

IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

STATE OF MISSOURI,)	
)	
Plaintiff,)	
)	
v.)	Case No. 19BA-CR04782-01
)	
JOSEPH DUANE ELLEDGE,)	
)	
Defendant.)	

MOTION TO DISMISS COUNT III OF THE INDICTMENT

COMES NOW defendant Joseph Duane Elledge, through undersigned counsel, to move this Honorable Court to dismiss Count III of the indictment, in support of which is offered the following:

INTRODUCTION

On or about October 10, 2019, officers with the Columbia, Missouri, police department began investigating the disappearance of Mengqi Ji Elledge, after her husband, Joseph Elledge, filed a missing person report.¹ In the course of the investigation, police recovered photographs depicting bruising on the buttocks of a child. It is alleged the child is A.E., the daughter of the Elledges. The date associated with the photographs is February 12, 2019. Even though Mr. Elledge denies involvement in the disappearance of Mrs. Elledge and the police cannot prove that her disappearance resulted from foul play, the Boone County prosecutor claims Mr. Elledge is responsible for Mrs. Elledge’s disappearance. See Exhibit 1.

On October 25, 2019, the prosecutor’s office filed a complaint charging Mr. Elledge with

¹ Unless otherwise noted, the facts used in this motion come from the probable cause statement filed in this case, as well as from other court documents. The summary of facts is provided for the Court’s use in ruling on this motion and should not be viewed as an admission by Mr. Elledge that the police description of facts contained in the documents are accurate and true. Mr. Elledge maintains that he is not guilty of the offenses alleged.

one count of child abuse, in violation of R.S.Mo. §568.060. The charge is based on an allegation that Mr. Elledge caused the bruising shown in the February 12, 2019, picture described above.

On November 26, 2019, the prosecutor's office filed an amended complaint charging Mr. Elledge with one count of child abuse, in violation of R.S.Mo. §568.060, and one count of first degree endangering the welfare of a child, in violation of R.S.Mo. §568.045. Both charges are based on an allegation that Mr. Elledge caused the bruising shown in the February 12, 2019, picture described above. On the same date, the prosecutor's office filed an information stating the same two charges.

On December 20, 2019, the prosecutor's office filed an indictment charging the same two counts found in the information but also adding a third count, which reads:

COUNT III: In violation of Section 568.045, RSMo, [defendant] committed the class D felony of endangering the welfare of a child in the first degree, punishable upon conviction under Sections 558.011 and 558.002, RSMo, in that on or about October 8, 2019 or October 9, 2019, in the County of Boone, State of Missouri, the defendant knowingly acted in a manner that created a substantial risk to the life and body and health of A.E., a child less than seventeen years old, by separating Mengqi Ji from A.E.

Count III is deficient on its face, in that it fails to state an offense.

ARGUMENT

Article I, sections 17 and 18(a) of the Missouri Constitution, and the equivalent Fifth Amendment to the United States Constitution, provide Mr. Elledge the right to an indictment that adequately states a charge and apprises him of the nature and cause of the accusation. MO. CONST. Art. I, §§17 and 18(a). To be sufficient, an indictment must contain all elements of the offense and clearly state the facts constituting an offense. *State v. O'Connell*, 726 S.W.2d 742, 746 (Mo. banc 1987); *State v. Fernow*, 328 S.W.3d 429, 430-31 (Mo.App. E.D. 2010).

For Count III to be a valid offense, the State must be able to prove, among other things, that Mr. Elledge “acted in a manner that created a substantial risk to the life and body and health of A.E. . . . by separating Mengqi Ji from A.E.” MAI-CR 4th 22.10(1) (2019). The indictment does not state an offense, at least under the circumstances of this case, because Mr. Elledge having custody of A.E. does not present an actual or practically certain risk to the life, body, or health of his child. *State v. Kuhn*, 115 S.W.3d 845, 851 (Mo.App. E.D. 2003).

Case law relevant to Count III reads:

The criminal statutes for child endangerment are meant to apply to situations where a parent creates an actual risk to the life, body, or health of a child. They are not meant to apply to situations where there is only the potential for risk to the health of the child.

* * *

The requirement of actual danger is necessary to draw a line “between trivial and substantial things so that erratic arrests and convictions for trivial acts and omissions will not occur.”

State v. Wilson, 920 S.W.2d 177, 180 (Mo.App. W.D. 1996), citing *State of Indiana v. Downey*, 476 N.E.2d 121, 123 (Ind. 1985).

An example of the law in practice may be found in *Carmons v. State*, 26 S.W.3d 382 (Mo.App. W.D. 2000). There, appellant Roberta Carmons’ child, D.J., had been sexually abused by his uncle for more than two years. Both D.J. and another family member informed Carmons of the abuse. Despite having this information, Carmons continued to allow the uncle to have contact with D.J. Based on these facts, the State charged Carmons with endangering the welfare of a child in the first degree. *Carmons v. State*, 26 S.W.3d at 384. The appellate court held that her conviction could not stand, because given the record before it, there could be no finding that her allowing contact between D.J. and the uncle posed an actual or practically certain risk or danger and not just a potential risk of danger. *Carmons v. State*, 26 S.W.3d at 385.

Applying the law to the matter now before the Court, even assuming the State can prove that Mr. Elledge caused the bruising depicted in the February photograph, the *Carmons* case establishes that a single incident of potential abuse occurring several months earlier cannot be the basis of a conviction for child endangerment in the first degree. At most, the State might be able to prove a potential risk to A.E. associated with her being in the custody of Mr. Elledge, but the law is clear that the ability to prove a potential risk is insufficient to state a claim for violation of the child endangerment statute.

Moreover, by not charging Mr. Elledge with offenses directly related to the disappearance of his wife, the State tacitly admits that it cannot prove beyond a reasonable doubt that Mr. Elledge did anything to his wife. Such an admission is fatal to Count III of the indictment, in that proving beyond a reasonable doubt that Mr. Elledge caused the disappearance of Mengqi Ji Elledge is an essential element of the charge. MAI-CR 4th 22.10 (2019). Therefore, even if the State can convince this Court that Mr. Elledge poses an actual risk to his child, the indictment still must be dismissed, because the State cannot prove beyond a reasonable doubt that Mr. Elledge actually separated Mengqi Ji from A.E.

Further, the State's actions in this case betray any claim that the questionable charge should be considered valid. Boone County Prosecuting Attorney Dan Knight told the media: "I'm not aware of cases—any cases—where someone's been charged with a crime such as endangering the welfare of a child in the first degree by separating a mother from a child." See Exhibits 2 and 3. The State's admittedly novel approach to prosecuting Mr. Elledge is not so much a good faith argument offered for the purpose of expanding the law as it is a transparent attempt to bring in at trial through the back door that which it knows is not allowed through the front door, namely evidence it believes supports its unproven theory that Mr. Elledge is

responsible for the disappearance of Mengqi Ji Elledge. *See* S.Ct. R. 4-3.1 (2007)(“Meritorious Claims and Contentions: A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law. . .”); ABA Model Rules of Professional Conduct Rule 3.1 (2019)(same).

“The law, both procedural and substantive, establishes the limits within which an advocate may proceed.” S.Ct. R. 4-3.1 cmt. 1. Even if the State’s actions are not taken in bad faith, there is no ambiguity in the areas of law and procedure touched on by the its efforts. As demonstrated above, a single, months-old allegation of prior abuse, even if proved, is grossly insufficient to support a conviction for first degree child endangerment as charged in Count III of the indictment, because it fails to support a finding that there is “an actual or ‘practically certain’ risk or danger [to the child] and not just the potential for risk or danger.” *Carmons v. State*, 26 S.W.3d at 385.

As for the admissibility of evidence the State thinks supports its belief that Mr. Elledge caused the disappearance of his wife, the admission of such evidence would violate Mr. Elledge’s rights under Article I, sections 17 and 18(a) of the Missouri Constitution. *State v. Burns*, 978 S.W.2d 759, 760 (Mo. banc 1998). After all, he has the right to be tried only for those acts that properly subject him to prosecution. *State v. Sladek*, 835 S.W. 2d 308, 311 (Mo. banc 1992), *citing State v. Shilkett*, 356 Mo. 1081 (Mo. banc 1947). The Missouri Supreme Court has long frowned on the use of other bad acts evidence, writing: “[T]he dangerous tendency and misleading probative force of this class of evidence require that its admission should be subjected by the courts to rigid scrutiny.” *State v. Reese*, 364 Mo. 1221, 1227 (Mo. banc 1954); *citing State v. Lyle*, 125 S.C. 406 (S.Ct. S. Car. 1923). Evidence does not support

the prosecution of Mr. Elledge for the disappearance of his wife, but the State appears intent on tainting his trial on unrelated charges by insisting to the jury he must be guilty of other, more heinous acts. The admission of such evidence would be reversible error, yet here we are.

CONCLUSION

WHEREFORE, for each of these compelling reasons, this Honorable Court should enter an order dismissing Count III of the indictment and grant such other relief it deems reasonable and just.

Respectfully Submitted,

/s/ John P. O'Connor

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ATTORNEYS FOR MR. ELLEDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of this motion was served via the Court's electronic filing system, this 3rd day of February, 2020, upon the following:

Daniel K. Knight
Boone County Prosecuting Attorney
ATTORNEY FOR THE STATE OF MISSOURI

/s/ John P. O'Connor
John P. O'Connor, Attorney



DANIEL K. KNIGHT, Prosecutor
Office of the Boone County Prosecuting Attorney
705 E. Walnut Street – Courthouse
Columbia, Missouri 65201-4485
573-886-4100
FAX: 573-886-4148

February 3, 2020

Christy Blakemore
Circuit Clerk
Boone County Courthouse
705 East Walnut
Columbia, Missouri 65201

RE: State of Missouri v. **JOSEPH DUANE ELLEDGE**
Case Number: **19BA-CR04782**

Dear Christy:

The above captioned matter is set for hearing this afternoon, Monday, February 3, 2020 at 3:00 p.m. in Division I. Please place the attached Motion to Endorse on the docket for hearing that the time.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Daniel K. Knight".

Daniel K. Knight
Prosecuting Attorney

enclosure

cc: John O'Connor

IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

STATE OF MISSOURI,

VS

JOSEPH DUANE ELLEDGE

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Cause No. 19BA-CR04782

MOTION TO ENDORSE

COMES NOW, plaintiff and asks leave of the Court to endorse additional witnesses,
to-wit:

Custodian of Records -- Chase Bank

Daniel K. Knight

Daniel K. Knight
Prosecuting Attorney
Bar No. 40443

NOTICE

TO: Ms. Christy Blakemore
Circuit Clerk
Boone County Courthouse
Columbia, Missouri 65201

John O'Connor
Attorney at Law
4740 Grand Avenue, Suite 300
Kansas City, MO 64112

You are hereby notified that the undersigned will call up on Monday, February 3, 2020, or 3:00 p.m. as soon thereafter as counsel can be heard in Division I

Daniel K. Knight

Daniel K. Knight
Prosecuting Attorney
Bar No. 40443

CERTIFICATE OF SERVICE

I hereby certify on this 3rd day of February, 2020, an electronic copy of the foregoing was sent through the Missouri e-Filing System to: John P. O'Connor

/s TL