

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

[REDACTED]
RAYMOND HAUCK

[REDACTED]
KRISTIN SCHMIDT
JOSEPH WALSH, II,
Defendants.

06-4016CFMA

06-4016CFMB

[REDACTED]
06-4016CFMD

[REDACTED]
06-4016CFMF

06-4016CFMG

06-4016CFMH

HAROLD BAZZEL
CLERK OF CIRCUIT COURT
BAY COUNTY, FLORIDA

2007 AUG 23 PM 4:00

FILED

DEFENDANTS' PROPOSED JURY INSTRUCTION
RE: EXCUSABLE HOMICIDE

Pursuant to applicable law, the Defendants move this Honorable Court to instruct the jury in accordance with the principle of excusable homicide. As grounds therefor, Defendants would show:

1. The court is required read to the jury the standard jury instruction entitled "Introduction to Homicide." Within this instruction, the court will define the principle of excusable homicide.
2. The standard jury instruction provides that excusable homicide may occur in one of three circumstances, including: "When the killing is committed by accident and misfortune in doing any lawful act by lawful means with usual ordinary caution and without any unlawful intent."
3. The underlined phrase renders the jury instruction erroneous since it implies that a killing which is done through mere negligence cannot be excusable homicide. In fact, it is

unconstitutional to punish negligent conduct as a crime. State v. Smith, 638 So.2d 509 (Fla. 1994).

4. Defendants maintain that the death of Martin Lee Anderson could be construed to be a case of excusable homicide. A reasonable juror could conclude that the death of Martin Lee Anderson was due to the accidental and unfortunate condition of sickle cell trait, which was transformed into a medical crisis by physical exertion and then exacerbated by the actions of the defendants. At most, the Defendants' conduct constituted simple negligence in failing to recognize that Martin Lee Anderson was suffering a medical crisis, and not malingering.

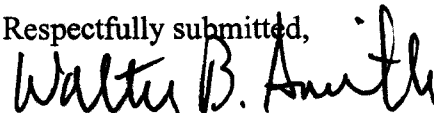
Based upon the foregoing, the Defendants propose the following language in lieu of the standard jury instruction:

“When the killing is committed by accident and misfortune in doing any lawful act without any unlawful intent.” or, alternatively:

“When the killing is committed by accident and misfortune in doing any lawful act without any conscious intention to harm.”

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 Additional Service List, by U. S. Mail this 23rd day of August, 2007.

Respectfully submitted,



WALTER B. SMITH
DEPUTY PUBLIC DEFENDER
P. O. BOX 580
PANAMA CITY, FL 32402-0580
(850) 784-6155
ATTORNEY FOR DEFENDANT
FLORIDA BAR NO.: 291749

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