

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

FILED

2007 SEP 20 A 11:04

STATE OF FLORIDA,

Plaintiff,

Case No.: 06-4016

HAROLD BAZZEL
CLERK CIRCUIT COURT
BAY COUNTY, FLORIDA

vs.

HENRY DICKENS
CHARLES ENFINGER

06-4016CFMA

06-4016CFMB

RAYMOND HAUCK

06-4016CFMD

HENRY MCFADDEN, JR

06-4016CFMF

KRISTIN SCHMIDT

06-4016CFMG

JOSEPH WALSH

06-4016CFMH

Defendant.

**MOTION FOR DEFENDANTS' PROPOSED JURY INSTRUCTION ON THE
LESSER INCLUDED OFFENSE OF "CULPABLE NEGLIGENCE"**

All Defendants jointly object to the Court's September 12th, 2007 Order Granting the State's Special Requested Jury Instruction which included the non-homicide lesser of "neglect of a child". All Defendants jointly respectfully request that this Honorable Court recognize the Defendants standing objection to the inclusion of this lesser included offense. However, if the Court is determined to allow this lesser included offense, then the Defense would respectfully request the following lesser included offense of "culpable negligence":

The State's instruction on "neglect of a child", was cited by the State under Section 827.03(3)(c) Florida Statute. There is no category one lesser to the offense of "neglect of a child" under the standard jury instruction, however there is a category two lesser of "culpable negligence" pursuant to Florida Statute 784.05(1). Based on the facts of this case the misdemeanor offense of "culpable negligence" would be a proper instruction as a lesser included offense to the charge of "neglect of a child" under Section 827.03(3)(c) Florida Statutes. Therefore, if a jury is to consider the elements required under the "neglect of a child" instruction it would be proper to instruct the jury on the lesser included offense of "culpable negligence".

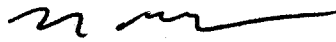
“Culpable negligence” under Section 784.05(1) reads as follows:

“Whoever, through culpable negligence, exposes another person to personal injury, commits a misdemeanor of the second degree”

Neither the “neglect of a child” instruction nor “culpable negligence” instruction requires death of the victim as an element. The Florida Standard Jury Instructions on “neglect of a child” is attached hereto as Exhibit “A” to show the category two lesser of “culpable negligence” as a lesser to that charge. Exhibit “B” which is attached hereto is Florida Standard Jury Instruction 8.9 for the misdemeanor offense of “culpable negligence” pursuant to Section 784.05(1) Florida Statutes.

WHEREFORE the Defendant’s jointly request this Court to include “culpable negligence” as a lesser included offense to the crime charged by the State in light of the Court’s decision to allow “neglect of a child” as a lesser included offense.

I HEREBY CERTIFY that a copy of the foregoing Defendant’s Witness List has been furnished to Honorable Michael C. Sinacore, State Attorney, 800 E. Kennedy Blvd 3rd Floor., Tampa, Florida 33602, by facsimile this 28th day of August, 2007.



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West's F.S.A. Std.Crim.Jury Instr., 16.6

West's Florida Statutes Annotated Currentness
 Florida Standard Jury Instructions in Criminal Cases (Refs & Annos)
 Part Two: Instructions on Crimes
 16. Child Abuse

→16.6. NEGLECT OF A CHILD

§ 827.03(3)(c), Fla.Stat.

(Without Great Bodily Harm, Permanent Disability, or Permanent Disfigurement)

To prove the crime of neglect of a child, the state must prove the following three elements beyond a reasonable doubt:

1. (Defendant)

Give as applicable

- a. [willfully] [by culpable negligence] failed or omitted to provide (victim) with the care, supervision, and services necessary to maintain (victim's) physical or mental health
- b. failed to make a reasonable effort to protect (victim) from abuse, neglect, or exploitation by another person.

2. (Defendant) was a caregiver for (victim).

3. (Victim) was under the age of 18 years.

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

Definition: Give in all cases

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

Definition: Give if applicable

I will now define what is meant by the term "culpable negligence": 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 for others. For negligence to be called culpable negligence, it must be gross and flagrant. The negligence must be 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 harm.

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West's F.S.A. Std.Crim.Jury Instr., 16.6

Lesser Included Offenses

NEGLECT OF A CHILD--827.03 (3) (c)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.

None			

	Culpable negligence	784.05	8.9

COMMENT

2006 Main Volume

This instruction was adopted in June 2002.

West's F. S. A. Std. Crim. Jury Instr., 16.6, FL ST CR JURY INST 16.6

Current with amendments received through 7/12/07

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West's F.S.A. Std.Crim.Jury Instr., 8.9

West's Florida Statutes Annotated Currentness
Florida Standard Jury Instructions in Criminal Cases (Refs & Annos)
Part Two: Instructions on Crimes
8. Assault and Battery

→8.9. CULPABLE NEGLIGENCE

§ 784.05, Fla.Stat.

To prove the crime of Culpable Negligence, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant)

Give 1a or 1b as applicable

a. [exposed (victim) to personal injury].

b. [inflicted actual personal injury on (victim)].

2. [He] [She] did so through culpable negligence.

Give if 1a alleged

Actual injury is not required.

Definition

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 for others. In order for negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard for human life, or for 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 shows such an indifference to the rights of others as is equivalent to an intentional violation of such rights.

Lesser Included Offenses

CULPABLE NEGLIGENCE--784.05(2)

CATEGORY ONE CATEGORY TWO FLA. STAT. INS. NO.

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West's F.S.A. Std.Crim.Jury Instr., 8.9

Culpable negligence	784.05 (1)	8.9
None		

COMMENT

2006 Main Volume

This instruction was adopted in 1981 and amended in 1985.

West's F. S. A. Std. Crim. Jury Instr., 8.9, FL ST CR JURY INST 8.9

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