



OFFICE OF THE WASHINGTON COUNTY ATTORNEY

County Attorney Brock R. Belnap

August 27, 2014

Chief Lynn Excell
Hurricane City Police Department

Re: Investigation of Death of Skyah Suwyn

Dear Chief Excell:

My office has completed our review of the investigation of the death of Skyah Suwyn. We have carefully analyzed the materials you provided, conducted additional investigative follow-up, researched and gathered relevant scientific and legal literature, and consulted with experts, including the leading scientist on inadvertent memory lapse as well as specialists with the FBI's Behavioral Analysis Unit in Quantico, Virginia.

After carefully weighing the evidence in this case, the current science of memory lapse, and the objectives of the criminal justice system, it is my conclusion that prosecuting April Suwyn for the tragic death of her daughter Skyah is not in the interest of justice.

SUMMARY OF THE FACTS OF THE CASE

Evidence gathered during the investigation shows the following:

April Suwyn and her husband are the parents of three children: a girl Skyah, age 11 months, and two boys, ages 3 and 5.

During the week leading up to August 1, Skyah had been teething. As a result, April and Skyah had not had much sleep, and April had not been feeling well for several days. On Thursday, July 31, April and Skyah went to bed around 9:00 p.m., as they normally do. At some point in the early morning hours of August 1, April and her daughter woke up and played together for about three hours before going back to bed for another hour.

About 8:30 a.m., April made breakfast for her boys and fed Skyah. April did not feel well, so she skipped her usual trip to the gym. At about 10:00 a.m., a friend dropped by with a smoothie for April. Between about 10:15 and 10:30, April and the children took the car to the car wash. They then returned home for a few minutes before loading up to take the two boys to the babysitter's home.

April had a standing nail appointment with a neighbor who lived across the street. April's routine was to take the boys to the sitter and leave Skyah with her sister who was living in the home. Skyah's normal nap time was between 11:00 and 1:00. But, on August 1, there was no one to watch Skyah and she was not sleeping, so April loaded Skyah in the car as well.

The babysitter lived less than a five minute drive away. Skyah was seated in a rear-facing car seat behind the driver's seat. The boys were seated in front facing car seats behind the front passenger seat. On the way to the babysitter's home, April stopped by the post office and dropped off some mail.

April drove to the babysitter's house. She normally pulls up and gets the boys out of her car and watches them get inside the house safely. But, on August 1, April went around to the other side of the car and got Skyah out of the car seat. April said she paused for a moment and asked herself, "Why am I taking her out of her car seat," knowing that Skyah was coming home with her. April hugged and held Skyah, who was awake at that time, and then put her back in the car seat.

April got back in the car and drove straight home. The street in front of her house was torn up by a construction crew, so she couldn't drive down the street to park at her house. April had to flip around to find a parking spot on an adjacent street near a community mail box. She pulled her car in between two other vehicles.

As April stepped from her car, her attention was diverted to a construction worker standing just behind her car. He said something to her about the parking. After talking briefly with the construction worker, April turned and walked around the front of her vehicle and headed home. She did not walk past the rear door where Skyah was. April does not remember if she locked the car door.

April needed to use the bathroom and hurried to get inside. April went into the house and straight to the bathroom. April did not close the bathroom door. April heard her neighbor with the nail appointment come into the house, so April had to stand up and close the bathroom door. It was not uncommon for the neighbor to let herself into the house since they had known each other for years.

April came out of the bathroom and went straight to the room where she does nails where her neighbor was waiting. April said the entire time she was doing the neighbor's nails, April believed that Skyah was downstairs sleeping in her crib because that was Skyah's usual routine.

The nail appointment lasted about one hour. After the nail appointment, another friend dropped by to borrow a Crock Pot. After visiting a few minutes, the friend took the Crock Pot and left.

April said because she had not heard Skyah cry or make a noise, April figured that Skyah was still sleeping. April decided to leave Skyah sleeping in her crib and pick up the boys.

When April arrived at the babysitter's house, she left the vehicle running and ran inside to get her sons. She told them to hurry because Skyah was sleeping at home. As April was loading the boys into the car, she saw Skyah in the car seat and started to scream.

April took Skyah and ran into the babysitter's house and yelled for the babysitter to call 911. April performed CPR until medical personnel arrived. Skyah was pronounced dead at the hospital.

Utah State Medical Examiner Todd C. Grey, M.D. ruled that Skyah's cause of death was hyperthermia and that the manner of death was accidental. The outside air temperature in the area measured by the closest weather substation was 83.9 degrees Fahrenheit at 11:00 a.m. and 89.6 degrees Fahrenheit at 1:00 p.m.

April told investigators that she did not intentionally leave her daughter in the car. April said she would not leave her daughter in the car especially with the construction going on in the street.

April can not explain why she had a lapse of awareness regarding her daughter. April told investigators that from the time she arrived home until she discovered her daughter in the car seat, April believed that Skyah was safely sleeping in her crib.

Investigators ruled out any use of prescription drugs, illegal drugs, or controlled substances by April. Investigators consulted with forensic examiners from the FBI's Behavioral Analysis Unit to identify red flags of intentional wrongdoing. Investigators concluded that April's conduct was consistent with inadvertent lapse of awareness and there were no indicators of willful bad acts. April's conduct after the discovery of her child's death was appropriate.

Neither April nor any member of her immediate family have any criminal history or prior history of child abuse or neglect.

SCIENCE OF MEMORY LAPSES

The idea that a responsible parent could forget a child in a hot car is difficult for many people to understand, yet statistics show that it happens all too frequently to people from every walk of life.

David Diamond, Ph.D., is a professor of biology at the University of Southern Florida who specializes in cognitive neuroscience. He is the leading national expert on the phenomenon of inadvertent lapse of awareness. Dr. Diamond has studied hundreds of cases of parents who leave their children in hot cars.

Dr. Diamond says that the lapse of awareness is a result of competition between two systems of the brain that ordinarily cooperate with each other: the basal ganglia (responsible for managing repetitive, habit-based conduct) and the hippocampus/pre-frontal cortex (responsible for high-level conscious thought processing). Particularly in times of stress, sleep deprivation, or varied routine, the habit-based system dominates and the thought-based processes are suppressed.

According to Dr. Diamond, parents who suffer such lapses not only fail to realize their child has been left in a car, but simultaneously believe that the child is in a safe location – such as at the day care center or sleeping at home.

According to Dr. Diamond, the memory lapse is not an act of negligence; rather, it is an unconscious result of converging circumstances triggering the habit-based portion of the brain to overcome the thought-based portion of the brain.

After reviewing this case, Dr. Diamond expressed his opinion that this is a classic case of lapse of awareness and that there was no volitional wrong-doing by April.

ANALYSIS

In determining whether criminal prosecution is appropriate, a screening prosecutor must keep in mind that the law seeks to impose criminal sanctions on those who consciously engage in wrongdoing while protecting those who are not blameworthy of mind. The screening prosecutor must also consider the purposes of criminal justice. Retribution seeks to impose a penalty for wrongful conduct and reflects society's judgment that certain behavior is wrong. Rehabilitation seeks to encourage an offender to remain a law-abiding citizen. Incapacitation seeks to protect society from an offender who cannot be rehabilitated. Deterrence seeks to discourage criminal conduct by other members of society generally.

In this case, the evidence suggests that when April Suwyn left Skyah in the car, April experienced a lapse of awareness similar to those that scientists have identified as outside a person's conscious control. The evidence shows that April was a loving, thoughtful caregiver who was operating under lack of sleep, changed routine, and stress. The evidence shows that rather than abandoning Skyah, April acted under the erroneous belief that Skyah was napping safely in her bedroom crib.

Because the purpose of the criminal justice system is to penalize a conscious wrongdoer, justice will not be served prosecuting April Suwyn because she was not blameworthy of mind. An unconscious lapse of awareness is substantively different than a conscious decision to leave a baby in a car. For example, this is not a case where a parent chose to leave a child in a car in the grocery store parking lot and then got distracted. The distinction between a conscious choice and an unconscious lapse of awareness is important in determining blameworthiness under the criminal law.

Some suggest that a criminal prosecution would recognize the value society places on the lives of the most vulnerable members of our society – our infant children. It is true that society has an extremely important interest in safeguarding the lives of infant children and the criminal justice system plays a key role in protecting that interest. The painstaking and thorough efforts of the law enforcement officers, detectives, and criminal justice community validate the importance of this case. However, the criminal justice system requires prosecutors to weigh a number of factors in determining whether to proceed with a prosecution. Those factors weigh against prosecuting April.

Retribution. In terms of retribution, no societal punishment (jail or fine) could exceed the pain April is already suffering from the loss of her child due to her inadvertent lapse of awareness

Deterrence. The purpose of deterrence is to send a warning to those who would choose to commit criminal acts. The possibility of criminal prosecution encourages them to think twice. However, this particular type of memory lapse is unlikely to be deterred by the threat of prosecution. Because the fear of losing a beloved child does not counter-act the brain's lapse of awareness, the added possibility of a criminal prosecution would provide only marginal deterrence at best.

Rehabilitation. Because the scientific research and the evidence suggest that April's lapse of awareness was outside her volitional control, there is no wrongful conduct from which to rehabilitate April. Some might suggest that prosecution would serve a useful rehabilitative purpose by providing social services to April and her family, but those resources are available without criminal charges.

Incapacitation. Jailing April to protect society is unnecessary because April is not a threat to reoffend. April's actions were not the result of a conscious choice and she has already suffered the unimaginably painful consequence of the loss of her child.

After carefully weighing the evidence in this case, the current science of memory lapse, and the objectives of the criminal justice system, it is my belief that prosecuting April Suwyn for the lapse of awareness that lead to the tragic death of her daughter Skyah is not in the interest of justice.

Sincerely,



Brock Belnap
Washington County Attorney