

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

STATE OF FLORIDA

Plaintiff,

vs.

HENRY DICKENS
CHARLES ENFINGER

[REDACTED]
RAYMOND HAUCK

[REDACTED]
KRISTIN SCHMIDT
JOSEPH WALSH II

CASES 06-4016CFMA-CFMH

MAZZEL
JUDICIAL CIRCUIT COURT
BAY COUNTY, FLORIDA

SEP 19 10 3:47

FILED

**ORDER RELATING TO STATE'S AND DEFENDANTS'
PROPOSED JURY INSTRUCTIONS**

THIS CAUSE, came on for hearing on the State's and Defendants' Proposed Jury Instructions which the court took under advisement. The court is now fully advised in the matter. Accordingly, with respect to the State's proposed jury instructions relating to the charge of Aggravated Manslaughter of a Person under 18, Manslaughter and Pre-existing Medical Condition and the Defendants' proposed jury instructions relating to Aggravated Manslaughter of a Person under 18, Manslaughter, Excusable Homicide and Foreseeability, the court orders that the following instruction will be given subject to consideration of further argument by the parties:

**AGGRAVATED MANSLAUGHTER OF A PERSON UNDER 18
§782.07(3) and §827.03(3)**

A person who causes the death of a person under the age of 18 by culpable negligence by neglect of a child commits Aggravated Manslaughter of a Person under 18.

As to (defendant), to prove the crime of Aggravated Manslaughter of a Person Under 18, the State must prove the following four elements beyond a reasonable doubt:

1. Martin Lee Anderson is dead.
2. The defendant was a caregiver for Martin Lee Anderson
3. Martin Lee Anderson was under the age of 18 years.

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4. The defendant directly and proximately caused the death of Martin Lee Anderson by neglecting Martin Lee Anderson through culpable negligence.

“directly caused the death” means that but for the culpable negligence of the defendant, Martin Lee Anderson would not have died.

Culpably negligent conduct can directly cause the death of an individual if the culpably negligent conduct aggravates a pre-existing medical condition and as a consequence, the pre-existing medical condition causes the death of an individual.

However, a defendant cannot directly cause the death of an individual if the death of the individual would have occurred, in any event, regardless of the culpably negligent conduct of the defendant.

“proximately caused the death” means that (1) the death of the victim was reasonably foreseeable; so that it can be said that the death of the victim is not beyond the scope of any fair assessment of the danger created by the defendant’s conduct, and (2) the conduct does not fall within the definition of justifiable or excusable homicide as I have previously explained those terms .

“culpable negligence” is defined as follows: 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 of 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.

“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 the 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.

"Child" means any person under the age of 18 years.

"Caregiver" means a parent, adult household member, or other person responsible for a child's welfare.

7.7 MANSLAUGHTER § 782.07, Fla.Stat.

As to (defendant), to prove the lesser-included crime of Manslaughter, the State must prove the following two elements beyond a reasonable doubt:

1. Martin Lee Anderson is dead.
2. The death of Martin Lee Anderson was directly and proximately caused by the culpable negligence of (defendant).

"directly caused the death" means that but for the culpable negligence of the defendant, Martin Lee Anderson would not have died.

Culpably negligent conduct can directly cause the death of an individual if the culpably negligent conduct aggravates a pre-existing medical condition and as a consequence, the pre-existing medical condition causes the death of an individual.

However, a defendant cannot directly cause the death of an individual if the death of the individual would have occurred, in any event, regardless of the culpably negligent conduct of the defendant.

"proximately caused the death" means that (1) the death of the victim was reasonably foreseeable; so that it can be said that the death of the victim is not beyond the scope of any fair assessment of the danger created by the defendant's conduct, and (2) the conduct does not fall within the definition of justifiable or excusable homicide as I have previously explained those terms.

However, the defendant cannot be guilty of manslaughter 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 of 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.

DONE AND ORDERED ON SEPTEMBER 12, 2007.



Michael C. Overstreet, Circuit Judge

Authorities:

Eversley vs. State of Florida, 748 So.2d 963 (Fla. 1999)

Weir vs. State of Florida, 777 So.2d 1073 (Fla. 4th DCA 2001)

CC:

All Counsel for the State

All Counsel for the Defendants