



STEPHEN B. RUSSELL
Office of the State Attorney
20th Judicial Circuit

Serving Charlotte, Collier, Glades, Hendry and Lee

For Immediate Release

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There have been many questions raised today as a result of Judge Hardt's ruling dismissing one count of the indictment in the Akers case. This statement is being issued to attempt to answer them, without commenting on the facts of the case, which remains an on-going prosecution.

The state is appealing the judge's decision to dismiss the second count of the indictment. The appeal will be handled by the Attorney General's office, and is considered by the Second District Court of Appeal in Lakeland.

The basis for the appeal is the state's belief that the judge should not have dismissed the count of the indictment that did not name the defendant, as only one defendant was charged in the indictment. It has been the practice of the State Attorney's Office to not list the defendant's name in each count of an information or indictment when there is only one person charged, since both the heading and the introductory paragraph of the document identify the defendant. Literally thousands upon thousands of cases have been charged successfully this way. The cases cited in the judges order both deal with indictments that charge multiple defendants, where naming the defendant charged in each count becomes necessary to inform each defendant of which counts he or she is charged with.

The state's position is that the indictment is sufficient under the law to properly notice and charge the defendant with the crimes alleged. In addition, even if the omission of the name is a defect, it does not warrant dismissal of the count. The state bases its reasoning on the language of Rule 3.140 of the Florida Rules of Criminal Procedure, which states that: "No indictment...or any count thereof...shall be dismissed ...on account of any defect in the form of the indictment...unless the court shall be of the opinion that the indictment...is so vague, indistinct, and indefinite as to mislead the accused and embarrass him...in the preparation of a defense...."

We do not take the subject of appealing a trial court's ruling lightly, and do not take an appeal unless we feel that we have a substantial prospect of winning the appeal. We therefore do not feel that this ruling will negatively impact other cases, either those pending or where a conviction has been obtained.

Randall McGruther
Chief Assistant State Attorney, 20th Judicial Circuit

Samantha Syoen
Communications Director
State Attorney's Office
239-533-1125
ssyoen@sao.cjis20.org