

I've fallen, and I can't get up!

From the late 1980s to today, this famous catchphrase has continued to be used in popular culture. It comes from the television commercial for the medical alarm and protection company LifeCall, which created a product to help senior citizens when they fell. The product was based off the fair assumption that senior citizens both want and need medical attention in a medical emergency. However, in a recent case heard at the Manitoba Court of Appeal, *R. v. Siwicki*, a senior citizen did not want help following her fall, which led to her untimely death and a strange criminal case for her son.

Case Summary

In 2014, Elizabeth Siwicki fell out of bed and onto the floor and was unable to get up. She refused to be moved by her son, Ronald, or to receive medical attention. For 26 days, Ronald, who lived with his mother, provided her with water and nutritional drinks, until December 17th, 2014, when she ultimately passed away. The autopsy revealed that Mrs. Siwicki died from complications due to bedsores and prolonged immobility, and that her death was completely preventable. She was not dehydrated or malnourished and with a reasonable level of care, her injuries would have been treated and she would have survived. Her case went to trial and Ronald pled guilty to criminal negligence causing death pursuant to section 219 of the *Criminal Code*. The sentencing judge sentenced him to three months' incarceration for the failure to provide his mother with the care she required. However, the Crown thought this sentence was too light, and appealed for a heftier punishment.

Call for a Strong Message

The Crown argued that a stronger message must be sent to the community to denounce and deter neglect of the elderly. They reflected on the values Canada must have as a society and the shared responsibility to our growing elderly population. The Court agreed that it is essential that we protect our elders and provide for their care, especially during challenges of physical and mental-health associated with aging. From a distance, this case seems like a good case to use to warn of the consequences of elder abuse. However, after careful examination, it is far from perfect to promote this cause. Adding greater punishment would not deter future neglect of the elderly any more than a lighter sentence would; it would only be unfair to one person, who didn't mean to hurt anyone – Ronald Siwicki.

The Real Abuse

The Crown argued that Ronald took part in elder abuse when he failed to provide his mother the necessities of life. On the day she died, she was found with her hair matted and dirty and she was covered in feces and urine. The Crown was quick to attribute the negligence to Ronald since he clearly performed the criminal act, or the *actus reus*. However, the intent of neglecting his mother, or the *mens rea*, was glanced over because it wasn't confidently there. Ronald was a devoted son and through all firsthand observations, committed to her health and safety. In fact,

Ronald had arranged for a home assessment when he first noticed signs of his mother's dementia, he tried to get her to go to the hospital for programming, he raised the potential of getting homecare, and his friends offered to help around the house. All these attempts were swiftly denied and resulted in Mrs. Siwicki being angry or upset with Ronald. She would often tell Ronald he was trying to make her look like a fool and that she would die if she went to a hospital.

The anger, the criticism, and the shaming of Ronald are all consistent with emotional abuse. The co-dependent relationship Ronald and his mother had is also indicative of an emotionally abusive relationship. Ronald's mother and his late father were the decision-makers throughout his entire life, refusing him opportunities such as moving out or dating women. Ronald never went against his mother's wishes or became independent, and he was characterized as indecisive and passive. His father died in a hospital in 1996, his sister died in a hospital in 2011, and as such, Mrs. Siwicki developed an aversion to health care. Therefore, when his abuser, his mother, fell from her bed, Ronald did everything he was told. He did as he was conditioned to do – to follow his mother's wishes. While the psychiatric assessment in 2015 and 2018 did not show any evidence of mental illness or disorders, they did not investigate the effect 60 years of emotional abuse would have in the situation. Ronald was not able to care for his mother like a reasonable person could because he was not a normal individual.

To Make a Point vs. To Look at Points

Ronald's sentence was increased to two years' incarceration to hammer home the point that the elderly population in Canada matters. However, while it made a point about elder abuse, it turned its back on emotional abuse. After the death of his abuser, Ronald made significant life changes and began thriving in the community. He was able to address his own health issues, to move out into his own apartment, to support himself with retirement benefits, and to have a girlfriend and a large support network of friends. These simple things, especially seeking medical help, were not things that he was able to do when under a relationship of emotional abuse.

If Ronald's case should stand for anything, it is that personal relationships should play a large role in the decisions of the Courts. However, we see that the policy reasons have gotten in the way. The big picture goal of denouncing and deterring neglect for senior citizens has trampled over the facts of the case and the real justice deserved. If sentencing law continues in this fashion, many individuals will receive sentences far harsher than they deserve for the chance that it might stop the next person. We will thus see the legal system spiral into a fool's game as it tries to tell Canada what is important rather than listening to what society wants and needs. Perhaps what we need now is for LifeCall to make us a device for our national issues.

Sources

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