

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

23-02935-CF-D
522023CF002935000APC

STATE OF FLORIDA

v.

MURDER IN THE FIRST DEGREE

TOMASZ ROMAN KOSOWSKI
PID: 312109281

RESPONSE TO DEFENDANT'S MOTION TO DISMISS INDICTMENT

Comes now, Bruce Bartlett, State Attorney for the Sixth Judicial Circuit of Florida, and files this Response to Defendant's Motion to Dismiss Indictment, and would respond as follows:

1. Tomasz Kosowski was arrested for First Degree Murder on March 26, 2023.
2. On March 27, 2023, probable cause was found by the Court and Tomasz Kosowski was held at zero bond.
3. A Grand Jury issued an indictment against Tomasz Kosowski on April 27, 2023.
4. The indictment issued by the Grand Jury pleads the following:

The Grand Jurors of the State of Florida, impaneled and sworn to inquire and true charge make in and for the body of the County of Pinellas, upon their oath do charge that

TOMASZ ROMAN KOSOWSKI
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 S.C., did by a criminal act or agency, a better description of which is to the Grand Jury unknown, inflict upon the said S.C. mortal wounds of which said mortal wounds and by the means

aforesaid, and as a direct result thereof the said S.C. died; contrary to Chapter 782.04(1)(a), Florida Statutes, and against the peace and dignity of the State of Florida.

5. On June 7, 2023, Defense filed a motion to dismiss the indictment pursuant Florida Rule of Criminal Procedure 3.140 (0), Florida Rule of Criminal Procedure 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.
6. The issues alleged by Defense Counsel relate to issues of vagueness in the language of the indictment.

Legal Argument

A Grand Jury duly heard facts in this case. They issued an indictment after the presentation.

The Florida Supreme Court found similar language permissible when presented with an unknown manner of death. In Houston v. State, the Supreme Court stated the following: "when a grand jury is satisfied that an unlawful homicide has been committed, and the evidence does not satisfactorily show how it was accomplished, the form of indictment used in this case is supported by abundant authority in the various states." Houston v. State, 50 Fla. 90, 93 (1905). The indictment language employed in Houston was pled as follows:

The grand jurors of the state of Florida, inquiring in and for the county of Hillsborough, upon their oaths present that R. H. Houston, whose Christian name is to the grand jurors unknown, late of the county of Hillsborough aforesaid, in the circuit and state aforesaid, on the 26th day of July, in the year of our Lord one thousand nine hundred and four, at and in the county of Hillsborough aforesaid, did unlawfully, and from a premeditated design to effect the death of one Robert Story, make an assault on the said Robert Story, and in some way and manner and by

some means, instruments, and weapons to the jurors unknown he, the said R. H. Houston, whose Christian name is to the jurors unknown, did then and there unlawfully, *92 and from a premeditated design to effect the death of the said Robert Story, inflict on and create in the said Robert Story certain mortal injuries and a mortal sickness, a further description whereof is to the jurors unknown, of which mortal injuries and sickness to the jurors unknown the said Robert Story then and there died. And so the said R. H. Houston, whose Christian name is to the jurors unknown, did, in the manner and form aforesaid, unlawfully, and from a premeditated design to effect the death of the said Robert Story, kill and murder the said Robert Story, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the state of Florida. Id. at 91.

Similar to the instant case, the Grand Jury in Houston employed language stating that description of the manner in which the injuries were inflicted is to the grand jury unknown. While generally the indictment should state with specificity the manner in which a homicide was committed, when the manner is incapable of being known, and the Grand Jury is satisfied that an unlawful homicide occurred the indictment is sufficient.

In Mendenhall v. State, the Florida Supreme Court reiterated its holding from Houston. The indictment in Mendenhall alleged:

an assault upon one Susan F. Elliot and in some way and manner, and by some means instrument, and weapons to the jurors unknown, he the said John J. Mendenhall, did then and there unlawfully, and from a premeditated design to effect the death of the said Susan F. Elliot, inflict and create in the said Susan F. Elliot certain mortal injuries and mortal sickness, a further description whereof is to the jurors unknown, the said Susan F. Eliot then and there died Mendendhall v. State, 71 Fla. 552, 553 (1916).

The Florida Supreme Court stated: "The form of indictment has been upheld so recently and so pointedly by this court that we

need only refer with our entire approval to the case of *Houston v. State*, 50 Fla. 90." *Id.* at 554.

Houston was cited approvingly in a footnote in 1997 by the fifth District in *Ingleton v. State*, 700 So.2d 735 (Fla 5th DCA 1997). The *Michael* case cited by Defendant Kosowski was also cited in the same footnote. The Fifth District stated: "Historically, grand juries have been instructed to include in murder indictments the manner and means by which the death was caused." (citing *Michael v. State*, 40 Fla. 265 (Fla. 1898). *Id.* at 740. The Fifth District also stated: "It has also been held, however, that the indictment may state that such information is unknown to the grand jury when such is the case." (citing *Houston v. State*, 50 Fla. 90 (1905) *Id.*

The case law cited by Defendant Kosowski deals with a range of alleged offenses from molesting a vending machine to DUI. In those cases, specificity can, and should, be alleged if the specifics are known. Imperfections or omissions in the charging documents can be cured by a reference to the charging statute. The two homicide cases relied upon by Defendant Kosowski have known acts causing death and known causes of death. However, long standing precedent has established that the indictment language charged in the instant case is sufficient and lawful.

In the instant case the specificity by which Defendant Kosowski murdered S.C. is incapable of being known *because of the actions of Defendant Kosowski*. Like the language and facts in *Mendenhall* and *Houston*, the indictment issued by the grand jury in the instant case is sufficient.

In *Mendenhall*, the Florida Supreme Court summarized the issue as follows: "an examination of the evidence clearly discloses that Mendenhall himself was better informed as to the exact cause of the death than any state witness, and that he

confesses he does not know the cause, whether by bullet or by blow or by burning; and the dead body was so consumed by fire as to render impossible even a plausible guess as to the cause of death." Mendenhall, 71 Fla. 552 at 554.

WHEREFORE, the State of Florida prays that the Motion to Dismiss Indictment be denied.

I HEREBY CERTIFY that a copy of the above has been furnished to Bjorn Esq Brunvand, Attorney, BRUNVAND WISE P A, 615 TURNER ST, CLEARWATER, FL 33756, bjorn@acquitter.com, by e-service or personal service or U.S. Mail this 10th day of July, 2023.

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Sixth Judicial Circuit of Florida

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