on advising and encouraging speech are not necessary to prevent assisted suicide.

The district court nonetheless concluded that the prohibition of speech that "encourages" another in suicide can be narrowly construed to survive strict scrutiny. And the state argues that our supreme court's recent decision in *Crawley* requires us to similarly construe "advises" to limit the reach of that prohibition on speech to only those categories of speech that necessarily infringe on the state's compelling interest.[8] We disagree. In *Crawley*, the supreme court held that a statute criminalizing false reports about police officers is constitutional when narrowly construed to encompass only unprotected defamatory speech. 819 N.W.2d at 105-07. But it did not do so based on a

[7] We further observe that the term "encourages" plausibly encompasses urging speech, but that is not necessarily the same as speech causing another to commit suicide through undue influence or duress—speech that likely would be unprotected speech integral to separate actionable offenses. Consequently, we cannot say that Minn. Stat. § 609.215 addresses this category of speech at all, let alone as part of an overbroad restriction on encouraging speech.

[8] The state urges us to construe the statute to prohibit only speech "that intentionally advises a specific person, with the specific intent to aid the person in taking the other person's own life," but acknowledges that the plain language of the statute does not so read.

freewheeling authority to revise facially unconstitutional statutes. Rather, it relied on the Supreme Court's authorization and encouragement to state supreme courts to "sustain the constitutionality of state statutes regulating speech by construing them narrowly *to punish only unprotected speech*." *Crawley*, 819 N.W.2d at 105 (emphasis added) (citing *Chaplinsky v. New Hampshire*, 315 U.S. 568, 573, 62 S. Ct. 766, 770 (1942)); *see also Broadrick v. Oklahoma*, 413 U.S. 601, 613, 93 S. Ct. 2908, 2916 (1973) (explaining that a statute should not be declared invalid for facial overbreadth if a "limiting construction has been or could be placed on the challenged statute" to "remove the seeming threat or deterrence to constitutionally protected expression"). Because the statute at issue in *Crawley* encompassed unprotected defamatory speech and protected non-defamatory speech, the supreme court construed the statute narrowly to punish only the unprotected category of speech. 819 N.W.2d at 104, 107. That same approach cannot save the "advises" and "encourages" provisions in Minn. Stat. § 609.215.

The plain language of Minn. Stat. § 609.215 limits only protected speech. When a statute addresses only protected speech, a court cannot "rewrite a . . . law to conform it to constitutional requirements." *See Stevens*, 130 S. Ct. at 1592 (quotation omitted); *see also Holder v. Humanitarian Law Project*, 130 S. Ct. 2705, 2718 (2010) ("Although this court will often strain to construe legislation so as to save it against constitutional attack, it must not and will not carry this to the point of perverting the purpose of a statute."). To do so "would constitute a serious invasion of the legislative domain" and "sharply diminish" the legislature's incentive to draft appropriately narrow laws in the first place. *Stevens*, 130 S. Ct. at 1592. Because section 609.215 lacks any identifiable category of

unprotected speech to which the statute's scope can be limited, we cannot impose a narrowing construction that saves the statute.

Moreover, even as construed by the state, the statute chills a significant amount of protected speech that does not bear a necessary relationship to the state's objective of preventing suicide. In particular, the state asserts that it would only seek to proscribe speech intended to educate a specific person whom the actor knows to be contemplating suicide about methods of doing so. This prohibition is significantly more narrow than the sweeping statutory language but still bears no necessary relationship to preventing suicide since less specifically targeted information about methods of suicide is easily accessible in numerous fora and just as likely to facilitate suicide.

We do not doubt the state's substantial concern about suicide and the vulnerability of those contemplating ending their lives. But the state may not infringe on constitutionally protected speech, no matter how significant the concern, unless it demonstrates that doing so is necessary to address that concern. Because it has failed to do so here, we conclude that the provisions in Minn. Stat. § 609.215 criminalizing speech advising or encouraging another in taking the other's own life are unconstitutional.

II. The district court did not err by denying respondents' motion to dismiss the indictments for lack of probable cause.

A grand jury indictment carries "a presumption of regularity," and the defendant seeking to overturn it "bears a heavy burden." *State v. Eibensteiner*, 690 N.W.2d 140, 151 (Minn. App. 2004), *review denied* (Minn. Mar. 15, 2005). Probable cause exists to charge a defendant when evidence worthy of the grand jury's consideration—both direct

and circumstantial—renders the charge reasonably probable. *State v. Flicek*, 657 N.W.2d 592, 596 (Minn. App. 2003); *see State v. Martin*, 567 N.W.2d 62, 66 (Minn. App. 1997) (permitting reliance on circumstantial evidence), *review denied* (Minn. Sept. 18, 1997). A reviewing court defers to the grand jury's role as fact-finder and should dismiss an indictment only when there are no issues of fact and the defendant's conduct could not constitute the offense as a matter of law. *Eibensteiner*, 690 N.W.2d at 151; *see also* Minn. R. Crim. P. 17.06, subd. 2(1)(a). We review de novo a district court's decision on a motion to dismiss an indictment for lack of probable cause. *See State v. Inthavong*, 402 N.W.2d 799, 802-03 (Minn. 1987) (considering directly the sufficiency of evidence before grand jury); *Eibensteiner*, 690 N.W.2d at 154 (same).

Respondents argue that the indictment must be dismissed because the grand jury was instructed to indict if there is probable cause to believe respondents intentionally advised, encouraged, or assisted Dunn in committing suicide, rather than receiving a more limited instruction consistent with our conclusion that the constitutional reach of Minn. Stat. § 609.215 is limited to criminalizing intentionally assisting another in committing suicide. We disagree. "[E]rroneous instructions given a grand jury, whether by the court or the prosecutor, will not invalidate an indictment absent a showing of prejudice," which "ordinarily will be found only on those rare occasions where the grand jury instructions are so egregiously misleading or deficient that the fundamental integrity of the indictment process itself is compromised." *Inthavong*, 402 N.W.2d at 802. And as the state pointed out at oral argument, it was not required to charge the offenses at issue here by indictment. *See* Minn. R. Crim. P. 17.01, subd. 1 (requiring indictment only for

offenses punishable by life imprisonment and permitting all other offenses to be charged by complaint). Accordingly, any flaws in the instructions to the grand jury are harmless so long as the evidence establishes a reasonable probability that respondents' conduct fell within the constitutional parameters of Minn. Stat. § 609.215.

The record indicates that Egbert and Dincin were Dunn's exit guides. While the record contains evidence that FEN instructs exit guides not to participate in procuring or assembling the materials used for helium asphyxiation, it also contains evidence suggesting such participation in Dunn's case. Specifically, Dunn's physical limitations, which prevented her from engaging in activities requiring fine motor skills or driving more than a few blocks from home alone, and the apparent absence of the materials necessary for helium asphyxiation in the home before her death reasonably support an inference that Egbert and/or Dincin procured or assembled the materials for her, thereby assisting in her suicide. And evidence that FEN expressly permits exit guides to hold a member's hand to prevent tearing of the plastic hood and instructs them to ensure the member is dead before removing the hood could reasonably be considered assistance in suicide attributable equally to Egbert and FEN. *See State v. Christy Pontiac-GMC, Inc.*, 354 N.W.2d 17, 20 (Minn. 1984) (stating that corporate liability for specific-intent crimes requires proof that (1) the agent was acting within the scope of employment, (2) in furtherance of the corporation's business interests, and (3) the criminal acts were authorized, tolerated, or ratified by corporate management). Finally, the evidence of Massey's role in FEN and her communications with Dunn, Dincin, and Egbert specifically about Dunn's request for exit-guide services, establishes a reasonable

probability that she intentionally aided and abetted Egbert and Dincin in assisting Dunn's suicide. On this record, the district court did not err by denying respondents' motions to dismiss the indictments.

In sum, the provisions in Minn. Stat. § 609.215 criminalizing speech intentionally advising or encouraging another in taking the other's own life are unconstitutional infringements on protected speech. However, the record contains sufficient evidence to establish a reasonable probability that each respondent violated the undisputedly constitutional prohibition on assisting suicide. Accordingly, the district court did not err by denying respondents' motions to dismiss the indictments.

Affirmed in part, reversed in part, and remanded.