

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH** : **No. CR-528-2010**

**vs.** :

**CHRISTOPHER INGRAM, SR.,** :  
**Defendant** :

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**COMMONWEALTH** : **No. CR-527-2010**

**vs.** :

**KARIE CROUCHER,** :  
**Defendant** :

**OPINION AND ORDER**

Before the Court are Defendants' Omnibus Pretrial Motions. Both Defendants are charged with aggravated assault, simple assault and endangering welfare of children.

More specifically, Defendants are alleged to have knowingly or recklessly caused injuries to their seven (7) week old infant son. The Commonwealth alleges that the son received multiple metaphyseal fractures to both his right and left legs, a fracture to his right arm, a fracture to his one big toe, multiple bruises to his facial area and a torn frenulum, all while in the care and custody of the Defendants or either one of them.

The first Motion for consideration is a Petition for Writ of Habeas Corpus filed on behalf of both Defendants. Defendants assert that there is insufficient evidence to conclude prima facie that either one of them was probably the perpetrator of the charged crimes. Contrary to Defendants' assertions, the Commonwealth argues that the evidence, both direct and circumstantial, proves that one or both of the Defendants caused the injuries to the child during the relevant time.

When reviewing a Motion for Habeas Corpus, the Court must view the evidence and all reasonable inferences to be drawn from the evidence in a light most favorable to the

Commonwealth. Commonwealth v. Santos, 583 Pa. 96, 876 A.2d 360, 363 (2005). At this stage of the proceedings, the Commonwealth must establish a prima facie case. “A prima facie case exists when the Commonwealth presents evidence of each of the material elements of the crimes charged and establishes sufficient probable cause to warrant a belief that the accused committed the offense.” Santos, supra, quoting Commonwealth v. Huggins, 575 Pa. 395, 836 A.2d 862, 866 (2003).

Defendants are correct in their assertion that it is insufficient for the Commonwealth to premise criminal culpability on an either/or theory. Regardless of the difficulties facing the prosecution in cases of child abuse, the Commonwealth must present sufficient evidence with respect to each co-defendant individually. See Commonwealth v. Vining, 744 A.2d 310, 320 (Pa. Super. 2000).

With these principles in mind, the Court will review the relevant facts as established by the Commonwealth at the hearing in this matter.

Late on October 24, 2009, Defendants’ seven (7) week old infant son was brought to the emergency room at the Williamsport Hospital. The infant was brought to the emergency room by Defendant Croucher after Defendant Croucher noted some medical concerns.

During the afternoon on October 25, 2009, the infant was examined by Dr. Beth O’Hara, a general pediatrician. Dr. O’Hara noted that the infant had a significant amount of pain from a swollen leg, multiple bruises on his forehead, as well as significant malnutrition.

According to Dr. O'Hara, there was no logical history of how this could have happened. Because she was suspicious for abuse and because Geisinger Medical Center had the expertise to manage cases of abuse, including pediatric orthopedic specialists, Dr. O'Hara made a decision to transfer the infant to Geisinger.

According to Dr. O'Hara, Defendant Croucher explained the bruising on the infant's head as resulting from a pit bull dog that jumped on the couch when the infant was having his diaper changed. Defendant Croucher did not give any explanation for the leg injuries. Dr. O'Hara noted that the history and physical did not match up and that there were multiple "hallmark classic concerns for abuse" and "classic indications for abuse." Dr. O'Hara noted that with respect to the infant's history, she never spoke with infant's father, Defendant Christopher Ingram, Sr.

Dr. Paul J. Bellino is a Pediatric Hospitalist and a Child Abuse Investigator for Geisinger Medical Center in Danville, PA. He also serves as the Director of the Inpatient Unit at the Janet Weis Children's Hospital, the Director of the Pediatric Hospital Service and the Director of the Pediatric Residency Education Program.

Prior to the infant being transferred to Geisinger, Dr. Bellino spoke with Dr. O'Hara and was waiting for the infant to arrive. Upon arrival, Dr. Bellino first examined the infant.

Dr. Bellino noted four identifiable bruises on the infant's head. The infant had bruising over his forehead and bruising over the left eye, bruising of the left cheek and an area of bruising over the scalp just behind the left ear. Dr. Bellino also noted that the infant's right

knee was swollen and the infant would become upset when the right leg was manipulated in any way.

Upon further examination, Dr. Bellino also noted that the infant's superior frenulum of his upper lip was torn. The frenulum is a small piece of tissue that connects the very center of the upper portion of the lip and gum. This type of injury suggested some trauma to the infant's face.

Dr. Bellino requested additional x-ray studies as well as a pediatric orthopedic consult. Dr. Bellino diagnosed the infant as suffering from metaphyseal fractures of the right proximal tibia and fibula. With respect to these specific leg injuries, Dr. Bellino concluded that they were "pathognomonic of child abuse." He noted that there was no other explanation. He suggested that these types of injuries could be caused by either taking and pulling on the lower extremity, or through uncontrollable flailing and shaking.

Dr. Bellino also concluded that the infant suffered a similar metaphyseal fracture of the left proximal tibia, a fracture of the left first metatarsal and a fracture of the proximal right humerus. All in all, according to Dr. Bellino, the infant had a fracture in his right arm, two fractures in his right leg, a fracture in his left leg and a fracture of the great toe on the left foot. It was the doctor's opinion that the infant's injuries occurred as a result of child abuse.

Regarding the timing of the injuries, Dr. Bellino testified that you could not say with any certainty that all of the injuries arose at the same time. With respect to the bruising on the head, Dr. Bellino opined that it occurred some time before 18 hours prior to when the infant was first examined by him at approximately 9:30 p.m. on October 25, 2009. With

respect to the infant's right leg fractures, Dr. Bellino testified that the most likely time for the injury to occur would have been some time on the 24<sup>th</sup> of October. With respect to the infant's left leg fracture, arm fracture and big toe fracture, Dr. Bellino opined that these injuries could have occurred within five (5) to seven (7) days prior to presentation. Dr. Bellino could not tell if the frenulum injury was a fresh injury. He could only opine that the injury was more than a few hours old.

Dr. Bellino had numerous conversations with the Defendants. According to the Defendants, the infant was primarily in the care of both of them. On the 24<sup>th</sup>, however, the Defendants had been at a party and the infant had been passed around among a number of individuals. Apparently, the infant then became fussy and was returned to his mother. She then gave the infant to his father who talked to him, bounced him and calmed him down.

Kevin Stiles of the Williamsport Bureau of Police interviewed the Defendants on October 28, 2009. Agent Stiles was advised that from October 22 through October 25 of 2009, the infant was in the care of "either" of the co-defendants. Defendant Croucher noted as well that she is always home taking care of the child and that Defendant Ingram "fixes up cars in their garage" and comes in from "working" around 8-10 p.m. most nights.

More specifically, on October 22, Defendant Ingram was caring for the child in the morning while Defendant Croucher was asleep, and took the child with him to Defendant Ingram's doctor appointment along with Defendant Ingram's mother. On October 23, the child was in the care of both of the Defendants the entire day. On October 24, both Defendants were together with the child prior to going to a party at the YMCA. Defendant Ingram apparently took some people to the party and then went to play basketball. He was not with the child for

the time the child was at the party. At the party, Defendant Croucher handed or “passed” the child off to one or two people but was always there with the child or “watched” the entire time. There was a possibility that the child was passed from one person to another person “outside of her” but according to Defendant Croucher, she was never away from her child when he was being passed from one person to another. At one point a 12 year old girl was walking around with the child. When the child was passed from the 12 year old to an adult, the child “screamed out loudly.”

After running some errands following the party, shortly after returning home and while changing the infant, Defendant Croucher noticed that his leg was swollen up after which “they” decided to take the child to the hospital.

Defendants assert that the evidence is insufficient to show that either one of them was in any way responsible for their infant’s injuries. Where an adult has sole custody of a child for a period of time and during that time the child suffers wounds which unquestionably are neither self-inflicted nor accidental, the evidence is sufficient to allow a jury to infer that the adult inflicted the wounds. Commonwealth v. Paquette, 451 Pa. 250, 301 A.2d 837, 840 (1973).

The Defendants do not question the evidence in support of the conclusion that the infant’s wounds were neither self-inflicted nor accidental. Defendants claim, however, that they did not have sole custody of their child during the time that their child suffered his injuries.

In Commonwealth v. Nissly, 379 Pa. Super. 86, 549 A.2d 918 (1988), Defendant argued that because he did not have “exclusive control” over his eleven (11) week

old son during the time the fatal injuries were inflicted, he could not be responsible for the injuries. Defendant argued that several other people were also in the house during the relevant time and that any one of them could have been responsible.

The Court concluded that under Paquette, supra, an inference of guilt was permissible in that during the very limited time period within which the fatal trauma occurred, the Defendant was the “only” person in custody of the victim infant during that time.

In Commonwealth v. Turner, 491 Pa. 620, 421 A.2d 1057 (1980), following the close of the prosecution’s case, the court granted Defendant’s demurrer. Defendant was charged with homicide in the death of his girlfriend’s 21 month old infant son.

The girlfriend and the infant stayed at the Defendant’s apartment. The infant was put to sleep on a couch in the Defendant’s bedroom. The girlfriend then went to bed. She was awakened a few hours later by Defendant’s shouts that the infant was not breathing.

The court reversed and held that the sole custody inference was applicable because prior to the girlfriend going to bed nothing was wrong with the infant. Clearly, the infant was in the sole custody of the Defendant at the time the injuries occurred.

The evidence in this case is that the infant victim sustained the fractures to his right leg most likely on the 24<sup>th</sup> of October. The evidence is also clear that the remaining fractures and injuries, except perhaps the torn frenulum, occurred within the five (5) day period prior to October 25.

There also appears to be no dispute that during the time period wherein the injuries would have occurred, the minor infant generally was within the care of either of the Defendants or both of them; albeit not within the sole custody of either one of them for the

entire several day period of time during which the injuries to the child could have occurred. There were periods of time when one Defendant was not with the child or when third parties had actual physical control of the child. This is not a situation in which during the times of the infant's injuries the evidence proves, even prima facie, that the infant was in the sole custody of either of the Defendants. While the Commonwealth may sustain its prima facie burden by means of wholly circumstantial evidence, it may not do so by speculation.

The either/or theory of liability advocated by the Commonwealth is not recognized under Pennsylvania law. The Commonwealth is required to present sufficient evidence to establish sufficient probable cause to warrant the belief that each of the Co-defendants committed the offense. See Commonwealth v. Vining, 744 A.2d 310, 320 (Pa. Super. 2000).

Under the very difficult and troublesome circumstances presented to it, the Commonwealth has been unable to meet its burden. The Commonwealth asserts that with respect to each of the charges, each individual Defendant knowingly or recklessly caused injuries to their seven (7) week old infant son. While the evidence is sufficient to establish a prima facie case that the child's fractures were caused either by someone abusing the child likely through shaking him or pulling on his legs, arm, and big toe, the evidence is insufficient, even at this stage, to show who committed the abuse that caused those injuries.

The medical testimony established that the injuries to the right leg likely occurred on October 24, but the Commonwealth's medical experts could only determine that the remaining fractures occurred in a five to seven day period prior to October 25, 2009. The Commonwealth did not have any direct evidence regarding who caused the injuries to the

child. The Commonwealth also did not show who had the sole or exclusive care and control of the child during these time periods to be able to circumstantially show who was responsible for the various injuries sustained by the child. For example on October 22, Defendant Ingram had exclusive control of the child during the morning hours while Defendant Croucher was asleep, but the child was with Defendant Ingram and Defendant Ingram's mother at the time of Defendant Ingram's doctor's appointment. On October 23, the child was in the care of both of the Defendants. On October 24, Defendant Croucher had control of the child during the party but clearly said control was not exclusive as the child was being passed from person to person. After the party, the child was again in the care of both of the Defendants.

The Court understands that because the infant in this case was seriously injured as an apparent result of child abuse while generally in the care of his parents, the Commonwealth wants to hold the parents criminally culpable. The outcome of this case, however, must be guided by the rule of law rather than the nature or consequences of the underlying accusations. Commonwealth v. Bradford, 2010 PA Super 142 (8-4-2010). Based on the evidence presented at the preliminary hearing, the Court cannot determine who probably committed the offenses against the child.

**ORDER**

AND NOW, this \_\_\_\_ day of October, the Defendants' Petitions for Habeas Corpus are GRANTED and the charges against the Defendants are DISMISSED WITHOUT PREJUDICE. In light of the Court's Decision on the Petitions for Habeas Corpus, the remaining Motions are deemed moot.

BY THE COURT,

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Marc F. Lovecchio, Judge

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