

1 THE COURT: All right. I am going to take a
2 15-minute break, and then we will be back.

3 (Whereupon, a brief recess was taken)

4 THE COURT: As we all know, when a case is
5 tried before a Jury, the Jury just comes in and
6 they announce their verdict and the Lawyers and the
7 Defendants sometimes do not understand the basis
8 for the Jury's reasoning.

9 This is a bench trial, so I believe that the
10 Defendants and the Lawyers are entitled to know the
11 reasons for my ruling. So I have extensive reasons
12 that I am going to read into the record, and then
13 there will be a record for any Appellate Court to
14 have to refer to.

15 We all know that Emmanuel Woods was born
16 prematurely on June 23rd, 2005, in New Orleans.
17 According to the medical records and the testimony,
18 he weighed three pounds and two ounces at birth.

19 He remained in the NICU at Tulane Medical
20 Center for 41 days until August 2nd of 2005. He
21 weighed five pounds and six ounces on the date of
22 his release.

23 Hurricane Katrina did not arrive until
24 August 29, 2005, which was almost four weeks later.
25 Emmanuel's parents, who are the Defendants herein,
26 evacuated to Shreveport.

27 The testimony indicates that they stayed in
28 shelters where medical care was provided. They
29 eventually moved to a house on Ralph Street, which
30 is in Shreveport, Caddo Parish.

31 Between the two of them, they had four children
32 living with them. There was an eight-year-old boy,

1 a five-year-old boy, a 13-month-old girl, and baby
2 Emmanuel.

3 On November 27, 2005, almost four months after
4 Emmanuel was discharged from Tulane weighing the
5 five pounds and six ounces, 911 is called to the
6 home. Emmanuel, who only weighed five pounds, 13
7 ounces, and this is so far in the future from when
8 he was released from Tulane, is dead.

9 The Caddo Parish Grand Jury indicted the
10 Defendants in this case in separate Indictments for
11 second degree murder on September 14, 2006. The
12 apparent delay between the death and the
13 Indictments was, presumably, caused by multiple
14 factors.

15 The first was that Dr. McCormick, who had been
16 the Coroner in Caddo Parish for many years, died
17 unexpectedly. So the child's body in this
18 particular case had to be sent to Arkansas for
19 Dr. Peretti to handle the autopsy for Caddo Parish
20 at that time.

21 It also appears that the medical records had to
22 be obtained from New Orleans in order for the
23 District Attorney's Office to review same, and then
24 it also appears that the Caddo Parish District
25 Attorney's Office consulted with the neonatologist,
26 Dr. Whitton, and all that was done in order to rule
27 out any medical reasons for the child's death
28 before this matter was referred to the Grand Jury.

29 In the Court's opinion, this matter has been
30 handled in a very careful and prudent manner by the
31 Caddo Parish District Attorney's Office. They did
32 not rush to judgment in seeking an Indictment

1 against these people. They made sure that they had
2 the evidence that they deemed was necessary for an
3 Indictment and to bring the matter to trial.

4 The Defendants were indicted in separate
5 Indictments. The cases were consolidated for trial
6 at the request of the Defendants. The Defendants
7 waived their right to a Jury trial.

8 This matter was tried as a bench trial on
9 Thursday, August 14th, and until noon on Friday,
10 August 15. I was the reason for the delay in the
11 close of the trial and closing arguments. I had to
12 go out of town. Then, as we all know here in
13 Criminal Section 3, it was our Jury week. So that
14 is why the delay between August 15 and coming back
15 today to argue the matter.

16 During the trial, the Court heard testimony
17 from Corporal Patrick McConnell with the Shreveport
18 Police Department, Detective Rod Johnson with the
19 Shreveport Police Department, Beverly Hunter who
20 was with the State of Louisiana Department of
21 Social Services at the time of the child's death.
22 She has since retired. We heard from Dr. Frank
23 Peretti, the forensic Pathologist who came down
24 here from Arkansas. We heard from Dr. Brent
25 Whitton, who is a Pediatrician and a Neonatologist.
26 We also heard from Emmanuel Scott. We heard from
27 Dr. Sahlinee Singh and from Tiffany Woods.

28 Numerous Exhibits were introduced into
29 evidence. I have thoroughly reviewed all the
30 Exhibits. I have been through all of the medical
31 records. I have lived with this case since last
32 Friday when I went out of town.

1 It is just horrifying. It has been one of the
2 most difficult case I have had as a Judge, but I
3 believe that the most compelling and the most
4 telling Exhibits were the pictures that were taken
5 of Emmanuel Woods shortly after he dies and then
6 the autopsy pictures. The only way that I can
7 describe these pictures is that they are absolutely
8 haunting.

9 The Court understood from Tiffany Woods'
10 testimony that she has never seen these pictures.

11 Ms. Woods, at some point you are going to need
12 to look at these pictures, so that you can live
13 with what you and your common law husband have done
14 in this case.

15 I thought I had seen everything in my lifetime,
16 but I have never seen anything like this.

17 There is no doubt in the Court's mind that this
18 child starved to death, as per the medical
19 testimony, but the question in the case is: Are
20 the Defendants in this case, Tiffany Woods and
21 Emmanuel Scott, who are the parents of this child,
22 are they guilty of second degree murder or a
23 responsive verdict or not guilty.

24 The Court, after thoroughly studying the law --
25 and, Mr. Bokenfohr, in a minute I am going to
26 address the case that you brought to my attention,
27 and I appreciate you doing that -- but I have
28 studied all the law that applies to these type
29 cases. I have considered the facts. I have
30 conducted an exhaustive review of all of the
31 Exhibits. I come to the conclusion that both of
32 the Defendants are guilty as charged of second

1 degree murder.

2 This baby's death was not caused by the 41-day
3 stay at Tulane Medical Center from June 23rd until
4 August 2nd, 2005; nor was it caused by this
5 family's evacuation to Shreveport following
6 Hurricane Katrina on August 29 of 2005.

7 I looked at all the medical records. When the
8 baby was released on August 2, this was not one of
9 the medical records that you-all concentrated on
10 during the trial, but the neonatal intensive care
11 unit note on the date that this child was
12 discharged specifically notes that this child sucks
13 well. Okay. So this child knew how to take
14 nutrition on August 2.

15 I realize it is difficult for all of us to go
16 through medical records, but I went through every
17 one of them and there is no doubt in my mind that
18 Tulane was not going to release this child until
19 this child could eat right.

20 Because we have taken records that we want in
21 the record, I want Mr. Fulco to make sure that this
22 is also in the record. I have highlighted it in
23 green.

24 I think that the treatment at Tulane and then
25 the argument about Hurricane Katrina, I think that
26 these are really red herring issues. If the child
27 had died on the date we were evacuating up here,
28 and all that, we would have a different ball game.
29 However, what we have got here is it was such a
30 significant amount of time from the time of
31 Hurricane Katrina till the child's death that,
32 again, I just view those as red herring issues.

1 The baby's death was caused by the criminally
2 negligent conduct of his parents.

3 For a significant period prior to the baby's
4 death on November 27 of 2005, the parents were
5 residing in a nice home on Ralph Street in
6 Shreveport. They had televisions. They had
7 furniture. They had two vehicles. They had a
8 refrigerator stocked with food and beer. They had
9 FEMA money, they had other governmental assistance
10 money, and Mr. Scott had a job.

11 Their decision to go off the prescribed formula
12 after their WIC voucher allegedly expired in
13 October is more than a poor choice. I believe that
14 was Tiffany's words during the trial. They had
15 money for beer and cigarettes, so they had money
16 for formula.

17 Their decisions to let their eight-year-old son
18 be in charge of feeding the baby on some occasions
19 is also more than a poor choice.

20 Their feigned ignorance of their child's
21 condition is just an insult to everyone. Anyone
22 can see who looks at these pictures that this
23 child's ribs are sticking out. He has absolutely
24 no fat on him. He has been starving to death.

25 Their failure to see what they should have seen
26 and to have proper nourishment and medical care
27 amount to criminal negligence and cruelty to a
28 juvenile under Louisiana law.

29 The testimony of the Police Officers, Beverly
30 Hunter, Drs. Peretti and Whitton, which will be
31 summarized in a few minutes, was credible.

32 The Court notes, as Mr. O'Callaghan argued, it

1 developed that Dr. Singh during her testimony said
2 many things that support the State's case.

3 I cannot help but remember that, when she saw
4 the pictures, she was horrified in court. I need
5 the Court of Appeal to understand that. When she
6 saw these pictures, this was the first time she had
7 seen these, this look of horror went over her face.

8 I want to note that I think that the Defendants
9 told a lot of lies when they were on the witness
10 stand. Tiffany wants us to believe that she just
11 made some poor choices; and, during his testimony,
12 Mr. Scott wants us to shift blame onto her because
13 she gets to be a stay-at-home mom while he is out
14 being the breadwinner.

15 I just cannot get past their testimony in court
16 that this child, and these are the pictures,
17 appeared normal. Her testimony that the child had
18 fat on him and that his ribs were not sticking out,
19 that is all lies. I mean, nobody can look at this
20 baby and say what they said during their testimony.

21 I know that the Lawyers have put on the record
22 items that they gleaned from the testimony, but I
23 have my recap of the testimony because sometimes I
24 hear things differently than the way Lawyers recite
25 and I am the fact finder in this case. So I want
26 this to be in the record for higher Courts to look
27 at, because I know there is going to be an appeal
28 on this matter.

29 Corporal Patrick McConnell testified that he
30 was called to the scene on Ralph Street on the date
31 in question, and he identified these pictures here
32 in court as being accurate depictions of what the

1 child looked like and then what was in the house.

2 He interviewed the Defendants. Again, he

3 observed the deceased infant, and he described him

4 as being cold and very, very thin, with arms and

5 legs that looked like pencils. That is a pretty

6 good description of what is in these pictures.

7 He took statements from the two Defendants.

8 Although he had had no prior dealings with them, he

9 did comment upon their demeanor and how this did

10 not seem to be affecting them in anyway.

11 The Court notes that the social worker who came

12 out there had the same observation about them.

13 He took statements from both Defendants. Those

14 were played in court. They are what they are.

15 They are in the record for any other Court to hear.

16 The Court notes that Tiffany's statement to the

17 Police contained many inconsistencies and then was

18 also inconsistent with her trial testimony.

19 At one point, she said she had fed the baby at

20 six a.m. with half organic milk and half water.

21 Then she said he would not eat. Then at one point

22 she said, "Maybe he had died during the night in

23 his sleep."

24 It was surreal listening to it, to say the

25 least, the way she talked about this child and not

26 knowing when she fed it and when she last saw it

27 alive.

28 Mr. Scott's statement was that he had worked

29 the night shift at McDonald's the day before. He

30 said in the statement to Corporal McConnell that he

31 got up around 11 o'clock. He went for a walk and

32 to smoke and came back. He never checked on the

1 child. He said that the family then prepared for
2 an outing to Wal-Mart to buy some diapers, which
3 makes no sense because they had allegedly been to
4 Wal-Mart the day; but, anyway, we are going to go
5 back to Wal-Mart. This is when they determined
6 there is a problem.

7 There are some discrepancies in their two
8 statements about who gave CPR. His statement was
9 somewhat inconsistent with his common law wife's.

10 He did talk about having taken the baby off the
11 formula. He admitted that -- well, both of them
12 have admitted that they ran out of their WIC money,
13 and then they made the decision to switch the baby
14 off the formula and put the baby on half organic
15 milk, half water. So that is not in dispute that
16 that happened.

17 Next we heard from Detective Johnson. He
18 corroborated Corporal McConnell's testimony about
19 what was seen at the scene. He also located the
20 heart monitor stored up in a closet. This was a
21 heart monitor that the little boy's parents were
22 supposed to have him on. He plugged it in and
23 found it to be functional, but they obviously
24 weren't using that. He found some bottles in cribs
25 that were almost full and at room temperature.

26 Next we heard from Beverly Hunter, who is the
27 retired social worker. She gets called to the
28 scene because of a suspicious death alert that goes
29 out when something like this happens, and she
30 testifies that there is an eight-year-old boy, a
31 five-year-old boy, a 13-month-old girl Nyla, and
32 then the dead infant.

1 She said that the three older children were
2 unkempt and very, very dirty, and she commented
3 that the 13-month-old little girl Nyla was very
4 smelly and very dirty; and that she had to clean up
5 the 13-month-old because neither one of the
6 Defendants made any efforts to do so.

7 She said that she attempted to speak with
8 Tiffany about grief over losing a child. She
9 described Tiffany as having a flat affect who said,
10 "I'm not grieving." Then who said, these were her
11 words to Beverly Hunter, "When I found it, it was
12 stiff. And it was going to die, anyway. And I
13 didn't kill it."

14 Again, that is just surreal listening to
15 someone talk about their child like that.

16 The older three children were taken into
17 protective custody, and she related that Tiffany
18 never interacted with them and refused to tell them
19 goodbye, which is something that social workers
20 like to have when young children are being removed
21 from their parents.

22 She had a conversation with the older boy,
23 Ny'Jond, and he shared with her that he would try
24 to feed the baby; that the baby did not feed well
25 for other people, but would feed well for him.

26 Next we heard from Dr. Peretti. He is a
27 highly-qualified forensic Pathologist. His office
28 is up in Arkansas. The Caddo Parish Coroner's
29 Office utilized his serviced for a point in time
30 after Dr. McCormick died unexpectedly.

31 He performed the autopsy on Emmanuel Woods.
32 The autopsy is in the record. It is S-18. It

1 speaks for itself.

2 He also provided S-19, 20, 21, and 22, which
3 are the autopsy pictures which are just absolutely
4 horrifying looking at this. He looks like
5 something you would see in a third-world country
6 where all the babies are dead. That is the best
7 way to describe them.

8 He shared with us that the cause of Emmanuel's
9 death was starvation. He found absolutely no
10 evidence whatsoever of any natural disease that
11 caused the death. He commented upon the high
12 levels of BUN, which that is the blood urea
13 nitrogen. He testified that this showed that the
14 kidneys had completely failed due to starvation and
15 that all of this occurred over an extended period
16 of time.

17 He also shared with us that there was
18 absolutely no fat in the body or any of the organs.
19 The fat had been used up for nutrition. He
20 completely checked out all the body organs. He
21 ruled out the -- he said there could be no
22 metabolic disorders. He expressly ruled out MCAD,
23 which was an issue that was being discussed at
24 trial.

25 So his complete and thorough autopsy shows that
26 this baby did not have MCAD, and that is consistent
27 with what Dr. Hans Anderson told Dr. Whitton. When
28 Dr. Whitton was hired as an expert by the DA's
29 Office, they wanted to rule out any disease.

30 So we have got Dr. Peretti, the highly-
31 qualified forensic Pathologist, who is able to rule
32 out diseases when he does autopsies, and that

1 totally corroborates this.

2 So all this issue about missing lab results,
3 and all that, again, that is a red herring because,
4 unfortunately, we had to have an autopsy here and
5 he said there was no MCAD. That was consistent
6 with what Dr. Anderson said.

7 Next we heard from Dr. Whitton. Dr. Whitton is
8 a Pediatrician and a Neonatologist here in
9 Shreveport. He examined all of the available
10 medical records and the autopsy reports, and he
11 shared with us about Emmanuel's birth at 31 weeks
12 and the three pounds and two ounces. The reason
13 the baby was born early was because Tiffany, the
14 mother, had a torn placenta.

15 Looking at the medical records, she had three
16 previous children. On discharge from Tulane, the
17 baby weighed five pounds, six ounces. On the date
18 of death, the child only weighed five pounds, 13
19 ounces.

20 His examination of the medical records caused
21 him to conclude that, when discharged from Tulane,
22 there was no medical reason why the baby could not
23 take in nutrition. That is consistent with what I
24 just put in the record that on the day that baby
25 was released that he could suck and he could take
26 in nutrition.

27 When he looked at the photos that have been
28 introduced into evidence, he shared with us that,
29 if he saw a child like that, he would require
30 immediate hospitalization. It is that obvious.

31 He also shared with us that you do not feed a
32 baby cow's milk. You use breast milk or formula.

1 He shared with us that cow's milk is too low in
2 iron. It has too much sodium.

3 He also shared with us that the death in this
4 case was caused by chronic malnutrition. He
5 testified that, had the baby gotten medical
6 attention, he could have been saved.

7 He also shared with us the process of
8 malnutrition leading to death as taking the
9 following path, which is noticeable. He says that
10 you will start out with initial irritability. This
11 then lessens. Activity decreases, and the baby
12 becomes very, very lethargic because it is feeding
13 on itself trying to stay alive. However, he says
14 this is noticeable to anyone.

15 He also testified that health care providers
16 cannot turn away emergency situations. That is
17 common sense, we all know that, but that is in the
18 record from a health care provider.

19 He, too, ruled out MCAD. He checked with the
20 geneticist at Tulane. Again, that letter in is the
21 record.

22 He said that the pictures reflected the, quote,
23 worst off baby, close quote, I have ever seen. The
24 baby died from malnutrition that could have been
25 prevented.

26 Next we heard from one of the Defendants,
27 Emmanuel Scott. There is no denying that he is the
28 father of the child and that he is over 17 years of
29 age, which is an element of the crime. He and the
30 mother are not married.

31 He shared with us that he participated in the
32 feeding of the baby. Therefore, he cannot argue

1 that he did know about any of this because he, by
2 his own admission, was involved in the care of the
3 baby.

4 He testified they ran out of the WIC money.
5 For the purposes of the Appellate Court, that is
6 W-I-C, women, infant, and children.

7 Because the baby had spit up when it drank the
8 formula, they decided to try organic milk and cut
9 it with water. He testified that nothing about
10 this child's condition alarmed me.

11 Now, how you square that up with we have got
12 Dr. Peretti, who has done thousands of autopsies,
13 we have got Dr. Whitton, who deals with, you know,
14 premature babies, when they say this is worst off
15 baby they have ever seen and this man can sit on
16 this stand and testify, "Nothing about his
17 condition alarmed me." It was just horrifying
18 listening to all that.

19 On his first day on witness stand, he denied
20 that the pictures that he was shown were his son.
21 When we reconvened court the next morning, he was
22 allowed to get back on the stand and he back
23 pedaled and he tried to explain away that answer
24 that that is not the way he is used to seeing that
25 child. But, you know, the pictures are what they
26 are.

27 Next we heard from Dr. Singh. She was a
28 Pediatrician called by the Defendant. She reviewed
29 the Tulane NICU medical records for the Defense.
30 She had some comments and criticisms about what she
31 gleaned from the records.

32 She found no social service notes and no

1 discharge plan for the Pediatrician, and she could
2 not find some tests in there. This is the newborn
3 screen and the lab tests that Mr. Bokenfohr was
4 commenting on.

5 She had some criticisms about the dietitian
6 notes, and she opined that perhaps she would not
7 have discharged the baby as early as Tulane did.
8 However, on Cross-Examination, she admitted that
9 she had no evidence that the baby had any defects
10 that would have caused the death.

11 She also conceded that she misspoke about the
12 baby's feeding in the hospital when she reviewed
13 the occupational therapist's and physical therapy
14 records.

15 She was unaware that Tiffany and Mr. Scott had
16 other children, and she said that you would assume
17 that then they would know more about care than
18 first time parents. So she conceded that people
19 with all these children ought to know how to take
20 care of a baby.

21 When she was asked about giving the baby half
22 cow's milk and half water, she testified this would
23 be very detrimental to the electrolyte balances and
24 would lead to seizures within two days. Then, if
25 the baby had been given half milk and half water,
26 as opposed to formula, the baby could not survive
27 for two weeks without exhibiting seizures.

28 Of interest to the Court is she said that there
29 would be gross evidence of problems, and she does
30 not mean gross that it is gross to look at; she
31 means apparent, obvious, gross. That is what she
32 meant when she said that.

1 Again, the Court could not help but notice
2 that, when she was shown the pictures of the baby
3 in court, she visibly reacted. She had clearly not
4 seen these photos and was shocked by the appearance
5 of the baby in this case.

6 Then we heard from Tiffany Woods. She has had
7 four children. Of significance to the Court was
8 that she knew that she was supposed to feed the
9 formula recommended by the Doctor. She even told
10 the Court what that formula was. She said it is
11 Similac with iron. You are supposed to give them
12 four ounces every three hours. She knew that. She
13 knew this baby was supposed to be on formula.

14 By her own admission, the WIC voucher ran out
15 at the end of October. Then, at the suggestion of
16 her common law husband, they just decided that they
17 were going to switch this baby to organic milk and
18 they were going to cut it with water.

19 She testified she never saw any noticeable
20 weight loss. She never looked at the pictures.
21 She did not want to look at the pictures.

22 She said that on the day he died, and these are
23 direct quotes out of her mouth, "He had meat on his
24 bones. His ribs were not sticking out. He was
25 never skeleton like."

26 Can't be. Those are all lies.

27 Her excuse for why she did not go to the Doctor
28 was, "I'm stuck here in Shreveport." That is
29 ridiculous. They can get in the car and they can
30 go to Wal-Mart and then can go hither and yon, and
31 the Court notes that she was able to travel to
32 LSU-S to take a driver's license test so that she

1 could perhaps use one of the two vehicles that were
2 parked in their garage. So her testimony that she
3 was just stuck, that is a lame, lame, lame excuse.
4 It is ridiculous.

5 All right. That is my recap of the testimony.
6 That is what I gleaned from everything that I heard
7 here in court.

8 All right. The law that applies to this case
9 is as follows:

10 All persons concerned in the commission of a
11 crime, whether present or absent and whether they
12 directly commit the offense, aid and abet in its
13 commission, or directly or indirectly counsel or
14 procure another to commit the crime, are
15 principals.

16 We have two principals here in court.

17 All right. Article 30.1 of our Criminal Code
18 defines Second Degree Murder as follows in
19 pertinent part:

20 Second Degree Murder is the killing of a human
21 being, number one, when the offender has the
22 specific intent to kill or inflict great bodily
23 harm; or, and what is apropos to this case, is
24 Subparagraph 2(B), when the offender is engaged in
25 the perpetration of cruelty to juveniles even
26 though he has no intent to kill or to inflict great
27 bodily harm.

28 Cruelty to Juveniles is defined in Article 93
29 of our Criminal Code as follows in pertinent part:

30 Cruelty to Juveniles is the intentional or
31 criminally negligent mistreatment or neglect by
32 anyone 17 years of age or older of any child under

1 the age of 17 whereby unjustifiable pain or
2 suffering is caused to said child.

3 The term intentional as used in Article 93 has
4 been held to refer to a general criminal intent to
5 mistreat or neglect and does not require an intent
6 to cause the child unjustifiable pain and
7 suffering.

8 Under our Criminal Code, criminal conduct can
9 consist of an act or failure to act that produces
10 criminal consequences and which is combined with
11 criminal intent; or a mere act or failure to act
12 which produces criminal consequences where there is
13 no requirement of criminal intent or criminal
14 negligence that produces criminal consequences.

15 So there are criminal consequences for crimes
16 that there is not any criminal intent. That is
17 clear under our Criminal Code.

18 Criminal negligence is defined in our Criminal
19 Code. Criminal negligence exists when, although
20 neither specific nor general criminal intent is
21 present, there is such disregard of the interest of
22 others that the offender's conduct amounts to a
23 gross deviation below the standard of care expected
24 to be maintained by a reasonably careful man under
25 like circumstances.

26 Under our law criminal negligence is
27 essentially negative. Rather than requiring that
28 the accused intend some consequences of his
29 actions, criminal negligence is found from the
30 accused's gross disregard for the consequences of
31 his actions. That is what we have in this case.

32 Thus, in order to convict either Defendant of

1 Second Degree Murder where the killing occurred
2 during the perpetration of cruelty to a juvenile,
3 the State was required to prove either that, number
4 one, the Defendant intentionally abused or
5 neglected Emmanuel Woods resulting in the
6 infliction of unjustifiable pain or suffering and
7 ultimately death; or, number two, that the
8 Defendants' abuse or neglect of Emmanuel was
9 criminal negligence that caused the infliction of
10 unjustifiable pain or suffering and finally death.

11 As stated earlier, the Court finds that the
12 evidence proved beyond a reasonable doubt that both
13 of the Defendants' actions in failing to provide
14 proper sustenance to this baby and in failing to
15 seek medical treatment of this baby evidences such
16 a disregard of the interest of others that the
17 conduct amounts to a gross deviation below the
18 standard of care expected to be maintained by a
19 reasonably careful person under like circumstances;
20 and, thus, constitutes criminal negligence.

21 The Court also finds that the evidence
22 establishes beyond a reasonable doubt that the
23 criminally negligent mistreatment and neglect by
24 the Defendants caused unjustifiable pain and
25 suffering to the child.

26 Dr. Whitton explained the progression of
27 starvation and what it does to the body, and I
28 previously set forth what his testimony was.

29 The evidence further establishes beyond a
30 reasonable doubt that both of the Defendants were
31 over the age of 17, and the child was under the age
32 of 17.

1 Accordingly, each element of the offense of
2 Second Degree Murder has been established beyond a
3 reasonable doubt.

4 Before the 1997 Amendment to Article 30.1 of
5 our Criminal Code, the criminally negligent conduct
6 of the Defendants in this case which led to the
7 death of their baby would only have resulted in a
8 conviction of negligent homicide under our law.

9 In 1997, our Legislature amended the definition
10 of Second Degree Murder to include criminally
11 negligent mistreatment or mistreatment of a
12 juvenile.

13 The Legislature has thus determined that the
14 conduct of the Defendants in this case warrants a
15 conviction of Second Degree Murder and the
16 imposition of a mandatory life imprisonment
17 sentence at the appropriate time.

18 The Court, again, finds both of the Defendants
19 guilty as charged of Second Degree Murder.

20 All right. The Defense has brought to the
21 attention of the Court a 1985 Louisiana Supreme
22 Court case, State vs. Lilly, which was reference by
23 Mr. Bokenfohr, reported at 468 So.2d. 1154, in
24 which the Louisiana Supreme Court reversed a
25 mother's conviction for negligent homicide.

26 The Court has carefully studied that case and
27 finds that it is distinguishable from this case and
28 that its rationale does not apply to the facts of
29 this case.

30 In that particular case, an eight-day-old baby
31 died from pneumococcal meningitis. Because there
32 was no evidence in the record to show what the

1 baby's symptoms were and that the mother noticed
2 and should have noticed these symptoms, the Supreme
3 Court reversed the conviction.

4 This case does not stand for the proposition
5 that failure to seek medical attention cannot be
6 punished as a crime. This case is clearly
7 distinguishable. Here we do not have a newborn
8 baby with any type of disease.

9 We have a five-month-old baby who has been
10 taken off of his prescribed formula, who is
11 starving the death, who is being neglected by his
12 parents, and who failed to observe that what they
13 should have seen and who failed to go get this
14 child medical treatment.

15 Again, the pictures in this case are self-
16 explanatory. Any normal or reasonable person would
17 know that this baby was starving and needed
18 immediate medical attention.

19 The Defendants know that there is free medical
20 care out there. After all, Tulane delivered the
21 baby and then cared for the baby in the NICU for
22 41 days.

23 The Court notes, for the record, that in an
24 earlier decision by the Louisiana Supreme Court in
25 1982, State vs. Jackson, reported at 419 So.2d.
26 837, the Court upheld a conviction for cruelty to
27 juveniles where a baby suffered from malnutrition
28 and the mother failed to seek medical attention.

29 In that particular case, an employee with the
30 State Department of Human Development intervened
31 when the mother would not act and the child was put
32 in foster care and the mother was prosecuted.

1 The Supreme Court noted the child had not been
2 to see a Doctor until the Defendant's arrest in
3 spite of a recommendation by the social worker on
4 April 27 that the child be taken for a physical
5 examination.

6 In light of the condition of the child at that
7 time, the mother's excuse that she was too busy
8 working is totally inadequate. Given the mother's
9 work schedule and her attitude, it appeared to this
10 Court that had the complaint against her not been
11 registered when it was medical attention would have
12 been withheld from the child for much longer, in
13 all probability causing irreversible physical and
14 mental trauma and quite possibly death.

15 From the testimony of the two Doctors and
16 Ms. Leblanc, it is clear to this Court that the
17 actions of the mother did indeed constitute an
18 abuse of her young child in violation of 14:93.

19 That is similar to this case. In that case,
20 thankfully, somebody intervened before the child
21 died. In this case, the child died.

22 Recently, in State vs. Tinsley, reported at 955
23 So.2d. 227, a Second Circuit case, the Second
24 Circuit reviewed a case where failure to promptly
25 seek medical attention was an issue. Although the
26 case was reversed on other grounds because it
27 developed that there was a conflict of interest in
28 an Attorney who represented one of the Defendants,
29 the Court noted as to the underlying facts of the
30 case that testimony also established that the
31 failure to seek immediate medical treatment gave
32 the child no chance of survival.

1 Each Defendant's statement that the other
2 Defendant gave proper care to the child and the
3 child exhibited no alarming symptoms of injury
4 until the morning of his death raises the inference
5 that both were directly and intentionally involved
6 in abusing the child. Such statements can be
7 understood as circumstantial evidence of their
8 joint intentional abuse and the cover up of their
9 actions in the face of overwhelming medical
10 evidence.

11 I realize that what we have in this case is
12 criminal negligence. There is no intent in this
13 case, but the case stands for the proposition that
14 failure to properly get medical care, you can
15 prosecute that. So there is other jurisprudence
16 that contradicts the case cited by Mr. Bokenfohr.

17 After reviewing all the jurisprudence and the
18 law, I am satisfied that malnutrition, starvation,
19 and failure to seek medical care can under the
20 appropriate circumstances constitute criminal
21 negligence under our cruelty to juvenile Statutes;
22 and, when a death occurs, support a conviction for
23 Second Degree Murder. So, again, I find both
24 Defendants guilty.

25 Now, I want to note, for the record, that the
26 Defendants' appointed Counsel, Mr. John Bokenfohr
27 and Mr. Edward Mouton, both did an excellent job of
28 vigorously defending their clients.

29 Both of these Lawyers are experienced criminal
30 defense Attorneys. There was voluminous discovery
31 in this case. They combed through volumes of
32 medical records, as I did. They fully

1 Cross-Examined all of the State's witnesses. Both
2 of the Defendants testified on their own behalf,
3 and a Pediatrician was called on behalf of Tiffany
4 in this case.

5 The Court notes that their side was fully
6 presented to the Court. Extensive legal research
7 was also conducted and presented to the Court.
8 Mr. Bokenfohr was kind enough the other day to
9 bring the case by my office when he hand-delivered
10 it to Mr. O'Callaghan.

11 They worked really, really hard on this case,
12 and I want to point all this out now in the event
13 that these Defendants ever attempt to raise an
14 incompetent Counsel claim, as does everyone who
15 goes to the jail for the rest of their life. Such
16 a claim would be completely frivolous.

17 The only persons responsible for the outcome of
18 this tragic case are the Defendants themselves.
19 Again, they are both guilty as charged of Second
20 Degree Murder.

21 We need to have the Defendants remanded back to
22 CCC, and we need to schedule a date to bring them
23 back into court for sentencing.

24 Let's reschedule the date now.

25 MR. O'CALLAGHAN: How long would Your Honor
26 want us to go out?

27 THE COURT: Well, we have got Jury week next
28 week.

29 MR. O'CALLAGHAN: Yes, ma'am.

30 THE COURT: Might I suggest sometime the next
31 week.

32 MR. O'CALLAGHAN: Your Honor, I would suggest

1 September 3rd, which is a Wednesday.

2 We do have a substantial afternoon hearing, but

3 I don't think it will take our entire afternoon

4 allotment of time.

5 THE COURT: September the 3rd at 1:30?

6 MR. O'CALLAGHAN: Yes, ma'am.

7 THE COURT: Is that date agreeable with

8 Mr. Bokenfohr and Mr. Mouton?

9 MR. BOKENFOHR: That is agreeable, Your Honor.

10 MR. MOUTON: That date's agreeable, Your

11 Honor.

12 (Whereupon, this proceeding was concluded for

13 the day)

14 * * *

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

C E R T I F I C A T E

STATE OF LOUISIANA:
PARISH OF CADDO:

I, Virginia Conlin Despot, Certified Court Reporter in and for the State of Louisiana, as the Officer before whom this proceeding was taken, do hereby certify that the proceedings had in Docket Nos. 254,301 and 254,302 were reported by me in the stenotype method, was prepared and transcribed by me or under my personal direction and supervision, and is a true and correct transcript to the best of my ability and understanding; that I am not related to Counsel or to the parties herein, nor am I otherwise interested in the outcome of this matter.

SUBSCRIBED AND SWORN TO on this the 16th day of September, 2008.



Virginia Conlin Despot
Virginia Conlin Despot, CCR
Official Court Reporter