

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]

HENRY MCFADDEN, JR.,
KRISTIN SCHMIDT,
JOSEPH WALSH, II,
Defendants.

06-4016CFMA

06-4016CFMB
[REDACTED]

06-4016CFMD
[REDACTED]

06-4016CFMF

06-4016CFMG

06-4016CFMH

HAROLD BAZZELL
CLERK OF CIRCUIT COURT
BAY COUNTY, FLORIDA

2007 AUG 23 P 4:00

FILED

DEFENDANTS' PROPOSED JURY INSTRUCTION
RE: AGGRAVATED MANSLAUGHTER OF A CHILD

Pursuant to applicable law, the Defendants move this Honorable Court to instruct the jury in accordance with the following jury instruction:

To prove the crime of aggravated manslaughter of a child, the State must prove the following four elements beyond a reasonable doubt:

1. Martin Lee Anderson is dead.
2. Martin Lee Anderson was under the age of eighteen (18) at the time of his death.
3. The Defendants were caregivers for Martin Lee Anderson at the time of his death.
4. (a.) The death of Martin Lee Anderson was caused by the Defendants' culpable negligence in failing to provide Martin Lee Anderson with the care, supervision, and services necessary to maintain Martin Lee Anderson'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 Martin Lee Anderson, or

(b.) The death of Martin Lee Anderson was caused by the Defendants' culpable negligence in failing to make a reasonable effort to protect Martin Lee Anderson from abuse, neglect, or exploitation by another person.

The culpably negligent behavior of the Defendants may be based on repeated conduct or on a single incident or omission that results in, or could reasonably be expected to result in substantial and foreseeable risk of death to Martin Lee Anderson. However, the Defendants cannot be guilty of aggravated manslaughter of a child if the killing was either justifiable or excusable homicide as I have previously explained those terms.

I will now define "culpable negligence" for you. Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence. But culpable negligence is more than a failure to use ordinary care toward others. In order for negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or such an entire want of care as to raise a presumption of a conscious indifference to consequences, or which shows wantonness or recklessness, or a grossly careless disregard for the safety and welfare of the public, or such an indifference to the rights of others as is equivalent to an intentional violation of such rights.

The negligent act or omission must have been committed with an utter disregard for the safety of others. Culpable negligence is consciously doing an act or following a course of conduct that the defendant must have known, or reasonably should have known, was likely to cause death or great bodily injury.

I will now define "caregiver" for you. A "caregiver" means a parent, adult household member, or other person responsible for a child's welfare.

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 23rd day of August, 2007.

Respectfully submitted,



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