

STATE OF MICHIGAN
IN THE 79TH DISTRICT COURT

PEOPLE OF THE STATE OF MICHIGAN,

v

FILE NO. 13-9042-FY

SEAN MICHAEL PHILLIPS,

Defendant.

OPINION AND ORDER

Defendant is charged with open murder of Katherine Phillips, a 4-month-old baby at the time of her disappearance. He was previously charged with unlawful imprisonment of Katherine Phillips. He was convicted of that offense and was sentenced to 10 to 15 years imprisonment. His conviction was upheld by the Court of Appeals in *People v Sean Phillips*, # 311110 (2013).

FACTS

A preliminary examination on the open murder charge was held over several dates and there are minimal new facts presented by the prosecution. Most of the facts have been recited in the Court of Appeals' decision. Those will not be repeated here. Additional relevant facts brought out at the preliminary examination include that Defendant was not violent with or toward Katherine, or, for that matter, Ariel Courtland, Katherine's mother. Defendant had a positive relationship with their other, older daughter to the point that he was favored over Ariel as the custodial parent during an early period in the older daughter's life.¹ There were never any

¹ This most likely was because of Ariel's age. She was very young when she had their first child (16) and youthful instability was likely a contributing factor to the Family Court's decision to grant physical custody of their first child to Defendant.

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threats of violence directed at or toward Katherine, Ariel or their first child. Except for the police witnesses' suggestion of an aggressive stance taken by Defendant during their first encounter with him when searching for Katherine, there is no evidence that Defendant was prone to aggressive or threatening behavior towards anyone.

Both parents' (Ariel and Sean) computers had evidence of efforts to research adoption information. Ariel was less interested in giving Katherine up for adoption than Sean was.

Several police agencies have made diligent efforts to locate Katherine and despite their efforts, Katherine Phillips has not been found. The central question is whether she is alive or dead. If alive, where is she? If dead, how did she die and where is her body?

At the trial in 2011 the Prosecutor introduced a note written by the Defendant that had been seized from the Defendant at the Mason County Jail. In the note Sean indicates that he gave baby Katherine Phillips away to a person for private adoption and information regarding families adopting could be obtained on a specific website. The note did not reveal the whereabouts of the baby. The prosecution introduced that letter at Defendant's unlawful imprisonment trial and relied upon that letter to help convict Defendant of the charge.

LAW

At the preliminary examination the Court is required to determine if a crime has been committed and if there is probable cause to believe the Defendant committed the offense. *MCL 766.13. People v Doss*, 406 Mich 90 (1979). In *People v Perkins*, 468 Mich 448 (2003), the Court said:

“The purpose of a preliminary examination is to determine whether there is probable cause to believe that a crime was committed and whether there is probable cause to believe that the defendant committed it. *MCR 6.110*. The

prosecutor need not establish beyond a reasonable doubt that a crime was committed. He need present only enough evidence on each element of the charged offense to lead "a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of [the defendant's] guilt." *Justice, supra* at 344, quoting *Coleman v Burnett*, 155 U.S. App DC 302, 317; 477 F.2d 1187 (1973). Thus, charges should not be dismissed merely because the prosecutor has failed to convince the reviewing tribunal that it would convict. That question should be reserved for the trier of fact. *People v Goecke*, 457 Mich. 442, 469-470; 579 N.W.2d 868 (1998).

If the prosecutor fails to present evidence on each of the elements of a charged offense, it would be an abuse of discretion to bind over the defendant for trial. *Goecke, supra* at 469, citing *People v Doss*, 406 Mich. 90, 100-101; 276 N.W.2d 9 (1979)."

The Prosecutor must establish the corpus delicti of the offense of open murder. To do so she must show (1) a specific injury or loss, in this case the death of Katherine Phillips, and (2) a criminal agency as the cause of the injury or loss. *People v Williams*, 422 Mich 381 (1985). Further she must do so without the Defendant's confession. *People v Williams*, at 391-392. The first question to be answered is whether the Prosecutor has shown the specific injury or loss, the death of Katherine Phillips.

The Prosecutor argues that the following facts show that Katherine is dead: (1) the baby was last in the physical custody of the Defendant when he left Ariel's place; (2) Katherine was not with him two hours later when he arrived home; (3) he had Katherine's clothes, diaper, bottle, and car seat with him; (4) a 4-month-old baby cannot thrive on its own; (5) Defendant was upset

with Ariel for not wanting to place the baby up for adoption; (6) he lied to the police when he said the baby was with Ariel; and (7) he told the police that he was not telling the whole truth. These facts, the Prosecutor argues, circumstantially show that baby Katherine is dead.

Omitted from the Prosecutor's argument is the jailhouse note relied upon by the prosecution at the Defendant's unlawful imprisonment trial to convict the Defendant by showing what he did with Katherine, that is, that he gave her away for private adoption. The note is part of the admitted record of the prior case and the prosecution now wishes to repudiate that evidence it relied upon. When the note is considered with the facts above, the evidence in the case does not support that Katherine is dead.

THE PRISON LETTER

Following Defendant's conviction and sentence to prison, law enforcement seized a letter that Defendant wrote to Ariel Courtland, Katherine's mother. The letter has been authenticated as written by the Defendant. The letter is Defendant's second version of what happened to Katherine.

The question next presented is whether the letter amounts to a confession or is merely an admission of certain facts. If the defendant makes admissions of fact that do not amount to confessions of guilt, those admissions may be admitted to prove the corpus delicti of the crime. *People v Rockwell*, 188 Mich App 405, 407; 470 NW2d 673 (1991), citing *People v Porter*, 269 Mich 284, 289-291; 257 NW 705 (1934). To attempt to satisfy the second prong (and perhaps the first) the Prosecutor introduced Defendant's letter to Ariel seized at the prison.

In the letter Defendant describes driving off from the front of Ariel's apartment, being unaware that Katherine was in the baby seat in the back seat of his car. He was upset about Ariel's refusal to give baby Katherine up for adoption. He became more upset while driving

because Ariel was repeatedly dialing his number and he could not reach his phone to shut it off. The Defendant could not get to his phone because the baby's car seat blocked movement of his driver's seat. Defendant decided to throw the baby seat away, found it jammed between the seats, and ripped it out of the car as hard as he could. Katherine Phillips was thrown from the car seat. He states that he "did not know," apparently, that she was still in the car, in the car seat. He then describes holding her, while he began crying and was unable to think about what to do. He then drove around, stopped and walked away from the car and set the baby in a "peaceful place." Finally, he describes being lost and unable to decide what to do. This is his second version of what happened to baby Katherine Phillips.

Law enforcement investigators have been unable to confirm either of Defendant's versions explaining what happened to baby Katherine. With respect to the first note, the police found corroborating evidence on Defendant's computer supporting the theory that Defendant gave the baby away for a private adoption. With respect to the letter, the police found corroborating evidence to support the theory that Defendant left baby Katherine in a "peaceful place." Defendant had changed from the shoes he was wearing earlier on the day that Katherine disappeared to a different pair he was wearing when confronted by the police about two hours later. The shoes he had been wearing showed signs of being wet and of having seeds, leaves and dirt on them consistent with a damp or swampy environment. The police also placed him near an area of northwest Mason County that is remote and characterized by forests and wetlands. They did so by locating witnesses who saw him in the two-hour period after he left Ariel and by locating him within the range of a particular cell tower when his cell phone was turned back on.

Thus, two stories have emerged, both supplied by the Defendant. Both stories are plausible and both are supported by independent facts.

The letter to Ariel provides a factual scenario of what happened to Katherine but it does not confess to any crime. The letter describes the death of baby Katherine as an accident and not by a criminal act. Is the letter a confession or mere admission of certain facts?

"If the fact admitted necessarily amounts to a confession of guilt, it is a confession. If, however, the fact admitted does not of itself show guilt but needs proof of other facts, which are not admitted by the accused, in order to show guilt, it is not a confession but an admission..." *People v Porter*, supra at 290. See also: *People v. Rockwell*, 188 Mich. App. 405 (1991); *People v Schumacher*, 276 Mich. App. 165 (2007).

In the letter, Defendant admits killing Katherine, but denies knowing she was in the car. To be a confession, the letter would have to acknowledge facts that show either a deliberate intent to kill the baby or a reckless act, yanking the car seat while knowing that she was in the car seat, such that the reckless act was likely to result in death. As an admission, the letter satisfies the first requirement of the corpus delicti rule for purposes of a preliminary examination, that is, that a specific injury or loss has occurred, that being the death of Katherine Phillips.

The letter provides the only facts about the manner of death of Katherine. It does not provide any proof supporting the second prong of the corpus delicti rule, that criminal agency was the cause of the death. To attempt to satisfy this element the Prosecutor traces a history between Defendant and Ariel that shows their concern for their ability to support another child. While Defendant (and to a lesser extent, Ariel) actively looked at giving Katherine up for adoption, such activity does not support criminal agency causing death.

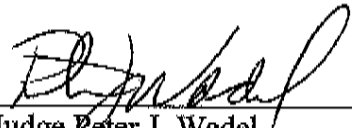
The explanation in Defendant's letter to Ariel provides facts consistent with death by accident. There are no independent facts presented by the Prosecutor to support any manner of death of Katherine, whether by accident or by a criminal act. The Prosecutor has failed to show any criminal act committed by the Defendant in the killing of Katherine Phillips. There simply are no proofs of any criminal agency causing the death of Katherine Phillips.

CONCLUSION

This case is about an infant who has been missing now for over three years. The baby cannot be found despite the diligent efforts of law enforcement. A baby is not deceased merely because she is missing, especially since the Defendant indicated that he gave her away for private, non-legal, adoption. The only proofs presented that the baby is dead comes from Defendant's letter to Ariel Courtland. When used to establish that the baby is dead, the letter then becomes the source for how the baby died, by accident and not by criminal agency.

The prosecution has failed to show that the crime of open murder has been committed because the proofs failed to show death by a criminal act of Defendant. This case is dismissed.

Dated: September 15, 2014



Judge Peter J. Wadel P23335
District Judge