

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA, IN AND FOR BAY COUNTY

STATE OF FLORIDA,  
Plaintiff.

vs.

CASE NOS.:

HENRY DICKENS  
CHARLES ENFINGER

06-4016CFMA

06-4016CFMB

RAYMOND HAUCK

06-4016CFMD

KRISTIN SCHMIDT  
JOSEPH WALSH, II,  
Defendants.

06-4016CFMF

06-4016CFMG

06-4016CFMH

HAROLD D. BAZZEL  
CLERK OF CIRCUIT COURT  
BAY COUNTY, FLORIDA

2007 AUG 23 P 4 00

FILED

**MOTION IN LIMINE RE: JURY INSTRUCTIONS:  
NON-HOMICIDE LESSER INCLUDED OFFENSES**

Pursuant to applicable law, the Defendants move this Honorable Court to rule in limine regarding the State's request to instruct the jury in accordance with non-homicide lesser included offenses. As grounds therefor, Defendants would show:

1. The Defendants are charged collectively with the offense of aggravated manslaughter of a child. Each Defendant is charged as a principal in causing the death of the victim. The State has alleged that all defendants are jointly and severally responsible for the victim's death.
2. The State has proposed that the Court instruct the jury in accordance with one or more non-homicide lesser offenses. Defendants submit that the jury should be instructed only in accordance with the charged offense, aggravated manslaughter of a child, and no lesser included offenses.

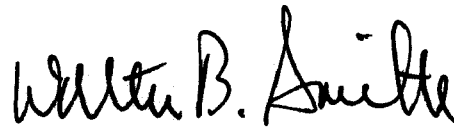
3. "Where a homicide has taken place, the proper jury instructions are restricted to all degrees of murder, manslaughter, and justifiable and excusable homicide." Martin v. State, 342 So.2d 501, 503 (Fla. 1977). Only under "peculiar facts" would it be appropriate to instruct a jury on non-homicide lesser included offenses. See Drotar v. State, 433 So.2d 1005 (Fla. 3<sup>rd</sup> DCA 1983).

4. Where one or more defendants act in concert to cause the death of the victim, it is improper to instruct on non-homicide lesser included offenses. Humphrey v. State, 690 So.2d 1351 (Fla. 3<sup>rd</sup> DCA 1997).

WHEREFORE, Defendant moves this Honorable Court to instruct the jury only in accordance with the jury instruction on aggravated manslaughter of a child, and no non-homicide lesser included offenses.

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Michael Sinacore, Assistant State Attorney, 800 E. Kennedy Blvd., Third Floor, Tampa, FL 33602; and to the persons listed on the attached Additional Service List, by U. S. Mail this 23<sup>rd</sup> day of August, 2007.

Respectfully submitted,



WALTER B. SMITH  
DEPUTY PUBLIC DEFENDER  
FOURTEENTH JUDICIAL CIRCUIT  
P. O. BOX 580  
115 EAST 4<sup>TH</sup> STREET  
PANAMA CITY, FL 32402-0580  
(850) 784-6155  
FLORIDA BAR NO.: 291749  
ATTORNEY FOR DEFENDANT

**ADDITIONAL SERVICE LIST**

Ashley S. Benedick  
Attorney at Law  
1004 Jenks Avenue  
Panama City, FL 32401

Hoot Crawford  
Attorney at Law  
Post Office Box 1103  
Panama City, FL 32402

Jonathan Dingus  
Attorney at Law  
527 Jenks Avenue  
Panama City, FL 32401

Waylon Graham  
Attorney at Law  
Post Office Box 327  
Panama City, FL 32402

Robert A. Pell  
Attorney at Law  
514 Magnolia Avenue  
Panama City, FL 32401

Robert S. Sombathy  
Attorney at Law  
434 Magnolia Avenue  
Panama City, FL 32401

James H. White, Jr.  
Attorney at Law  
229 McKenzie Avenue  
Panama City, FL 32401