

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-321-2016
v.	:	CR-322-2016
	:	
ARLENE P,	:	HABEAS CORPUS
TIFFANY P	:	
Defendants	:	

OPINION AND ORDER

On April 8, 2016, Defense Counsel for Defendant Tiffany P filed an Omnibus Pretrial Motion requesting Habeas Corpus relief with respect to Count 1, Endangering the Welfare of a Child¹ and Count 2, Failure to Report or Refer.²

On April 15, 2016, Defense Counsel for Defendant Arlene P filed an Omnibus Pretrial Motion requesting Habeas Corpus relief with respect to Count 1, Endangering the Welfare of a Child³ and Count 2, Failure to Report or Refer.⁴

At a subsequent court conference, on May 27, 2016, Counsel for both Defendants agreed to have the Court decide the Habeas Corpus motion based on the transcript of the Preliminary Hearing.

Background

Both Defendants are charged that between the dates of June 1, 2015, and August 31, 2015, they knowingly endangered the welfare of a child by violating a duty of care, protection or support by failing to report alleged incidents of child abuse as required. Police Criminal Complaint 15-10597, at 2. As both Defendants are health care providers, they are required to

¹ 18 Pa. C.S. § 4304(a)(1)

² 23 Pa. C.S. § 6319(a)(1)

³ 18 Pa. C.S. § 4304(a)(1)

⁴ 23 Pa. C.S. § 6319(a)(1)

report any suspected child abuse, and failing to report becomes a criminal offense. Tiffany P is a Certified Nursing Assistant, N.T., 4/4/16, at 5, 21. Arlene P is a Registered Nurse, Id. at 5, 21.

The facts of the case establish Co-Defendants live with their grandchildren, nieces, nephews, sons and daughters, at 1013 M St. Williamsport, PA. Id. at 19-20. Tiffany P and Arlene P are adults residing in the same home as the alleged victim (R.P.) at the time of the alleged incidents.

Commonwealth alleges that two incidents occurred at the home. The first is alleged to have occurred in July of 2015, and involved a 14-year-old male (C.H.) and 6-year-old male (K.P.) masturbating while looking at the 3-year-old victim (R.P.), who was not wearing clothes. The three grandchildren were in a camper located on the 1013 M St. property. K.P (6-year-old male) is the son of Tiffany P. R.P. is the half-sister to C.H. and first cousin of K.P.

Commonwealth alleges this incident took place when C.H. was “asked to take them outside and watch them outback.” Id. at 10. The 4-year-old sister (B.P.) went looking for her sister R.P. when she allegedly found the two boys in a state of undress with R.P., who was also undressed. Id. at 10, 11. The children immediately reported the incident to the paternal grandparents who sent the boys to bed and put the Victim (R.P.) in a time out. Id. at 11.

A second incident was reported on October 31, 2015, when R.P. was trick or treating with her father, Brian P, (Father of B.P. and R.P.; son of Arlene and Thomas P; brother to Tiffany P; as well as resident at 1013 M St). R.P. told her father that her brother (C.H.’s) “weiner was in my mouth”. Id. at 21. Father disregarded the statement at the time believing himself to be hallucinating; however, it was again brought to his attention when both B.P. and R.P. reported the incident to their mother who again reported it to Father. Id. at 24.

After this last incident, Father confronted his own father, Thomas P, (Grandfather) at the M St. residence at 11:00 p.m. on November 3, 2015. Grandfather admitted that there had been a situation in July where the boys had their pants down in front of the Victim (R.P.). Id. at 22.

Father and Nicole P (Mother) then reported the incident to the Williamsport Bureau of Police. Id. A criminal investigation followed and Officer Frederick Miller IV (Miller) of the Williamsport Bureau of Police testified along with the Victim's parents, at the preliminary hearing. Neither parent testified to exact dates for the incidents in question or whether Tiffany P was the specific caretaker on the dates the acts allegedly occurred; however, the Commonwealth charged that the crimes took place between June 1 and August 31, 2015, a time period which encompasses the camper incident.

Mother testified that she and Father have shared custody of the children and that Father resides in the home on M St. with Tiffany P (Aunt), Arlene P (Grandmother) and Thomas P (Grandfather). Id. at 6-7. Father testified that he leaves his children in the care of his parents and that when he confronted his parents about the allegations that he asked his sister, Tiffany P, to leave as the matter did not concern her. Id. at 33.

Miller testified that he has been employed by the Williamsport Bureau of Police for 18 years and currently investigates crimes against children, sexual crimes involving adults and/or children and violations of Megan's Law. Id. at 36. Miller testified that neither Tiffany P (Aunt) nor Arlene P (Grandmother) made a report to Children and Youth Services. Id. at 37.

Habeas Corpus

At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove the defendant's guilt beyond a reasonable doubt, but rather, must merely put forth sufficient evidence to establish a *prima facie* case of guilt. A *prima facie* case exists when the

Commonwealth produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused committed the offense.

Furthermore, the evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to be decided by the jury. Commonwealth v. Karetny, 880 A.2d 505, 583 Pa. 514, 529 (Pa. 2005). Additionally, hearsay evidence shall be considered by the issuing authority in determining whether a *prima facie* case has been established. Pa.R.Crim.P. 542(E). *Prima facie* case in the criminal realm is the measure of evidence which if accepted as true, would warrant the conclusion that the crime charged was committed.

Section 4304 of the Crimes Code defines the crime of Endangering the Welfare of children as follows:

A parent, guardian or other person supervising the welfare of a child under 18 years of age, or a person that employs or supervises such a person, commits an offense if he knowingly endangers the welfare of the child by violating a duty of care, protection or support. 18 Pa.C.S. § 4304 (a) (1).

The term “knowingly” is defined in § 302 (b) (2) which states:

A person acts knowingly with respect to a material element of an offense when: (i) the element involves the nature of his conduct or the attended circumstances if the element involves the nature of his conduct or the attended circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and (ii) if the element involves a result of his conduct he is aware that it is practically certain that his conduct will cause such a result. 18 Pa.C.S. § 302 (b) (2).

The crime of Failure to Report is established in Title 23 of the Pennsylvania Consolidated Statutes. Subchapter B of Chapter 63 governs Provisions and Responsibilities for Reporting Suspected Child Abuse and the Penalties for a failure to report or refer:

§ 6319. Penalties.

(a) Failure to report or refer.

- (1) A person or official required by this chapter to report a case of suspected child abuse or to make a referral to the appropriate authorities commits an offense if the person or official willfully fails to do so. 23 Pa.C.S. § 6319

Persons mandated to make reports of child abuse are delineated in Section 6311 of Title 23 of the Pennsylvania Consolidated Statutes:

§ 6311. Persons required to report suspected child abuse.

(a) Mandated reporters. --

The following adults shall make a report of suspected child abuse, subject to subsection (b), if the person has reasonable cause to suspect that a child is a victim of child abuse:

(1) A person licensed or certified to practice in any health-related field under the jurisdiction of the Department of State.

(b) Basis to report.

- (1) A mandated reporter enumerated in subsection (a) shall make a report of suspected child abuse in accordance with section 6313 (relating to reporting procedure), if the mandated reporter has reasonable cause to suspect that a child is a victim of child abuse under any of the following circumstances:

...

(iii) A person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse. 23 Pa.C.S. § 6311.

Discussion

The Court will first address the failure to report charges first because it is without question that the evidence adduced at the preliminary hearing, if true, warrants the conclusion that the crime as charged was committed. Both Defendants are either licensed (Arlene P) and/or certified (Tiffany P) in a health related field (nursing). Such persons are mandated to report any suspected child abuse if a person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse. The mother of the alleged victim

confronted Aunt regarding the alleged abuse. N.T, 4/4/2016, at 5. In response to the accusation, Aunt allegedly said “Victim is lying...the situation is handled”. If Aunt believed the “situation was handled” then she must have been aware of the “situation”; in other words, somebody made a disclosure to the Aunt regarding the abuse. If Aunt believed “Victim is lying” she is also able to identify the victim of the abuse. When there is an allegation and there is a specifically identifiable child, as is the case here, it then became her duty, as someone certified in Pennsylvania in a health related field, to report such abuse. Children and Youth services would then investigate the report and determine whether the report is founded, unfounded or indicated; however, the statute does not require the person certified in a health related field (mandated reporter) to make a determination as to the truth or falsity of the allegation. Rather it imposes by the very designation of the obligation a duty to report. Aunt is mandated to report and did not report and therefore it is legal for her to be held for court on such an omission.

Father also testified that Grandmother was a registered nurse and that he had spoken to her about the alleged incidents. He testified that Grandmother responded to him when he talked to her about the allegations by saying, “one statement was they had handled it and then the others was that my kids were lying”. Id. at 22. Miller testified that both Defendants indicated to him that they were in the healthcare field when he interviewed them. Id. at 36. As Grandmother is also a mandated reporter, the Court finds that there was sufficient evidence presented at the preliminary hearing to hold her for court to answer to the criminal charge of Failure to Report as well.

This Court also finds that the testimony adduced at the Preliminary Hearing established *prima facie* evidence that both Defendants endangered the welfare of a child in that they violated a duty of care to the children who resided in their home.

A person can be held to a duty of care for a child even if the child is not one's own child or if the person is not a mandated reporter of abuse. See Commonwealth v. Brown, 721 A.2d 1105 (Pa. Super. Ct. 1998) where a defendant was found guilty of Endangering the Welfare of Child for failing to report abuse when he lived with the child, and periodically babysat, changed diapers, and played with the child. In Commonwealth v. Kellam, 719 A.2d 792, (Pa. Super. 1998) the Superior Court held

In this age where children reside in increasingly complex family situations, we fail to understand why criminal liability should be strictly limited to biological or adoptive parents. . . . We therefore hold that whenever a person is placed in control and supervision of a child, that person has assumed such a status relationship to the child so as to impose a duty to act.

In the case at bar, the parents of the children testified to what they felt was the duty of Aunt and Grandmother to the children as they had supervisory care over their children. The children also reside in the home with Aunt and Grandmother. Defense Counsel questioned Miller on the contents of his Affidavit of Probable Cause, which states on page 3, "N.P. claimed that she had told her mother, Tiffany P, as well as her grandmother, Arlene P, and that Arlene told [C.H.] to stop or you will get a spanking." Affidavit of Probable Cause, Tiffany Marie P, Page 3 of 4. That statement coupled with the statements made at the preliminary hearing, if true, corroborates that statements Mother and Father made at the preliminary hearing: Aunt and Grandmother knew about the situation and that the "situation was handled". In other words, Defendants knew about the alleged inappropriate sexual activity in their home.

ORDER

AND NOW, this _____ day of September, based upon the foregoing Opinion, the Motion for a Writ of Habeas Corpus, as to both Defendants, is DENIED.

BY THE COURT,

Nancy L. Butts, President Judge

cc: Nicole Ippolito, ADA
John Gummo, Esq. Counsel to Tiffany P
Ron Travis, Esq. Counsel to Arlene P
Gary Weber, Lycoming Law Reporter