

IN RE:

: IN THE COURT OF COMMON PLEAS OF
: DAUPHIN COUNTY, PENNSYLVANIA

:
: NO: CP-22-MD-1425-2009

THE SIXTH DAUPHIN COUNTY
INVESTIGATING GRAND JURY

: **NOTICE NUMBER: 06-2009-06**

ORDER OF COURT

AND NOW, this 3rd day of August, 2010;

IT IS HEREBY ORDERED that Presentment Number 2 is accepted. The Court finds a matter of law that the facts stated in the Presentment established a *prima facie* case to support each of the recommended charges. This Presentment shall be sealed and no person shall disclose a return of the Presentment except when necessary for issuance and execution of process, or as otherwise directed or permitted by order of the supervising judge. Disclosure is authorized for issuance and execution of process.

BY THE COURT

Todd Hoover

TODD A. HOOVER, P.J.
SUPERVISING JUDGE

Distribution:

Francis T. Chardo, First Assistant District Attorney (C)
Sean M. McCormack, Chief Deputy District Attorney (C-2 copies)

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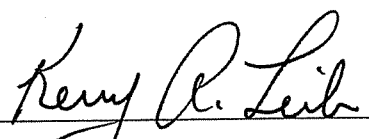
**THE SIXTH DAUPHIN COUNTY
INVESTIGATING GRAND JURY**

IN RE: : IN THE COURT OF COMMON PLEAS OF
: DAUPHIN COUNTY, PENNSYLVANIA
THE SIXTH DAUPHIN COUNTY :
INVESTIGATING GRAND JURY : No: CP-22-MD-1425-2009
: :
: **NOTICE NUMBER: 06-2009-06**

TO THE HONORABLE PRESIDENT JUDGE TODD A. HOOVER, SUPERVISING JUDGE:

PRESENTMENT NO.2

We, the SIXTH Dauphin County Investigating Grand Jury, duly charged to inquire into offenses against the criminal laws of the Commonwealth, have obtained knowledge of such matters from witnesses sworn by the Court and testifying before us. We find reasonable grounds to believe that a violation of the criminal laws has occurred. So finding with not fewer than twelve concurring, we do hereby make this presentment to the Court.



Foreperson –
Sixth Dauphin County
Investigating Grand Jury

DATED: July 21, 2010

INTRODUCTION

We, the members of the Sixth Dauphin County Investigating Grand Jury, having received evidence pertaining to a possible violation of the Pennsylvania Crimes Code, occurring in Dauphin County, Pennsylvania, pursuant to Notice of Submission of Investigation 06-2009-06, do hereby make the following findings of fact and recommendation of charge.

FINDINGS OF FACT

On May 6, 2009, at 1:30 P.M., 22 month old Ayveionse Cruz-Carter was pronounced dead at the Harrisburg Hospital. Ayveionse Cruz-Carter died while in the custody and care of Tajha Phillips. Tajha Phillips was the girlfriend of Ayveionse Cruz-Carter's father, Abraham Cruz. Tajha Phillips was a caretaker for Ayveionse Cruz-Carter since Ayveionse Cruz-Carter was approximately three months of age. On the day she died, Ayveionse Cruz-Carter and her caretaker, Tajha Phillips, were staying at the residence of Tajha Phillip's sister, Laterricka Phillips, 76 B Ivey Lane, apartment number 15.

At approximately 12:45 PM on May 6, 2009, a 911 emergency call was made reporting that "... a lady laid on her baby and the baby is not breathing..." The caller, Evelyn Cruz, was visiting the Ivey Lane Apartments with a friend when she was approached by a male who told her "...there was a girl upstairs with a dead baby in her arms." Ms. Cruz ran upstairs and saw a "female sitting on the couch with a baby in her arms and the baby was lifeless. She [the baby] was blue." Ms. Cruz further testified before the grand jury that:

"I asked her why she was still sitting there, why didn't she get up. I told her I seen like two different people come out of the building while I was sitting there, why didn't you run out and ask someone to help you, it's a baby. And she was just sitting there like just kept saying she fell asleep on top of the baby; that it wasn't her fault..."

She wasn't moving. She just sat there, so I grabbed the baby out of her arms and ran out of the door and she ran behind me and I got into the van...

She got in the front seat. I laid the baby on her lap and I dialed 911.”

While Ms. Cruz was on the phone with the 911 operator, her friend began driving the van to the Harrisburg Hospital. A few minutes later the van operator spotted and flagged down an ambulance at the intersection of Cameron and Paxton Streets in the City of Harrisburg. The ambulance then proceeded with Ayveionse Cruz-Carter to the Harrisburg Hospital where she was pronounced dead.

The grand jury heard the testimony of numerous witnesses concerning the circumstances surrounding the death of Ayveionse Cruz-Carter. The grand jury has determined that Ayveionse Cruz-Carter lived with Abraham Cruz and Tajha Phillips at 235 South 13th Street in the City of Harrisburg. They resided in the home of Rosa Cruz, Abraham Cruz’s sister. On or about, April 25, 2009¹, Tajha Phillips moved out of Rosa Cruz’s home. Abraham Cruz remained at Rosa Cruz’s home. Ayveionse Cruz-Carter left with Tajha Phillips. During the week of April 27, 2009, Ayveionse Cruz-Carter was primarily in the custody of Tajha Phillips who was staying with her mother, Kim Turner, on Vernon Street in the City of Harrisburg. For a few hours on at least two occasions during the week of April 27, 2009, Ayveionse Cruz-Carter visited with her father.

During the week of April 27, 2009, Tajha Phillip’s sister, Laterricka Phillips, went into labor and was admitted to the Harrisburg Hospital. She gave birth on April 29, 2009. Laterricka Phillips was discharged from the hospital on Friday, May 1, 2009. Beginning May 1, 2009, Tajha Phillips, along with Ayveionse Cruz-Carter, began staying at

1 The testifying witnesses did not agree on the exact date Tajha Phillips moved out. Roza Cruz testified that Tajha Phillips moved out on Saturday, April 25, 2009. Tajha Phillips did not give a date but testified it was perhaps April 27, 2009 (she dated it as the day before her sister gave birth). Nor did the witnesses agree as to the reason why she moved out of the home. Roza Cruz testified she asked Tajha Phillips to leave her home. Tajha Phillips testified that she made the decision to leave 235 S. 13th St. on her own.

Laterricka Phillip's Ivey Lane apartment to assist her sister with her newborn infant².

Tajha Phillips and Ayveionse Cruz-Carter slept on the couches in the apartment's living room.

On late Sunday night, May 3, 2009, into early Monday morning, May 4, 2009, (approximately midnight) Abraham Cruz took custody of Ayveionse Cruz-Carter as a result of a phone call by Tajha Phillips during which she indicated that Ayveionse Cruz-Carter was sick and needed to be taken to the doctor because she was throwing up and had a fever. Abraham Cruz brought Ayveionse Cruz-Carter to the 235 S. 13th St. residence where his sister Rosa Cruz determined that Ayveionse Cruz-Carter did not have a fever and appeared to be fine³. Abraham Cruz returned Ayveionse Cruz-Carter to Tajha Phillips at the Ivey Lane apartment sometime during the day on Monday, May 4, 2009. Tajha Phillips had custody of Ayveionse Cruz-Carter from Monday, May 4, 2009, until Ayveionse's death on Wednesday, May 6, 2009.

Tajha Phillips testified before the grand jury. Tajha Phillips was asked to describe if she saw any bruises on Ayveionse Cruz-Carter from when she was returned by Abraham Cruz on Monday, May 4th until Wednesday, May 6th. She indicated that she noticed a bruise on Ayveionse Cruz-Carter's right temple area, a red mark on her nose and a bite mark on her back. Tajha Phillips related that she called Abraham Cruz the night before Ayveionse Cruz-Carter's death to ask him about the bruising to Ayveionse's temple. She told the grand jury that Abraham Cruz told her that Ayveionse and another child at Rosa Cruz's home were fighting over a ceramic toy and both children fell on the

² Also residing in the Ivey Lane apartment were Laterricka Phillip's two older daughters (3 years old and 15 months old respectively).

³ This is based on the testimony of Rosa Cruz. Tajha Phillips testified that Abraham Cruz informed her that he took Ayveionse Cruz-Carter to the hospital emergency room but the wait was too long so he did not stay. Abraham Cruz had no specific recollection of this day when he testified.

stairs and the toy hit her in the head.⁴ She further testified that the bite mark was an injury she saw inflicted on Ayveionse Cruz-Carter by Laterricka Phillip's 15 month old daughter. Other than those marks, Tajha Phillips testified that she did not see any other marks or bruises on Ayveionse Cruz-Carter.

Evelyn Cruz testified that while they were rushing Ayveionse Cruz-Carter to the hospital in the van she noticed that Ayveionse had 'black and blue' bruises on her abdomen area (around her hip). She further testified that every time Ayveionse's shirt would rise up exposing the bruises Tajha Phillips would pull the shirt down covering up the marks. Pictures taken of Ayveionse Cruz-Carter at the Harrisburg Hospital immediately after her death and photographs taken during the autopsy clearly show a large area of bruising on her left hip/abdomen. Tajha Phillip's was shown a photograph of that bruising during her testimony before the grand jury and denied ever seeing that injury on Ayveionse.

The grand jury heard testimony that in the days prior to Ayveionse Cruz-Carter's death, Tajha Phillips met Sandra Torres at a playground located between the Ivey Lane Apartments and Hall Manor. The two women struck up a conversation during which Tajha Phillips told Ms. Torres about how she was staying with her sister temporarily because she had lost everything in a fire where she had been living.⁵ During this conversation Tajha Phillips stated that she had at just given birth to the newborn infant that she had at the park with her⁶. Ms. Torres offered to help Tajha Phillips find housing and furniture. They made arrangements for Ms. Torres to pick up Tajha Phillips at 7:30

⁴ There was conflicting testimony concerning the timing of the injury involving the toy. While Tajha Phillips testified it was close in time to Ayveionse's death, other witnesses indicated the injury occurred a month earlier. Laterricka Phillips testified it occurred closer to Easter 2009 (April 12, 2009). Abraham Cruz also testified this injury occurred "right before Easter". There was also a discrepancy as to the location of this bruise.

⁵ Tajha Phillips and Abraham Cruz previously lived with his mother, Gloria Rodriguez, in Steelton until a fire destroyed the home in January 2009.

AM on Wednesday, May 6, 2009.

A few days prior to May 6, 2009, Ms. Torres confirmed her appointment with Tajha Phillips when Phillips dropped by Torres' apartment to use the Torres' phone. However, on May 6, 2009, when Ms. Torres arrived at 7:30 AM in the hallway outside Laterricka Phillip's apartment, she immediately heard screaming coming from inside the apartment. She heard a woman, whose voice resembled Tjaha Phillip's voice, screaming at a child. She described the woman as using '...very harsh language towards the child.' She indicated that she heard the child crying. She said the woman was telling the child to 'shut up, I didn't do nothing to you for you to be crying like this...' Ms. Torres knocked on the door but no one answered the door. She then called a phone number she had been provided and the person who answered the phone told her there was no one by the name of Tajha Phillips at the apartment. Ms. Torres continued to knock on the door until the woman asked through the door who is knocking. Ms. Torres identified herself and responded that she was there to pick-up Tajha Phillips. No one ever opened the door nor was there any other response to Ms. Torres from inside the apartment. Ms. Torres then left the building.

Throughout the police investigation Tajha Phillips has provided statements that are inconsistent with statements of other witnesses concerning the events leading up to Ayveionse Cruz-Carter's death. Laterricka Phillips testified that on the morning of May 6, 2009, Ayveionse Cruz-Carter was originally sleeping on the smaller of two couches in the living room of her Ivey Lane apartment. Tajha Phillips was sleeping on the larger couch. Laterricka and her sister Tajha Phillips had stayed up all night Tuesday, May 5, 2009, into the early morning hours (perhaps until 5 AM) of May 6, 2009. Laterricka went to sleep in her bedroom. She got up around 6 AM

6 Tajha Phillips did not have any children of her own in May of 2009.

to get her newborn baby a bottle and discovered Ayveionse in the hallway. She brought Ayveionse Cruz-Carter to her sister Tajha and told her "...you need to get Ayve; she's up in the hallway and nobody else is awake with her. You need to make her lay down." Laterricka saw Tajha put Ayveionse Cruz-Carter behind her on the bigger couch. Laterricka then went back to bed. Laterricka testified that the next thing she knew Tajha Phillips was "...waking me up and she was bringing Ayve in there [Laterricka's bedroom] and she told me she rolled on her. And I was like what do you mean you rolled on her, what happened. And she's like I woke up and I was sleeping on her and from there everything just went down hill."

Contrary to her sister Laterricka's testimony, Tajha Phillips testified that Ayveionse Cruz-Carter did not sleep on the little couch but instead in a crib. She said Laterricka at some point got Ayveionse out of the crib and brought her into Laterricka's bed. Tajha Phillips testified that Laterricka called to her and told her to come get Ayveionse Cruz-Carter because she was whining and didn't want to sleep in Laterricka's bed. After feeding and putting Ayveionse on the potty Tajha Phillips testified she fell asleep with Ayveionse located behind her on the couch with Ayveionse facing the back of the couch. Tajha Phillips further testified the next thing she knew:

"... I woke up to my sister tapping me saying 'where's Ayve, where's my niece. I don't see her.' And I said what do you mean, she's right here. And she said 'I only see her head. I didn't see the rest of her body.' And the first thing that popped in my head was, oh, my goodness, I was tired, maybe I was on her. So I looked over. But the way she was laying I could tell I wasn't laying on her because her arms were straight and she had her face turned over and she sort of had a smile on her face. She was hard. She was stiff. She was purple. And when I looked at her I could tell that she was gone."

Tajha Phillips denied hitting or any responsibility for any of the injuries on Ayveionse Cruz-Carter's body.

Laterricka Phillips was re-interviewed after she testified before the grand jury. During this interview she told detectives sometime in May 2010 Tajha Phillips spoke to her about what

happened to Ayveionse Cruz-Carter the day she died. Laterricka Phillips told the detectives that her sister Tajha Phillips admitted hitting Ayveionse Cruz-Carter because she wasn't being quiet. This interview was recorded and later played for the grand jury.

On Thursday, July 8, 2010, Tajha Phillips was re-interviewed by detectives from the Dauphin County District Attorney's Criminal Investigation Division. During the course of this interview, Tajha Phillips told the detectives that Ayveionse Cruz-Carter was behind her on the couch and was not settling down to sleep and was whining. Tajha Phillips related that she told Ayveionse Cruz-Carter that she better go to sleep now because Tajha had a long day. Tajha Phillips told the detectives the Ayveionse Cruz-Carter's response was "no". Ayveionse Cruz-Carter kept fussing and whining and kept waking up Tajha Phillips. Tajha Phillips then admitted that she did hit Ayveionse Cruz-Carter four times in the abdomen/hip region to get her to go to sleep. She described the hits as taps with an open hand. She said the location of the hits on Ayveionse Cruz-Carter's body was red after the hits. Tajha Phillips said Ayveionse Cruz-Carter then went to sleep.

The autopsy performed on Ayveionse Cruz-Carter determined that the cause of her death was 'Asphyxia and Multiple Traumatic Injuries' and the manner of death was 'Homicide'. The autopsy report lists numerous injuries to Ayveionse Cruz-Carter including, but not limited to, the following injuries:

- The large bruise to the lower left abdomen (referred to by Evelyn Cruz during her testimony) measured over an area of 4" x 3 ½" in size. The bruise is described at autopsy as ten very distinct and fresh contusions. Tajha Phillips denied any knowledge of this injury during her testimony before the grand jury. When later re-interviewed, she admitted to "tapping" Ayveionse four times in this area with an open hand, leaving only a red mark.

- The lower right leg has an extensive hemorrhage which is of such a severe degree that it extends deep throughout the leg's underlying fat tissue. There is also marked swelling to the right lower leg. These injuries are indicative of severe force and severe trauma being directly applied to the lower right leg. Tajha Phillips was showed a photograph of this injury when she testified before the grand jury and said that she never noticed this injury to Ayveionse Cruz-Carter despite bathing and dressing her.
- There was extensive soft tissue trauma and swelling noted to all regions of Ayveionse Cruz-Carter's scalp. Bruises and swelling were observed on the right frontal, left frontal, right superior parietal, right lateral parietal, right temporal, right posterior parietal, left frontal, left superoparietal, left lateral parietal, and left posteroparietal regions of the scalp. Twenty-four circular, fresh contusions were noted to the left side of the scalp along the left frontal, left parietal, and left occipital regions. There was a large, gaping hemorrhage with swelling noted to the back of the head on the central and left side. Marked hemorrhage was noted extending along the left posterior parietal, left occipital regions of the scalp. A large, irregular shaped contusion with swelling was appreciated to the central superoparietal region of the scalp, but it extends to both the left and right sides. There are multiple contusions noted to the right side of the scalp; five contusions are noted to the right lateral frontal, right parietal and occipital regions of the scalp. The hemorrhages extend all the way back to the right posteroparietal, right lateral parietal, and right occipital regions; they are large, gaping, confluent hemorrhages. There are a total of 30 fresh contusions appreciated to these areas.

- Three injuries were compatible to bite marks. One on her upper back and two located on her left thigh.

RECOMMENDATION OF CHARGES

Based upon the evidence we have obtained and considered, which establishes a *prima facie* case, we, the members of the Sixth Dauphin County Investigating Grand Jury, recommend that the District Attorney or his designee, institute criminal proceedings against Tajha Phillips. We recommend charging her with violating sections 18 Pa.C.S.A. § 2501 (Criminal Homicide), 18 Pa.C.S.A. § 4304 (Endangering the Welfare of Children) and 18 Pa.C.S.A. § 2705 (Recklessly Endangering Another Person).