

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff

CASE: 19-7166CF10A
JUDGE: MARTIN S. FEIN

vs.

SCOT PETERSON,
Defendant

_____ /

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

This cause having come forward and been heard on August 18, 2021
the Court states as follows:

1. The Defendant filed a motion to dismiss on July 18, 2019.
2. The State filed a written response to the Defendant's motion to dismiss and motion to strike on September 9, 2019.
3. The Court conducted a hearing on the Defendant's motion to dismiss on August 18, 2021.
4. After considering the Defendant's motion to dismiss, the State's written response to the Defendant's motion to dismiss and motion to strike as well as the arguments from the State and the Defendant the Court makes the following findings of fact and conclusions of law:
 - A. As to counts 1, 2, 3, 4, 5, 6 and 7 the Defendant takes the position that a BSO deputy and school resource officer is not included in the definition of a caregiver pursuant to F.S.S. 827.01 and F.S.S. 39.01 and F.S.S. 800.101 and

as such the Defendant is not subject to prosecution for a violation of F.S.S. 827.03.

B. The State takes the position that a BSO deputy and school resource officer is included in the definition of a caregiver and as such the Defendant is subject to prosecution for a violation of F.S.S. 827.03. In support of this position the State relies on Braddy vs. State, 111 So.3d 810 (Fla. 2012), State vs. Nowlin, 50 So.3d 79 (Fla. 1st DCA 2010), State vs. Christie, 939 So.2d 1078 (Fla. 3rd DCA 2005) and Durand vs. State, 820 So.2d 381 (Fla. 5th DCA 2002).

C. F.S.S. 827.01 states as follows (in pertinent part)

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

D. In Braddy the Defendant was convicted of first degree murder, attempted first degree murder, kidnapping, burglary, child neglect causing great bodily harm and attempted escape. In upholding the convictions the Florida Supreme Court found the evidence sufficient to support the finding that the Defendant was an "other person responsible" for a child's welfare while engaged in a kidnapping and therefore subject to prosecution for a violation of F.S.S. 827.03. See also Nowlin (finding a babysitter was an "other person responsible" for a child's

welfare), Christie (finding a public school teacher was an "other person responsible" for a child's welfare) and Durand (finding a landlord was an "other person responsible" for a child's welfare).

E. This Court granted the Defendant's unopposed motion to withdraw attestation to motion to dismiss without objection from the State. As such the pending motion to dismiss is not sworn to pursuant to Rule 3.190.

F. This Court notes neither the State nor the Defendant present any Florida authority that has previously addressed the issue as to if a law enforcement officer and school resource officer is or is not included as an "other person responsible for a child's welfare" pursuant to F.S.S. 827.01.

G. This Court finds it is not required to determine the disputed or undisputed facts of the case. This determination will be made by the jury based on the evidence presented at trial. In support of this conclusion this Court notes standard criminal jury instructions 16.5 (child neglect) and 16.6 (child neglect) as published by the Florida Supreme Court each require as an element of each crime a determination by the jury as to if the Defendant "was a caregiver for" the victim. In further support of this conclusion this Court notes both jury

instructions also include the verbatim definition of "caregiver" as defined in F.S.S. 827.01. A copy of standard criminal jury instructions 16.5 and 16.6 are attached to and incorporated as part of this order.

H. While the Defendant moves this Court to substitute its determination of the facts in place of a jury determination of the facts this Court concludes the jury will determine if the Defendant is included in the definition of caregiver pursuant to F.S.S. 827.01. See Puy vs. State, 294 So.3d 930 (Fla. 4th DCA 2020) (affirming denial of a motion to dismiss and holding that factual disputes are properly resolved by the jury).

I. For the same reasons as previously stated in this order as to counts 8, 9, 10 and 11 this Court again finds it is not required to determine the disputed or undisputed facts of the case. This determination will also be made by the jury based on the evidence presented at trial.

Therefore, based on the foregoing and pursuant to Rule 3.190 it is **ORDERED and ADJUDGED** that the Defendant's motion to dismiss is **DENIED**.

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The Defendant has the right to appeal this order within 30 days of rendition of this order.

DONE and ORDERED at Fort Lauderdale, Broward County, Florida this 19th day of August, 2021.



MARTIN S. FEIN
CIRCUIT COURT JUDGE
case #19-7166CF10A

CC: Christopher Killoran, Assistant State Attorney
Mark Eigliarsh, Attorney for Defendant

16.5 NEGLECT OF A CHILD

§ 827.03(2)(b), Fla. Stat.
(Great Bodily Harm, Permanent Disability,
or Permanent Disfigurement)

To prove the crime of Neglect of a Child Causing [Great Bodily Harm] [Permanent Disability] [Permanent Disfigurement], the State must prove the following four 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. In so doing, (defendant) caused [great bodily harm] [permanent disability] [permanent disfigurement] to (victim).
3. (Defendant) was a caregiver for (victim).
4. (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.

Great bodily harm. Wheeler v. State, 203 So. 3d 1007 (Fla. 4th DCA 2016).

“Great bodily harm” means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

Lesser Included Offenses

NEGLECT OF A CHILD CAUSING GREAT BODILY HARM, PERMANENT DISABILITY OR PERMANENT DISFIGUREMENT— 827.03(2)(b)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Child neglect		827.03(3)(d)	16.6
Culpable Negligence Inflicting Injury, if culpable negligence is charged		784.05	8.9
Culpable Negligence Exposing Another to Injury, if culpable negligence is charged		784.05	8.9

Comment

This instruction was adopted in 2002 [824 So. 2d 881] and amended in 2013 [122 So. 3d 263], and 2019.

16.6 NEGLECT OF A CHILD

§ 827.03 (2)(d), 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.

Lesser Included Offenses

NEGLECT OF A CHILD — 827.03 (2)(d)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Culpable Negligence Exposing Another to Injury, if culpable negligence is charged		784.05	8.9
	Culpable Negligence Inflicting Injury on Another, if charged	784.05	8.9

Comment

This instruction was adopted in 2002 [824 So. 2d 881] and 2013.