

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA**

STATE OF FLORIDA,

CASE NO.: 05-2021-CF-020747-AXXX

Plaintiff,

vs.

JUDGE: KOENIG

KATHLEEN PRINCESS EDWARDS,

Defendant.

SWORN MOTION TO DISMISS

The Defendant, KATHLEEN PRINCESS EDWARDS, by and through the undersigned attorney, pursuant to Rule 3.190(c) (4), Florida Rules of Criminal Procedure, moves this Honorable Court to dismiss the Information in the above-styled cause, and as grounds in support thereof alleges that there are no material facts in dispute and the undisputed facts do not establish a prima facie case of guilt against the Defendant.

FACTS

1. My name is Kathleen Princess Edwards and I am charged with Aggravated Manslaughter of a Child stemming from a tragic accidental drowning that occurred in my home on June 27, 2020.
2. Several weeks prior to my son Gregory Edwards Jr.'s drowning on June 27, 2020, I was emotionally and psychologically suffering from Post-Traumatic Stress Disorder (PTSD) as a result of many traumatic events that occurred in my life prior to the drowning. Some of those events included, but were not limited to: Serving in the armed forces as a combat soldier in Iraq; the emotional devastation caused by my belief that my husband (also a combat veteran) was killed by sheriff's deputies at the jail (while I was nine months pregnant); and the unannounced night time visit by Sheriff Ivey and other deputies at my home.
3. My dear friends Justin and Jennifer Vasquez had concerns about my mental/emotional state weeks prior to the accidental drowning. While they believed I was a decent and very loving mother, they knew I was having challenges properly caring for myself and my young children.

4. As a result, Justin and Jennifer Vasquez generously offered to assume the role of caregivers to both me and my children. I accepted their generous and kind offer.
5. Both Justin and Jennifer Vasquez, who were frequently joined by their two children, ages 11 and 13, took turns living in my house 24/7, rotating in and out ensuring that neither I nor my children were ever left alone so that we were safe and properly cared for.
6. Furthermore, my sister Gabrielle Bonilla came down to stay with me to also ensure that me and my children were cared for during this challenging time I was going through.
7. By accepting the help that was offered, I knew my children and I would be properly cared for while I focused on my emotional/psychological recovery.
8. Approximately a week before the drowning, my mother, Margarita Rodriguez Bonilla, flew in from her home town of Centreville, Virginia to replace my sister Gabrielle, and serve as caretaker in the home. Based on my emotional/mental state at the time, my mother Margarita Rodriguez Bonilla determined that I shouldn't be left alone to care for my children. Like the Vasquez's, my family members decided to take full responsibility for me and my children, deciding to take turns rotating family members in and out of the house, ensuring that there were no gaps in time when I would have to be the primary caretaker for myself or my kids.
9. The time that my mother and the Vasquez family spent in my home overlapped. Both resided in my home at the same time, assuming the role of caretaker of my children.
10. Something changed on the day of the drowning. My mother decided that she alone could take on full caretaker duties for both me and my two children. My mom ordered me to tell the Vasquez family that their assistance would no longer be needed, that my mother alone could serve as caretaker.
11. I remember arguing with my mother over this decision. I pled with my mother to allow the Vasquez's to remain in my home since they had done a phenomenal job caretaking for me and my kids for weeks. My mother refused to allow the Vasquez's to remain in the home. She made it clear that she wasn't going to stay if the Vasquez's remained. My mother then took full caretaking duties herself, assuring me that she alone could handle everything. I believed that she could. While I was physically present in the home, my mother, Margarita Rodriguez Bonilla, was the sole caretaker of my children at the time.

12. As a result of my mother's decision, the Vasquez's left my home on June 27, 2020 at approximately 9 a.m., prior to the drowning. Shortly after the Vasquez's left my home, the tragedy occurred. The Vazquez's left around 9 am and the police investigative overview report lists 9:49 a.m. as the time I called 911.
13. My mother has described to my lawyer in detail how the tragic drowning occurred on her watch, while she was the sole caretaker.
14. At the time of the drowning, my mother erroneously believed that both children were playing in the backyard playhouse. Unfortunately, my 18 month old son found his way into the pool.
15. After 911 was immediately called, all recitation attempts failed.

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS
Culpable Negligence

For Ms. Edwards to be guilty of aggravated manslaughter, she needed to act with culpable negligence. "In order for negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or of 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 of the safety and welfare of the public, or such an indifference to the rights of others as is equivalent to an intentional violation of such rights. The negligent act or omission must have been 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 injury." *Fla. Crim. Jury. Instr. § 7.7(a)*. (*emphasis added*)

Parents similarly situated to Ms. Edwards are not arrested under these circumstances. Therefore, it was admittedly difficult to find controlling case law on this issue. However, a case arising out of the 18th Circuit in and for Seminole County, Florida did address some similar issues.

In *State of Florida v. Reed*, the defendant, Rachel Reed (a mother), was charged with two counts of aggravated manslaughter, two counts of third-degree murder and two counts of felony child neglect based upon "a tragic event involving the accidental drowning of the defendant's eighteen-month-old daughter and her roommate's three-year-old daughter in the swimming pool located at their residence." *State v. Reed*, 6 Fla. L. Weekly Supp. 39b

In *Reed*, the defendant was responsible for watching the two children but fell asleep on the couch. The children were able to get out of the house and ended up drowning in the swimming pool located within their community. Furthermore, and unlike the case before this Court, the defendant was well aware of the danger of allowing the children to be in the pool area unsupervised because she had been “placed on notice by the police on at least two occasions to watch the children more carefully” after the police were contacted due to the children being in the pool area unsupervised. *Id.*

The Court in *Reed* found that as a matter of law, the State failed to prove the actions of the defendant (falling asleep on the couch with no other supervision in place for the children) amounted to culpable negligence. *Id.*

The Court went on to say, “A contrary conclusion would place criminal liability upon every parent whose momentary inattention resulted in a tragedy.” *Id.* (emphasis added). The Court further added “Perhaps it would have been more prudent to seek the advice of an expert in negligence before wasting the taxpayer resources and putting the defendant and the witnesses through an unnecessary and traumatically stressful experience.” *Id.*

Reed is certainly distinguishable from the case before this Court. Ms. Edwards was not the primary caretaker of her children at the time of the tragic accident. She trusted her children in the custody of her mother. The children had a capable caregiver and the last time she saw the children they were in good hands. There is no documented incidents as it pertains to the children while being watched by their grandparents prior to this incident and therefore there was no reason for Ms. Edwards to assume that her children were not safe or that they were not being properly cared for.

Furthermore, the defendant in *Reed* was actually reprimanded by police after her child got into the pool area twice without supervision. That is not the case before this Court.

Reed also cites to *State v. Davis*, a case out of Nashville, Tennessee. Again, the Court sites to *Davis* because there are not a lot of controlling cases because these prosecutions are few and far between. The Court in *Reed* relies on *Davis* for law but upon further review, the facts in *Davis* are strikingly similar to the case before this Court.

Davis arises out of the accidental drowning of the defendant’s two-year-old child. The defendant lived in an apartment with her husband, mother, and child. *State v. Davis*, 798 S.W.2d 268 (1990). The child was seen earlier in the day playing with other children and was being

watched by the defendant's husband who was the stepfather of the child while at their apartment complex. *Id.* During that time, the defendant went to Wal-Mart to purchase maternity clothes and upon returning sat on the steps of her apartment. *Id.* at 270. While on the steps, and due to her pregnancy, the defendant went inside to lie down because she wasn't feeling well. *Id.* At some point, the grandmother of the child lost sight of the boy and the child "darted." The grandmother did not know where he went until he was next seen dead in the pool. *Id.*

In *Davis*, unlike the instant case, there were numerous instances of investigations into the parenting displayed by the defendant by the Department of Human Services for lack of parental supervision.

In *Davis*, the Court noted "involuntary manslaughter convictions can result only from criminal negligence and that the negligence must be the proximate cause of the death." *Id.* at 272 (emphasis added). The Court went further and stated "In this case there was no criminal negligence by the defendant on the day of the drowning. Indeed, it is not even apparent that there was any ordinary negligence on the defendant's part. Ordinary negligence will not support a conviction of involuntary manslaughter. The defendant left the child in the care of her own mother, the grandmother of the victim." "If there was any negligence in letting the child "dart off" it was the negligence of others and not the negligence of the mother."

Just like in *Reed*, the Court in *Davis* had some strong final words. The Court said "(m)ust a parent never leave a young child (in the care of other relatives) on risk of being adjudged guilty of manslaughter if some unforeseeable occurrence causes the death of a child? We think not." *Id.* At 273. (emphasis added)

Based on the facts, circumstances and law from both *Reed* and *Davis*, it is clear that the State will not be able to prove culpable negligence for a multitude of reasons and it is why this case should never have seen the light of day.

It is further instructive that ordinary negligence cannot sustain a conviction for aggravated manslaughter. There must be a conscious intention to do harm, which there was not. Specifically, the jury instructions detail that, "Every person 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.** The defendant cannot be guilty of Aggravated Manslaughter by causing a death because of a merely negligent act."

The State cannot proceed with the instant prosecution. But more importantly, prosecuting Ms. Edwards goes against every principle that every drowning prevention alliance supports. Ms. Edwards reasonably trusted her mother to care for both of her young children. There is nothing criminal about this decision. Additionally, the actions of the defendant's mother does not support an arrest, let alone a criminal ~~prosecution~~

WHEREFORE, based upon the above and foregoing, the Defendant respectfully requests this Court to grant the instant motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was electronically filed this 7TH day of January, 2022.

Respectfully submitted,
LAW OFFICES OF MARK EIGLARSH
3107 Stirling Road
Suite 207
Fort Lauderdale, FL 33312
Telephone (305) 674-0003
Facsimile (305) 674-0102
Mark@EiglarshLaw.com

BY: /s/ Mark Eiglarsh
MARK EIGLARSH
Florida Bar No.: 956414