

FILED
03-18-2024
Clerk of Circuit Court
Manitowoc County, WI
2024CF000162

STATE OF WISCONSIN	CIRCUIT COURT	MANITOWOC COUNTY
State of Wisconsin, v. Jesse Vang,	Plaintiff, Defendant.	Case No. 2024 CF 162

Defendant's Motion to Make Complaint More Definite and Certain or to Dismiss for Insufficient Complaint

Jesse Vang, appearing specially by defense counsel and reserving objections to the court's jurisdiction, moves the Court for an order requiring the state to make the criminal complaint more definite and certain or, in the alternative, an order dismissing the complaint.

IN SUPPORT, Mr. Vang asserts:

Due process requires that a defendant be informed of the nature and cause of the allegations against him. State v. Kempainen, 2015 WI 32, ¶ 19, 361 Wis. 2d 450, 862 N.W.2d 587 (citing Holesome v. State, 40 Wis. 2d 95, 161 N.W.2d 283 (1968)). In order to determine whether there has been a violation of a defendant's due process right to be informed of the nature and cause of the allegations against him, courts look at whether "the complaint... 'states an offense to which he [can] plead and prepare a defense and whether conviction or acquittal is a bar to another prosecution for the same offense.'" Id. (quoting Holesome, 40 Wis. 2d at 102, 161 N.W.2d 283). Courts must "consider whether the complaint alleges facts that identify the alleged criminal conduct with reasonable certainty." Id. at ¶ 20 (citing Fink v. City of Milwaukee, 17 Wis. 26 (1863)). No matter how abhorrent the alleged conduct may be, a defendant's due process rights cannot be ignored or trivialized. Id. at ¶ 21 (quoting State v. Fawcett, 145 Wis. 2d 244, 250, 426 N.W.2d 91 (Ct. App. 1988)).

Mr. Vang is charged with one count of Neglecting a Child in violation of Wisconsin Statute section 948.21(3)&(3)(e). As charged in the criminal complaint, this offense has six elements, which are as follows:

- (1) The child had not attained the age of 18 years.
- (2) The defendant was a person responsible for the welfare of the child.
- (3) The defendant, through action, and for reasons other than poverty, failed to provide necessary care.
- (4) The failure to provide seriously endangered the physical, mental, or emotional health of the child.
- (5) The failure to provide was negligent.
- (6) The natural and probable consequences of the neglect would be death, great bodily harm, a child sex offense, emotional damage, or bodily harm.

Wis. JI-CRIMINAL 2150. The criminal complaint alleges various conduct of Mr. Vang between February 12, 2024 and February 20, 2024. However, the criminal complaint either does not provide Mr. Vang with sufficient notice as to what conduct is alleged to be neglectful and/or fails to allege sufficient facts from which it can be inferred that Mr. Vang committed the offense charged.

With respect to the lack of notice, the criminal complaint does not provide Mr. Vang with sufficient information that would allow him to plead and prepare a defense. Upon reading the criminal complaint, it is unclear as to what behavior Mr. Vang is alleged to have engaged in that would be considered a failure to provide necessary care. Is the state alleging that Mr. Vang having the alleged victim stand for one to three hours in time out a failure to provide necessary care? Is the state alleging that Mr. Vang changing the alleged victim's diaper at least once per day a failure to provide necessary care? Is the state alleging that Mr. Vang locking the front door (with the lock on the doorknob, the dead bolt, and security chain) and going to sleep while the alleged victim was in a time out a failure to provide necessary care? In short, the complaint fails to provide sufficient notice to Mr. Vang as to the alleged neglectful action that would allow him to plead and prepare a defense. In order to provide Mr. Vang with sufficient notice, the state must make the criminal complaint more definite and certain as to what behavior Mr. Vang is alleged to have done that would be considered a failure to provide necessary care.

Moreover, the criminal complaint also fails to allege sufficient facts from which it can be inferred that Mr. Vang committed the offense with which he is charged. In order to establish probable cause for a count of Neglecting a Child, the complaint must allege that Mr. Vang's failure to provide necessary care seriously endangered the physical, mental, or emotional health of the child, and that the natural and probable consequence of his neglect would be death, great bodily harm, a child sex offense, emotional damage, or bodily harm. The complaint fails to set forth essential facts from which it can be inferred that the child's physical, mental, or emotional health was seriously endangered. How was the child's health seriously endangered? In addition, how was the natural and probable consequence of any of Mr. Vang's alleged conduct death, great bodily harm, a child sex offense, emotional damage, or bodily harm? The complaint fails to answer these questions and therefore does not provide probable cause to believe Mr. Vang committed the offense charged.

WHEREFORE, for the reasons stated above, Mr. Vang requests that the Court grant this motion and enter an order requiring the state to make the criminal complaint more definite and certain to provide Mr. Vang with sufficient notice that would allow him to plead and prepare a defense. In the alternative, Mr. Vang requests that the Court grant this motion and enter an order dismissing the criminal complaint.

Dated: March 18, 2024

HOGAN EICKHOFF, SC

Attorneys for the Defendant

Electronically signed by: Timothy E. Hogan

Timothy E. Hogan

State Bar No. 1073721

1775 Margaret Street

Appleton, WI 54913

Telephone: (920) 450-9800