

# ATTACHMENT 2

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# THE TEXAS COURT OF CRIMINAL APPEALS

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**No. YAG-APP-2011**  
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**Don Coleson, Appellant**

**v.**

**State of Texas, Appellee**

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**On Appeal from  
The 15<sup>th</sup> Court of Appeals**  
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## **ORDER OF THE COURT ON SUBMISSION**

**The appeal is granted for consideration of the following questions presented:**

**IT IS THEREFORE ORDERED that counsel appear before the Texas Court of Criminal Appeals to present oral argument on the following issues:**

- (1) Whether the search warrant was improperly issued mandating the suppression of the evidence obtained as a result of the search warrant and whether the court abused its discretion in failing to do so.**

**And**

- (2) Whether Appellant's prosecution under Texas Penal Code, Sections 19.04 and 22.04, as applied to him, was unconstitutional under the First Amendment Freedom of Religion and due to its interaction with Texas' religious accommodation statute found in Chapter 110 of the Texas Civil Practice and Remedies Code.**

**THE TEXAS COURT OF CRIMINAL APPEALS**

DON COLESON, Appellant

v.

THE STATE OF TEXAS, Appellee

Docket No. Y&G-APP-2011

September 1, 2011

CASES BELOW:

Appeal is **GRANTED** so that the court may hear and consider the issues raised by the record.

The issues before the Court are:

- (1) Whether the search warrant was improperly issued mandating the suppression of the evidence obtained as a result of the search warrant and whether the court abused its discretion in failing to do so.**

**And**

- (2) Whether Appellant's prosecution under Texas Penal Code, Sections 19.04 and 22.04, as applied to him, was unconstitutional under the First Amendment Freedom of Religion and due to its interaction with Texas' religious accommodation statute found in Chapter 110 of the Texas Civil Practice and Remedies Code.**

It is further ordered that this case be set down for an expedited hearing in the January 2012 term of this court. The Appellant, Don Coleson, shall present argument first.

Michelle Willoughby, Chief Justice

## MEMORANDUM TO THE COURT

**To: Court of Criminal Appeals**

**From: Lynn Herrington, Law Clerk**

We have received a new appeal from the 15<sup>th</sup> Court of Appeals. At your request, I have reviewed the appeal and the record and provide this summary of the case:

### **Facts:**

This case involves the death of Annabelle Lee Coleson, age 4 as a result of untreated juvenile diabetes, which resulted in diabetic ketoacidosis. Appellant was the father of Annabelle Lee Coleson ("Annabelle"). The Coleson family is members of the First Church of the Divine Healing of Our Lord a religion in which illnesses are addressed through prayer rather than by traditional medicine. Thus, Appellant and his church attempted to treat Annabelle's illness through prayer alone.

Following Annabelle's death, a search warrant was issued for the Coleson house and certain materials were gathered that indicated, in conjunction with other witness testimony, that the Appellant had been aware of Annabelle's illness for at least two weeks and had been warned to get her medical care.

Appellant argues two issues on appeal: First, that the court abused its discretion in not suppressing evidence gathered as a result of the search warrant. Second, that he has a fundamental right to free exercise of religion and to raise his children as he wishes; therefore, his prosecution under Texas Penal Code, Sections 19.04 and 22.04, as they were applied to him, was unconstitutional under the First Amendment Freedom of Religion and due to its interaction with Texas' religious accommodation statute found in Chapter 110 of the Texas Civil Practice and Remedies Code.

Appellant was convicted in the 1<sup>st</sup> District Court of Coco County, Texas of involuntary manslaughter and endangering the welfare of a child, based on his refusal to obtain medical treatment for his child. He was sentenced to 5 years incarceration on each count, to run concurrently, and a fine of \$10,000.

### **RECORD ON APPEAL**

1. 15<sup>th</sup> Court of Appeals Decision
2. Sworn Complaint
3. Search Warrant and Evidence Ledger
4. Order Denying Motion to Suppress Evidence
5. Jury Instructions
6. Trial Evidence (e-mails, notes, photograph, witness statements, autopsy report, police report)
7. Judgment of Conviction by Jury

**NO. 11-YAG-15THAPP**  
**IN THE COURT OF APPEALS**  
**FOR THE 15<sup>TH</sup> DISTRICT OF TEXAS**

**AT COCO COUNTY**

**PANEL A**

**SEPTEMBER 1, 2011**

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**Don Coleson, Appellant**

**v.**

**State of Texas, Appellee**  
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**FROM THE 1<sup>ST</sup> CRIMINAL DISTRICT COURT OF COCO COUNTY**  
**NO. 11-123456; HONORABLE NATHAN CAPPER, JUDGE**

**OPINION**

Defendant was convicted in the 1<sup>st</sup> District Court of Coco County, Texas of involuntary manslaughter and endangering the welfare of a child, based on Defendant's refusal to obtain medical treatment for his child. He was sentenced to 5 years incarceration on each count, to run concurrently, and a fine of \$10,000. This direct appeal followed. We affirm.

On appeal, Appellant raises two issues:

(1) That the notes and e-mails obtained as a result of the search warrant should have been suppressed as the search warrant was not properly issued and the court abused its discretion in failing to do so.

(2) That Appellant has a fundamental right to free exercise of religion and to raise his children as he wishes; therefore, his prosecution under Texas Penal Code, Section 19.04, as it was applied to him, was unconstitutional under the First Amendment Freedom of Religion and due to its interaction with

Texas' religious accommodation statute found in Chapter 110 of the Texas Civil Practice and Remedies Code.

## I.

### FACTUAL BACKGROUND

Appellant was the father of Annabelle Lee Coleson ("Annabelle"). The Coleson family is members of the First Church of the Divine Healing of Our Lord a religion in which illnesses are addressed through prayer rather than by traditional medicine. Thus, when Annabelle began to feel ill in January of 2011, Appellant and his church prayed for her recovery. Annabelle was ill for a period of at least two weeks during which time she appeared weak and tired easily. She ate little, drank a lot of water, and urinated frequently. She had labored breathing and ultimately lapsed into a coma. Annabelle died on January 31, 2011 of what was later determined to be diabetic ketoacidosis secondary to untreated juvenile onset diabetes. During the two week period when Annabelle was ill, Appellant rebuffed any suggestions to seek traditional medical assistance, stating that only through prayer could Annabelle be healed.

On the weekend prior to her death, Annabelle was listless and lethargic. She could not get out of bed, walk or talk and could not eat or drink without being fed through a syringe. Her breathing was labored and on several occasions she stopped breathing. On the day that Annabelle died, the Appellant asked a friend to come to his house and pray for healing with them. The friend called and activated the church prayer chain and 30 to 40 members of the church gathered at the Appellant's house to pray for Annabelle. At one point, the friend suggested that the Appellant call 911; however the Appellant and his pastor rebuffed this suggestion and continued praying. At around 3:45, Annabelle's teacher called her house and learned that Annabelle had lapsed into a coma that day and was currently not breathing. Annabelle's teacher contacted 911. At approximately the same time that the ambulance and police arrived at Appellant's home, Appellant also called 911. Annabelle was transported to the hospital where she was noted to be very emaciated and dehydrated. Efforts to revive Annabelle failed and she was pronounced dead at 4:50 p.m.

Appellant's faith in the power of prayer continued even after Annabelle was pronounced dead. When the medical examiner asked Appellant about funeral home arrangements, he responded "We won't need one. She will be alive tomorrow." When the medical examiner advised Appellant that the body would be taken in for an autopsy, Appellant responded "You won't need to do that, she will be alive by then."

Appellant argues that the court abused its discretion in not suppressing evidence gathered as a result of the search warrant. Appellant also argues that he has a fundamental right to free exercise of religion and to raise his children as he wishes; therefore, his prosecution under Texas Penal Code, Sections 19.04 and 22.04, as they were applied to him, was unconstitutional under the First Amendment Freedom of Religion and due to its interaction with Texas' religious accommodation statute found in Chapter 110 of the Texas Civil Practice and Remedies Code. We disagree and will affirm the judgment of the trial court.

## II.

### VALIDITY OF SEARCH WARRANT

A trial court's decision on a motion to suppress evidence is reviewed under a bifurcated standard of review. *McKissick v. State*, 209 S.W.3d 205, 211 (Tex.App.-Houston [1st Dist.] 2006, pet. ref'd). Almost total deference is given to the trial court's determination of historical facts that depend on credibility. Likewise, our review of an affidavit in support of a search warrant is not de novo and great deference is given to the magistrate's determination of probable cause. *Id.* That is to say, we do not review the facts for re-determination. However, we do review de novo the trial court's application of the laws of search and seizure and probable cause to those facts. *Id.*

No search warrant may issue unless supported by an affidavit setting forth substantial facts establishing probable cause for its issuance. Tex.Code Crim. Proc. Ann. arts. 1.06, 18.01(b) (Vernon 2005 & Supp. 2009). The issuance of a search warrant for "items" requires that the peace officer first present to a magistrate a sworn affidavit setting forth sufficient facts to establish probable cause that (1) a specific offense has been committed; (2) the **specifically described property or items to be searched for or seized constitute evidence of that offense or evidence that a particular person committed that offense**; and (3) the property or items constituting such evidence are located at or on the particular person, place, or thing to be searched. Tex.Code Crim. Proc. Ann. arts. 18.01(c), 18.02(10) (Vernon 2005).

Great deference is given to the judge's decision to issue a warrant. *Rodriguez v. State*, 232 S.W.3d 55, 60 (Tex.Crim.App.2007). "The test for determination of probable cause is whether the magistrate had a substantial basis for concluding that a search would uncover evidence of wrongdoing." *McKissick*, 209 S.W.3d at 211 (citing *Illinois v. Gates*, 462 U.S. 213, 236–37, 103 S.Ct. 2317, 2331, 76 L.Ed.2d 527 (1983)). Probable cause is determined by looking at the four corners of the affidavit. U.S. Const. amend. IV; Tex. Const. art. I, § 9; Tex.Code Crim. Proc. Ann. art. 18.01(b) (Vernon Supp.2010) ("A sworn affidavit ... establishing probable cause shall be filed in every instance in which a search warrant is requested."); *Nichols v. State*, 877 S.W.2d 494, 497 (Tex.App.-Fort Worth 1994, pet. ref'd). Reasonable inferences may be drawn from the affidavit, but the affidavit must be interpreted in a common sense and realistic manner. *Id.* The affidavit must show facts and circumstances to warrant a person of reasonable caution to believe that the criteria set forth in the Code of Criminal Procedure art. 18.01(c) have been met. *Tolentino v. State*, 638 S.W.2d 499, 501 (Tex.Crim.App. [Panel Op.] 1982). When under the totality of the circumstances, the facts submitted to the magistrate are sufficient to justify a conclusion that the object of the search is probably on the premises to be searched at the time the warrant is issued, then probable cause exists. *McKissick*, 209 S.W.3d at 211.

In this case, Appellant argues that the affidavit for the search warrant did not state probable cause to justify the seizure of any items, in particular the e-mails and notes, because the affidavit provided no probable cause to authorize the search and seizure of certain items. In order for an affidavit for a search warrant to show probable cause, sufficient circumstances must be set forth for a judge to determine, independently, the validity of the affiant's belief that contraband is at the place to be searched. There is no magical formula for providing such information. *Frazier v. State*, 480 S.W.2d 375, 379 (Tex.Cr.App.1972). It is irrelevant whether there are other facts that could or should have been included in the affidavit. The question is whether there was a substantial basis for concluding a search would uncover evidence of wrongdoing. If the affidavit shows facts and circumstances within

the affiant's knowledge and of which the affiant has reasonable trustworthy information sufficient to warrant a person of reasonable caution to believe that the criteria set forth in Art. 18.01(c), V.A.C.C.P., has been met, the probable cause exists. In this case, the affidavit stated that an offense had been committed; it listed the property or items to be seized and that such items were used in the commission of a crime; and it stated where the items were located. Therefore, considering the facts contained in the four corners of the affidavit and the reasonable inferences therefrom in the totality of the circumstances, it is our conclusion that the judge had a “substantial basis for concluding that a search would uncover evidence of wrongdoing” and that the facts submitted to the judge were sufficient to justify a conclusion that the objects of the search were probably on the premises to be searched at the time the warrant is issued.

### **III.**

#### **FREEDOM OF RELIGION AND FREEDOM TO PARENT**

Appellant argues that his prosecution under Texas Penal Code, Section 19.04, as it was applied to him, was unconstitutional under the First Amendment Freedom of Religion and due to its interaction with Texas’ religious accommodation statute found in Chapter 110 of the Texas Civil Practice and Remedies Code. In plain language, Appellant argues that the involuntary manslaughter and endangering the welfare of a child statutes were unconstitutionally applied to punish conduct that is protected by the free exercise clause of the First Amendment.

Appellant premises his right as a parent to refuse medical treatment for his child on two bases: First that parents have a broad grant of authority conferred upon them to raise their children as they see fit. This grant of power is commonly referred to as the parental control doctrine. Second, he relies upon the Free Exercise Clause of the First Amendment, which states: "Congress shall make no law respecting the establishment of particular religion or prohibiting the free exercise thereof." Appellant argues that because there is religious conduct in concert with another protected liberty interest (the parental control doctrine) that the court should use the compelling government interest test in this case. We will provide a background on the Parental Control Doctrine and Free Exercise Clause in this context and then address Appellant’s argument regarding the compelling government interest test and its applicability in determining whether the statutes at issue should have been applied to Appellant in these circumstances.

#### **A. Background**

##### **The Parental Control Doctrine**

A long history of constitutional law sets forth the principle that the right to raise a child and make decisions on their behalf resides first and foremost with the parent. Supreme Court jurisprudence quite firmly places the parent and not the state as the primary caretakers and advocates for the care and upbringing of a child. In *Parham v. J.R.*, the Court held, “for centuries it has been a canon of the common law that parents speak for their minor children. So deeply embedded in our traditions is this principle of law that the Constitution itself may compel a State to respect it.” 442 U.S. 584, 621 (1979). This latitude afforded to parents is premised on the supposition that the natural bonds of affection between parent and child will necessarily cause a parent to act in the child's best interests. *Id.*

In the 1920s, in *Meyer v. Nebraska*, the seminal case on this issue, the Supreme Court recognized that parents retain the primary authority for the upbringing of their child and as decision makers on issues of a child's health and well-being. 262 U.S. 390 (1923). The Court in *Meyer* asserted that the right of parents to raise and educate their children was a fundamental liberty interest and therefore protected by the due process clause. *Id.*; See also *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925). Likewise, in *Wisconsin v. Yoder*, the parents of Amish children challenged the constitutionality of compulsory school attendance laws. 406 U.S. 205 (1972). The parents argued that it was within their purview as parents to raise their children as they saw fit, which would not include schooling past the age of sixteen and that such a requirement would affect their right as parents to raise their children in the manner in which they deemed best appropriate. *Id.* at 209-210. The Supreme Court agreed with the Yoders, holding:

The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.

*Id.* at 232. The Court's holding was a statement that the state's interest did not outweigh the rights afforded to the parents pursuant to the Free Exercise Clause of the Constitution.

The Supreme Court has been fairly consistent in a line of cases addressing the issue of parental rights.<sup>1</sup> In *Stanley v. Illinois*, the Supreme Court held that parental rights, which include decisions regarding child bearing and child rearing, are "basic civil rights." 405 U.S. 645, 651 (1972). The Court held in *Santosky v. Kramer*, that it is a "fundamental liberty interest" for a parent to raise their child free from governmental interference. 455 U.S. 745, 753 (1982). In *Planned Parenthood v. Casey*, the Court set forth the principle that the right to make decisions on behalf of a child is primarily within the province of parental liberty, holding that "the Constitution places limits on a State's right to interfere with a person's most basic decisions about family and parenthood." 505 U.S. 833, 849 (1992). In *May v. Anderson*, the Court noted that a parent's "right to the care, custody, management and companionship of his or her minor children" is an interest that is "far more precious than... property rights." 345 US 528, 533 (1952). Finally, in *Prince v. Massachusetts*, the Court held that "it is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." 321 U.S. 158, 166 (1943).

However, a parents' right to raise a child, while an important legal concept, is not an absolute right. The right of parents to raise their children is qualified by a duty to ensure their health, safety, and well being. This has been particularly emphasized in cases involving medical decisions. In *Newmark v. Williams*, parents were charged with medical neglect for failing to authorize chemotherapy for their cancer-stricken child. 588 A.2d 1108, 1115 (Del. 1991). While ultimately concluding that the parents would not be forced to consent to chemotherapy due to the low rate of success, the court still noted that "we...recognize that parental autonomy over minor children is not an absolute right. Clearly, the state can intervene in the parent-child relationship where the health and safety of the child and the

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<sup>1</sup> Some courts have extended this line of cases into the arena of healthcare and medical decisions. In *Burge v. City and County of San Francisco*, the California Supreme Court held that along with the custody of a child is the right to make health care decisions for that child, by noting that the authority conferred on a parent in the rearing of a child includes the ability to make medical decisions for that child. 262 P.2d 6 (Cal. 1953).

public at large are in jeopardy.” *Id.* at 1116. Likewise, in *Jacobson v. Massachusetts*, the Court recognized that parental authority, in certain instances, is not free from state regulation and intervention. 197 U.S. 11 (1905). In *Prince v. Massachusetts*, the Court held that “the family itself is not beyond regulation in the public interest...and neither rights of religion nor rights of parenthood are beyond limitation.” 321 U.S. 166. The Court in *Prince* went on to say there is a “realm of family life which the state cannot enter” without substantial justification. *Id.* *Without substantial justification.* What could provide more justification than the necessity of life sustaining medical care for a young child? It is clear, despite appellant’s argument, that while significant leeway is given to parents to be free from state interference in the raising of their children, at some point, with substantial justification such as the health, safety and well-being of a child, the state can interfere with those rights.

### **The Free Exercise Clause As It Relates to the Parent-Child Paradigm**

The parental control doctrine often acts in concert with the First Amendment. Here, the appellant seeks to argue that his liberty rights to raise his children as he sees fit in conjunction with his First Amendment free exercise rights provide a place of refuge, a justification, for his decisions.

The First Amendment states in part: “Congress shall make no law respecting a particular religion or prohibiting the free exercise thereof.” U.S. Const. Art. I.

It is well supported in legal precedent that the Free Exercise Clause acts as a vehicle to preserve and enhance parental autonomy. In *Prince*, the Court stated, “the rights of children to exercise their religion, and of parents to give them religious training and to encourage them in the practice of religious beliefs, as against preponderant sentiment and assertion of state power voicing it, have had recognition here...” 321 U.S. at 165. Likewise, in *Yoder*, the Court similarly held that “the duty to prepare the child for ‘additional obligations...’ must be read to include the inculcation of moral standards, religious beliefs, and elements of good citizenship.” 406 U.S. at 233.

Parents who reject conventional medical treatment for their children have invoked the Free Exercise Clause in the medical context and there are instances where courts have upheld this as a parent’s right. In *In Re Seithfert*, the parent of a fourteen-year-old child with a cleft palate and a hair lip refused corrective surgery, preferring “mental healing by letting the forces of the universe work on the body.” 127 N.E.2d 820, 822-23 (N.Y. 1955). Here, the court refused the state’s request to compel surgery. *Id.* Likewise, in *In Re Green*, where the parents objected on religious grounds, the court refused to order corrective spinal surgery on a minor. 292 A.2d 387, 392 (Pa. 1972). The court held, “as between a parent and the state, the state does not have an interest of sufficient magnitude outweighing a parent’s religious beliefs when the child’s life is not immediately imperiled by his physical condition.” *Id.* These cases seem to indicate that in the context of medical decision making, the Free Exercise Clause is a powerful weapon, allowing parents to reject conventional medical treatment in favor of alternative treatment methods.

The Free Exercise Clause has also been successfully used as an affirmative defense to shield parents from criminal liability when their child died as a result of sole reliance on spiritual healing. In *State v. Lockhart*, where a child died as a result of a good faith reliance on spiritual healing rather than conventional medicine, the Oklahoma Court of Criminal Appeals held that parents could not be liable for manslaughter. 644 P.2d 1059 (Okla. Cr. 1983). Likewise, in *In Re Hudson*, the court held that a Jehovah’s Witness could not be liable for child neglect when the refusal to accept conventional

medical treatment was premised on religious grounds. 126 P.2d 765, 768 (Wash. 1942). In *Bradley v. State*, the Florida Supreme Court determined that parents could not be criminally liable when their child perished as a result failed attempts at spiritual healing. 79 So. 651 (Fla. 1920). So it would appear that at least some courts have construed the Free Exercise Clause to confer some type of immunity from criminal prosecution or as an affirmative defense that can be wielded by religious parents whose actions would otherwise render them criminally liable.

We do not agree with the position taken by these courts. As with the general right to rear a child free from state intervention, the broad Free Exercise right for parents is not an absolute right. In *Prince*, the Court clearly held, “the family itself is not beyond regulation in the public interest, as against a claim of religious liberty. Furthermore, neither rights of religion nor rights of parenthood are beyond limitation.” 321 U.S. at 166 (citing *Reynolds v. United States*, 98 U.S. 145 (1878)). The Court in *Prince* also held, “[t]he right to practice religion freely does not include liberty to expose...the child...to ill health or death,” a holding which has been the basis for restricting the religious rights of parents in the context of medical care. *Id.* at 166-67. Likewise, while *Wisconsin v. Yoder* represented a fairly expansive reading of the Free Exercise Clause, that Court still indicated that a Free Exercise claim by parents may be subject to stringent limitation in certain instances. 406 U.S. 205, 233-34 (1972). This narrowing of what appears to be a Constitutional guarantee has been further tapered in more recent Free Exercise jurisprudence, in particular as regards medical care for minors. For example, in *In Re Sampson*, the court authorized surgery for facial and neck deformities over the objections of the parents, in part because the parents’ objection was only to the blood transfusion. 317 N.Y.S.2d 641, 657-59.

Courts have gone beyond merely requiring parents to provide medical care to their children and have upheld convictions where the withholding of medical care resulted in the death of the child. In *Walker v. Superior Court*, Christian Scientists parents relied solely on faith healing to cure their son of meningitis. 763 P.2d 852, 855 (1988). Ultimately, the child died and the parents were prosecuted for involuntary manslaughter. *Id.* The parents argued free exercise of religion as their defense, but the court rejected this argument and found the Walkers to be criminally liable for the death of their child, stating: “parents have no right to free exercise of religion at the price of a child's life.” *Id.* at 870. Likewise, in *Commonwealth v. Barnhardt*, the court upheld involuntary manslaughter convictions of parents who were members Faith Tabernacle Church and relied on faith healing to cure their son's cancer. 497 A.2d 616 (Pa. Super. 1985). Again the parents claimed religious freedom as their defense; however the court held that the parents abdicated their duty to protect the child when his life was in danger. *Id.* In *Hall v. State*, parents were found guilty of reckless homicide when their child died from bronchial pneumonia after they refused conventional medical treatment. 493 N.E.2d 433 (Ind. 1986). These and other cases<sup>2</sup> provide a bases for holding parents

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<sup>2</sup> See also *Hermanson v. State*, 570 So.2d 322 (Fla. 1990)(upholding conviction for felony child abuse and third degree murder where child with juvenile diabetes died after treatment solely by spiritual means); *Craig v. State*, 220 Md. 590 (1959)(where court held that religious freedom did not constitute a bar to prosecution for failure to provide medical treatment and faith healing parents were convicted after child died of pneumonia); *People v. Pierson*, 176 N.Y. 201 (1903)(court refused to give parents immunity from prosecution for criminal neglect); *Beck v. State*, 29 Okla. Crim. 240 (1925)(upholding conviction of father who relied on prayer rather than medical treatment for child who ultimately died of tetanus); *Funkhauser v. State*, 763 P.2d. 695, 697-98 (Okla.Crim.App. 1988)(upheld parents’ conviction where infant died of pneumonia after parents’ relied on spiritual healing); *Owens v. State*, 6 Okla. Crim. 110 (1911)(holding that religious belief was not a defense to

criminally liable for failing to provide necessary conventional medical care to their child. While the cases from other jurisdictions are not binding on this court, we find them both instructive and persuasive and follow them in this decision.

It is without question that parents have a fundamental civil liberty to raise their children as they see fit and a fundamental right to their religious beliefs; however, this right is not absolute and when the health, welfare or safety of a child is jeopardized, state interference may be necessary.<sup>3</sup>

## **B. Standard of Review**

The question at issue is what level of scrutiny should be used to determine whether state action in this case is necessary and constitutional. Appellant makes two arguments in support of using the compelling governmental interest test. First, he argues that because his case implicates two fundamental rights, free exercise rights and parental rights, the hybrid rights test found in *Employment Division v. Smith* should be used. 494 U.S. 872, 881 (1990). Second, he argues that the Texas Civil Practice and Remedies Code 110.003, part of the Texas Religious Freedom Act, requires that the compelling interest test be used. We reject both these arguments.

It is true that some cases in this area balance the governmental interest served by the law at issue against the impact that the law has on the particular religious practice. *See, e.g. Sherbert v. Verner*, 374 U.S. 398 (1963); *Wisconsin v. Yoder*, 406 U.S. 205 (1971). In such cases, the government's interest in making the law must outweigh the burden on an individual's fundamental rights. Indeed, where more than one constitutionally protected right is implicated, the compelling governmental interest test may be appropriate. In *Smith*, Justice Scalia explained: "the only decisions in which we have held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action have involved not the Free Exercise Clause alone, but the Free Exercise Clause in conjunction with other constitutional protections, such as...the right of parents...to direct the education of their children." 494 U.S. at 881. In such cases, the compelling governmental interest test would be controlling. *Id.* It is this hybrid rights test that the Appellant urges us to use here arguing that his free exercise right in conjunction with the right to raise his children as he wishes are both implicated. Appellant argues that under the hybrid rights test found in

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child endangerment prosecution where child died of typhoid fever); *Commonwealth v. Nixon*, 718 A.2d 311 (Pa.Super.Ct. 1998)(where parents relied on prayer treatment and rejected conventional medical care and convicted of involuntary manslaughter in death of daughter from diabetes); *State v. Norman*, 808 P.2d 1159 (Wash.Ct.App. 1991)(holding that religious freedom is not absolute and does not permit a parent to place a child's life in danger where father was convicted for manslaughter where child died of diabetes treated solely through spiritual healing methods);

<sup>3</sup> [The child's parents] have a perfect right to worship as they please and believe what they please, [but] this right of theirs ends where somebody else's right begins. Their child is a human being in his own right - the right to live and grow up without disfigurement...when a religious doctrine espoused by the parents threatens to defeat or curtail such a right of their child, the State's duty to step in and preserve the child's right is immediately operative...to put it another way, when a child's right to live and his parents religious beliefs collide, the former is paramount, and the religious doctrine must give way. In *Re Clark*, 185 N.E. 128, 132 (Ohio Comm. Pleas 1962).

*Smith* the government should have to show a compelling interest in order to burden his religious rights. 494 U.S. 872, 881 (1990). However, *Smith* has no relevance here.

The fundamental issue at stake here is that of free exercise of religion. The parental control doctrine is encapsulated within the free exercise doctrine and is not separated from it. Quite simply, the parental control doctrine does not and never could stand independently as a claim against equal enforcement of criminal laws. Further, the parental control doctrine is never a central issue on the constitutionality of religious exemption statutes. Appellant's case is distinguishable from cases where a hybrid rights type test was used. For example, in *Yoder*, parental rights were an integral part of the parents' decision not to allow the child to attend school. 406 U.S. at 233-34. Their decision was collaterally motivated by their religious beliefs. However, here, appellant's conduct was solely motivated by religious beliefs. As such, use of the hybrid rights test would be inappropriate.

Appellant next argues that the compelling governmental interest test must be used pursuant to the Texas Religious Freedom Act. This section provides:

- (a) Subject to Subsection (b), a government agency may not substantially burden a person's free exercise of religion.
- (b) Subsection (a) does not apply if the government agency demonstrates that the application of the burden to the person:
  - (1) is in furtherance of a compelling governmental interest; and
  - (2) is the least restrictive means of furthering that interest.
- (c) A government agency that makes the demonstration required by Subsection (b) is not required to separately prove that the remedy and penalty provisions of the law, ordinance, rule, order, decision, practice, or other exercise of governmental authority that imposes the substantial burden are the least restrictive means to ensure compliance or to punish the failure to comply.

Tex. Civ. Prac & Rem. Code Ann § 110.003. However, Appellant disregards other portions of the Act. In particular,

- (b) In determining whether an interest is a compelling governmental interest under Section 110.003, a court shall give weight to the interpretation of compelling interest in federal case law relating to the free exercise of religion clause of the First Amendment of the United States Constitution.

Tex. Civ. Prac & Rem. Code Ann § 110.001. We read this section to mean that federal law on the subject should be considered. In cases such as this, federal law makes clear that the compelling governmental interest standard should not be used.

In this area, Supreme Court precedent has made clear that the proper test to use is whether a law is neutral and generally applicable. “[A] law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*,

508 U.S. 520, 531 (1993), citing *Smith*. To do otherwise “would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself.” *Reynolds v. U.S.*, 98 U.S. at 167. The involuntary manslaughter and endangering the welfare of a child statutes are neutral and of general applicability. They target no individuals, rather they hold all individuals accountable for conduct the state has determined to be criminal. Therefore, the court need not weigh the governmental interest supporting these statutes against the appellant’s religious beliefs. These statutes do not unconstitutionally hinder the appellant’s right to freely exercise his religion, even in the context presented here. However, even were the compelling governmental interest test required in order to withstand a free exercise challenge, such a compelling governmental interest would be found: the State’s interest in safeguarding the lives of its citizens is beyond serious dispute.

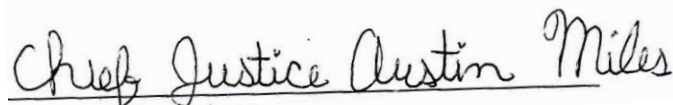
Other courts which faced a free exercise challenge in the context of parents who chose to pray over their sick children, have reached the same conclusion as we have. *See, e.g. People v. Pierson*, 68 N.E. 243 (N.Y. App. Div. 1903); *People ex rel. Wallace v. Labrenz*, 104 N.E.2d 769, 773-74 (Ill. 1952); *State v. Perricone*, 181 A.2d 751, 755-57 (N.J. 1962); *Commonwealth v. Barnhart*, 497 A.2d. 616 (Pa. Super. 1985); *Walker v. Superior Court*, 763 P.2d 852, 869-71 (Cal 1988). Those courts have followed the logic of the U.S. Supreme Court in *Prince v. Massachusetts*, which held that: “Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves.” 321 U.S. 158 (1944). The appellant has a constitutionally protected right to freely exercise his religious belief in prayer to cure illness. However, his rights to transfer that belief into conduct must yield to neutral, generally applicable criminal laws that are designed to protect public safety.

The Free Exercise Clause of the First Amendment protects religious belief, but not necessarily conduct. “Free exercise of religion does not necessarily mean the right to act freely in conformity with a religion. ‘The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires.’” *Employment Division v. Smith*, 494 U.S. 872, 877 (1990). However, as recognized in *Reynolds v. United States*, “[l]aws are made for the government of actions, and while they cannot interfere with mere religious beliefs and opinions, they may with practices.” 98 U.S. 145 (1879). The right to freedom of religious beliefs is absolute; however, for the protection of society, religiously motivated practices or conduct are subject to government regulation. *Cantwell v. Connecticut*, 310 U.S. 296, 303-304 (1940). Therefore, a claim of the right to free exercise of religion does not relieve an individual of the obligation to comply with “valid and neutral law[s] of general applicability” even when one’s religion dictates a course of conduct that is in conflict with the law. *Smith*, 494 U.S. at 879.

#### IV.

### CONCLUSION

Having overruled Appellant’s two issues, we affirm the judgment of the trial court



Chief Justice Austin Miles

**TRIAL CLERK'S RECORD**

**VOLUME 1**

**Trial Court Cause No. 11-123456  
In the 1<sup>st</sup> Criminal District Court  
Coco County, Texas  
Honorable Nathan Capper, Judge Presiding**

---

**THE STATE OF TEXAS**

**V.**

**DON COLESON**

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STATE OF TEXAS

IN THE 1<sup>ST</sup>

vs

CRIMINAL DISTRICT COURT

DON COLESON

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COCO COUNTY, TEXAS

**SWORN COMPLAINT**

Complainant, on information and belief, being first duly sworn on oath states that:

**Count 1:** Manslaughter in the second degree:

The above-named defendant on or about Monday, January 31, 2011, in the City of Brookbend, Texas, did recklessly cause the death of Annabelle Lee Coleson, contrary to Texas Penal Code, Section 19.04 which is a second degree felony, and upon conviction may be fined not more than \$10,000 and/or imprisoned not more than 20 years or less than 2 years.

**Count 2:** Second Degree Injury to a Child:

In the alternative, the above-named defendant on or about Monday, January 31, 2011, in the City of Brookbend, Texas did recklessly cause serious bodily injury to a child to wit the death of Annabelle Lee Coleson, contrary to Texas Penal Code, Section 22.04 which is a second degree felony, and upon conviction may be fined not more than \$10,000 and/or imprisoned for not more than 20 years or less than 2 years.

Complainant is a law enforcement officer in Brookbend, Texas and bases this complaint upon the attached law enforcement reports which your complainant believes are reliable in that they are made by the officer in the routine and ordinary course of the officer's official duties.

Your complainant believes the statements contained within said reports are reliable for the following reasons: They are made by Diane Reagan, Kate Riley, Rev. Shorty McGee and Madeline Coleson, as witnesses to activity, insofar as it is based upon personal observations and knowledge. They are made by Dr. Joshua Sapp based upon his specialized expertise. They are made by Don Coleson contrary to penal interests.

And prays that the defendant be dealt with according to law.

*Det Sgt Amelie Hodges*

Complainant – Det. Sergeant Amelie M. Hodges

Subscribed and sworn to before me,  
And approved for filing on this:  
February 25, 2011

*Morgan Taylor*

Morgan Taylor - District Attorney  
Coco County, Texas  
State Bar Number: 0134556782

**SEARCH WARRANT**

STATE OF TEXAS

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1<sup>st</sup> CRIMINAL DISTRICT COURT

COCO COUNTY, TEXAS

THE STATE OF TEXAS, to Detective Sergeant Amelie M. Hodges, Brookbend Police Department or any constable or any peace officer of said county:

WHEREAS, Detective Sergeant Amelie Hodges being duly sworn says that on the 31<sup>st</sup> day of January 2011, in the City of Brookbend, the State of Texas, in and upon certain premises located at 111 Penny Park Place, occupied by Don Coleson, Madeline Coleson and Annabelle Coleson, and more particularly described as follows:

A one-story house. There are double garage doors located on the north side of the house. There is a single brown front door to the house which is also located on the north side of the house. The roof of the house is black. There are white shutters on the home and the siding is dark green. There is a number affixed to the side of the house identifying it as number 111 Penny Park Place. There are now located and concealed upon these premises certain things which constitute evidence of a crime, possessed for the purpose of evading or violating the laws of the State of Texas and contrary to Texas Statutes, which things may constitute evidence of a crime, to wit the criminal homicide of Annabelle Lee Coleson which things were used in the commission of a crime, to wit:

Medical supplies including but not limited to syringes, medications, medical books, bedding used by the victim, clothing worn by the victim, religious books, religious videos, religious pamphlets, diaries, journals, logs, computers and computer files, computer hard drives, computer disks, computer zip drives and computer print outs.

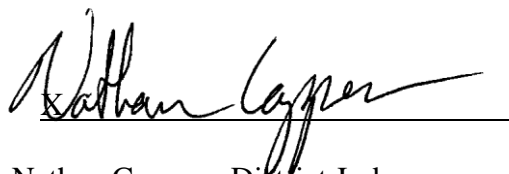
AND PRAYED that a search warrant be issued to search said home.

NOW, THEREFORE, in the name of the State of Texas, you are commanded forthwith to search said home for said things and if the same, or any portion thereof, are found, to bring the same and return this warrant after execution before this court, or before any court of record for Coco County, to be dealt with according to law.

Said warrant must be executed not more than three (3) days after the date of issuance and returned not more than 48 hours after execution thereof.

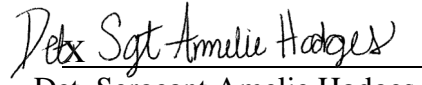
Dated this the 2nd day of February 2011.

BY THE COURT:

  
Nathan Capper - District Judge

ENDORSEMENT ON WARRANT

Received by me this 2nd day of February, 2011 at 1:00 p.m.


  
\_\_\_\_\_  
Det. Sergeant Amelie Hodges

I hereby certify that by virtue of the within warrant I searched the within named premises and found the following items:

See attached copy of evidence ledger

And have the same now in my possession subject to the direction of the court.

Dated this 4<sup>th</sup> day of February 2011.

  
\_\_\_\_\_  
Det. Sergeant Amelie Hodges

## Brookbend Police Department Search Warrant Evidence Ledger

<b>Case #:</b> 11-123456	<b>Report Date:</b> February 4, 2011	<b>Date &amp; Time Obtained:</b> February 4, 2011
<b>Items taken from:</b> <input type="radio"/> Person <input type="radio"/> Vehicle <input checked="" type="radio"/> Scene <input type="radio"/> Other		
<b>How seized:</b> <input type="radio"/> Incident to Arrest <input type="radio"/> Voluntary <input checked="" type="radio"/> Search Warrant <input type="radio"/> Other		
<b>Scene location or address:</b> 111 Penny Park Place, Brookbend, Texas		
<b>Person Name:</b> Don Coleson		<b>Owner:</b> <input checked="" type="radio"/> Yes <input type="radio"/> No

DESCRIPTION OF ARTICLES	
1	Physicians of Death book by Rev. Shorty McGee
2	Assorted CDs by Rev. Shorty McGee on healing by faith
3	Box for 12 syringes (1 syringe missing/11 in box)
4	Raised from the Dead by Rev. Shorty McGee
5	3 Bibles, King James Version
6	Guidebook to Healing by Rev. Shorty McGee
7	Two notes from Kate Riley to Don Coleson
8	Manila folder with insurance paperwork
9	Toshiba laptop computer
10	Squirt top water bottle with liquid
11	Used syringe with liquid
12	Information on the afterlife printed off the internet
13	E-mail printout between Don Coleson and Rev. Shorty McGee dated January 29, 2011
14	Bedclothes from Annabelle Coleson's room
15	Various clothing items of Annabelle Coleson

Chain of Custody		
Released By	Received By	Purpose of Change of Custody/Location
<b>Signature:</b> <b>Name, Title:</b> N/A <b>Date:</b>	<b>Signature:</b> <i>Det Sgt Amelie Hodges</i> <b>Name, Title:</b> Det. Sergeant Amelie M. Hodges <b>Date:</b> 2/4/2011	Evidence secured in Brookbend Police Department evidence locker

STATE OF TEXAS

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IN THE 1<sup>ST</sup>

vs

CRIMINAL DISTRICT COURT

DON COLESON

COCO COUNTY, TEXAS

**ORDER ON DON COLESON’S MOTION TO SUPPRESS EVIDENCE**

On the 18<sup>th</sup> day of April, 2011, the Court conducted a hearing on the Motion to Suppress Evidence filed by DON COLESON. The hearing consisted not only of argument of counsel, but also testimony from witnesses, the admission of affidavits and other documentary evidence. The Court after considering the pleadings, the testimony, the arguments, and briefs of counsel, Orders that Defendant’s Motion to Suppress should be denied.

The Court makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. The Court finds that the Search Warrant was issued after a probable cause affidavit for search had been presented by Detective Sergeant Amelie Hodges to the issuing judge.
2. The Court finds that the Warrant was issued on February 2, 2011 at 1:00 p.m. That entry onto the Defendant’s home located at 111 Penny Park Place, Brookbend, Texas was made pursuant to the warrant on February 4, 2011.
3. The Defendant and Detective Sergeant Amelie Hodges testified at the Motion to Suppress hearing.
4. The Court finds that given the facts and circumstances, the description of the place to be searched as stated in the search warrant was sufficiently specific.
5. The Court finds that given the facts and circumstances, the description of the items to be seized as stated in the search warrant were sufficiently specific.
6. The Court finds that given the facts and circumstances, the basis for issuance of the search warrant was sufficiently specific.

**CONCLUSIONS OF LAW**

1. No search warrant shall issue by a magistrate unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested.

2. A search warrant must only be issued upon a finding by the issuing magistrate that the request is supported by an affidavit that sets forth sufficient information that would constitute probable cause to believe that a crime has been committed and that the evidence of a crime will be found at the place to be searched.
3. A Probable Cause Affidavit may be based on the affiant's personal knowledge and/or on information that the affiant has if it is from a reasonably trustworthy source.
4. On a Motion to Suppress hearing, the Court must review the sufficiency of the Probable Cause affidavit by conducting a review of the information actually contained within the "four corners" of the probable cause affidavit.
5. The Court concludes as a matter of law that the Probable Cause Affidavit in this case complied with the law.
6. The Court concludes that the "four corners" of the affidavit in question provided sufficient probable cause to enter and search the Defendant's home as described in the warrant and to seize the property on the premises as described in the warrant.
7. Pursuant to the Court's factual determinations, the Court concludes that the descriptions of the place to be searched in the warrant was sufficiently specific.
8. The Court concludes that the warrant was validly issued upon appropriate probable cause and met all requisites of the Constitution of the United States of America, the Constitution and Laws of the State of Texas, including the requirements of Chapter 18 of the Texas Code of Criminal Procedure and other applicable law.

The Court concludes that based upon the above factual determinations and consideration of the applicable law, that the Defendant's Motion to Suppress the search warrant should be denied.

SIGNED this the 18<sup>th</sup> day of April, 2011



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JUDGE PRESIDING

## **Jury instructions for State v. Don Coleson**

In addition to standard instructions addressing such matters as the burden of proof on the State, the requirement of proof beyond a reasonable doubt and the need for jury unanimity, the following special jury instructions are appropriate for this case:

### **DEFINITIONS**

#### **INSTRUCTION NO. 1:**

1. A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint. (Texas Penal Code § 6.03(c)).
2. "Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ. (Texas Penal Code § 1.07 (46))
3. Child means a person 14 years of age or younger.
4. Omission means failure to act.

### **MANSLAUGHTER**

#### **INSTRUCTION NO. 2:**

A person commits the crime of manslaughter in the second degree if he recklessly causes the death of an individual. (Texas Penal Code § 19.04)

#### **INSTRUCTION NO. 3:**

Now, bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt that on or about January 31, 2011 in Brookbend, Texas, the defendant, Don Coleson did recklessly cause the death of Annabelle Lee Coleson, you will find the defendant guilty of the offense of manslaughter as alleged in the indictment.

If you do not so find, or if you have a reasonable doubt thereof, you will find the defendant not guilty.

### **INJURY TO A CHILD**

If, after full and careful deliberation of the charges of manslaughter in the second degree and criminally negligent homicide, you are not unanimously satisfied beyond a reasonable doubt that the defendant is guilty of these charges, then you may consider whether the defendant has been proven to be guilty of the lesser crime of injury to a child.

**INSTRUCTION NO. 4:**

A person who has a legal duty to act commits the crime of injury to a child if he recklessly by omission, causes a child serious bodily injury. (Texas Penal Code § 22.04 (a))

A parent of a child has the duty to support the child, including providing the child with clothing, food, shelter, medical and dental care, and education. (Texas Family Code § 151.001 (a)(3)).

**AFFIRMATIVE DEFENSE**

**INSTRUCTION NO. 5:**

It is an affirmative defense to injury to a child that the omission was based on treatment in accordance with the tenets and practices of a recognized religious method of healing with a generally accepted record of efficacy.

The burden of proof is on the defendant to prove such a defense by a preponderance of the evidence. The term "preponderance of the evidence" means the greater weight of the credible evidence.

**INSTRUCTION NO. 6:**

Now, bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt that on or about January 31, 2011 in Brookbend, Texas, the defendant, Don Coleson did by omission, intentionally, knowingly or recklessly by omission, cause serious bodily injury to Annabelle Lee Coleson and you find that the defendant failed to prove his affirmative defense by a preponderance of the evidence, you will find the defendant guilty as charged in the indictment.

If you find that the defendant did not by omission, intentionally, knowingly, or recklessly cause serious bodily injury to Annabelle Lee Coleson or you have a reasonable doubt thereof, or if you find by the preponderance of the evidence that the omission was based on treatment in accordance with the tenets and practices of a recognized religious method of healing with a generally accepted record of efficacy, then you will find the defendant not guilty.

**INSTRUCTION NO. 7:**

The evidence that has been presented to you may be either direct or circumstantial. The term "direct evidence" refers to evidence that is given by a witness who has directly perceived something at issue in this case. The term "circumstantial evidence" refers to evidence from which, based on your common sense and experience, you may reasonably infer something that is at issue in this case. The law does not distinguish between direct and circumstantial evidence in terms of their weight or value in finding the facts in this case. One is not necessarily more or less valuable than the other.

-----Original Message-----

From: Shorty McGee <revshortymcgee@coldmail.com>

To: Don Coleson <colesondad@coldmail.com>

Sent: Sat, Jan 29, 2011 4:45 pm

Subject: Prayer Chain Request Activated

Lord, we thank You for having mercy on Your dear child Annabelle and for comforting her father during this trial of his faith. We thank You Father for giving Don the faith to hold fast to the confession of his hope and that it waiver not, for it is Your will Lord that Annabelle was already healed, 1 Peter 2:24 - - "Who his own self bare our sins in his own body on the tree, that we, being dead to sins, should live unto righteousness: by whose stripes ye were healed."

We add our faith to Don's and command Annabelle to be healed. We command that spirit of infirmity to loose Annabelle now, leave her body, leave her home, and go back from where it came and stay there. We stand on the word, Mark 11:24 - "Therefore I say unto you, What things soever ye desire, when ye pray, believe that ye receive them, and ye shall have them."

Matthew 18:18-20 - "Verily I say unto you, Whatsoever ye shall bind on earth shall be bound in heaven: and whatsoever ye shall loose on earth shall be loosed in heaven. Again I say unto you, That if two of you shall agree on earth as touching any thing that they shall ask, it shall be done for them of my Father which is in heaven. For where two or three are gathered together in my name, there am I in the midst of them."

James 5:14-16 - Is any sick among you? let him call for the elders of the church; and let them pray over him, anointing him with oil in the name of the Lord: And the prayer of faith shall save the sick, and the Lord shall raise him up; and if he have committed sins, they shall be forgiven him. Confess [your] faults one to another, and pray one for another, that ye may be healed. The effectual fervent prayer of a righteous man availeth much.

We pray in the name of Jesus Christ, our only hope. Amen.

Be Blessed Reverend McGee.

-----Original Message-----

From: Don Coleson <colesondad@coldmail.com>

To: Shorty McGee [revshortymcgee@coldmail.com](mailto:revshortymcgee@coldmail.com)

Sent: Sat, Jan 29, 2011 3:00 pm

Subject: Help my daughter needs emergency prayer!!!

Please activate the prayer chain. I need agreement in prayer over my daughter who is very weak and pale at the moment with hardly any strength - struggling to breathe. Has stopped breathing once for a short period of time. Call me at 817-555-1213.

Blessings in Faith, Don Coleson.



FROM THE DESK OF KATE RILEY

January 19, 2011

Mr. Coleson:

I am concerned about Annabelle's behavior and appearance recently at school. Typically Annabelle is a lively little girl and has difficulty settling down and listening in class. She is typically very talkative and active during playtime. This week however, Annabelle has been unusually quiet. She does not talk much during the day and during recess, rather than run and play with the other children; she will sit or lie down next to me on the bench. She also does not want to participate in physical education activities or classroom games and has said several times that she is tired. This sort of behavior from Annabelle is very unusual. I sent Annabelle to the school nurse today when she complained of not feeling well, and it is the suggestion of the nurse that you should have Annabelle checked out by your family physician.

Please let me know if you have any questions or if I can provide you or your family doctor any more information about what I have observed at school.

Sincerely,

Kate Riley





FROM THE DESK OF KATE RILEY

January 28, 2011

Mr. Coleson:

As you know, I am very concerned about Annabelle's health. Annabelle was extremely tired and weak today. She was lethargic, would not go out and play and would not eat lunch. After we spoke this morning and I asked you to come pick up Annabelle and you stated that you would pick her up after school, I sent Annabelle to the nurse's office. Annabelle spent the day sleeping in the nurse's office. It is my opinion that something is seriously wrong with Annabelle. This is based on my observations of Annabelle over the past two weeks, in particular her tiredness, weakness, failure to eat, excessive thirst and trips to the bathroom, and her clear loss of weight. Annabelle's condition has only worsened over the last two weeks and in particular over the past few days. As I told you when we spoke on the phone earlier this week, Annabelle needs to see a doctor. I hope that you will ensure that she sees a physician immediately.

Sincerely,

Kate Riley





## Brookbend Police Department Initial Police Report

Case #: 11-123456	Report Date: February 14, 2011	Page Number: 1 of 4
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### SYNOPSIS:

Annabelle Coleson (age 4) died at her residence of 111 Penny Park Place in the City of Brookbend as a result of medical complications. This case will be marked active and the investigation will continue. On January 31, 2011 at 3:56 p.m. dispatch requested that Officer Myrick respond to 111 Penny Park Place in the City of Brookbend for a report of unknown medical problems with a four year old female. Dispatch further paged out Brookbend Ambulance Service to respond to the scene as well. Dispatch received information from a female in Fort Worth who stated that her one of her students was ill and due to religious reasons, the father would not take the child to the hospital for treatment. The caller further advised dispatch that she believed the child had had very shallow breathing, was running a high fever, was extremely weak and pale and that she feared the child was in or near a coma at the time of her call.

I responded to the area as well and while in route to that address, dispatch advised that they had just received a 911 call from the residence of 111 Penny Park Place, stating that the child was now without a pulse and was no longer breathing.

I was the first to arrive on scene and upon entry into the residence there were numerous people sitting in the living and dining room. I was directed to a bedroom in the back of the house where I observed a 4-year-old female lying on a blanket on the floor of the room. I observed a man (later identified as the child's father) attempting to push down on the girl's chest as I came into the room. The father was praying to God at the time I came into the room. There were several other adult males in the room also praying. The Brookbend Emergency Personnel entered the room right behind me and immediately hooked the girl up to the defibrillation unit. The girl lying on the mattress had her eyes open and was still warm at the time of our arrival. I picked up the 4-year-old girl and took her out to the cot in the ambulance where she was immediately loaded up and transported to Brookbend Hospital.

Once at Brookbend Hospital, Emergency Personnel attempted to revive Annabelle for approximately 30 to 45 minutes but those attempts were unsuccessful and Annabelle was pronounced dead at Brookbend Hospital at 4:50 p.m.

At this time while in the privacy of a room outside the Emergency Room Department, I spoke with Don Coleson, the father of Annabelle. As I spoke with her father, he advised that Annabelle had not been sick at all over the past couple of days. It was extremely difficult to get any information from the father about any medical problems Annabelle was experiencing. He advised that Annabelle had not been eating or drinking and that she was unable to talk or walk from Saturday, January 28, 2011 through today.

## Brookbend Police Department Initial Police Report

Case #: 11-123456	Report Date: February 14, 2011	Page Number: 2 of 4
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Mr. Coleson stated that it appeared as if Annabelle was in a coma starting this afternoon where she was unable to move, walk or talk in any way. Mr. Coleson stated that he placed Annabelle on the blanket just before I had arrived.

As I attempted to speak with the father, Annabelle's sister Madeline (age 9) began providing me with information about how Annabelle had been feeling over the last couple of days. She stated that Annabelle had not been eating or drinking and that the last time she heard her say anything as far as words, was yesterday before dinner. After dinner Annabelle had laid down and was unable to move her mouth and would only make moaning sounds. As Madeline provided me this information, the father acknowledged that it was correct but would not provide any additional details about how sick Annabelle had been.

Shortly after this interview, the father was informed by the Emergency Room Physician that Annabelle had died. I further interviewed Mr. Coleson on February 7, 2011 and Mr. Coleson provided me with a written statement at that time. The information contained in his statement was similar to the information he provided to me at the hospital.

On February 2, 2011, I made contact with the reporting party from Fort Worth, Kate Riley who was Annabelle's school teacher.

In speaking with Ms. Riley, she advised the following: She stated that she felt Annabelle had been sick for at least two or more weeks and had not been talking or as active or eating at least part of this time. During this time she stated that she did have the chance to speak with Madeline and Mr. Coleson about Annabelle being sick and that this is how she learned some of her information. According to Ms. Riley, she sent two notes home regarding Annabelle's condition and approximately a week ago she spoke with Mr. Coleson on the phone and expressed her concerns and the need to take Annabelle to a doctor. Mr. Coleson told Ms. Riley that he thought it might just be a growth spurt and he was sure that Annabelle would be okay. Ms. Riley told him that she was very concerned about Annabelle and that she did not believe it was just a growth spurt. She told Mr. Coleson that since Annabelle was not eating or drinking, that at a minimum, Annabelle needed to get Pedialyte in order to maintain nutrients in her body. Mr. Coleson told her that to give Annabelle Pedialyte or any sort of medication or medical care would be taking away the glory from God and that he would not provide Annabelle any such care. Mr. Coleson told Ms. Riley at that time "Annabelle will be fine. God will heal her." Ms. Riley told me that Mr. Coleson does not believe in doctors and will not take either child to the doctor for any check-ups or shots.

Ms. Riley also spoke to Madeline who told her that Annabelle had been acting like this for several days and mostly didn't want to get out of bed, play, eat or drink.

**Brookbend Police Department  
Initial Police Report**

<b>Case #: 11-123456</b>	<b>Report Date: February 14, 2011</b>	<b>Page Number: 3 of 4</b>
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On January 31, 2011 at approximately 3:45 p.m., Ms. Riley called the Coleson home when Annabelle did not come to school that day. She was told that Annabelle was in a coma state when she called and spoke to Annabelle's sister Madeline. It was at this time that she called dispatch to report the situation. She advised dispatch that she understood that Mr. Coleson was putting water into Annabelle's mouth with a syringe and was worried that Annabelle could not swallow any of the water being given to her and might choke.

Ms. Riley provided me a written statement. Copies of the notes that Ms. Riley wrote to Mr. Coleson were found during the search of the Coleson house.

On February 8, 2011, I spoke to a friend of Mr. Coleson's by the name of Diane Reagan who told me that on Monday morning, January 31, 2011, Mr. Coleson called her and stated that Annabelle was in a coma state but was still breathing. Mr. Coleson told Diane that Annabelle had not been running a fever and had never complained of being sick. Mr. Coleson asked Diane what he should do because Annabelle seemed to be very dehydrated. Diane advised him to use a syringe to put water into Annabelle's mouth. Diane Reagan is a member of Mr. Coleson's church. Ms. Reagan arrived at the Coleson house in the morning and stayed throughout the day. According to Ms. Reagan, various church members came to the home as did the pastor and they prayed throughout the day. At one point Ms. Reagan suggested that EMS be called to transport Annabelle to the hospital; however, both Mr. Coleson and the pastor told her no.

Ms. Reagan provided me with a written statement.

On February 9, 2011, I spoke with Madeline Coleson. Madeline provided me with information regarding Annabelle's condition over the past two weeks. According to Madeline, the Coleson family did not believe in obtaining professional medical care.

Madeline Coleson provided me a written statement.

On February 9, 2011, I interviewed Reverend Shorty McGee. Rev. McGee provided me with information regarding the religious beliefs of his church regarding professional medical care. Rev. McGee also provided me with information regarding the events which occurred on January 31, 2011 surrounding the death of Annabelle Lee Coleson. Rev. McGee and Don Coleson had corresponded prior to January 31, 2011 about Annabelle's medical condition. Copies of the e-mails were recovered during the search of the Coleson house.

Rev. McGee provided me a written statement.

**Brookbend Police Department  
Initial Police Report**

<b>Case #: 11-123456</b>	<b>Report Date: February 14, 2011</b>	<b>Page Number: 4 of 4</b>
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It should be noted that in looking at Annabelle’s physical appearance, on January 31, 2011, she appeared to be extremely malnourished and very thin. Her sister Madeline appeared to be healthy and did not appear to be neglected in any way.

I spoke with the physician who attended Annabelle in the emergency room and he stated that Annabelle’s blood sugar level was very high to the point that no reading could be obtained. It appeared that she was diabetic but had never been diagnosed with the disease because she had not seen a doctor since birth.

Medical Examiner Joshua Sapp responded to the call to the hospital and stated that he would be performing an autopsy. The autopsy was performed and Dr. Sapp provided a written autopsy report and a written statement regarding Annabelle’s medical condition.

On February 4, 2011 at 1:00 p.m., a search warrant was served on the Coleson home at 111 Penny Park Place, Brookbend, Coco County, Texas 76126 on February 4, 2011. One of the items recovered is an e-mail which was found on the desk in the office area of the home. The e-mail which was printed on a piece of paper has two separate e-mails on it. When you look at the e-mails, the top e-mail is dated January 29, 2011 at 4:45 p.m. The lower e-mail is dated January 29, 2011 at 2:00 p.m. In reviewing this document, it is very apparent that at least by Saturday, January 29, 2011 at 3:00 p.m., Don Coleson was aware of the fact that his daughter was very ill and that he was reaching out for emergency prayer to help his daughter. However, it is difficult to understand how Mr. Coleson failed to notice how sick his daughter was for almost two weeks before her death.

**RECOMMENDATION:**

Refer to the District Attorney’s office for prosecution for Criminal Homicide and Injury to a Child


**Detective Sergeant Amelie M. Hodges, #11**

**\*Detective Sergeant with the Brookbend Police Department (2005 to 2011 – Homicide Division; 2000 to 2005 – Armed Robbery)**

**\*Patrol Officer with the Brookbend Police Department (1997 to 2000)**

**\*Graduate of the Brookbend Police Academy**

**\*BA in Criminal Justice from University of Texas at Arlington**

<b>Officer Signature &amp; Date</b>  <b>Det. Sergeant Amelie M. Hodges</b>	<b>Report Approved By:</b> 	<b>Date Approved:</b> <b>February 14, 2011</b>
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# REPORT OF AUTOPSY

Decedent	Age	Birth Date	Race	Sex	Case No
Annabelle Lee Coleson 123456	4	March 31, 2006		C	F

11-

Type of Death	Means	ID By	Authority for Autopsy
Natural	untreated and undiagnosed illness	Toe tag	State of Texas

## Present at Autopsy

Det. Sergeant Amelie M. Hodges

## FINDINGS

1. Metabolic death – diabetes
  - a. Laboratory records indicating diabetic illness
  - b. Physical wasting, severe**
2. Posterior callous rib lesions, consistent with remote fractures
3. No acute physical trauma identified
4. Based upon the severity of the condition, Annabelle must have been sick for at least 30 days prior to her death.

The death is due to untreated diabetes.

Comment: The case was reviewed by Joshua Sapp, M.D.

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CAUSE OF DEATH:           Diabetic Keto Acidosis  
                                  Untreated Juvenile Onset Diabetes

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The facts stated herein are true and correct to the best of my knowledge and belief.



Brookbend Medical  
Examiners Complex

February 2, 2011  
9:55 a.m.

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Joshua Sapp, M.D., Chief Medical Examiner

Location of Autopsy

Date and Time of Autopsy

## EXTERNAL EXAMINATION

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DESCRIPTION						
Height	Weight	Eyes	Hair	Rigor	Livor	Body Heat
37"	28 lbs	Brown	Brown	0	1	Warm

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Pronounced:	4:50 p.m. January 31, 2011
Dispatch Notified:	3:56 p.m. January 31, 2011
M.E. Notified	Yes
Body Found by:	Family
Body Viewed by M.E.?	Yes

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### **Description of Clothing:**

Long pink nightgown with blue and green flowers

### **Scene Description:**

Annabelle Lee Coleson had reportedly not been feeling well for approximately two weeks. According to reports, she was tired, lethargic, eating poorly, drinking excessive amounts of water and frequent urination. On Saturday she ate very little and was lethargic. She was noticed to be shivering and her breathing was labored. On Sunday, she appeared to be somewhat better; however her breathing was still labored and at one point she stopped breathing. On Monday, Annabelle was unable to sit up or speak coherently and then lapsed into a coma. At some point, a family member contacted 911 emergency services and sent an ambulance to Annabelle's home. Reportedly the father had declined to seek medical attention for Annabelle because of their religious beliefs. Though, dispatch did receive a 911 call from Annabelle's residence around 4:00 p.m. on Monday. The report at that time was that Annabelle was no longer breathing. EMS responded to the Coleson home and found that Annabelle did not have a pulse and was not breathing. CPR was started and later Advanced Cardiac Life Support. She was then transported to Brookbend Hospital. Resuscitation efforts were not successful and Annabelle was pronounced dead at 4:50 p.m. Emergency staff obtained Blood and urine during resuscitation and laboratory analysis indicates that Annabelle was in Diabetic Keto Acidosis, which caused her death. Annabelle had juvenile onset diabetes mellitus and had likely been having symptoms for several weeks or months; however she was not provided medical attention until she was dead.

Upon my arrival at the emergency room, I observed the body of Annabelle Coleson. The body was noted to be very emaciated. She also appeared to be dehydrated. There were signs of medical intervention present, including IV lines, monitor/defib pads, endotracheal tube, nasogastric tube. The family was allowed to spend time with the body for grieving purposes. I asked Mr. Coleson about a funeral home and he responded "We won't need one. She will be alive tomorrow." When I advised the father that the body would be taken to my office for an autopsy, he responded "You won't need to do that, she will be alive by then." I did not speak to the father any further. The body was taken to the

morgue and secured by security officers. I obtained vitreous from the body for further analysis. On February 2, 2011, myself and Det. Sergeant Amelie Hodges transported the body to my office for autopsy. I performed the autopsy and Det. Sergeant Hodges was present and witnessed the entire autopsy procedure. The body was left in the morgue so that that a pediatric skeletal trauma survey could be completed.

**Body Examination:**

The body presented supine on a hospital emergency room bed in room 5 of the Brookbend Hospital Emergency Room. The body is that of a Caucasian female in an emaciated state. Estimated weight is approximately 32 pounds. This is underweight for standard height/weight for a typical four-year-old female. She has brown hair and brown eyes. Her skin appears and feels dry, skin turgor demonstrates dehydration. ER personnel report that it was difficult to obtain blood specimens for laboratory analysis and only a small quantity was drawn. A small amount of urine was obtained via catheterization and was sent for analysis. Hospital laboratory findings demonstrate severe Diabetic Keto Acidosis, severe hyperglycemia, and that this has been a chronic condition. This child has a general appearance of emaciation, malnutrition, dehydration and chronic untreated illness. While it is possible, it is however unlikely that Annabelle showed no symptoms of the disease. The process of the illness would have occurred over time. Annabelle was dehydrated and essentially starving to death, not because she did not receive food but because the diabetes would not allow her to carry food to her tissue. Basically all body function stopped as she became dehydrated and her muscle, lung and heart function became impaired.

**Medical History:**

Unknown

**Medications/Doctor:**

Unknown

**Toxicology Results:**

Vitreous sent for electrolyte analysis, blood sent for comprehensive drug screen. Pediatric skeletal trauma survey done.



X

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Joshua Sapp, M.D.  
Chief Medical Examiner

**Brookbend Police Department  
Witness Statement**

<b>Case #</b> <b>11-123456</b>	<b>Date of Report:</b> <b>February 3, 2011</b>	<b>Case Title:</b> <b>Coleson Child Death</b>
<b>Activity: Interview statement of Dr. Joshua Sapp, Medical Examiner</b>		<b>Page Number: 1 of 2</b>

My name is Dr. Joshua Sapp. I am the Brookbend Medical Examiner. I have held this position for the past 10 years. Prior to holding that position, I served as the Assistant Medical Examiner of Brookbend, Texas for five years. I attended the University of Texas for my undergraduate degree in pre-med and biology. I received my medical degree from Johns Hopkins. I completed training in anatomic pathology and forensic pathology from the New York University Medical Center. I am certified in both anatomic and forensic pathology by the American Board of Pathology. I am an active member of the National Association of Medical Examiners. I am licensed to practice medicine in six states, including Texas. I have performed over 2,000 autopsies.

On February 2, 2011, I conducted an autopsy of Annabelle Lee Coleson. A copy of my autopsy report is attached hereto and is a true and accurate representation of my findings.

Annabelle Lee Coleson died of untreated/undiagnosed Juvenile Diabetes which resulted in diabetic ketoacidosis (DKA). DKA is a life-threatening condition that develops when cells in the body are unable to get the sugar (glucose) they need for energy, such as when you have diabetes but do not take enough insulin. Without enough insulin, one's body cannot use sugar for energy and when her cells did not receive sugar, her body began to break down fat and muscle for energy. This results in the production of ketones, or fatty acids, which enter the bloodstream and cause DKA.

Typically DKA can be caused by not taking enough insulin, severe dehydration, or a severe infection or other illness. It can also occur because of a combination of these issues. Both type 1 diabetics (those with little or no insulin in their bodies) as well as type 2 diabetics (those whose blood sugar levels are high) can be impacted by DKA. While symptoms can vary in diabetics, in addition to high blood sugar, some of the noticeable symptoms of DKA are:

1. Flushed, hot, dry skin
2. Blurred vision
3. Feeling thirsty
4. Drowsiness or difficulty waking up; in children there is a lack of interest in normal activities
5. Rapid, deep breathing
6. A strong, fruity breath odor
7. Loss of appetite, belly pain and vomiting
8. Confusion

**Brookbend Police Department  
Witness Statement**

<b>Case #</b> <b>11-123456</b>	<b>Date of Report:</b> <b>February 3, 2011</b>	<b>Case Title:</b> <b>Coleson Child Death</b>
<b>Activity: Interview statement of Dr. Joshua Sapp, Medical Examiner</b>		<b>Page Number: 2 of 2</b>

With severe DKA, one might have a difficult time breathing and there may be brain swelling and a risk of coma and death. DKA can be tested through blood or urine tests in a laboratory. Urine dipstick tests are available for use at home to test. Severe DKA must be treated in a hospital. The treatment involves insulin and fluids through a vein and close monitoring of chemicals in the blood. With severe DKA, it may take several days for one's blood sugar level to return to normal.



X

\_\_\_\_\_  
Dr. Joshua Sapp

**Brookbend Police Department**  
**Witness Statement**

<b>Case #</b> 11-123456	<b>Date of Report:</b> February 2, 2011	<b>Case Title:</b> Coleson Child Death
<b>Activity: Interview statement of Kate Riley</b>		<b>Page Number: 1 of 2</b>

My name is Kate Riley. I am a pre-K teacher at the Brookbend Elementary School. On February 8, 2011, I met with Detective Sergeant Amelie M. Hodges in my classroom at the school located in Brookbend, Texas. The following is a true and correct representation of my statements to Det. Hodges at that time:

I have been Annabelle Coleson's teacher throughout the 2010-2011 school year. Annabelle was a lively little girl. She always seemed to me to be a very healthy and well-nourished child. She was very funny and lively and quite a talker. In fact, I often had to remind her that when we were in class, she had to settle down and listen and not talk or move around.

I believe that Annabelle was sick for at least two to three weeks prior to her death. I noticed that Annabelle had begun acting differently about the middle of January 2011. Annabelle was usually a chatterbox. She talked non-stop all the time. However, beginning in the middle of January, I noticed that she did not talk as much and was not as responsive in class. She began staying close to me on the bench during recess time. She did not run around with the other children or play. She also did not want to participate in physical education, saying that she was tired. She seemed to want to be held and just lie in my lap. Annabelle did not seem to be running a fever. Her appetite did change though. She wasn't eating much.

I saw her sister Madeline in the hall at school and asked her if Annabelle had been sick at home. Madeline told me that Annabelle had been tired lately and didn't want to play as much. She said that when Annabelle got home from school, she would just go lie down.

This was very unusual behavior for Annabelle, so I sent a note home with her to her father during the week of January 17, 2011. I thought he might want to have Annabelle checked out by a doctor. I did not know at that time what Mr. Coleson decided to do about Annabelle's odd behavior, but I do know that it did not get any better over the next two weeks. She continued to say that she was tired and at times, I saw her drift off during class and put her head down. On those occasions, I would send her to the school nurse. I guess that happened three or four times. It was actually after the first time it happened that I sent the note home to her father. I honestly wondered if she was being allowed to stay up too late and maybe that was the problem.

In addition to being tired, Annabelle didn't talk as much in class, didn't answer questions or participate in class games and she was constantly thirsty and constantly had to go to the bathroom. I finally called Mr. Coleson, Annabelle's father, on January 25, 2011 to let him know that I was concerned about Annabelle's behavior and to let him know what had been going on at school. Mr. Coleson told me that he believed Annabelle was just going through a growth spurt similar to her older sister and that in a week or two she would be fine. He did tell me that he had not taken her to a doctor and would not take her even if she was ill because to do so would be to show a lack of faith. He told me that illness comes from sin and the only healing can be through the Lord. I tried again to urge him

**Brookbend Police Department  
Witness Statement**

<b>Case #</b> 11-123456	<b>Date of Report:</b> February 2, 2011	<b>Case Title:</b> Coleson Child Death
<b>Activity: Interview statement of Kate Riley</b>		<b>Page Number: 2 of 2</b>

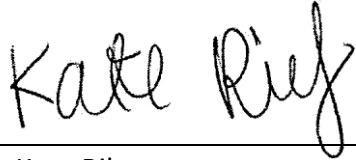
to take Annabelle to a doctor but he told me that he was not going to discuss it with me because it was out of the question. I then urged him to at least give Annabelle some Pedialyte in order to maintain the nutrients in her body since she wasn't eating. Mr. Coleson told me that to give Annabelle Pedialyte or any other sort of medication or medical care would be taking away the glory from God and that he would not provide Annabelle any such care. He told me that Annabelle would be fine because the Lord would heal her. I have to say that this faith healing nonsense is just crazy. How on earth can this church he's mixed up with not believe in doctors and not go in for check-ups or shots? I debated whether I should call Child Protective Services but decided that I would wait a few days and watch the situation before doing so.

On Friday, January 28, 2011, Annabelle came to school late. I noticed that she seemed much more tired and weak than even the day before. She was extremely lethargic. She would not go out to play and would not eat lunch. I tried to call her father but he told me that he would pick her up after school. I sent Annabelle to the nurse's office to lie down for the rest of the day. I did write a note to her father though and sent it home with Annabelle. I let him know that I thought something was seriously wrong with Annabelle and that he needed to take her to see a doctor.

I had decided that if Annabelle were still acting the same on Monday, I would call CPS and make a report. I told the school nurse that I would be calling CPS if things did not improve. I can't believe I decided to wait. If only I had picked up the phone and called things might be different today. But I didn't.

On Monday, January 31, 2011, Annabelle did not come to school. I called the Coleson house after school to check on Annabelle and a woman answered the phone. I could hear murmuring voices in the background. I asked for Mr. Coleson and the woman told me that he couldn't come to the phone that he was in a prayer session with his pastor and men's prayer group. Then, I asked for Madeline. She came on the phone and told me that Annabelle hadn't been out of bed or awake all day and that Mr. Coleson was giving Annabelle water through a syringe. She said that Mr. Coleson had tried to wake Annabelle but she wouldn't wake up. She told me that their house was filled with their church group praying and singing and that Annabelle was going to wake up any minute and be okay as soon as she started breathing again. That was when I hung up the phone and called 911. That was at approximately 3:50 p.m.

I can't help feeling that I failed Annabelle and that this is partly my fault. Well not as much as it's the fault of that crazy father of hers who wouldn't take her to the doctor.

  
X \_\_\_\_\_  
Kate Riley

## Brookbend Police Department Witness Statement

<b>Case #</b> 11-123456	<b>Date of Report:</b> February 7, 2011	<b>Case Title:</b> Coleson Child Death
<b>Activity: Interview statement of Don Coleson</b>		<b>Page Number: 1 of 3</b>

My name is Don Coleson. On February 7, 2011, I met with Detective Sergeant Amelie M. Hodges at the Brookbend Police Department in Brookbend, Texas. The following is a true and correct representation of my statements to Det. Hodges at that time:

My daughter Annabelle was four years old when she died. I am a single father. I have another daughter named Madeline who is 9 years old. My wife died two years ago of diabetes. I have raised the girls alone since that time. We live at 111 Penny Park Place in Brookbend, Texas. We are members of the First Church of the Divine Healing of Our Lord. We joined the church about three years ago. One of the central beliefs of our church is that it is God who heals illness after forgiveness and prayer for our sins. We believe that this is the only cure for illness because all illness is due to sin. This belief applies to children as well as adults.

Annabelle has always been a healthy child. She was very active. Always running and playing. She has not seen a doctor since the first year after she was born. We were not part of the church at that time and only joined around the time Annabelle turned one year old. Annabelle has never needed a doctor. My wife and I took care of her and our other daughter. We never had to do more than care for small cuts and bruises and minor colds.

I noticed Annabelle acting different about two weeks or so before she died. She was weak and tired. She drank a lot of water too and was frequently up and down at night going to the bathroom. She always seemed hungry too. But she was still moving around and she didn't complain about feeling bad . . . she just acted a bit more tired and less energetic. I thought she was just going through a stage, maybe a growth spurt that was dragging her down. Madeline had periods of less energy when she was around that age.

On Friday, January 28, 2011, I noticed that Annabelle seemed a bit more tired and weak. She lay on the couch a lot after school and her teacher sent a note home stating that Annabelle had been in the nurses office lying down for part of the day. We did go out to eat that night at Chick Fil A though and she ate chicken nuggets and fries without any problems and was very excited to be there. She seemed fine to me later that evening.

On Saturday, January 29, 2011, I woke up around 7:00 a.m. and checked on the girls. Both were still asleep. Madeline woke up around 8:00 a.m. but Annabelle slept until 9:30 a.m. I heard Annabelle calling to me from her room. I went into her room and saw that she had kicked off her covers. I noticed that her legs looked very skinny and slightly blue. I never realized how skinny she was. I also noticed that she was shivering. She was acting like she had a fever but I don't think she did. She was mumbling and I couldn't really understand what she was saying. She sounded really confused. I wrapped her up in a blanket to try to get her warm. I thought it

## Brookbend Police Department Witness Statement

<b>Case #</b> 11-123456	<b>Date of Report:</b> February 7, 2011	<b>Case Title:</b> Coleson Child Death
<b>Activity: Interview statement of Don Coleson</b>		<b>Page Number: 2 of 3</b>

was a spiritual attack so I stayed by her side and prayed non-stop. I asked Annabelle if she loved our Lord and she nodded her head yes. Her breathing was labored and she was breathing very deeply. Later I went downstairs to fix lunch for Madeline. While I was downstairs, Annabelle fell off the bed while trying to get up to go to the bathroom. At that point, I moved her downstairs to the couch so she could be near by. I fixed a fruit smoothie drink for Annabelle and she drank all of it. She drank a lot of water that day. After lunch, Madeline and I spent the afternoon kneeling by the couch praying. We slept by the couch so we could be nearby. I really didn't see anything that raised a red flag. I really thought it was just a growing thing and that she would be better in a day or two.

On Sunday, January 30, 2011, Annabelle seemed to be better. Her breathing wasn't quite as labored and she wasn't shivering anymore. She had a bit of color in her cheeks. I remember that they were a brightish red. I tried to feed her some soup but she couldn't swallow very well so I got a syringe and gave her some chicken broth through the syringe. She still didn't eat very much and she wouldn't drink anything. She didn't get up all day. Her breathing stayed about the same most of the day but toward the evening it became labored again. At one point she stopped breathing but it was only for a few seconds and then she started breathing again. Overall she seemed to be getting better and I let her sleep in her own room that night.

On Monday, January 31, 2011, I woke up about 7:00 and began to get ready for work. I went in to wake up Annabelle at 7:30 and saw her trying to sit up but she just fell over back onto her bed. She was mumbling again and I couldn't understand what she was saying. I tried to give her some water but she couldn't swallow. She turned over and went back to sleep. At around 8:30, I went back in to check on her but she wasn't responsive. She seemed to be in sleep mode. Around 9:00 a.m. when I still couldn't wake her up, I called our friend and fellow church member Diane Reagan and asked her to come over because Annabelle wouldn't wake up. I asked her how I could get her to drink water and Diane said I should give her water through a syringe. Diane said she would call our church prayer chain and get people to come over to the house to pray. Diane said she would be there as soon as she could. Diane arrived about 10:00 and began making phone calls to church members and our pastor. By 2:00 p.m., probably 20-30 church members came to our house to pray. It probably wasn't enough and that is why Annabelle died. We needed more help.

Around 3:00 p.m., Annabelle stopped breathing for a brief moment. Diane Reagan asked me if I didn't think I should call an ambulance and have her taken to the hospital. I knew that was not necessary because our Lord would heal her. My pastor backed me up. At around 3:45 or 3:50 Annabelle stopped breathing for a longer period of time. I called 911 at 4:00 when she didn't

**Brookbend Police Department  
Witness Statement**

<b>Case #</b> 11-123456	<b>Date of Report:</b> February 7, 2011	<b>Case Title:</b> Coleson Child Death
<b>Activity: Interview statement of Don Coleson</b>		<b>Page Number: 3 of 3</b>

start breathing again but as I was on the phone with 911 an ambulance showed up at the house. I guess someone else called them.

Yes, Annabelle's teacher, Kate Riley told me that she was concerned about Annabelle. She sent a couple of notes home and called me once. She can be like a dog with a bone. I told her that it was probably just a growth spurt that was getting Annabelle down and in a few days or a week she'd be back to normal. She suggested that I give Annabelle Pedialyte but that would be like giving up on our faith. It would not be trusting in our Lord to give something like that.

I never considered taking Annabelle to see a doctor or giving her any sort of medication over the last two weeks before she died. She just didn't seem that sick to me. I didn't understand how sick she was. Even though my wife had died the circumstances weren't the same. I had never seen anything happen like this and I just didn't know what to do other than pray. I thought Annabelle's illness was a spiritual attack and that our prayers would be enough. Our religion teaches that any health problems, any illness can only be cured by our Lord. I knew my faith was her only salvation and chance for healing. I know healing can only come from our Lord. I just didn't know she was that close to death. I did try to save her. At the end, I did call 911 and I tried to give her CPR but that was when the ambulance showed up and took her away. In the end, I turned my back on our faith and tried to save her on my own, and I lost my baby. Our Lord is the only one who can heal the sick. I believe it is possible that our Lord just might bring her back to us if we pray hard enough.

X **DON COLESON**

Don Coleson

## Brookbend Police Department Witness Statement

<b>Case #</b> 11-123456	<b>Date of Report:</b> February 8, 2011	<b>Case Title:</b> Coleson Child Death
<b>Activity: Interview statement of Diane Reagan</b>		<b>Page Number: 1 of 2</b>

My name is Diane Reagan. On February 2, 2011, I met with Detective Sergeant Amelie M. Hodges at my residence of 200 Penny Park Blvd. in Brookbend, Texas. The following is a true and correct representation of my statements to Det. Hodges at that time:

I was at the Coleson residence located at 111 Penny Park Place on January 31, 2011 from approximately 10:00 a.m. until the officers arrived in response to the 911 call. I responded to an urgent call from Mr. Coleson at 9:00 a.m. that morning that Annabelle appeared to be in a coma state but that she was still breathing. I asked Mr. Coleson if Annabelle had been running a fever and he said that to his knowledge Annabelle had not. He also told me that Annabelle had never complained of being sick. Mr. Coleson told me that Annabelle was not moving, had shallow breathing and that she hadn't been talking since the day before. He asked me what he should do right now because Annabelle seemed to be very dehydrated. I advised him to use a syringe to put water into Annabelle's mouth and told him that I would be over as soon as I could. Mr. Coleson and I both live in Penny Park Estates but on different streets. As soon as I got ready, I walked to Mr. Coleson's house. When I arrived, I saw that Annabelle was lying in her bed and was not moving and was not responsive to touch or to words. She was breathing although her breathing was shallow.

I am a member of Mr. Coleson's church, First Church of the Divine Healing of Our Lord. Mr. Coleson and I attend the same Bible study and church services. A key tenant of the church is the belief that physical illness in an individual is due to sin and the only way to cure that illness is to ask for forgiveness and pray that God will cure you from that illness. This applies to both children and adults.

Upon arriving at the house and seeing Annabelle, I immediately activated our Church prayer chain and asked members to come to Mr. Coleson's house to pray over Annabelle. Within a couple of hours 20 to 30 church members, including our pastor, had arrived at the Coleson house. We spent the day praying over Annabelle and rejoicing in God's eventual healing of her. I guess my faith is not as strong as the other members of the church because around 3:00 I became very scared when Annabelle stopped breathing for a brief moment. I begged Mr. Coleson to seek medical help. Pastor McGee rebuked me though and I began praying again. Mr. Coleson told me that this was a test of his faith and Pastor McGee backed him up. I really should have known better. We have seen miraculous examples of healing in our church. Just last month, we had two members on the edge of death who were prayed back to health. We prayed for her but I guess God decided he needed her in Heaven.

**Brookbend Police Department  
Witness Statement**

<b>Case #</b> 11-123456	<b>Date of Report:</b> February 8, 2011	<b>Case Title:</b> Coleson Child Death
<b>Activity: Interview statement of Diane Reagan</b>		<b>Page Number: 2 of 2</b>

Just before 4:00 p.m. though Mr. Coleson did call 911 and request an ambulance. Annabelle had stopped breathing again. Mr. Coleson went into a panic and grabbed Annabelle and kept yelling “My baby, my baby. I can’t lose you. I lost your mom. I can’t lose you too. We prayed and prayed for you. Why aren’t you healed?” He truly believed that prayers would heal Annabelle. He didn’t understand why they didn’t and neither do I.

I was friends with Mr. Coleson’s late wife and friends with him. We are not in a relationship. We are only friends and have only ever been friends. I loved his late wife dearly. I have known Mr. Coleson for approximately 3 years. He and his wife are the people who introduced me to the church and helped me to understand how important faith is. They helped me when I lost my job two years ago by giving me a loan and helping me to find other work. I am very grateful to Mr. Coleson. At times I babysit Mr. Coleson’s children when he has to work late.

I know the Coleson family very well. Mrs. Coleson was a wonderful wife and mother and she truly believed in the power of prayer in healing. She would have supported Mr. Coleson 100% in the decisions he made with Annabelle because those decisions came from a place of love and faith. The Colesons are a loving family and Mr. Coleson is a great dad. He is a hard worker but he always makes time for his girls. Mr. Coleson always has his childrens’ best interest at heart. He talks about those girls all the time and I’ve seen him struggle to provide them with a good life, trying to be both father and mother to the girls. He loves those girls and would do anything for them. He would not deliberately hurt them. He would never think of doing anything that might cause harm to Annabelle and Madeline. What happened is a tragedy and he is truly broken over Annabelle’s death. This is just a witch hunt and he is being persecuted for his faith. It is shameful for the police and the district attorney to be persecuting Mr. Coleson. They need to let him and Madeline grieve in peace.

  
\_\_\_\_\_  
Diane Reagan

## Brookbend Police Department Witness Statement

<b>Case #</b> 11-123456	<b>Date of Report:</b> February 9, 2011	<b>Case Title:</b> Coleson Child Death
<b>Activity: Interview statement of Reverend Shorty McGee</b>		<b>Page Number: 1 of 3</b>

My name is Reverend Shorty McGee. I am the head pastor of the First Church of the Divine Healing of Our Lord in Brookbend, Texas. On February 9, 2011, I met with Detective Sergeant Amelie M. Hodges in my office at the church. The following is a true and correct representation of my statements to Det. Hodges at that time:

I have an Associate's Degree from Texas Community College in mechanics and wood working. I graduated in 1981. I worked odd jobs for about five years before I felt a call to the ministry. I began working as a mechanic during the day while studying the scriptures and religious books at night. After another couple of years, I felt ready to enter the ministry and began holding small religious services in my home or in the homes of others. Eventually, the group of people who were coming to my services suggested that we form an official church. I was already preaching from the teachings of the Divine Healing of Our Lord denomination so we applied to them for a charter and it was granted. I have been the pastor of the First Church of the Divine Healing of Our Lord for the past 20 years. I did not attend seminary. I am self taught in the divine scriptures though I have attended religious courses offered by our denomination's leadership. My particular field of study focus has been healing through faith. Over the last 15 years, I have taken two to three courses per year through our denomination on prayer, praise and healing and on the divine Biblical scriptures that address healing. Additionally, I have up to ten speaking engagements around the country each year on the subject of faith healing. Despite my lack of formal education, I am considered one of the foremost pastors on divine healing through faith.

I am very familiar with the Coleson family. Approximately four years ago they joined our church. I do not believe that they had been particularly religious before that. I came to know them very well. The girls were part of our children's program that my wife leads and Mr. and Mrs. Coleson were in one of my Bible Study classes. They were a wonderful couple... always volunteering to help out financially, leading Bible study groups, hosting events in their home and being on the front lines praying whenever a fellow member needed assistance. They recruited heavily for others to enter our church family. It was a sad day when Karryn Coleson died. Our church family lost a wonderful church member and the Coleson family lost a wonderful wife and mother.

I became aware that Annabelle was ill on January 29, 2011 when I received an e-mail from Mr. Coleson asking that the prayer chain be activated and that his fellow believers join together in prayer for his dear daughter. I activated the prayer chain and sent Don an e-mail of comfort and blessings. My wife and I prayed throughout the weekend for Annabelle. The Coleson's were not at church on Sunday but our whole congregation prayed for Annabelle's healing.

## Brookbend Police Department Witness Statement

<b>Case #</b> 11-123456	<b>Date of Report:</b> February 9, 2011	<b>Case Title:</b> Coleson Child Death
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On Monday, January 31, 2011, I received a call from fellow church member Diane Reagan. Ms. Reagan told me that she was at the Coleson home and that I should come immediately. She said that she had activated the prayer chain and that church members were arriving in droves. Our church is just that way. Always willing to help. Diane told me that Annabelle was not responsive and would not wake up. I told Diane to start praying and miracles would happen. I hopped in my car and headed to the Coleson home.

At about noon when I arrived at the Coleson's house, I was gratified to see it filled with church members. All praying and singing... rejoicing in the healing that was to come. I gathered a group of men and headed to Annabelle's room for a prayer circle. We gathered around Annabelle's bed and spent the afternoon praying for healing and forgiveness of Annabelle's sin. Annabelle stopped breathing a few times but we just prayed harder and she always started breathing again.

I guess it was around 3:00 when she stopped breathing for more than a few seconds. Ms. Reagan began to panic and said we should call for a doctor. I reminded Ms. Reagan that only our Lord can heal because only our Lord can take away sins. To call a doctor would be to spit in the face of all that we believe and to show a lack of faith, risking the life of poor Annabelle. Mr. Coleson agreed and told her that this was just a test of his faith and he would pass the test.

At around 4:00, Annabelle had stopped breathing for quite a while. Mr. Coleson succumbed to fear and lack of faith and called 911. It appears that someone else had already called because the ambulance was arriving as he was calling. It was a lack of faith that killed Annabelle and not a lack of medical attention. Calling 911 was a signal that we no longer relied on our Lord's healing power and no longer believed that He would provide healing and forgiveness. That is why that poor child died.

After Annabelle's death, I learned that she had been sickly for the past two weeks. Mr. Coleson told me that he honestly believed it was just growing pains and nothing more that was making her run down. He said she kept getting more lethargic and wouldn't eat or drink over the week prior to her death. I asked him why he didn't ask for prayer before Saturday or get a prayer circle together before the day she died. He said he thought he could handle it himself and that he and Madeline had been praying. He told me he believed our Lord would heal her. If only he had called me sooner, we could have got to praying sooner and maybe things would have turned out differently.

People can scoff at our beliefs but I tell you that they are founded on the solid Word of our Lord. We believe that only the King James version of the Bible is the true and holy divine Word of our Lord and the scriptures are clear that healing comes through prayer and salvation. It is impossible to get out from under illness and disease – basically curses – except through the Words of our Lord found in the divine Holy Scriptures. Our Lord can be merciful but there is no way to guarantee our Lord's deliverance from

## Brookbend Police Department Witness Statement

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the curse for those who do not walk in His Words. I don't see any doctors in the scriptures. Do you? There is a reason for that. Our Lord doesn't command us in His divine scriptures to send people to see doctors. He commands us to meet their needs by praying for them. He commands that we be faithful. Now, I'm not against doctors nor is anyone in our church. There is a place for them for those who place their faith there. But let's face it, doctors are more dangerous than gun owners and the very fact that the word pharmacy was derived from a Greek word meaning witchcraft or sorcery, should tell you all you need to know. The statistics show how dangerous doctors and hospitals are. I wrote a book on this very subject called "Physicians of Death." Research shows that:

- 12000 deaths/year from unnecessary surgery
- 7000 deaths/year from medication errors in hospitals
- 20000 deaths/year from other errors in hospitals
- 80000 deaths/year from nosocomial infections in hospitals
- 106000 deaths/year from non-error, adverse effects of medications

This is 225,000 deaths per year resulting from "modern medical care." The figures are probably even higher by now. The research I based my book on is in part from a wonderful treatise called "Is US Health Really the Best in the World." It is a wonderfully well written and well researched article that I believe makes my point.

"The Holy divine scriptures are clear that we are to put our trust in our Lord only and we can only do this through repentance and faith in his promises. You just can't argue with the Holy divine scriptures. There is example after example of the foundation of our faith and our hope. In Luke 13:10-16, Jesus was teaching in the synagogue and there was a woman there who had been crippled for 18 years. Jesus laid his hands on her and immediately she was healed and glorified God. In Matthew 17:15-18, Jesus healed a boy who was having seizures. He told his father to bring the boy to him and when he did, Jesus cast the devil out of the boy and he was healed. In Mark 1:29-34, we are told that Jesus went to the house of Simon and cured his mother who was ill with a fever. That night after sunset people from all over the city began bringing all the sick to Him and Jesus healed people with many diverse diseases and also cast out demons."

Don't you see? Our Lord didn't send the sick and diseased to see the local doctor. He healed the diseased but he didn't just heal them, he delivered them from the spirit that made them sick. You can't argue with success and our Lord has shown that he has the sole authority over healing.

*Rev Shorty McGee*  
 \_\_\_\_\_  
 Rev. Shorty McGee

## Brookbend Police Department Witness Statement

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My name is Madeline Coleson. On February 9, 2011, I met with Detective Sergeant Amelie M. Hodges at my home in Brookbend, Texas. The following is a true and correct representation of my statements to Det. Hodges at that time:

My daddy is Don Coleson. My mommy was Karryn Coleson. She died two years ago. I live with my daddy and my sister Annabelle in Brookbend, Texas. I go to school at Brookbend Elementary School. I go to church at the First Church of the Divine Healing of Our Lord. We have gone to church there for about four years.

I don't go to the doctor. When I was little I used to go when I was sick but when we joined the church we stopped going to the doctor. Daddy teaches us that when you get sick that means you sinned and God will heal you if you pray hard enough and believe and if enough people pray with you. I guess mommy didn't pray enough. It makes me sad sometimes to think about her but I know that daddy loves me and Annabelle very much. He always plays with us and takes care of us. When we are sad he holds us and he listens to what we have to say. Whenever we don't feel good, daddy always holds our hands and prays for us. He is a good daddy.

Annabelle was 4. She died last week and went to heaven. I liked to play with Annabelle. We would run races and swing and play on the slides. She hasn't been feeling good though. I don't know how long. It seemed like a long time. She was sick at school last week and sat in the teacher's lap most of recess. She was sick before that day too. She had been sick for a while. Annabelle was usually never sick though. I got sick sometimes but Annabelle was always well. She just started acting tired all of a sudden. She lay around and wouldn't play with me. She wouldn't talk to me either. She sounded sick when she tried to talk like she didn't have any air. She slept all the time and when she was awake she drank a lot of water and always went to the bathroom. Daddy said she would be fine though and we prayed with her every night so God would heal her.

A few days before she died, Annabelle came home from school and laid on the couch. She had been sick at school that day. I heard her teacher tell the nurse that she was going to get the state to take me and Annabelle away from our daddy if he didn't do something. I was really scared because I love my daddy and he loves me. I don't want to go away. I told Annabelle that she had to get better or the teacher was going to get us taken away. We were both really scared and Annabelle cried. I told her she had to pretend to be well. Annabelle got up and went to eat with us that night and pretended to feel better so Daddy wouldn't know she was sick.

The next day I woke up and watched cartoons. Annabelle was still asleep. Later, I heard Annabelle calling daddy and I followed him to her room. Annabelle was acting really cold. She was shaking but daddy wrapped her up in a blanket to get her warm. Daddy said that we just had to pray harder and that he was going to have Pastor McGee get everyone in the church praying for Annabelle. Daddy went to fix me lunch and Annabelle fell out of bed. Daddy came upstairs and got Annabelle and put her on the couch so she would be near us. Daddy and I prayed for Annabelle all afternoon. When

## Brookbend Police Department Witness Statement

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daddy went to e-mail the pastor, I reminded Annabelle she had to get well or we couldn't live with daddy anymore. She asked daddy for a smoothie and she drank it all. I slept by the couch that night.

We didn't go to church on Sunday even though Annabelle felt better. She stopped acting cold and she ate some soup though daddy had to feed it to her in a funny tube. I got scared later that day though when daddy started crying and saying "my baby stopped breathing. What do I do?" But Annabelle must have been getting better from all the prayers because daddy let her sleep in her own room that night.

On Monday morning, daddy told me that me and Annabelle didn't have to go to school that day because Annabelle wasn't all the way better. Daddy said that Annabelle was sleeping and wouldn't wake up. I was really scared because daddy was crying and praying and rocking Annabelle and begging her to wake up. He kept saying, "what do I do? What do I do?" Then he called Miss Diane and asked her to come over and help. Miss Diane came to our house and called all the church members to come over and pray. A lot of people came to our house and everyone was praying and singing and talking about how Annabelle would be all better soon if we just had faith.

I wasn't allowed in Annabelle's room that afternoon but I could hear some of what was happening. Miss Diane was crying and begging my daddy to call an ambulance but pastor McGee told her that she needed the devil to flee from her. He said that my daddy knew that only God could heal Annabelle and it would be evil for him to call a doctor. He said my daddy would lose his faith if he called a doctor.

Annabelle's teacher called right about then and I talked to her on the phone. I told her that Annabelle hadn't been out of bed or awake all day and that she wouldn't eat or drink. I said that daddy was giving Annabelle water through the funny tube and that Annabelle was asleep and wouldn't wake up. I told her not to worry though because our church friends were at my house and were praying and singing and that they said Annabelle would wake up and start breathing again any minute. Annabelle's teacher hung up on me and a few minutes later an ambulance and the police came to our house. Right before the ambulance came, I heard daddy talking on the phone, crying and saying he needed help because his baby wasn't breathing anymore.

I think my daddy did the right thing by praying for Annabelle instead of going to the hospital because God created everyone and how can we be more powerful than God? He is the one that is in control. I believe that and so does my daddy. We always go to Him with our problems because He is the One in charge. He decides how things work. How can a doctor be more powerful than God? I don't understand what happened and why Annabelle had to go to heaven except that it must have been God's choice. We prayed for her but I guess God decided he needed her in Heaven.

*Madeline Coleson*  
\_\_\_\_\_  
Madeline Coleson



THE STATE OF TEXAS

§ IN THE 1ST DISTRICT

v.

§ COURT

DON COLESON

§ COCO COUNTY, TEXAS

STATE ID No.: TX

§

**JUDGMENT OF CONVICTION BY JURY**

Judge Presiding: **HON. Nathan Capper** Date Judgment Entered: **June 1, 2011**

Attorney for State: **MORGAN TAYLOR** Attorney for Defendant: **ASHLEY L. MYRICK**

Offense for which Defendant Convicted: **INJURY TO A CHILD**

Charging Instrument: **INDICTMENT** Statute for Offense: **22.04**

Date of Offense: **1/31/2011**

Degree of Offense: **2ND DEGREE FELONY** Plea to Offense: **NOT GUILTY**

Verdict of Jury: **GUILTY** Findings on Deadly Weapon: **N/A**

Plea to 1<sup>st</sup> Enhancement Paragraph: **N/A** Plea to 2<sup>nd</sup> Enhancement/Habitual Paragraph: **N/A**

Findings on 1<sup>st</sup> Enhancement Paragraph: **N/A** Findings on 2<sup>nd</sup> Enhancement/Habitual Paragraph: **N/A**

Punished Assessed by: **JURY** Date Sentence Imposed: **June 1, 2011** Date Sentence to Commence: **June 1, 2011**

Punishment and Place of Confinement: **Five years for each count INSTITUTIONAL DIVISION, TDCJ**

**THIS SENTENCE SHALL RUN CONCURRENTLY.**

SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR **N/A** .

Fine: **\$ 10,000** Court Costs: **\$ 765.00** Restitution: **\$ N/A** Restitution Payable to:  VICTIM (see below)  AGENCY/AGENT (see below)

Attachment A, Order to Withdraw Funds, is incorporated into this judgment and made a part hereof.

**Sex Offender Registration Requirements do not apply to the Defendant.** TEX. CODE CRIM. PROC. chapter 62.

The age of the victim at the time of the offense was **N/A** .

If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.

Time Credited:	From	to	From	to	From	to
	From	to	From	to	From	to

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.

**N/A DAYS NOTES: N/A**

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

This cause was called for trial in **Tarrant** County, Texas. The State appeared by her District Attorney.

**Counsel / Waiver of Counsel (select one)**

Defendant appeared in person with Counsel.

Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

It appeared to the Court that Defendant was mentally competent and had pleaded as shown above to the charging instrument. Both parties announced ready for trial. A jury was selected, impaneled, and sworn. The INDICTMENT was read to the jury, and Defendant entered a plea to the charged offense. The Court received the plea and entered it of record.

The jury heard the evidence submitted and argument of counsel. The Court charged the jury as to its duty to determine the guilt or innocence of Defendant, and the jury retired to consider the evidence. Upon returning to open court, the jury delivered its verdict in the presence of Defendant and defense counsel, if any.

The Court received the verdict and **ORDERED** it entered upon the minutes of the Court.

**Punishment Assessed by Jury / Court / No election (select one)**

**Jury.** Defendant entered a plea and filed a written election to have the jury assess punishment. The jury heard evidence relative to the question of punishment. The Court charged the jury and it retired to consider the question of punishment. After due deliberation, the jury was brought into Court, and, in open court, it returned its verdict as indicated above.

**Court.** Defendant elected to have the Court assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

**No Election.** Defendant did not file a written election as to whether the judge or jury should assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

The Court **FINDS** Defendant committed the above offense and **ORDERS, ADJUDGES AND DECREES** that Defendant is **GUILTY** of the above offense. The Court **FINDS** the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 § 9.

The Court **ORDERS** Defendant punished as indicated above. The Court **ORDERS** Defendant to pay all fines, court costs, and restitution as indicated above.

**Punishment Options (select one)**

**Confinement in State Jail or Institutional Division.** The Court **ORDERS** the authorized agent of the State of Texas or the Sheriff of this County to take, safely convey, and deliver Defendant to the **Director, Institutional Division, TDCJ**. The Court **ORDERS** Defendant to be confined for the period and in the manner indicated above. The Court **ORDERS** Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court **ORDERS** that upon release from confinement, Defendant proceed immediately to the Tarrant County District Clerk's office. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

**County Jail—Confinement / Confinement in Lieu of Payment.** The Court **ORDERS** Defendant immediately committed to the custody of the Sheriff of \_\_\_\_\_ County, Texas on the date the sentence is to commence. Defendant shall be confined in the County Jail for the period indicated above. The Court **ORDERS** that upon release from confinement, Defendant shall proceed immediately to the \_\_\_\_\_. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

**Fine Only Payment.** The punishment assessed against Defendant is for a **FINE ONLY**. The Court **ORDERS** Defendant to proceed immediately to the Office of the \_\_\_\_\_ County \_\_\_\_\_. Once there, the Court **ORDERS** Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

**Execution / Suspension of Sentence (select one)**

The Court **ORDERS** Defendant's sentence **EXECUTED**.

The Court **ORDERS** Defendant's sentence of confinement **SUSPENDED**. The Court **ORDERS** Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court **ORDERS** that Defendant is given credit noted above on this sentence for the time spent incarcerated.

**Furthermore, the following special findings or orders apply:**

N/A

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**Signed and entered on June 1, 2011**



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**Nathan Capper**  
JUDGE PRESIDING