

MEMORANDUM: Office of the District Attorney

Quebec (MFT)

7102

TO: Shirley Clay Scott, ADA

FROM: Applicant

Re: Tweedy, James A.

The ^{admissible} evidence we have is sufficient to support ^{an indictment} ~~a judgment~~,

although there remains some investigation to be completed prior to a trial on this case.

I. The Admissible Evidence Against Defendant James A. Tweedy

Sufficiently Supports an Indictment that he did knowingly

Violate his Duties of Care and Support of his Two Minor

Children in Violation of § 4304 of the Franklin Penal Code.

The Franklin Penal Code, in § 4304, sets forth the test to

establish. Endangerment of a Child's Welfare, a felony offense.

The statute requires that a parent or legal guardian who

knowingly endangers the welfare of their child by violating a duty of care, protection or support be found guilty of a third degree felony. In the 1992 case of State v. Miller under §4304, this state's Supreme Court set forth a three-prong test for establishing the requisite intent for this crime:

- ① Defendant must be aware of the duty to protect ~~the~~ ^{his} child;
- ② Defendant must be aware that the child is in circumstances reasonably likely to result in harm to the child;
- and ③ Defendant must have failed to act or taken actions so lame and meager that such actions could not reasonably be expected to be effective to protect the child from physical or ~~at~~ psychological harm. The Court noted that merely leaving a child alone, or acting recklessly or negligently would be insufficient for a conviction.

A. James A. Tweedy Was Aware of his Duty

to Protect His Children

~~The evidence~~ The evidence shows that Tweedy did know of this duty. First, on ^{some} prior occasions, he did arrange for a neighbor to watch the children in his absence, although it is ~~not established~~ ^{not established} that he did so on every occasion that he went out. Additionally, his actions on the night in question, and his answers to police questioning indicate that he was aware of his duty: "This is not a safe neighborhood... I did what I could..." This evidence is relevant to proving the first element, and it is not prejudicial, confusing or inadmissible character evidence.

B. Tweedy was aware that his children were in circumstances likely to result in harm to them.

There are several available pieces of evidence establishing this element. First, ~~the~~ Sweedy's own statements and actions indicate that he was concerned about the safety of his children if left alone. He asked someone to watch them, left the T.V. on so it would appear that he was home, knew that it was a bad neighborhood; and locked the children ~~in~~ in the bedroom, jamming the door shut. Again, this is all relevant and admissible evidence.

Additionally, Sweedy was aware of the danger of fire in that building based on the prior incident with his wife's curling iron, and the complaints filed against the landlord for faulty wiring. The evidence of the prior incident is relevant and admissible. It will NOT be offered to show action in conformity therewith, as prohibited by FRE 404(a). Rather, under

FRE 404(b) it will be used to establish Tweedy's knowledge or absence of mistake as to the danger of the circumstances the children were left in.

The complaints and citations are also relevant under this same theory as circumstantial evidence of Tweedy's knowledge of the danger his children were left in.

C. Tweedy's Actions were so lame and/or meager that

They could NOT reasonably be expected to be effective to protect his children from physical harm.

The actions taken by Tweedy were: ① to ask a neighbor to watch the children; ② to jam their bedroom door shut; and ③ to leave the T.V. on. These were not only ineffective, they were affirmatively the cause of his children's death.

First, while it is undisputed that Tweedy asked his

neighbor to watch the children, it is unclear whether she agreed to do so. The evidence available establishes that Sweedy did not actually believe his neighbor would watch the children. He left the apartment in a state suggesting he believed the children would, in fact, be alone there the entire evening - jamming the door shut and leaving the T.V. on would be unnecessary if someone was watching the children. Additionally, if he did believe his neighbor would be down shortly, his duty of care ~~should~~ required him to wait for her. His action in leaving the children alone was unreasonable, but State v. Miller tells us that alone is insufficient.

Unlike in Miller, the additional actions establish further proof of Sweedy's culpable intent. As noted above, the

prior incident with Tweedy's wife gave him knowledge of the dangers of unexpected fires. With that knowledge based on leaving a small appliance on and unattended, Tweedy's actions in leaving the T.V. running, and the children locked in a room from which they could not escape, leave him culpable under this third element.

D. ~~That~~ Tweedy's actions caused the deaths of his 2 children.

As noted by the Supreme Court in State v. Shoup, causation is an essential element in a criminal case, which the state must prove beyond a reasonable doubt.

There must be a direct causal relationship between the Defendant's actions and the deaths. Here, both the fire marshalls' and Medical Examiner's reports

establish that direct ~~is~~ cause. The T.V. left on caused the fire, and the children died of smoke inhalation because they could not be rescued from the room with the door jammed shut.

II. REMAINING INVESTIGATION

A few things should be clarified or investigated before proceeding to trial:

1) Tweedy's previous actions in leaving the children alone - how often, when, and what evidence is available?

2) Was Tweedy actually aware of the complaints filed against the landlord for faulty wiring?

3) Did Tweedy make any statements to his social companions on the night in question regarding his children - perhaps admitting they were left alone

4) Mrs. England - it is not established conclusively whether she agreed to watch the children - investigate further:

a) Did she have other plans, making it likely she would have refused Tweedy?

b) Did anyone overhear their conversation?

c) Did she discuss their conversation with anyone?

Generally speaking, this investigation should proceed by interviewing the tenants of the apartment, the friends Tweedy was with that evening and any other potential witnesses discovered along the way.