

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	No. 528-2010
	:	
vs.	:	CRIMINAL DIVISION
	:	
	:	
CHRISTOPHER INGRAM, SR.,	:	
Defendant	:	1925(a) Opinion
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COMMONWEALTH	:	No. 527-2010
	:	
vs.	:	
	:	
KARRIE CROUCHER,	:	
Defendant	:	

**OPINION IN SUPPORT OF ORDER IN
COMPLIANCE WITH RULE 1925(a) OF
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this Court's Order entered October 5, 2010, which granted Defendants' Petition for Writ of Habeas Corpus contained in an Omnibus Pretrial Motion. The reasons for the Court's decision can be found in the Opinion accompanying that Order.

In addition, the Court would note the following: The Commonwealth's theory in this case was that it could proceed on an either/or theory of liability; it was not required to show which Defendant committed the acts of abuse on their seven week old son. The Court disagreed with the Commonwealth. Recently, the Court became aware of the Commonwealth Court decision in J.W. v. Department of Public Welfare, 408 C.D. 2010, 2010 Pa. Commw. LEXIS 632 (Dec. 1, 2010) Although this case is not directly on point because it deals with a challenge to the filing of an indicated report of child abuse, the Court

believes this case supports its conclusion that the Commonwealth cannot proceed on an either/or theory of liability to establish a prima facie case.

In J.W. the Administrative Law Judge (ALJ) denied the petitioners' appeals based in part on section 6318(d) of the Child Protective Services Law, which states:

(d) Prima facie evidence of abuse. – Evidence that a child has suffered child abuse of such a nature as would ordinarily not be sustained or exist except by reason of the acts or omissions of the parent or other person responsible for the welfare of the child shall be prima facie evidence of child abuse by the parent or other person responsible for the welfare of the child.

23 Pa.C.S.A. §6318(d). The Commonwealth Court reversed the ALJ regarding his utilization of the presumption for two reasons: (1) the presumption was waived because it was not raised as an issue at the hearing, thereby depriving the petitioners of a meaningful opportunity to rebut the presumption; and (2) the presumption does not apply in situations where a child was in the care of multiple persons during the period when the abuse occurred and it is not possible to determine which person actually abused the child.

For these same reasons, the Court finds the presumption does not apply in this case and the Commonwealth did not establish a prima facie case against either of the defendants. The Commonwealth neither mentioned this statute during the argument on Defendants' motions nor presented sufficient evidence from which the Court could determine who actually abused the child. If the statute cannot be used in this manner in the civil context of an indicated finding of abuse, it certainly should not suffice for criminal charges where an individual's liberty is at stake.

DATE: _____

By The Court,

Marc F. Lovecchio, Judge

cc: Mary Kilgus, Esquire (ADA)
William Miele, Esquire (PD)
Spero T. Lappas, Esquire
2080 Linglestown Rd, Suite 201, Harrisburg PA 17110-9670
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)