



State Attorney

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July 28, 2014

Detective Joshua Haimes
Hillsborough County Sheriff's Office
2224 Falkenburg Road
Tampa, Florida 33619

Re: Investigation of Death of Logan Sheppard
H.C.S.O. # 2014-415314

Dear Detective Haimes:

We have reviewed the above-referenced case to determine whether charges should be filed against the child's mother or any other caregiver for the death of Logan Sheppard. We have determined that the evidence does not prove the criminal intent required for the charge of child neglect or the charge of aggravated manslaughter. The crime of child neglect requires proof beyond a reasonable doubt that a caregiver neglected a child willfully or through culpable negligence. For the charge of aggravated manslaughter, child neglect must be committed by culpable negligence, and the child neglect must cause the death of the child. There is no indication that any caregiver willfully neglected the child, and while the evidence may indicate some degree of negligence, it does not prove culpable negligence sufficient to sustain a charge of child neglect.

While the evidence indicates that the adult caregivers went into a room and left the child in the care of a 15 year old child, delegation of caregiver responsibility to another person, including a minor, does not necessarily constitute child neglect. A caregiver is responsible for providing a child with the care and supervision necessary to maintain the child's physical health. Leaving the child under the care of a minor who is capable of supervising the child does not, in itself, satisfy the definition of child neglect.

Regardless of whether the actions of the caregivers in this case constitute neglect of a child, criminal charges may only be brought if the evidence proves beyond a reasonable doubt that the caregiver possessed the required criminal intent. In this case

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the intent required would be that the caregiver willfully neglected the child, or that the caregiver neglected the child through culpable negligence.

The term “willfully” has been defined as meaning “knowingly, intentionally and purposely.” The evidence does not indicate that anyone responsible for caring for the child neglected the child knowingly, intentionally and purposely. Instead, the evidence indicates that the death of the child was a tragic event brought on by a mistaken belief that the dogs had been secured in a pen in the yard. The fact that the dogs were able to escape the dog pen was unknown at the time of the tragic event.

While it may be argued that the caregivers were negligent in supervising the child, mere negligence is insufficient to sustain a charge of child neglect. For the negligence to meet the threshold of criminal liability, it must be culpable negligence. As defined by law, culpable negligence is more than a failure to use ordinary care toward others. In order for negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or such an entire want of care as to raise a presumption of a conscious indifference to consequences, or which shows wantonness or recklessness, or a grossly careless disregard of the safety and welfare of the public, or such an indifference to the rights of others as is equivalent to an intentional violation of such rights. The negligent act or omission must have been committed with an utter disregard for the safety of others. Culpable negligence is consciously doing an act or following a course of conduct that the defendant must have known, or reasonably should have known, was likely to cause death or great bodily injury.

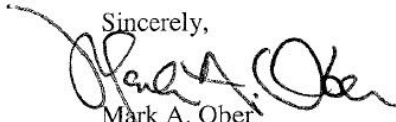
In determining whether the child’s mother and any other person that could be considered a caregiver was culpably negligent, all their acts and omissions must be considered. If the child’s mother and the other adults were in a room smoking marijuana when the child got out of the house, that is a factor that must be considered. Culpable negligence must be determined by the totality of the circumstances, however, and while the decisions and actions of the caregivers can certainly be questioned, those acts or omissions do not prove culpable negligence beyond a reasonable doubt. The fact that the caregivers believed that the dogs had been secured must be considered when judging whether anyone neglected the child by culpable negligence. The fact that the adults believed that the 15 year old would keep an eye on the child must also be considered. After reviewing the totality of the circumstances, the evidence does not prove culpable negligence in this case.

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We have also considered whether the evidence supports lesser charges, such as possession of marijuana and contributing to the dependency of a child. Even with an admission to smoking marijuana, a charge for possession of marijuana cannot be sustained because no marijuana was recovered from the scene. The charge of contributing to the dependency of a child requires proof of an act which caused, tended to cause or contributed to the child becoming dependent child or a child in need of services. It is not clear that the mother's conduct in this case would have been sufficient to cause or tend to cause her child to become dependent or a child in need of services if the child survived.

Please contact me at your earliest convenience should you have any questions in this matter.

Sincerely,



Mark A. Ober
State Attorney