

1 SUMMER STEPHAN
District Attorney
2 RAMONA McCARTHY
Deputy District Attorney, SBN 272862
3 330 W. Broadway
San Diego, CA 92101
4 Tel: (619) 531-3510
Fax: (619) 515-8820
5 Email: Ramona.McCarthy@sdca.org

6 Attorneys for Plaintiff

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF SAN DIEGO
9 CENTRAL DIVISION

10 THE PEOPLE OF THE STATE OF CALIFORNIA,
11 Plaintiff,
12
13 v.
14 VICTORIA FRANCES FOX,
15 Defendant.

Court No. SCD291455
DA No. AEV121

**PEOPLE'S SENTENCING
STATEMENT**

Date: February 28, 2023
Time: 1:30 p.m.
Dept: 1102

16 Comes now the Respondent and Plaintiff, the People of the State of California, by
17 and through their attorneys, SUMMER STEPHAN, District Attorney, RAMONA
18 McCARTHY, Deputy District Attorney, and respectfully submits the following
19 PEOPLE'S SENTENCING STATEMENT.

20 **I.**

21 **STATEMENT OF THE CASE**

22 On August 24, 2021, Defendant was arraigned on the People's felony complaint on
23 the following charges: Murder in violation of Penal Code section 187(a) and Assault on a
24 Child by Force Likely to Produce GBI resulting in Death in violation of Penal Code
25 section 273ab(a). On August 31, 2022, Defendant pleaded guilty to Count 1, Penal Code
sections 187(a)/189. The current sentencing hearing is scheduled for February 28, 2023.

26 ///

27 ///

28 ///

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

II.

STATEMENT OF FACTS

A. BACKGROUND:

Phoenix’s parents reside in Singapore. The couple had a difficult time getting pregnant, including multiple failed attempts at IVF. Eventually, Phoenix’s mother gave birth to their first born in 2020. They wanted their child to have siblings, so they located a surrogate in San Diego who became pregnant via IVF with the couple’s twins. Soon thereafter, and to the surprise of their doctors, the couple discovered they were pregnant with Phoenix. Phoenix was born on July 18, 2021 – they called Phoenix their “miracle baby.”

To prepare for the birth of their twins, Phoenix’s parents decided it was best to hire a second nanny who could help watch 4 week old Phoenix. Phoenix’s parents participated in a thorough vetting process and ultimately hired Defendant - a career nanny who impressed the couple through multiple interviews, an impressive resume, and who came with stellar recommendations (later to be discovered that the most recent reference was fabricated). Phoenix’s parents paid for Defendant to fly to San Diego a week earlier and the family met Defendant on August 13, 2021. The entire family, along with the two nannies, stayed in a 4 bedroom, two-story, 4,600 square foot Airbnb.

B. DISCOVERING THE ABUSE

On August 18, 2021, Phoenix’s parents went to Mary Birch Hospital for the birth of their twins and stayed there overnight leaving their first born in the care of his nanny, and for the first time alone, Phoenix in the care of Defendant. Throughout the night and the following morning, Defendant sent Phoenix’s mother text messages letting her know that Phoenix was not eating as much and suffering gas pains – Defendant assured her that Phoenix was alright and that she did not need to come home. Later that afternoon at about 2:00 p.m., Defendant sent a text message asking Phoenix’s mother when she was coming home. Defendant’s message alarmed Phoenix’s mother and she immediately left the hospital. Phoenix’s mother came home to find Phoenix barely breathing with blue lips and his body completely limp. Phoenix’s mother immediately dialed 911 requesting

1 paramedics. While police and paramedics were on scene, Defendant continued to tell
2 Phoenix’s mother and the emergency response team that Phoenix was alright, that he was
3 merely dehydrated, and this type of medical intervention was unnecessary. Phoenix was
4 transported to Rady Children’s Hospital.

5 Phoenix suffered severe traumatic brain injury and physicians were concerned that
6 Phoenix would not survive. Phoenix’s treating physician stated “*It’s disturbing to see the*
7 *amount of injury to this child’s head. I don’t usually see this type of ischemic injury to a*
8 *brain this fast.*” A CT scan revealed bilateral thin film subdural hemorrhages,
9 subarachnoid hemorrhage, and loss of gray/white differentiation consistent with cerebral
10 edema. A dilated ophthalmologic evaluation revealed bilateral retinal hemorrhages that
11 were “*too numerous to count*” in multiple layers and extended to his periphery. A skeletal
12 survey showed that Phoenix suffered a transverse right femur fracture as well as bilateral
13 femur CMLs. Phoenix’s liver enzymes were elevated, and an abdominal ultrasound
14 revealed fluid in his abdomen.

15 On August 21, 2021, the treating physicians informed Phoenix’s parents that he would
16 not survive regardless of being on life support. That same day life support was removed,
17 and Phoenix passed away shortly thereafter.

18 C. THE AUTOPSY

19 During the autopsy, Dr. Pizarro noted extensive subdural brain hemorrhaging and
20 multiple leg fractures. Dr. Pizarro indicated the cause of death was subdural hemorrhaging
21 and blunt force trauma - the manner of death was homicide.

22 D. DEFENDANT’S ADMISSION

23 Defendant initially denied knowing how Phoenix suffered a brain injury and
24 continued to reiterate that she is a highly experienced nanny, and no child would ever be
25 hurt under her care. Ultimately, Defendant admitted that at around 3:00 a.m., she violently
26 shook Phoenix, threw him on the bed twice, and squeezed him. Defendant stated that she
27 threw Phoenix in the middle of the bed the first time, but the second time she used more
28 force throwing Phoenix towards the side of the bed. Defendant used a doll to demonstrate
how she shook Phoenix – she shook the doll in a forward/back motion causing the doll’s

1 head to whip all the way back and completely forward. Defendant stated she hurt Phoenix
2 because he would not stop crying. Defendant stated that she suffered from depression and
3 did not ask for help because she was “British” and too proud. Defendant wrote Phoenix’s
4 parents an apology letter, which mainly focused on her own depression and suicidal
5 thoughts.

6 **III.**

7 **THE OBJECTIVES OF CALIFORNIA SENTENCING LAW ARE BEST SERVED**
8 **BY REQUIRING DEFENDANT TO SERVE A STATE PRISON SENTENCE**

9 “The Legislature finds and declares that the purpose of imprisonment for crime is
10 punishment. This purpose is best served by terms proportionate to the seriousness of the
11 offense. . . .” (Pen. Code § 1170, subd. (a)(1).) The seriousness of these crimes, along with
12 the following sentencing objectives and circumstances in aggravation, should be of primary
13 concern to this Court. The Judicial Council Rules provide the following objectives to be
14 achieved in sentencing:

15 **Rule 4.410(a)(1). Protecting society.** Defendant is a threat to society, particularly to
16 vulnerable children. Defendant was specifically hired to care for and keep Phoenix safe.
17 Defendant fabricated her last reference to assure Phoenix’s parents that she was the right
18 person for the job. Instead, after she brutally abused Phoenix, allowed eleven hours to go by
19 observing his condition deteriorate, lied to his mother about the state of his condition, and
20 attempted to block proper medical intervention by asserting that Phoenix was merely
21 dehydrated. While Defendant admitted to the majority of the abuse, her apology to Phoenix’s
22 family focused on herself essentially portraying herself too, a victim. Despite her subsequent
23 apologies, after she abused Phoenix, she left him downstairs to die while she went upstairs
24 and ate lunch with the other nanny. Defendant had ample time to seek medical help to try to
25 save Phoenix’s life. Instead, she chose to have her lunch and prevent medical care by
26 assuring his mother that he just needed milk. Defendant’s time in prison will assure that she
27 cannot hurt anymore children.

26 ///

27 ///

1 **Rule 4.410(a)(2). Punishing the Defendant.** Defendant’s time in custody will ensure
2 Phoenix’s parents and our community that she will not have opportunity to harm another
3 child. Phoenix’s parents are suffering an emotional life-long sentence as a result of
4 Defendant murdering their baby – Defendant certainly deserves a life sentence. Phoenix was
5 their “miracle baby” born to a loving and growing family. The very day that Phoenix’s
6 parents were celebrating the birth of their twins was the same day the person they hired to
7 protect and care for Phoenix violently abused him and killed him. With every year they
8 celebrate their twins’ birthday, they also mourn Phoenix’s death.

9 Defendant was only concerned about protecting herself. She violently abused Phoenix
10 and watched as he was dying refusing to provide him aid. Instead, Defendant intervened to
11 ensure that Phoenix did not receive medical aid by initially convincing his mother that he
12 was fine. Phoenix’s mother nevertheless rushed home after having a “gut” feeling that
13 something was wrong only to find her four week old baby dying in her arms. Defendant
14 continued to tell the emergency response team that Phoenix was merely dehydrated and that
15 he did not require their level of medical intervention. Even while Phoenix’s parents were at
16 the hospital as their son was dying, instead of expressing remorse or at minimum, empathy,
17 Defendant instead sent a text message to them expressing her outrage that the police dare
18 investigate her and treat her as though she was guilty. Defendant expressed that she was
19 upset that no one – including Phoenix’s parents – were concerned for her feelings because,
20 “*You know how sensitive I am...and my job means everything to me. I just feel it all slipping*
21 *away.*” Defendant brutally abused Phoenix by violently shaking him, throwing him on a bed,
22 shaking him again, and later fracturing his femur. Instead of seeking medical aid, she
23 allowed Phoenix to slowly die and succumb to his injuries. Defendant deserves the
24 maximum 25 years to life sentence.

25 **Rule 4.410(a)(3). Encouraging the Defendant to lead a law-abiding life in the**
26 **future and deterring her from future offenses.** Defendant’s 25 years to life prison
27 sentence will impress upon her the absolute necessity that she rejects future criminality.
28 Defendant admitted she should not have been caring for children, her family discouraged her
from doing so, instead she created a fake email claiming to be a reference and hid her
previous mental breakdown from Phoenix’s parents. Defendant accepted a nannying job and

1 within days brutally abused a 4 week old baby murdering him. She then attempted to
2 intervene during his medical intervention and made it clear to Phoenix's parents that she was
3 offended that no one was considering her feelings as their son was dying. Hopefully, this
4 prison term will deter Defendant from committing future offenses.

5 **Rule 4.410(a)(4). Deterring others from criminal conduct by demonstrating its**
6 **consequences.** Defendant's prison term will send a strong message to other members of
7 society that violently abusing children will lead to substantial prison time.

8 **Rule 4.410(a)(7). Achieving uniformity in sentencing.** Uniformity requires that
9 Defendant be sentenced to a prison term commensurate with her level of egregious criminal
10 conduct. Defendant's prison sentence of 25 years to life is mandated pursuant to her first
11 degree murder conviction and will thus achieve uniformity in sentencing.

12 IV.

13 **DEFENDANT IS INELIGIBLE FOR PROBATION**

14 Defendant is absolutely ineligible for probation due to the nature of the underlying
15 offenses. Further, she is simply not deserving of probation.

16 V.

17 **THE FACTORS IN AGGRAVATION OUTWEIGH ANY CIRCUMSTANCES IN** 18 **MITIGATION**

19 An examination of the facts demonstrates that the circumstances in aggravation exist
20 in this case. The circumstances are defined by Rule 4.421 of the California Rules of Court.

21 The circumstances in aggravation in the case at bar are as follows:

22 **A. RULE 4.421 FACTORS RELATING TO THE CRIME**

23 **Rule 4.421(a)(1). The crime involved great violence, great bodily harm, threat of**
24 **bodily harm, or other acts disclosing a high degree of cruelty, viciousness, or**
25 **callousness.** Defendant abused four week old Phoenix by shaking him so violently that he
26 suffered a severe traumatic brain injury killing him. One of the physicians at Rady
27 Children's stated, "It's disturbing to see the amount of injury to this child's head. I don't usually
28 see this type of ischemic injury to a brain this fast." Instead of seeking medical attention,
Defendant left Phoenix to die.

///

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

DATED: February 28, 2023

Respectfully submitted,
SUMMER STEPHAN
District Attorney

By: _____

RAMONA McCARTHY
Deputy District Attorney

Attorneys for Plaintiff