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IN THE CIRCUIT COURT OF THE FOURTEEN JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR BAY COUNTY
CRIMINAL JUSTICE DIVISION

2007 FEB 20 A 11:40

HAROLD BAZZEL
CLERK OF CIRCUIT COURT
BAY COUNTY, FLORIDA

STATE OF FLORIDA

CASE NO.: 06-4016CF

vs.

HENRY DICKENS
CHARLES ENFINGER
[REDACTED]
RAYMOND HAUCK
[REDACTED]
KRISTIN SCHMIDT
JOSEPH WALSH II

06-4016CFMA
06-4016CFMB
[REDACTED]
06-4016CFMD
[REDACTED]
06-4016CFMF
06-4016CFMG
06-4016CFMH

**STATE'S RESPONSE TO DEFENDANTS' MOTIONS
FOR STATEMENT OF PARTICULARS**

THE STATE OF FLORIDA, by and through the undersigned Assistant State Attorney, hereby responds to the Motion for Statement of Particulars filed in this cause by counsel for defendants [REDACTED], Raymond Hauck, [REDACTED] [REDACTED] and Joseph Walsh, II. The State objects to the motions. The State contends that the defendants are not entitled to a statement of particulars in this case, and that a statement of particulars is unnecessary and unwarranted.

Rule 3.140(n) of the Florida Rules of Criminal Procedure requires a statement of particulars only if necessary to enable a defendant to prepare a defense. The rule states, in pertinent part:

The court, on motion, shall order the prosecuting attorney to furnish a statement of particulars when the indictment or information on which the defendant is to be tried fails to inform the defendant of the particulars of the offense sufficiently to enable the defendant to prepare a defense.

If a court orders the prosecution to provide a statement of particulars, Rule 3.140(n) requires the following:

The statement of particulars shall specify as definitely as possible the place, date, and all other material facts of the crime charged that are specifically requested and are known to the prosecuting attorney, including the names of persons intended to be defrauded.

Rule 3.140(n) does not require the prosecution to provide a statement of particulars based merely on a request by the defense or by an assertion by the defense that a statement of particulars is necessary. The rule only requires production of a statement of particulars when the court finds that the information is insufficient to enable a defendant to prepare a defense.

A defendant is only entitled to a statement of particulars when the charging document does not give him adequate notice of the charge he must defend. Smith v. State, 93 Fla. 238, 112 So. 70 (Fla. 1927). A defendant is not entitled to a statement of particulars if the information contains all the elements necessary to establish the crime, and does not otherwise mislead the defendant in the preparation of a defense. Jones v. State, 466 So.2d 293 (Fla. 3rd DCA 1985). Even when an information charges more than one way for a crime to have been committed, a defendant is not entitled to a statement of particulars absent a showing of lack of notice, prejudice, surprise or the inability to prepare an adequate defense. Harrison v. State, 557 So.2d 151 (Fla. 4th DCA 1990). A statement of particulars is only required in exceptional cases where the denial of a statement of particulars constitutes an abuse of judicial discretion. Peel v. State, 154 So.2d 910 (Fla. 2nd DCA 1963); Miller v. State, 764 So.2d 640 (Fla. 1st DCA 2000).

A statement of particulars is not required or necessary in this case. The information filed in this cause contains all the elements necessary to establish the crime charged, and provides sufficient notice of the offense to enable the defendants to prepare for trial.

Three grounds are raised in the motions for statement of particulars filed in this case. The motions filed by the various defendants are substantially identical, and for purposes of this response the State addresses the motions collectively.

Ground One

The first ground for a statement of particulars asserts that the information in this case fails to inform each defendant of the particulars of the allegation that the defendant was a caregiver of Martin Lee Anderson. The motions request the court to require the prosecution to provide the conclusory theory upon which the defendant is alleged to be the caregiver of the victim, and to include a statement of facts supporting the conclusion. This ground does not demonstrate any deficiency in the information that precludes the defendant from preparing a defense.

For the State to convict any defendant of the offense charged, it will be necessary to prove that the defendant caused the death of the victim by culpable negligence under the statute for Child Neglect, Florida Statute §827.03(3), which requires that the defendant be a caregiver for the victim. The term “caregiver” is defined by Florida Statutes, and will be provided in jury instructions. The definition of caregiver includes any person responsible for a child’s welfare. Whether the facts prove that a defendant was a “caregiver” for the victim is a matter to be determined by the jury. As is evident by

this ground being raised in the motion for a statement of particulars, the information adequately puts the defendant on notice that the defendant is charged with having been a caregiver for the victim, and the defendant is aware of that allegation. Therefore, the information is sufficient to enable the defendant to prepare a defense. Furthermore, this ground of the motion seeks disclosure of a prosecution theory. Rule 3.140(n) does not authorize or compel disclosure of prosecution theories.

Ground Two

The second ground of the motion for statement of particulars asserts that the information fails to inform the defendant of the particulars of the allegation that the defendant neglected Martin Lee Anderson by failure or omission to provide him with the care, supervision or services necessary to maintain his physical or mental health that a prudent person would consider essential for the well-being of a child. The motion alleges that the information fails to inform the defendant of the particulars of the offense sufficiently to enable the defendant to prepare a defense. This ground is merely a conclusory allegation, and does not demonstrate any deficiency in the information that precludes the defendant from preparing a defense.

The information gives adequate notice of the elements of the crime alleged. The information puts the defendant on notice that the defendant is accused of being a caregiver who neglected Martin Lee Anderson by failing to provide the care that any prudent person would consider essential for the well-being of a child. The information puts the defendant on notice that the alleged failure to provide that care caused the death of the victim. The information puts the defendant on notice of the allegation that the

death of Martin Lee Anderson was caused by culpable negligence by the defendant.

Therefore, the information provides sufficient notice for the defendants to understand the elements of the crime alleged and to prepare a defense.

The defendants are charged with failing or omitting to provide the care, supervision or services that a prudent person would consider essential for a child. This is an objective standard derived from the elements of the crime of Child Neglect in Florida Statute §827.03(3), which provides as follows:

(3)(a) "Neglect of a child" means:

1. A caregiver's failure or omission to provide a child with the care, supervision, and services necessary to maintain the child's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of a child; or
2. A caregiver's failure to make a reasonable effort to protect a child from abuse, neglect, or exploitation by another person.

Neglect of a child may be based on repeated conduct or on a single incident or omission that results in, or could reasonably be expected to result in, serious physical or mental injury, or a substantial risk of death, to a child.

The definition of child neglect gives examples of care, supervision and services necessary to maintain the child's physical and mental health, but does not limit the duty to provide care, supervision and services to those examples. Any failure or omission, however, must be one that a "prudent person" would consider essential for the well-being of a child.

The information has put each defendant on notice that the State is alleging a failure or omission to provide proper care, supervision and services, based on the

objective standard of a “prudent person.” Deciding whether a defendant failed to provide proper care for the victim is a factual determination to be made by the jury, and is limited only to the “prudent person” standard. The law does not require the State to select specific failures or omissions. The information in this case has put the defendants on notice that their conduct is alleged to have been a breach of the duty to provide essential care to the victim, and that their conduct as caregivers will be judged by the finder of fact based on the objective standard of a “prudent person.” Therefore, the information provides sufficient information to notify the defendants of the allegation and enable the preparation of a defense.

Moreover, most of the incident in question in this case was observed and recorded on videotape. Reports about the incident were written by some of the defendants. All defendants have been interviewed about the incident and given statements. It is unlikely that there will be much dispute as to what each defendant did or did not do during the incident. As a result, the danger of unfair prejudice or surprise is minimal in this case.

Ground Three

The third ground asserts that the information fails to inform the defendant of the particulars of the allegation that the defendant failed to make a reasonable effort to protect Martin Lee Anderson from abuse, neglect or exploitation by another person. The motion alleges that the information fails to inform the defendant of the particulars of the offense sufficiently to enable the defendant to prepare a defense. This ground is merely a conclusory allegation, and does not demonstrate any deficiency in the information that precludes the defendant from preparing a defense.

The information puts the defendants on notice that they are accused of neglecting Martin Lee Anderson, a child that was in their care, and causing his death as a result of that neglect. Accordingly, the information includes language from the Child Neglect statute, Florida Statutes §827.03(3). Not only is it unlawful for a caregiver to fail to provide the care essential for the well-being of a child, but it is also child neglect when a caregiver fails to protect a child from abuse or neglect by another person. The information advises each defendant that they are charged with both methods of child neglect, in the alternative. Charging alternative allegations in an information is authorized under Rule 3.140(k)(5), Florida Rules of Criminal Procedure.

The third ground also requests that the court order the prosecution to provide the identity of the “another person” referenced in the information. Florida Statutes §827.03(3) holds caregivers responsible for protecting a child in their care from harm inflicted by another person. The statute is not limited to a specific person, and does not require that the person who harmed the victim be identified. The standard jury instruction for Child Neglect does not require “another person” to be named, but simply uses the term “another person.” Therefore, it is not necessary for the State to specify or provide the identity of “another person.”

As has previously been discussed, the incident in question was recorded on videotape, and all defendants have given statements describing the event. There is no doubt that all defendants are aware of the identity of everyone involved in the incident. The request to have “another person” identified in a statement of particulars fails to demonstrate that this information is necessary to prepare a defense to the crime charged.

CONCLUSION

The incident in question involves multiple defendants who were responsible for the well-being of the victim. All defendants interacted with the victim and each other during the incident. Each defendant is fully aware of the conduct of all involved in this case. The question to be resolved by a jury is whether the conduct of each defendant was criminally negligent, as alleged by the State. The information adequately puts the defendants on notice that the State has alleged that the defendants were caregivers of Martin Lee Anderson and the conduct of each was culpably negligent, constituted child neglect, and caused the death of Martin Lee Anderson. The information is sufficient to enable the preparation of a defense, and no additional information is required to put the defendants on notice of the charges, or to prevent prejudice or surprise.

Under Rule 3.140(n), when a statement of particulars is ordered by a court, the statement of particulars is limited to date, place and material facts. The motion for a statement of particulars in this case requests explanations and prosecution theories. This is tantamount to a request to have the Court order the prosecution to argue this case in writing before trial. A statement of particulars should not be used as a device to force the prosecution to articulate legal theories and argue inferences from the evidence. The law only requires a statement of particulars if necessary to prevent a lack of notice, prejudice, surprise, or the inability to prepare a defense.

The information in this case provides adequate notice of the crime charged for the defendants to prepare a defense. Furthermore, the evidence in this case includes a videotape of the incident, reports about the incident written by multiple defendants, and interviews about the incident with all defendants. An extensive amount of media

attention has been given to this case. There is no doubt that the defendants are fully aware of the conduct that is at issue in this case, and there is little danger of unfair prejudice or surprise.

For the foregoing reasons, the Motion for a Statement of Particulars should be denied.

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Robert Sombathy, attorney for [REDACTED], at P.O. Box 430, Panama City, Florida 32402; James H. White, Jr., attorney for Raymond Hauck, at 229 McKenzie Avenue, Panama City, Florida 32401; [REDACTED] Panama City, Florida 32402-0327, Jonathan Dingus, attorney for [REDACTED] at 527 Jenks Avenue, Panama City, Florida 32401; and Robert Pell, attorney for Joseph Walsh II, at 514 Magnolia Avenue, P.O. Box 651, Panama City, Florida 32401, via U.S. mail, on this 16th day of February, 2007.

MARK A. OBER
STATE ATTORNEY



Michael C. Sinacore
Assistant State Attorney
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