

State v. Christopher Wise: Neglect in a Community Setting

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Proving Criminal Neglect

- Typically must prove:
 - That suspect is person with duty of care
 - What constitutes proper care in victim's circumstances
 - Mental element—gross negligence, willful indifference, recklessness, criminal negligence (varies by state)
 - Suspect's knowledge, resources
 - What care suspect failed to provide (breach of duty)
 - Causation-- victim's injuries/death are due to suspect's failure to provide care

Investigation of Neglect

- Remember that the victim's body and location(s) are the crime scenes
- Anticipate and prepare for defenses
 - Doing the best I can
 - This is what victim wanted
 - Underlying medical condition
- Early and ongoing consultation with prosecutor

Building the Neglect Case

- ▶ Anticipate that jurors may sympathize or identify with the caregiver (defendant)
- ▶ Focus on the defendant's choices
- ▶ Follow the money
- ▶ Make the victim's suffering real for the jury
- ▶ Desire for a peaceful death at home is very different from dying in pain, covered with untreated bedsores, and lying in filth

Motive

- ▶ Caregiving for an adult with significant illnesses and/or disabilities is extremely difficult
- ▶ Many people are placed in the role of caregiver by default and lack the physical, intellectual, emotional or financial capacity to provide proper care
- ▶ Charging these people criminally is usually inappropriate and juries will not be sympathetic to your case



Motive

- ▶ If, on the other hand, the caregiver has a clear financial or other motive to neglect the victim, the picture changes



Financial Motive

- ▶ Usually the best predictor of when a criminal case is viable
- ▶ Forms of financial motive:
 - ▶ Keeping victim in the home in order to avoid their income, assets being diverted to long-term care facility
 - ▶ Failing to pay for needed medications, care so suspect can have more of victim's assets
 - ▶ Hastening victim's death in order to inherit more quickly



What Do You Want to Ask Christopher Wise?

- ▶ At the crime scene...
- ▶ What is most important for you to learn at this time?

Key Areas

- ▶ Caregiver status
- ▶ Ruby's cognitive status
- ▶ Ruby's medical needs, medical providers, history of seeking medical care
- ▶ Services he provides to Ruby; anyone else providing caregiver assistance
- ▶ Legal status (POA, guardian, etc)
- ▶ Who makes financial decisions, sources of income, and how is money spent
- ▶ Advanced care directives for Ruby

Questions to Ask the Suspect

- ▶ Who is responsible for victim's care?
- ▶ What is the care agreement?
 - ▶ In writing?
 - ▶ What do you receive in return? (salary, other benefits)
- ▶ What care do you provide?
- ▶ Describe typical day
 - ▶ Medications, food, hygiene, activities
- ▶ What are victim's underlying medical issues?
- ▶ Does victim have any memory problems? Describe.

Questions to Ask the Suspect

- ▶ What is your income?
- ▶ What is victim's income?
- ▶ Who handles the family's finances?
- ▶ What will you inherit when he/she dies?
- ▶ Who are/were victim's treating physicians?
- ▶ When did victim last go to doctor? Who took him?
- ▶ What medications is she on?
- ▶ Does he have a living will, advanced care directive?

Questions to Ask the Suspect

- Where are victim's financial accounts?
 - Are you on any of those accounts?
- Where are your financial accounts?
 - Do you have any financial accounts you use for the victim's expenses?
- Is there a POA or other decision maker for victim?
Who is that?
 - If so, when was it signed?
- Who else knows what's been happening with victim?
- Who have you talked to about her?

Critical Evidence from the Scene

- Bank statements
- Checkbooks, registers
- Bills and past due notices--utilities, credit card
- Medical records and supplies (containers, receipts)
- Prescriptions and over-the-counter medications
- Photographs
- Victim's will, advanced care directive
- Journals, calendars and letters of victim, suspect
- Computers

Medical Records

- ▶ Victims medical records dating back at least 3 years prior to incident date; ask for:
 - ▶ Primary care physician's records
 - ▶ EMTs/paramedic's records of current/prior callouts
 - ▶ Pharmacy records
 - ▶ Hospital records (current/prior)
 - ▶ Nursing notes
 - ▶ Social worker notes
 - ▶ Lab reports
 - ▶ Photographs
 - ▶ Discharge plans

Documentary Evidence

- ▶ Suspect's employment history
- ▶ Tax returns (may need Tax Authority to seize)
- ▶ Prior APS reports
- ▶ Requests for assistance (or lack of them) from referral services, area agencies on aging, etc.
- ▶ Financial documents of victim and suspect

Care Arrangements

- ▶ Documents indicating care arrangement between victim and suspect
 - ▶ Contract for care
 - ▶ Care assessment, plan
 - ▶ Pay stubs, other evidence of salary, payments to suspect

Any Legal Documents

- Legal documents
 - Power of Attorney for health care, finances
 - Conservatorship/Guardianship
 - Civil matters
 - Protection order applications
 - Advanced care directives
 - POLSTs
 - Will

Reflections on Case

- ▶ Victim so isolated that only witnesses who saw living conditions were defendant and his friends
- ▶ Case was entirely circumstantial
- ▶ No smoking gun
- ▶ Difficulty of building a criminal case on a failure to act, rather than an affirmative act

Questions?

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