

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss

SUPERIOR COURT
WOCR 2007-1323

COMMONWEALTH OF MASSACHUSETTS

v.

ALISSA PUGH

MEMORANDUM OF DECISION AND ORDER ON SENTENCING

I. INTRODUCTION

1. The defendant, Alissa Pugh, was convicted after a jury waived trial of Involuntary Manslaughter (G.L. c. 265, § 13) and unlawfully conveying away a dead body (G.L. c. 272, § 71).

II. FACTS¹

2. The criminal charges in this case were based on the discovery of an infant boy's body in the "hopper" of a rubbish disposal truck on January 6, 2007. One of the truck personnel discovered the body as he was loading trash into the truck's hopper as it made its rounds in the vicinity of Purchase and Camp streets in Milford. The child's head was in a plastic shopping bag. The infant was born five days earlier to the defendant, who resided at that address with her boyfriend, her then 8 ½ year old son Colby, and her boyfriend's aunt. The defendant was interviewed by the police in the

¹ Criminal sentencing is an intensely fact-bound exercise of judicial discretion. Therefore, I have included a synopsis of the facts in this sentencing decision. The complete statement of the court's findings of fact is contained in the Memorandum of Decision filed on January 26, 2009.

days following discovery of the child's body.²

3. The defendant did not testify at her trial. The only direct evidence of the events surrounding the birth of the child come from statements made by the defendant to the police. The court issued a written decision following the jury waived trial and found that the defendant, Alissa Pugh, gave birth to a baby boy in the late afternoon or early evening hours of January 2, 2007 at 263 Purchase Street, Milford, Massachusetts while alone and inside her bathroom. During the birthing process, the child was injured when the defendant pulled his foot and grabbed other parts of his body, including his abdomen, to forcibly release him from the breech position in which he presented. Certain other injuries were suffered by the child that were not established to be ante mortem or that were established to be postmortem. There is no evidence that the child suffered from any anatomical anomalies or diseases at birth that could have accounted for or contributed to his death.

During her pregnancy with her first son, the defendant received prenatal care through the Fallon Clinic, including appointments with an OB/GYN physician. The defendant gave birth vaginally to her first son in a hospital setting and while attended by physicians and nursing personnel on July 4, 1998.

4. Sometime in 2006 the defendant became aware that she was pregnant as a

² In addition to the statements made by the defendant when the police first met her on January 6, 2007, the defendant was interviewed at the Milford Police Department on January 7, 8, and 12, 2007. The court viewed and listened to these interviews.

result, in part, of using a home pregnancy testing kit.³ Her last period before the birth of the baby in question was in April, 2006. The defendant did not inform anyone else that she was pregnant. She has been in a monogamous relationship with her boyfriend except for a brief sexual relationship with another man in April-May, 2006. Her relationship with her boyfriend in the fall of 2006 was not good. He was not working and she was supporting a household made up of four people. The defendant was in financial distress. She had only a highschool education. She was employed as a veterinary technician at an animal hospital. Her relationship with her boyfriend improved somewhat in December 2006 when he found part-time work at the post office.

5. During 2006 and until the day in question, the defendant did not have any health insurance. She had health insurance when her son was born in 1998 but it lapsed. She was reminded that she lacked insurance for her son when he attended kindergarten, but she took no steps to apply for Mass. Health insurance or any other such insurance coverage for herself or her son. From the time the defendant first became aware she was pregnant until the birth of the baby boy on January 2, 2007, the defendant did not seek or receive any prenatal care and had not seen a doctor in years.

6. On January 2, 2007, the defendant went to work at the Milford Animal Hospital at 12:00 p.m. At about 3:00 p.m., she began to feel pains in her abdomen which

³ At trial, I did not credit the statements by the defendant that she did not learn that she was pregnant until October, 2006 and that she believed she was only about three months pregnant as of January 2, 2007. I found that the defendant was aware that she beginning labor and experiencing contractions while at work on January 2, 2007.

she recognized as contractions. From her experience with the birth of her first son, she understood that contractions were associated with the birth of a child. She reported only that she was not feeling well and went home at 4:00 p.m. The defendant told her boyfriend and her aunt that she did not feel well and they left her alone. The defendant went to her bedroom and lay down. She was in and out of the bathroom several times. The contractions continued. At some point, the contractions were about one minute apart. The defendant did not call for help to her boyfriend who was at home, to her aunt who was upstairs, or to anyone else. Although the home telephone was not working, there was at least one working cell phones in the home. At some point she went into the bathroom and her "water" broke. From the birth of her first son she understood that the discharge of "water" was a step in the birthing process. There was some additional discharge from her vagina. The defendant did not call for help to her boyfriend who was at home, to her aunt who was upstairs or to anyone else. An interval of time of at approximately forty-five minutes in duration passed from when the defendant arrived home until her water broke and all the while she was having contractions.

7. After her water broke and while in the bathroom, the defendant reached inside herself and felt a foot. The defendant pulled the baby's foot and then a leg appeared. She pulled the baby's legs and abdomen and other parts of the baby's body to hasten the process of delivery. The defendant knew that it was dangerous to deliver a baby feet first. She had to push ten times in addition to pulling. At one point, the baby seemed to

be stuck inside the defendant. The defendant remained conscious throughout this period of time. Eventually, after about six minutes of pulling coupled with pushing by the defendant, the baby emerged from the mother and fell into the toilet bowl. It is unclear what followed immediately after the actual birth of the baby and, therefore, I make no findings as to what the defendant did or did not do in the moments immediately following the delivery other than a finding that she did not call out for help or phone for help.⁴

8. The baby in question was nearly full term at 36 ½ weeks and viable, that is capable of living outside of the mother's womb. The baby was viable during the birthing process and up to the point when the defendant began to pull it out. The baby was 21 ¾ inches long and weighed 6 ½ pounds despite the fact that most of its brain was missing. There was no evidence of a diseased or abnormal placenta or umbilical cord, an infection, or the presence of illegal drugs in the baby's system. I further find that apart from the postmortem injuries caused by the trash compactor into which the baby had been dumped along with other trash, and certain other injuries that the medical experts could not determine to be ante mortem or postmortem, the baby

⁴ The defendant was able to stand and move about while she was in the bathroom before the delivery and immediately thereafter. At some point shortly after the delivery, the defendant became aware that the baby was dead. The defendant put the baby in a plastic bag which she found in the bathroom and brought it outside and put it in a gray trash container. She then returned to the bathroom, cleaned herself and the bathroom, and took the baby outside and deposited it in a trash can behind the house. The defendant used pads to soak up her own blood and bodily discharges. The defendant said nothing to her boyfriend or his aunt that evening. She went to work the following day.

suffered a series of injuries before death and during the birthing process.⁵

III. SYNOPSIS OF LEGAL CONCLUSIONS⁶

9. The defendant caused the death of her baby boy on January 2, 2007 during the birthing process as a result of applying significant force to various parts of his body. At the time of her acts she was aware that her conduct involved a high degree of risk to the life of the baby. The defendant's conduct was not undertaken to save the life of the baby or her own life. The defendant's conduct was not the result of a mere mistake of judgment about what conduct was reasonable and appropriate under the circumstances. The defendant did not act with malice aforethought, and the court did not find the defendant acted with the specific intent to cause the death of her baby. The defendant was not prevented from seeking assistance or medical aid because she was too weak or disabled to call for help. While it is true that the defendant could not

⁵ These antemortem injuries resulted in a substantial amount of bleeding into the abdominal cavity. I found that these injuries did not occur before birth and while the baby was in his mother's uterus. From other findings made above, I inferred that these prior-to-death injuries were caused by the defendant pulling at the baby boy's legs and grabbing other parts of his body with significant force in an effort to accelerate the process of delivery. I found that at least some of these injuries required the application of a significant amount of force such as pressing down hard with a person's thumb or a hard clamping down on the defendant's abdomen. I found that the baby boy in question did not die of natural causes.

There were some facts that I concluded the Commonwealth has not proved beyond a reasonable doubt. First, the Commonwealth did not prove precisely when in 2006 the defendant first became aware she was pregnant. Second, the Commonwealth did not prove that the baby was alive i.e., had a heart beat or was breathing on its own when it fully emerged from the defendant and was fully delivered. Third, it is left to speculation and thus not proved that the baby would have lived if the defendant had called for help when her water broke and she first felt the baby's foot. Although there is evidence of some air in the baby's lungs, it is left to speculation and thus not proved that it was the result of respiration on the part of the baby or due to some other cause.

⁶ A complete analysis of the legal principles involved in this case is set forth in the court's memorandum of Decision dated January 26, 2009.

possibly know how long it would take for emergency personnel to arrive if called, her decision to pull and grab the baby in an effort to dislodge its head and deliver the baby by using a significant amount of force to bring about the delivery constituted a wanton and reckless act.

IV. SENTENCING CONSIDERATIONS

10. Purposes of sentencing. The purposes of sentencing in Massachusetts are "(A) to reflect the seriousness of the offense; (B) to promote respect for the law; (C) to provide just punishment for the offense; (D) to afford adequate deterrence to criminal conduct; (E) to protect the public from further crimes of the defendant; and (F) to provide the defendant with educational or vocational training" G.L. c. 211E, § 2(3). See Commonwealth v. Goodwin, 414 Mass. 88, 92 (1993)(A judge's sentence should reflect the careful assessment of several goals: punishment, deterrence, protection of the public, and rehabilitation).

11. Principles of sentencing. How judges should exercise this discretion is the subject not only of ongoing dialogue among members of the bench and the bar, but is directly affected by legislation which established an independent Sentencing Commission comprised of prosecutors, defense counsel, judges, public safety and correctional officials, and a victim-witness advocate. See G.L. c. 211E, § 1(a), This commission has developed proposed sentencing guidelines. G.L. c. 211E, § 3(a)(1). Although the draft guidelines were not adopted by the legislature, they have some utility, and are consulted on a regular basis by many judges. Based on the nature of the

offenses involved in this case and the defendant's lack of a prior criminal record, the "presumptive" range of sentences under the guidelines is 40-60 months.⁷ In addition to the proposed sentencing guidelines, I also have considered the sentences imposed by me and other judges in other cases involving similar circumstances. In particular, the Massachusetts Sentencing Commission brought to my attention five cases involving the death of a new born between 1998-2008. The cases involved convictions for both Manslaughter and Involuntary Manslaughter. The cases involved defendants between the ages of 18 and 23 years. The lead sentences in these other cases were as follows: (1) 2 ½ years to the House of correction, 1 year to serve; (2) 2 ½ years to the House of Correction; (3) 1 and ½-3 years to state prison; (4) 5-5 years and 1 day to state prison; (5) 10-12 years to state prison.

The range of sentences imposed by judges in this category of criminal cases is not a reflection of idiosyncratic behavior, but rather a reflection of the fact that each of these cases involved different specific facts and compelling circumstances that require the court to fix a sentence above or below the guideline range in order to satisfy the overarching goal of a punishment that fits the unique circumstances of the crime and the individual defendant.

12. Judicial responsibility to exercise discretion. Despite the expression of legislative purposes in sentencing, and the identification of guiding principles, the

⁷ Under the Sentencing Commission's proposal, in a case such as this, the court has the authority to impose a sentence below or above the guidelines range whenever it is appropriate to do so provided that written reasons are given to support the lesser or greater sentence. The Court is also permitted to impose sentences for each separate offense on a consecutive or concurrent basis.

sentencing scheme established by the Legislature in this case, as in most cases, calls on the judge to consult his or her conscience and exercise a sound judicial discretion. Judicial discretion requires the court to carefully examine and assess the facts and circumstances of this case, and not simply to reflect the philosophy or reasoning of the prosecution, the defense, or the victims and their families. Judicial discretion does not permit the court to substitute its personal norms for the public values expressed by the legislature in G.L. c. 211E, § 2(3). Judicial discretion does not permit the court to assign a value to the victim's life because every human life has incalculable value. Judicial discretion does not permit the court to act impulsively to satisfy any personal or public desire for vengeance. Judicial discretion does not permit the court to punish the offender for conduct other than that which has resulted in a conviction. And judicial discretion does not permit the court to focus solely or even principally on the problems and needs of the offender.

13. Facts and Circumstances of this Offense. The defendant is charged with a serious crime, one of the most serious crimes that come before the Superior Court for Sentencing. The law requires the court in this case, as in all cases, to impose a just sentence. A just sentence is one that takes into account the circumstances of the crimes, and the character of the defendant.

The facts in this case include elements of aggravation—the defendant's maturity in terms of her age and having a prior experience with the birthing process. The defendant was aware of her pregnancy no later than months before the birth. The

defendant's failure to request assistance on the day in question once she became aware that the birthing process was underway is not sufficiently explained. And, the defendant's conduct in forcibly and recklessly extracting the baby from her body once the birthing process was underway without any effort to summon help or medical assistance was a wanton and reckless act.

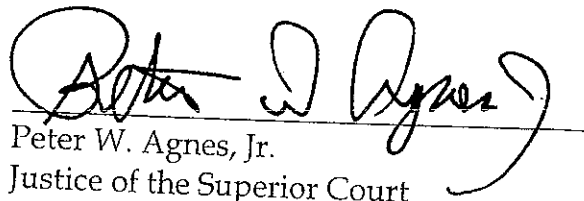
On the other hand, I take into consideration the data gathered by the Probation Department and defense counsel, including the testimony today by Dr. Howard M. Lester, about the character and life of the defendant. I do not believe Dr. Lester's analysis of the psychological factors that may have been at play in the defendant's life (chronic anxiety disorder, depression and disassociation) satisfactorily explain the defendant's behavior on the day in question or outweigh the aggravating factors in this case. Nonetheless, the defendant manifested signs of some pathological condition throughout her pregnancy in that she took steps to hide it from everyone and acted in other ways that reflected a denial of the very fact of her pregnancy. I also credit the numerous testimonials by family members and friends to the defendant's work ethic, her loving care and attention toward her son Colby (now age eleven), and her willingness to confront and address in a therapeutic setting her psychological problems.

ORDER

Despite the best efforts of judges, lawyers, legislators and those who study sentencing law and policy, no one has devised a formula that is capable of mechanistically calculating the appropriate sentence in a criminal case. Fortunately, our

legislature recognizes that despite the serious nature of the crime of involuntary manslaughter, there are sufficient differences from case to case and from defendant to defendant to warrant trial judges having the discretion to sentence all the way from straight probation up to twenty years to state prison.

My decision in this case is guided by three principal considerations. First, the sentence imposed should be the least severe measure necessary to achieve the purpose for which the sentence is imposed. See G.L. c. 211E, § 2(6). Second, the sentencing judge should consider the presence of any aggravating or mitigating factors with reference to the specific defendant before the court. Third, the court should carefully weigh and assess the recommendation by the prosecutor and the defense counsel, the contents of the presentence evaluation report carried out by the Probation Department, and any other evidence offered at the sentencing hearing. A consideration of these factors leads me to conclude that in order to "punish the offender justly," G.L. c. 211E, § 2(1), she should be sentenced to a term of 2 ½ years to the House of Correction on the conviction for Involuntary Manslaughter and a term of supervised probation for 5 years on the conviction for Disposing of a Dead Body, said sentence to be served from an after the sentence on the Involuntary Manslaughter count. The probation sentence shall be subject to special conditions.


Peter W. Agnes, Jr.
Justice of the Superior Court

5-11-09