

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

STATE OF FLORIDA

vs.

TOMASZ ROMAN KOSOWSKI

_____ /

MOTION FOR STATEMENT OF PARTICULARS

Defendant Tomasz Roman Kosowski, by and through undersigned counsel, pursuant to Florida Rule of Criminal Procedure Rule 3.140(n); 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 this Honorable Court to order the State to furnish a statement of particulars that specifies as definitively as possible the place, date, time and all other material facts of the specific alleged offense charged in the Indictment. As grounds therefore, Dr. Kosowski 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 or heard from 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.

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 utilizes boilerplate text that fails to include a “definite written statement of the essential facts constituting the offense charged.” FLA. R. CRIM. P. 3.140(b). Given its vagueness and overbreadth, the Indictment fails to sufficiently inform Dr. Kosowski of the particulars of the factual allegations against him so as to enable him to prepare a defense.

8. More specifically, the Indictment fails to allege, in any sense whatsoever, what “criminal act or agency” inflicted the alleged “mortal wounds;” what “wound”

or “wounds” were sustained;¹ when and where the wound or wounds were sustained; and/or what caused the wound or wounds to be “mortal.”

9. Dr. Kosowski previously filed a Motion to Dismiss the Indictment on grounds that it was so vague, indistinct, and indefinite as to be fatally defective. The Court denied that motion. In orally pronouncing that ruling, the Court noted Florida’s liberal discovery rules and suggested that a statement of particulars could be sought in the future if necessary.

10. Since that time, the Defense has reviewed the voluminous discovery in the case, conducted ample investigations of its own, and taken 80 depositions of State witnesses.

11. The particulars of the factual allegations are just as unclear today as they were when the Motion to Dismiss was litigated.

WHEREFORE, the undersigned respectfully request this Honorable Court to order the State to furnish a statement of particulars that specifies as definitively as possible all material facts of the specific alleged offense charged in the Indictment.

¹ The use of the plural, “wounds,” would seemingly suggest the Grand Jury believed multiple wounds were sustained, yet the Indictment provides no details of the alleged wounds.

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). “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).

Rule 3.140 further provides for the issuance of a statement of particulars when, as in this case, a charging document is lacking in sufficient detail:

(n) Statement of Particulars. The court, on motion, shall order the prosecuting attorney to furnish a statement of particulars when the indictment or information on which the defendant is to be tried fails to inform the defendant of the particulars of the offense sufficiently to enable the defendant to prepare a defense. The statement of particulars shall specify as definitely as possible the place, date, and all other material facts of the crime charged that are specifically requested and are known to the prosecuting attorney, including the names of persons

intended to be defrauded. *Reasonable doubts concerning the construction of this rule shall be resolved in favor of the defendant.*

FLA. R. CRIM. P. 3.140(n) (emphasis added). Ordering a statement of particulars rests within the discretion of the court. *Miller v. State*, 764 So. 2d 640, 645 (Fla. 1st DCA 2000). The purpose of a statement of particulars is to properly advise the defendant of the nature and specifics of the accusations against him or her so that the defendant can properly prepare a defense. *Brown v. State*, 462 So. 2d 840, 843 (Fla. 1st DCA 1985); *Smith v. State*, 93 Fla. 238, 245, 112 So. 70 (Fla. 1927). The Florida Supreme Court has provided that “the bill of particulars is no part of the pleadings, and the indictment is neither strengthened nor weakened by it...” *Smith*, 93 Fla. at 245 citing *Branch v. State*, 76 Fla. 558, 80 So. 482 (Fla. 1919); *Thalheim v. State*, 38 Fla. 169, 20 So. 938 (Fla. 1896) *superseded by statute on other grounds as stated in Nock v. State*, 256 So. 3d 828, 833-34 (Fla. 2018); *Brass v. State*, 45 Fla. 1, 34 So. 307 (1903); *Mathis v. State*, 45 Fla. 46, 34 So. 287 (1903). Consequently, ordering the issuance of a statement of particulars does not put the State at any disadvantage or otherwise weaken its case. The issuance of a statement of particulars does, however, help to ensure that a defendant is able to properly prepare a defense in accordance with his or her constitutional rights. Moreover, as the plain text of Rule 3.190(n) provides, any reasonable doubts over whether a statement of particulars should issue must be decided in favor of the defense.

In the instant case, the Indictment does not even come close to providing a sufficient level of detail to permit Dr. Kosowski to adequately prepare his defense. Even after steadily engaging in the discovery process for over a year, the specifics of the State's allegations are entirely unclear. Dr. Kosowski can only attempt to speculate as to the State's allegations of any manner or means by which the alleged death of the purported victim might have occurred. The vagueness of the State's allegations are further compounded when, as here, the alleged victim is not truly even known to be deceased. Under the circumstances, the issuance of a statement of particulars is absolutely necessary to ensuring that Dr. Kosowski has the ability to properly formulate his defense to the State's allegations. The denial of this reasonable request 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 by email to the Office of the State Attorney, Sixth Judicial Circuit of Florida, at SA6eservice@co.pinellas.fl.us on this 5th day of September 2024.

s/Jervis Wise
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