

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
CASE NO. 2023-CF-002935

STATE OF FLORIDA

v.

TOMASZ ROMAN KOSOWSKI  
\_\_\_\_\_ /

**MOTION TO DISMISS INDICTMENT**

Defendant Tomasz Roman Kosowksi, by and through undersigned counsel, pursuant to Florida Rules of Criminal Procedure Rule 3.140(o) and 3.190(b); the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution; and Article I, sections 9, 16, and 17 of the Constitution of the State of Florida, hereby moves to dismiss the Indictment in the instant case and, as grounds therefore, states as follows:

1. On or about March 21, 2023, the alleged victim, S.C., was reported missing.
2. The alleged victim has not been seen since that time.
3. Dr. Kosowski was developed as a person of interest in S.C.'s disappearance based on pending civil litigation wherein S.C. was defending against a civil lawsuit brought in 2019 by Dr. Kosowski against various doctors and surgical facilities. He was purportedly connected circumstantially to the location where S.C. was last known to have been located.

4. Numerous factors from S.C.'s past indicate that S.C.'s disappearance may well have been of his own doing and/or not the result of foul play.

5. On or about April 27, 2023, despite S.C. not having been located, Dr. Kosowski was indicted on one count of Murder in the First Degree. The State has filed a notice of intent to seek the death penalty.

6. The Indictment reads as follows:

in the County of Pinellas and State of Florida, on the 21st day of March, in the year of our Lord, two thousand twenty-three, in the County and State aforesaid unlawfully and from a premeditated design to effect the death of [REDACTED] did by a criminal act or agency, a better description of which is to the Grand Jury unknown, inflict upon the said [REDACTED] mortal wounds of which said mortal wounds and by the means aforesaid, and as a direct result thereof the said [REDACTED] died; contrary to Chapter 782.04(1)(a), Florida Statutes, and against the peace and dignity of the State of Florida. [L2]

7. The Indictment fails to include a “definite written statement of the essential facts constituting the offense charged.” FLA. R. CRIM. P. 3.140(b). It likewise fails to adequately provide Dr. Kosowski with fair notice of the charges against him. As set forth in greater detail below, the Indictment is so vague, indistinct, and indefinite that it is fatally defective as defined under Florida case law.

WHEREFORE, the undersigned counsel of record request this Honorable Court to dismiss the Indictment pursuant to Florida Rules of Criminal Procedure Rule 3.140(o) and 3.190(b); the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution; and Article I, sections 9, 16, and 17 of the Constitution of the State of Florida.

## MEMORANDUM OF LAW

The constitutional rights to due process and to fair notice mandate that an indictment be sufficiently detailed on its face to allow a defendant to build a defense to the allegations. *United States v. Cruikshank*, 92 U.S. 542, 558, 23 L.Ed. 588 (1875); *United States v. Odom*, 252 F.3d 1289, 1298 (11th Cir. 2001). Consequently, “[a]n accused has a right to be charged by an information free of defects and fatalities patent on its face, such as misjoinder and vagueness.” *Carroll v. State*, 251 So. 2d 866, 870 (Fla. 1971). For that reason, Florida courts have long held that a charging document is fatally defective “where the indictment or information is so vague, indistinct and indefinite as to mislead the accused and embarrass him in the preparation of his defense or expose him after conviction or acquittal to substantial danger of a new prosecution for the same offense.” *Ingraham v. State*, 32 So. 3d 761, 766 (Fla. 2d DCA 2010) quoting *Jones v. State*, 415 So. 2d 852, 853 (Fla. 5th DCA 1982) (citations omitted) (citing *State v. Wimberly*, 459 So. 2d 456, 458–59 (Fla. 5th DCA 1984); see also *State v. Fields*, 390 So. 2d 128, 131 (Fla. 4th DCA 1980). In such instances, the defendant may challenge the indictment in a motion to dismiss filed under Rule 3.190(b). See *Fields*, 390 So. 2d at 131. Rule 3.140(o) similarly vests courts with authority to dismiss an indictment if “the court shall be of the opinion that the indictment or information is so vague, indistinct, and indefinite as to mislead the accused and embarrass him or her in the

preparation of a defense or expose the accused after conviction or acquittal to substantial danger of a new prosecution for the same offense.” FLA. R. CRIM. P. 3.140(o); *see also State v. Block*, 428 So. 2d 782 (Fla. 4th DCA 1983.) (holding that “[i]f [the trial court] felt the information was too vague, it should have dismissed it pursuant to Florida Rule of Criminal Procedure 3.140(o).” *id* at 783).

“It is an elementary principle of criminal pleading, that, where the definition of an offence, whether it be at common law or by statute, includes generic terms, it is not sufficient that the indictment shall charge the offence in the same generic terms as in the definition, but it must state the species,—it must descend to particulars.” *Cruikshank*, 92 U.S. at 558. Consistent with that bedrock principle of criminal procedure, Rule 3.140 mandates that “the indictment or information on which the defendant is to be tried shall be a plain, concise, *and definite written statement of the essential facts constituting the offense charged.*” FLA. R. CRIM. P. 3.140(b) (emphasis added). With respect to an indictment for murder, the Florida Supreme Court has held that “it is essentially necessary to set forth particularly the manner of the death, and means by which it was effected.” *Michael v. State*, 40 Fla. 265, 269, 23 So. 944 (Fla. 1898). In doing so, the indictment must include “an averment of the manner and means by which the deceased came to his death, in concise and ordinary language, and in such a way as to enable a person of common understanding to know what was intended.” *Id.* To illustrate, in *Michael v. State*,

cited *supra*, the Court found that a murder indictment was sufficient and not unconstitutionally vague where it “show[ed] clearly that the deceased was struck by leaden bullets discharged from a gun in the hands of the accused at the time when and the place where the accused is alleged to have made the assault upon the deceased; that a mortal wound was inflicted by the leaden bullets, of which the deceased instantly died; and that in every act done by the accused he was proceeding unlawfully, feloniously, of his malice aforethought, and from a premeditated design to effect the death of the deceased.” *Id.* In comparison, the Indictment filed in the instant case does not even come close to providing such a sufficient level of detail. It, on the contrary, does not even attempt to speculate at any manner or means by which the alleged death of the purported victim might have occurred.

The Indictment filed in the instant case simply fails to put Dr. Kosowski on adequate notice of the alleged acts underlying the charge. To be sure, the State is purely speculating that the victim is deceased. It is speculating even further that Dr. Kosowski committed some unknown act that would have caused the victim’s purported death. The Indictment then merely alleges that “mortal wounds” were inflicted on the alleged victim. The Indictment seemingly even recognizes its own vagueness as it further states that the death of the victim was caused by “a criminal act or agency, a better description of which is to the Grand Jury *unknown*.” Given the generic and unclear text of the Indictment, no reasonable person could be on

adequate notice of the alleged crime he or she purportedly committed. As the higher courts have recognized for well over a century, without having such basic knowledge, a person cannot adequately defend against the prosecution's accusations.

As set forth above, the Indictment wholly fails to inform Dr. Kosowski of any particulars of the alleged offense to enable him to prepare a defense to the generic allegation that the State asserts. *See* FLA. R. CRIM. P. 3.140(n). The Indictment does not even sufficiently charge that a crime occurred, much less that Dr. Kosowski would have carried out some act to have committed it. It is thereby fatally defective as overly vague, indistinct and indefinite. Permitting the State to proceed on that Indictment would violate Dr. Kosowski's rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, sections 9, 16, and 17 of the Constitution of the State of Florida.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was furnished electronically to the Office of the State Attorney in and for the Sixth Judicial Circuit on this 7<sup>th</sup> day of June, 2023.

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