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Attorney for Plaintiff

A. [REDACTED] A. [REDACTED]
[REDACTED]

Plaintiff

v.

Rebecca Warren, Esq.
29 Mill Street
Danville, PA 17821

Montour County
29 Mill Street
Danville, PA 17821

Susan Kauwell
29 Mill Street
Danville, PA 17821

Defendants

UNITED STATES
DISTRICT COURT FOR THE
MIDDLE DISTRICT OF
PENNSYLVANIA

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, A. [REDACTED] A. [REDACTED] avers the following:

JURISDICTION

1. This action is brought pursuant to 42 U.S.C. § 1981, 42 U.S.C. § 1983 and 42 U.S.C. § 1985 and the Fourth, Fifth, Sixth and Fourteenth Amendment of the Constitution of the United States.

2. The jurisdiction of the Court is predicated on 28 U.S.C. § 1343(a), (1), (2), (3) and (4) and 28 U.S.C. § 1331.

ALLEGATIONS-PARTIES

3. Plaintiff, A ■■■ A. I. ■■■ hereinafter “A ■■■” is a college graduate with a bachelor of science in biomedical engineering, and is a former Research Fellow at the Mayo Clinic. A ■■■ co-presented a Workshop at the Prevent Child Abuse Minnesota Conference in 2008 with his wife, B ■■■ B ■■■ hereinafter “B ■■■”. B ■■■ is a board certified psychiatrist. A ■■■ is the father of A.I. who had a medical condition known as Benign Extra Axial Collections of Infancy (BEAC) and congenital rickets causing slight anterior rib beaking near the growth area of the rib at the costochondral junction. A.I. had no visible retinal findings upon his admission to Geisinger Medical Center, hereinafter “GMC”, and developed retinoschisis and too many to count retinal hemorrhages after surgery to drain his BEAC. Based on Dr. Bellino’s (GMC’s purported child abuse expert) and Dr. Wilson’s (a GMC ophthalmologist) false diagnosis that A.I.’s BEAC, slight rib beaking and post-operative retinal findings were caused by abuse, A ■■■ was coerced to move out of his own home under the threat of placement of his son in foster care. Furthermore, A ■■■ was arrested and criminally charged with aggravated assault, simple assault and endangering the welfare of a child by allegedly shaking A.I., and causing A.I.’s BEAC, minor rib beaking and post-operative retinal findings. The dependency petition and criminal charges have been dismissed. A ■■■ filed a previous civil rights action against Defendants that include Montour County and Montour County employees, Geisinger Medical Center,

Dr. Bellino and Dr. Wilson. Geisinger Medical Center and doctors Bellino and Wilson were dismissed from that suit. (M.D.Pa. Docket No. 4:12-cv-0043).

4. Defendant Montour County is an 8th class county political subdivision of the Commonwealth of Pennsylvania governed by a board of three commissioners elected to four year terms, Commissioner chairman Trevor Finn, Commissioner vice chairman Jack Gerst and Commissioner Jerry Ward. Plaintiff previously sued Defendant Montour County in a 42 U.S.C. §1983 action after Defendant Montour County employees coerced Plaintiff to “agree” to leave his home under the threat of placing his children in foster care and failing to provide A [REDACTED] and B [REDACTED] due process. The Middle District of Pennsylvania granted A [REDACTED] and B [REDACTED] Summary Judgment against Defendant Montour County in that case, M.D.Pa. Docket No. 4:12-cv-0043, on August 27, 2013.

5. Defendant Rebecca Warren is a Danville, Pennsylvania attorney who served as “a special assistant DA in Montour County as needed” prior to being elected and sworn in as Montour County District Attorney in January of 2012. Defendant Warren represented the Montour County Commissioners as “special counsel” and on a pro bono basis. Defendant Warren served as an Assistant District Attorney in Columbia County, Pennsylvania. Defendant Warren represented Montour County Commissioners in a civil action against the Governor of Pennsylvania, the Pennsylvania State Assembly and the Pennsylvania Treasurer in a suit to increase funding from the Commonwealth of Pennsylvania for a full time district attorney in Montour County. Defendant Warren also served on a Montour County multi-disciplinary team that investigated allegations of child abuse concerning A.I. Defendant Warren is sued individually and in her capacity as Montour County District Attorney.

6. Defendant Warren serves on the Board of Trustees of Maria Joseph Manor alongside Robert Davies, V.P. of Geisinger System Services and Dr. O. Fred Miller, M.D., a Dermatologist at Geisinger Medical Center.

7. At all times relevant to this complaint Defendant Warren served and continues to serve on the Montour County Child Abuse Near Fatality/ Fatality multidisciplinary review Team alongside Geisinger Medical Center pediatrician Dr. Paul Bellino.

8. Defendant Susan Kauwell is the Prothonotary/Clerk of Courts of the Montour County Court of Common Pleas. Defendant Kauwell serves on the board of the Geisinger Authority, alongside Montour County solicitor, Robert Marks, Esq. Geisinger Authority, previously named the Geisinger Medical Center Authority, is a Pennsylvania Municipal Authority established in 1975 with registered office address identical to that of Defendant Montour County, Defendant Warren and Defendant Kauwell, 29 Mill Street, Danville, PA, 17821. According to reports, Geisinger Medical Center Authority “was established to finance certain capital projects of Geisinger Health System”. Defendant Kauwell is sued in her individual capacity and as the Prothonotary/Clerk of Courts of the Montour County Court of Common Pleas.

ALLEGATIONS - FACTUAL

9. In January of 2010, B [REDACTED] was employed as a psychiatrist at the State Correctional Institute at Coal Township, PA. A [REDACTED] was the primary caretaker of J.B. and A.I.

10. A [REDACTED] and B [REDACTED] have been together since 2006 and have one biological child together, A.I. Although a stepfather to B [REDACTED]’s daughter J.B., A [REDACTED] is, and always has been, a father figure to J.B. who calls him “daddy”.

11. Prenatal ultrasounds demonstrate that A.I.’s body measurements were proportional to his head circumference measurements up until 22 weeks gestation.

12. The ultrasounds taken at 27 weeks and 37 weeks suggest A.I.’s head was already growing disproportionately larger compared to the measurements of the rest of his body.

13. A.I. was delivered via scheduled c-section.

14. A.I. had significant anemia at birth suggesting there may have been some organic process already in process at the time of his birth.

15. After A.I. was born, B [REDACTED] and A [REDACTED] took him to the pediatrician at 6 days old, 3 weeks old, 5 weeks old, 7 ½ weeks old and 2 months old. At no visit were any bruises, swelling, abrasions or any evidence of trauma to A.I. observed nor was there ever any suspicion that A.I. was abused.

16. Measurements documented in A.I.'s medical chart demonstrate that his head grew at a disproportionately greater rate than the rest of his body beginning at birth or even beginning before birth.

17. When A.I. was three months old, he attended a pediatrician appointment for his sister J.B. where it was noted that A.I.'s head appeared to be disproportionately large. The doctor suggested B [REDACTED] ask A.I.'s pediatrician about A.I.'s head size at his 4-month visit. The pediatrician was not alarmed at this observation nor was abuse suspected as a result of this observation that A.I. had a large head. The doctor had no reservation about delaying the investigation of the appearance that A.I.'s head was disproportionately large and that it was not an emergency.

18. On January 7, 2010, J.B. was 7 years old and A.I. was 4 months old.

19. On January 7, 2010, A [REDACTED] watched J.B. and A.I. while B [REDACTED] was at work as was their usual practice. Although A.I. took some formula during the day, he did not feed well and was uncharacteristically sleepy all day. A.I. did not spit up at all during the day.

20. After B [REDACTED] arrived home from work she went to the pharmacy and got some pedialyte and Tylenol. When A.I. spit up the pedialyte and Tylenol, B [REDACTED] was concerned about dehydration and A.I.'s somnolence, so she took A.I. to Geisinger Medical Center.

21. Multiple exams by multiple physicians at GMC revealed A.I. had absolutely no external evidence of trauma. A.I. was found to have significant subdural collections and minor rib beaking.

22. A full skeletal survey was conducted on A.I. A full skeletal survey is a series of x-rays that examine every bone in a child's body to search for evidence of fractures. The skeletal survey report found no "evidence of acute fracture".

23. At approximately 2:45 a.m., Dr. Neutze, a third year ophthalmology resident at GMC, was unable to identify any retinal hemorrhages or retinal abnormalities during an undilated eye exam conducted shortly after A.I.'s admission to GMC.

24. According to published medical literature, an undilated eye exam "provides an excellent view of the optic discs, maculae, and posterior retina."¹

25. According to published medical literature, undilated eye exams performed by non-ophthalmologists are accurate in identifying the presence or absence of retinal hemorrhages 87% of the time².

26. A CT scan of A.I.'s abdomen performed at 2:56 a.m. reported, "No fracture or subluxation is noted. Bony structures are normal for age. Intervertebral disc spaces are within normal limits. The prevertebral and paravertebral soft tissues are unremarkable. The apices of the lungs are clear. IMPRESSION: Negative cervical spine CT scan."

27. At approximately 9:00 a.m., A.I.'s subdural collections were surgically drained and the neurosurgeon noted a "serosanguineal [*sic*] fluid with extremely significant pressure".

¹ Morad, Y, Kim, YM, Huyer D, Capra, L, Levin AV "Nonophthalmologist Accuracy in Diagnosis of Retinal Hemorrhages in the Shaken Baby Syndrome" JPediatr 2003;142:431-4 (2003).

² Id. (accuracy rate in identifying the presence of retinal hemorrhage in current study comparable to prior study).

28. After A.I.'s "serosanguineal [*sic*] fluid with extremely significant pressure" was drained, A.I.'s eyes were dilated and Dr. Bellino conducted an eye exam in which Dr. Bellino was "concerned" that he may have observed retinal hemorrhages and retinoschisis.

29. At 9:13 a.m. an addendum to the 2:56 a.m. CT scan report was made with a notation, "Addendum: There are subtle fractures at the anterior ends of the ribs of the fifth, sixth, and seventh ribs bilaterally."

30. No rib fractures were identified on the skeletal survey.

31. The "subtle rib fractures" were so subtle they were not reported on the initial radiology report because they were not fractures but were very minor anterior rib beaking at the growth plate of A.I.'s ribs.

32. Laboratory testing demonstrated A.I.'s mother, B [REDACTED], to be deficient in vitamin D with a 25 hydroxy level of 10 ng/mL with a normal level of 25-80 ng/mL.

33. At approximately 12:45 p.m. on January 8, 2010, three hours after A.I.'s "serosanguineal [*sic*] fluid with extremely significant pressure" was drained, Trooper Davis reported, "Dr. Bellino related that they had just received the results from the [dilated] eye exam and there were retinal hemorrhages and that they can only be attributed to abuse and shaking. No other medical explanation can be determined to cause that injury."

34. Over a year later, Dr. Wilson reported, "I had a clear view to the posterior part of the eye. The exam revealed too numerous to count retinal hemorrhages in both eyes involving the intraretinal layers of the retina. The hemorrhages extended to the ora serrata but were concentrated in the posterior pole. I also observed a macular retinoschisis in the right eye. ... It was my impression that the findings described above could only have been associated with acceleration/deceleration injuries seen with shaken baby syndrome."

35. A [REDACTED] and B [REDACTED] observed Dr. Wilson utilize a device to examine A.I.'s eyes that transmitted the images observed to a monitor screen. B [REDACTED] observed Dr. Wilson print a copy of images of A.I.'s out on a printer connected to the device.

36. Dr. Wilson failed to acknowledge and/or report that Dr. Neutze saw no retinal hemorrhages or retinoschisis in the macula or posterior of A.I.'s eyes during the pre-operative undilated exam Dr. Neutze performed shortly after A.I.'s admission to GMC and before surgery to drain A.I.'s "extremely significant pressure" fluid collection.

37. In a report addressed to then District Attorney Buehner, Dr. Bellino states essentially what is referred to as the vitreoretinal traction hypothesis concerning retinal hemorrhage and the shaken baby syndrome, "[A.I.] exhibited extensive retinal hemorrhage and retinoschisis, ... Although other disease states may produce retinal hemorrhages, only traumatic injury will produce bleeds in the number and manner seen on [A.I.]'s examination. ... A [REDACTED] exhibited traumatic retinoschisis on his exam. ... This finding can only be caused by severe physical trauma, in this case, abusive head injury. Traumatic [macular] retinoschisis has no other known medical cause except trauma. The finding on exam is in and of itself proof that severe trauma has occurred. ... Dr. Thomas Wilson, a pediatric ophthalmologist at Geisinger who studied under the world's foremost expert in retinal findings in child abuse, performed a more thorough, dilated, indirect fundoscopic examination and confirmed with certainty the presence of both the hemorrhages and the retinoschisis."

38. Dr. Bellino's reference to "the world's foremost expert in retinal findings in child abuse" is a reference to Dr. Alex V. Levin, M.D.

39. Dr. Levin is an ophthalmologist at Wills Eye Hospital who left an 18-year tenure at Toronto's Hospital for Sick Children in 2008 after a colleague of Dr. Levin's in Toronto, pathologist Dr. Charles Smith, became embroiled in a scandal that led to public hearings in November of 2007

conducted by Justice Steven T. Goudge of the Canadian Court of Appeal for Ontario. Justice Goudge's inquiry ultimately resulted in the reversal of a number of convictions based on the hypothesis of shaken baby syndrome, including one guilty plea.

40. Dr. Levin is the chairman of the International Advisory Board of the National Center for Shaken Baby Syndrome. Dr. Levin is the world's foremost advocate of the hypothesis that shaking causes retinal hemorrhages in general and macular retinoschisis in particular. Dr. Levin's hypothesized mechanism of retinal injury, often referred to as vitreoretinal traction, is controversial. Dr. Levin has spent much of his career advocating and defending his vitreoretinal traction hypothesis. Recent medical literature calls Dr. Levin's vitreoretinal traction hypothesis into serious question.

41. Dr. Levin trained Geisinger Medical Center ophthalmologist Dr. Wilson in a fellowship program at Toronto's Hospital for Sick Children.

42. Dr. Bellino further stated in his report to Mr. Buehner that A.I.'s subdural collections, which had an acute component and a chronic, or older component, was evidence that A.I. suffered "repeated episodes" of abusive head trauma. (hereinafter "Bellino's subdural hypothesis" meaning that old subdural fluid collections represents episodes of trauma remote in time and trace amounts of fresh hemorrhage represents a recent episode of head trauma, rather than a benign natural explanation for the fluid collection).

43. Based on A.I.'s subdural collections, post-operative retinal findings and rib beaking, Dr. Bellino stated, "I can conclude with the utmost of medical certainty that A. [REDACTED] is the victim of child abuse, namely abusive head trauma. There is no known medical disease state that will result in spontaneous, recurrent subdural hemorrhaging, retinal bleeding, retinoschisis, and rib fractures."

44. Dr. Bellino failed to acknowledge and/or report to District Attorney Buehner and Trooper Davis that Dr. Neutze saw no retinal hemorrhages or retinoschisis during the pre-operative

undilated exam Dr. Neutze performed shortly after A.I.'s admission to GMC and before surgery to drain A.I.'s "extremely significant pressure" fluid collection.

45. Trooper Davis prepared an affidavit of probable cause and obtained a warrant for A■■■■'s arrest.

46. Trooper Davis does not mention anything about rib fractures in his report or affidavit of probable cause.

47. Trooper Davis asserts that A.I.'s subdural collections "suggest multiple episodes of shaking" in his affidavit of probable cause.

48. Trooper Davis' affidavit of probable cause states, "with the retinal hemorrhages there can be no other explanation except a shaking type injury only associated with abuse, no medical explanation could explain the injuries."

49. Trooper Davis' affidavit of probable cause does not mention that A.I.'s initial pre-operative undilated exam demonstrated no retinal hemorrhages or retinoschisis.

50. A■■■■ turned himself in voluntarily for arrest.

51. At A■■■■'s March 3, 2010 preliminary criminal hearing, Dr. Bellino testified that, based on A■■■■'s subdural collections, he made "a diagnosis that this is child abuse that there's been repeated episodes of child abuse"... and that he told Trooper Davis "retinoschisis in this particular situation and this age that there could be no other diagnosis to explain the injury ... than abusive head injury".

52. Dr. Bellino omitted and failed to testify at A■■■■'s preliminary hearing to three critical facts. Dr. Bellino failed to testify to the fact that A.I. had no observable retinal hemorrhaging when Dr. Neutze performed a pre-operative undilated eye exam shortly after A.I.'s admission to GMC, that A.I.'s rib findings were subtle rib beaking that did not resemble fractures and that a medical non-

traumatic condition known as Benign Extra-Axial Collections of infancy (BEAC) could account for A.I.'s subdural collections.

53. As a result of Dr. Bellino's failure to present critical facts at the preliminary hearing, probable cause was found and A ■■■ was bound over for trial.

54. In May of 2010, Montour County filed a dependency petition alleging that B ■■■ was an unfit mother because she believed Dr. Bellino and Dr. Wilson misdiagnosed A.I.'s medical condition as being caused by child abuse and therefore lacked the protective capacity to ensure A.I.'s safety.

55. The ■■■ family moved to Lycoming County, where the dependency petition was litigated in the Lycoming County Court of Common Pleas.

56. The Lycoming Court of Common Pleas heard the testimony of Dr. Bellino and Dr. Wilson in support of their allegations of abuse. The Court also heard the testimony of Stanford University neuro-radiologist Dr. Patrick Barnes and Hershey Medical Center radiologist Dr. Julie Mack.

57. Then District Attorney Buehner attended the dependency hearing on the day Dr. Barnes and Dr. Mack testified and observed Dr. Mack explain, through showing A.I.'s imaging to the dependency court, that A.I.'s subdural collections were not abusive in origin and A.I.'s rib beaking were not fractures. See Exhibit 1.

58. On February 24, 2011, Dr. Mark Dias, a Penn State Hershey Medical Center neurosurgeon issued a report contradicting Dr. Bellino's subdural hypothesis. Dr. Dias opined that A.I. had a medical condition (BEAC) that explained his subdural collections. However, based on the reports of retinal hemorrhage, rib fractures and in particular, the report of retinoschisis, Dr. Dias opined A.I. had been abused. Dr. Dias' report does not mention that the initial pre-operative undilated eye exam demonstrated no retinal hemorrhages or retinoschisis. Dr. Dias does not mention in his report that the

initial CT report and the skeletal survey reported no rib fractures and that the only report of rib fractures was in an addendum to the CT report. Dr. Dias does not report that Dr. Mack and Dr. Barnes reported A.I.'s rib beaking had been misinterpreted in the CT scan Addendum as fractures.

59. Dr. Dias was never called as a witness in the dependency proceeding. A copy of Dr. Dias' report was never provided to A [REDACTED] during the dependency.

60. On May 4, 2011, the Lycoming County Court of Common Pleas dismissed the dependency petition returning full custody of A.I. (and their older daughter, J.B.) to A [REDACTED] and B [REDACTED].

61. Upon reconsideration, The Lycoming County Court of Common Pleas later vacated its May 4, 2011 Opinion and Order and on August 15, 2011 issued a new Order and Opinion to make it clear that the court had not made any finding of abuse in its May 4, 2011 Order.

62. The Lycoming County Court declined to make any finding that A.I. had been abused despite the request by both Montour County and Lycoming County to do so in their respective dependency petitions.

63. The Lycoming County Court declined to find B [REDACTED]'s support of A [REDACTED]'s innocence and B [REDACTED]'s belief that Dr. Bellino and Dr. Wilson had misdiagnosed A.I.'s subdural collections, eye findings and rib beaking as having been caused by abuse as unreasonable nor did the Court find such to be a basis for finding B [REDACTED] lacked protective capacity to protect A.I.

64. The failure of a dependency court to make a finding of abuse where the standard of proof is clear and convincing evidence ordinarily results in the dismissal of criminal charges where the standard of proof is beyond a reasonable doubt.

65. A [REDACTED]'s counsel requested, and former District Attorney Buehner did not object, to continue A [REDACTED]'s criminal trial pending the outcome of the dependency proceeding.

66. On August 9, 2011, A ■■■ forwarded copies of reports and curriculum vitae of five experts who were to testify on behalf of A ■■■ at his criminal trial to District Attorney Buehner.

67. Then District Attorney Buehner, was retiring after 20 years of serving as the Montour County District Attorney and did not run for re-election in 2011.

68. On September 29, 2011 A ■■■ requested that District Attorney Buehner provide the names and reports of experts the Commonwealth expected to testify at trial.

69. A ■■■ repeatedly requested that Dr. Wilson and Geisinger Medical Center produce copies of the retinal photos taken by Dr. Wilson during his dilated post-operative examination.

70. A ■■■'s counsel and then District Attorney Buehner met to discuss the status of the criminal case on October 11, 2011. At that meeting District Attorney Buehner mentioned that the Commonwealth expected to call Dr. Mark Dias and Dr. Alex Levin at trial. District Attorney Buehner agreed the Commonwealth would provide A ■■■ with expert reports by February 25, 2012 with an expected trial date of April 1, 2012.

71. At the October 11, 2011 meeting, Mr. Buehner expressed the intention of obtaining the photos Dr. Wilson took of A.I.'s retinas during his post-operative dilated examination.

72. It was evident that then District Attorney Buehner did not expect to try the criminal case before his term as District Attorney ended.

73. It was evident that District Attorney Buehner expected that Defendant Warren would be elected to replace Mr. Buehner.

74. On November 12, 2011, A ■■■ filed a motion requesting an Order compelling Dr. Wilson and/or Geisinger Medical Center to produce the photos Dr. Wilson took of A.I.'s retinas during his post-operative dilated examination. In the alternative, A ■■■ requested that no testimony about Dr. Wilson's post-operative dilated examination be permitted at trial.

75. On December 22, 2011, Judge James conducted a telephone conference concerning A. I.'s motion to produce the photos Dr. Wilson took of A.I.'s retinas during his post-operative dilated examination.

76. Mr. Buehner represented to Judge James that his investigation into the matter revealed that Dr. Wilson took the images bedside, the images were not saved and the images cannot be recovered. Judge James indicated a hearing on the matter would be scheduled.

77. Defendant Warren was sworn in as the Montour County District Attorney on January 3, 2012.

78. Prior to being sworn in as Montour County District Attorney Defendant Warren served as an Assistant District Attorney in Colombia County and as "a special assistant DA in Montour County as needed".

79. On February 11, 2010, nearly two years prior to becoming Montour County District Attorney, Defendant Warren participated in a multi-disciplinary team meeting concerning allegations A.I. had been abused. Participants at this meeting included Defendant Warren, then District Attorney Buehner, Montour County Solicitor Robert Marks, Sr., Montour County Children and Youth Services Agency Director, Craig Patterson, Montour County Children and Youth Services case-worker Julie Spencer and Dr. Bellino.

80. Defendant Warren represented Defendant Montour County pro bono in a lawsuit by Montour County against then Pennsylvania Governor Ed Rendell, the Commonwealth of Pennsylvania, the General Assembly of Pennsylvania, and then Commonwealth of Pennsylvania Treasurer, Rob McCord.

81. The Montour County Defendant's October 1, 2009 civil complaint prosecuted by Defendant Warren names three Defendant Montour County Commissioners as Plaintiffs and, according

to news reports, sought to compel the Commonwealth of Pennsylvania to pay Montour County \$190,000.00 reimbursement for funding a full time Montour County District Attorney.

82. Defendant Warren withdrew from her representation of Defendant Montour County on August 27, 2012, nearly 8 months after becoming Montour County District Attorney.

83. On January 6, 2012, Plaintiff A■■■■ filed a civil rights lawsuit against Defendant Montour County and employees of Montour County for due process civil rights violations. A■■■■'s complaint articulated in detail the three critical facts omitted by Dr. Bellino in his report and preliminary hearing testimony that became evident during the dependency hearing; 1) that A.I.'s subdural collections were best explained by BEAC rather than trauma, 2) that A.I. had no retinal hemorrhages or retinoschisis prior to his surgery to drain his subdural collections and any suggestion that the retinal hemorrhages or retinoschisis observed post-operatively was not supported by the medical record or facts, and 3) that A.I. had rib beaking that had been misinterpreted in the CT scan report addendum as fractures was clearly demonstrated by Dr. Mack during the dependency proceeding.

84. On February 6, 2012, Judge James conducted a hearing concerning A■■■■'s motion to compel Dr. Wilson and/or Geisinger Medical Center to produce the photos Dr. Wilson took of A.I.'s retinas during his post-operative dilated examination.

85. B■■■■ testified that she was familiar with eye exams because she had worked at an eye clinic for several years.

86. B■■■■ testified to her recollection of an electronic device Dr. Wilson used to examine A.I.'s retinas that displayed the images of what Dr. Wilson was seeing on a monitor. B■■■■ testified that there was a printer attached to the electronic device and that Dr. Wilson printed out at least two photos on the printer.

87. An employee of Geisinger testified that Dr. Wilson has an electronic device that Dr. Wilson uses to conduct retina examinations that has a monitor and possibly a printer. He further testified that, in addition to the device used by Dr. Wilson, Geisinger possessed specialized digital photography equipment for taking digital photographs of retinas. He further testified that he was trained to operate the digital retina camera and was the person who would normally perform such imaging. He testified that normally a doctor would write an order for the retinal photographs to be taken. He further testified that once such an order was written, he would go to the patient and take the ordered digital retinal photographs. He testified that he had no recollection of taking any digital retinal photographs of A.I. and further testified that he had searched A.I.'s entire medical file and could not find any order written by any doctor for digital retinal photographs of A.I. to be taken.

88. There were representations made and/or testimony that the photos Dr. Wilson printed Dr. Wilson could not be located and/or had been destroyed.

89. In light of information indicating that the photos printed by Dr. Wilson were no longer in existence, Judge James requested that Defendant Warren and A■■■■ brief the issue of spoliation of evidence as applied to the missing retinal photographs.

90. A newspaper reported Judge James as saying, "Given all the controversy over shaken baby syndrome, we really got to nail down whether there are photos here which are crucial."

91. By February 6, 2012, Defendant Warren was aware that the evidentiary basis that a crime had been committed as established in Trooper Davis' affidavit of probable cause no longer existed. First, Dr. Dias' February 24, 2011 report repudiated Dr. Bellino's subdural hypothesis, the claim that A.I.'s subdural collections were evidence of multiple episodes of abusive shaking. Second, in addition to the fact that Dr. Neutze's pre-operative undilated exam showed no retinal hemorrhages or macular retinoschisis, the photos Dr. Wilson took during his post-operative retinal exam had been lost or

destroyed and no medical order had been written by Dr. Wilson or Dr. Bellino to photodocument A.I.'s retinas with the specialized equipment owned by GMC for such purposes.

92. As of February 6, 2012, Defendant Warren knew or should have known that probable cause to continue A■■■■'s prosecution no longer existed.

93. A prosecutor does not have discretion to continue the prosecution of a case in which probable cause no longer exists.

94. Once probable cause no longer exists, a prosecutor has but one option, which is to withdraw the criminal charges.

95. The act of withdrawing criminal charges when probable cause no longer exists is an administrative act unrelated to a prosecutor's quasi-judicial prosecutorial function.

96. A prosecutor is barred from prosecuting a criminal case in which her duty of loyalty to advocate on behalf of a private client clouds and conflicts with her duty to exercise independent prosecutorial judgment.

97. Prosecuting a case in which a prosecutor is barred from prosecuting is not part of a prosecutor's quasi-judicial prosecutorial function.

98. The act of referring a case in which the prosecutor is barred from prosecuting a criminal case because she has a conflict of interest is an administrative act unrelated to a prosecutor's quasi-judicial function of prosecuting a criminal case.

99. After February 6, 2012, Defendant Warren continued to prosecute A■■■■ in furtherance of her duty to advocate for her client, Montour County and in dereliction of her duty to exercise independent prosecutorial judgment and in violation A■■■■'s Constitutional rights.

100. On March 10, 2012, A [REDACTED] provided the same medical records that Defendant Warren claimed she did not have but A [REDACTED] had already provided to Mr. Buehner in 2011, including the reports and curriculum vitae of five defense experts.

101. At all times relevant to this complaint, it was the policy and/or practice of Defendant Montour County, defendant Warren and Defendant Kauwell to schedule every open criminal case for a pre-trial conference and trial every two months whether or not there were any matters that required a pre-trial conference or the parties were ready for trial.

102. At all times relevant to this complaint, it was the policy and/or practice of Defendant Montour County and Defendant Kauwell to send notices of the pre-trial conferences that stated “You are hereby DIRECTED to appear for a pre-trial conference in the above captioned case” ... “If you fail to appear ... a warrant for your arrest may be issued.”

103. At all times relevant to this complaint, it was the policy and/or practice of Defendant Montour County and Defendant Kauwell that all continuance requests would not be submitted to the Court without first being submitted to Defendant Warren for Defendant Warren’s approval.

104. At all times relevant to this complaint, it was the policy and/or practice of Defendant Montour County and Defendant Warren not to approve any continuance request unless submitted on a form provided by Defendant Warren which required A [REDACTED] to waive his right to a speedy trial.

105. At all times relevant to this complaint, the policies and/or practices of Defendant Montour County, Defendant Kauwell and Defendant Warren effectively required A [REDACTED] to waive his right to a speedy trial in order to avoid a pre-trial conference at which Defendant Warren had not yet provided expert witness reports and was not ready to go to trial or even ready for a pre-trial conference.

106. On April 4, 2012, though the Commonwealth was not ready to proceed to trial, pursuant to Defendant Kauwell's policy, A [REDACTED] was required to submit a request for continuance on Defendant Warren's form with boilerplate language that A [REDACTED] was waiving his right to a speedy trial in order to avoid the court issuing an arrest warrant for failing to appear for a pre-trial conference where Defendant Warren would represent she was not ready to proceed to trial.

107. On April 9, 2012, A [REDACTED]'s attorney met with Defendant Warren to discuss, among other things, that Defendant Warren would provide expert reports by May 15, 2012 with an expected trial date of June 18, 2012.

108. On April 17, 2012, Judge James issued an Order denying A [REDACTED]'s motion to compel Dr. Wilson and/or GMC to produce the photos Dr. Wilson took of A.I.'s retinas during his post-operative dilated examination.

109. Judge James indicated he would consider a negative inference instruction to the jury regarding the missing photos.

110. Defendant Warren stated in an April 20, 2012 email that the manufacturer was to examine Dr. Wilson's electronic device to see if there was any way to retrieve photos taken or printed from the device.

111. No photos were ever recovered from the device.

112. On April 20, 2012, Defendant Warren stated in an email, "I am going to secure another expert and have begun the process to receive approval [from Defendant Montour County] to do so. I will notify you upon receipt of the Report and will provide you with a copy. We had tentatively discussed May 15th as the date to exchange Expert Reports. ... We anticipated that we will pick a Jury on June 12th and Trial will commence June 18th and take a week to try ... I am a bit concerned about

scheduling this matter for June. ... I would feel more comfortable setting a date certain for Trial during our next trial term which is August 14th in order to avoid any potential problems.”

113. On May 15, 2012, Defendant Warren filed a motion in limine stating, “The existence of the Federal lawsuit which has not yet been resolved is inflammatory, prejudicial, without probative value, and irrelevant to the criminal case. WHEREFORE the Commonwealth respectfully requests the Court grant its Motion in Limine preventing defense from referring to or mentioning in any manner the existence of the Federal lawsuit...”

114. On May 15, 2012, Defendant Warren further stated “an expert has been identified by the Commonwealth; however, the ability to review the documents and issue an expert report prior to May 15, is unattainable” and “ the Commonwealth respectfully requests the Court to extend the time for the Commonwealth’s expert to issue his report.”

115. On May 30, 2012, Judge James held a pre-trial conference and issued an order in which he stated, “As of this date, [the] Commonwealth has not provided expert reports or the equivalent statement to Defense counsel. The Commonwealth will be providing the same to Defense counsel within days of today’s conference” based on the representations Defendant Warren made to Judge James that the production of Dr. Levin’s report was imminent.

116. From “within days” of Judge James May 30, 2012 Order Defendant Warren was in violation of Judge James Order for failure to provide expert reports to A [REDACTED]

117. On June 4, 2012, though Defendant Warren was in violation of Judge James May 30, 2012 Order and was not ready to proceed to trial, pursuant to Defendant Kauwell’s policy, A [REDACTED] was required to submit a request for continuance on Defendant Warren’s form with boilerplate language that A [REDACTED] was waiving his right to a speedy trial in order to avoid the court issuing an arrest warrant for

failing to appear for a pre-trial conference where Defendant Warren would represent she was not ready to proceed to trial.

118. On June 11, 2012, Defendant Warren emailed “I have not been able to contact Dr. Levin due to my schedule. I will try to touch base with him later this week.”

119. On June 15, 2012, 16 days after Judge James Order to provide expert reports to A ■■■ “within days”, Defendant Warren represented that she still needed to obtain additional medical records for Dr. Levin to complete his report.

120. Defendant Warren misrepresented to Defendant Kauwell and/or the court that she was ready for trial to avoid counting the delay caused by Defendant Warren’s failure to produce expert reports to A ■■■ against the Commonwealth for purposes of Rule 600 as evidenced by the June 29, 2012 Criminal Court Docket entry “Commonwealth Ready to Proceed. It is understood by Commonwealth that continuance granted due to Defense expert availability”.

121. On July 5, 2012, 36 days after Judge James Order to provide expert reports to A ■■■ “within days”, Defendant Warren emailed “I need to secure medical documentation from Hershey so that Dr. Levin can complete his Report. I am working on arranging that.”

122. A ■■■ provided all Hershey medical records to Defendant Warren on March 10, 2012.

123. On August 14, 2012, 76 days after Judge James May 30, 2012 Order to provide expert reports to A ■■■ “within days”, Defendant Warren emailed, “Dr. Levin needs the Hershey neurosurgeon report. I have been stymied in my attempts to get those documents.”

124. Defendant Warren already had the documents for which she claims her efforts to obtain had been “stymied”. The neurosurgeon report from Hershey to which Defendant Warren referred had been provided by A ■■■ to Defendant Warren on March 10, 2012, some five months prior. A ■■■’s

attorney directed Defendant Warren to the specific page number of the records in her possession since March 10, 2012 for that report.

125. On August 30, 2012, three (3) months after Judge James Order to provide expert reports to A ■■■ “within days”, though Defendant Warren was still in violation of Judge James May 30, 2012 and was not ready to proceed to trial, pursuant to Defendant Kauwell’s policy, A ■■■ was required to submit a request for continuance on Defendant Warren’s form with boilerplate language that A ■■■ was waiving his right to a speedy trial in order to avoid the court issuing an arrest warrant for failing to appear for a pre-trial conference where Defendant Warren would represent she was not ready to proceed to trial.

126. On September 25, 2012, United States Middle District Court of Pennsylvania Judge John E. Jones, III denied Defendant Montour County’s motion to dismiss A ■■■’s civil due process claim.

127. On September 26, 2012, Defendant Warren represented to A ■■■’s counsel that cost was a factor in failing to produce expert report(s) to date and she had concern about spending Defendant Montour County money for experts. Defendant Warren promised an update on Dr. Levin’s report by October 4, 2012.

128. It appears that Defendant Warren’s repeated assertions that she lacked medical records for Dr. Levin to complete his report, a report whose production was represented as imminent on May 30, 2012, was a stalling tactic because of Defendant Warren’s concern over her client, Defendant Montour County, having to fund the prosecution of A ■■■.

129. Defendant Warren failed to provide any update concerning Dr. Levin’s expert report on October 4, 2012.

130. By October of 2012, Defendant Warren had stalled the criminal trial for over 9 months because of her concern about her private client, Defendant Montour County, spending money on experts.

131. When probable cause exists, a defendant has a Constitutional right to a speedy trial.

132. When probable cause does not exist, a defendant has a Constitutional right to a timely administrative dismissal of the criminal charges.

133. On October 8, 2012, A [REDACTED] filed a motion to preclude any Commonwealth experts due to the Commonwealth's extraordinary delay in producing any expert reports in violation of Judge James May 30, 2012 Order that they be produced "within days" of the Order.

134. On October 9, 2012, Defendant Warren filed a motion stating that "the Commonwealth has encountered difficulty in securing a sole expert opinion" and the "Commonwealth requires additional time in order to finalize the retention of experts and issuance of opinions".

135. In her motion for more time, Defendant Warren attributed her difficulty in securing an expert to a bizarre imaginary defense expert conspiracy to intimidate prosecution expert witnesses.

136. The lack of medical facts supporting probable cause that A.I. had been abused is the likely explanation for Defendant Warren's inability to secure an expert, not an imaginary defense expert conspiracy.

137. On October 14, 2012, Dr. Levin sent an email to Defendant Warren with a subject entitled "RE: FW: Commonwealth v. [REDACTED]", the email was copied to dwalsh@mbklaw.com. That email address belongs to Donna Walsh, Esquire, an attorney at the law firm Myers, Brier & Kelly located in Scranton, Pennsylvania.

145. In direct contradiction to Dr. Levin's assumption, Dr. Neutze observed no retinal hemorrhages and no retinoschisis during her pre-operative undilated exam shortly after A.I. was admitted to GMC.

146. Dr. Levin's report states, "One of the confounding factors in this case is that the full [dilated] eye exam did not occur until after neurosurgery. ... My assessment of this case is based on the assumption that the retina as seen by Dr. Wilson [during the dilated exam after surgery to drain A.I.'s "extremely significant pressure" subdural collection] was actually the retina, or close to the retina that would have been seen on presentation had there been a dilated examination at that time [Dr. Neutze saw no retinal hemorrhages or retinoschisis during her pre-operative undilated eye exam]".

147. Dr. Levin further states "That the initial limited eye examination in this child showed no hemorrhages is, somewhat inconsequential as the optical challenges of viewing through a small [undilated] pupil make it quite likely that an inadequate view prevented the detection of hemorrhages which may have been present."

148. Dr. Levin's assertion that Dr. Neutze's undilated exam was "somewhat inconsequential" ... and that it was "quite likely" that she missed retinal hemorrhages "too numerous to count" and missed a major finding - macular retinoschisis - because she performed an undilated exam directly contradicts Dr. Levin's published work in which he and his colleagues found an 87% accuracy rate when nonophthalmologists attempted to identify retinal hemorrhages through undilated pupils.³

149. Dr. Neutze, an ophthalmology resident, would be at least as proficient – and likely more proficient – than a nonophthalmologist at identifying retinal hemorrhages during an undilated exam.

³ Morad, Y, Kim, YM, Huyer D, Capra, L, Levin AV "Nonophthalmologist Accuracy in Diagnosis of Retinal Hemorrhages in the Shaken Baby Syndrome JPediatr 2003;142:431-4 (2003) (accuracy rate comparable to prior study).

150. According to Dr. Levin's own published research, there is only a 13%, or lower, probability that Dr. Neutze missed retinal hemorrhages too numerous to count.

151. The probability that Dr. Neutze missed two major findings, macular retinoschisis *and* retinal hemorrhages too numerous to count, during an undilated exam may well approach zero.

152. Dr. Levin's assumption is not supported by the facts of this case or by Dr. Levin's own published work.

153. On November 9, 2012, over five months after Judge James Ordered Defendant Warren to produce expert reports "within days", Defendant Warren emailed Dr. Levin's report dated October 31, 2012, to A■■■■'s counsel.

154. Defendant Warren also stated in her November 9, 2012 email that she was securing another expert, "I will now forward those files to my other expert so that he may review and write his report."

155. On November 19, 2012, though the Commonwealth was not ready to proceed to trial and was still seeking another expert, pursuant to Defendant Kauwell's policy, A■■■■ was required to submit a request for continuance of the hearing on A■■■■'s motion to exclude the Commonwealth's experts due to delay in producing expert reports on Defendant Warren's form with boilerplate language waiving A■■■■'s right to a speedy trial in order to avoid the court issuing an arrest warrant for failing to appear for the hearing.

156. On January 22, 2013, Defendant Warren emailed that she "was looking at another expert witness but I do not think I really need one. I am awaiting a response from my County regarding cost."

157. By January 22, 2013, Defendant Warren had stalled A■■■■'s criminal trial by over a year on the basis of her failure to obtain expert opinions and reports due to her concern that her private client Montour County had to pay for the experts.

158. Dr. Levin's report mentions verbal conversation and emails between Dr. Dias and Dr. Levin and Dr. Dias' February 24, 2011 report to Lycoming County Children and Youth Services employee Shelby Newcomer.

159. On January 30, 2013, A■■■■'s counsel sent Defendant Warren a request for a copy of the emails referenced in Dr. Levin's report and for a copy of Dr. Dias' February 24, 2011 report.

160. On February 4, 2013, A■■■■ filed a motion to compel Defendant Warren to turn over the emails between Dr. Dias and Dr. Levin referenced by Dr. Levin in his October 31, 2013 expert report.

161. On February 12, 2013, after discovering that Defendant Warren had represented Defendant Montour County until August 27, 2012, A■■■■'s counsel sent Defendant Warren a letter challenging her to recuse herself due to her conflict of interest and/or to dismiss the criminal charges against A■■■■ due to the lack of probable cause.

162. On February 18, 2013, Defendant Warren emailed, "Please advise as to your legal basis" for A■■■■'s request for emails between Dr. Dias and Dr. Levin referenced by Dr. Levin in his October 31, 2013 expert report

163. On February 19, 2013, A■■■■ filed a motion to disqualify Defendant Warren from prosecuting A■■■■ due to Defendant Warren's conflict of interest. See Exhibit 2.

164. On February 19, 2013 A■■■■ filed a habeas corpus motion to dismiss the criminal charges for lack of probable cause.

165. On February 25, 2013, Judge James issued a “MEMORANDUM OF CONFERENCE” in which Defendant Warren was Ordered to forward the emails “forthwith to this Court for in camera review” and that such should be done “expeditiously”.

166. Judge James February 25, 2013 Order further provided that A■■■■’s habeas corpus motion to dismiss the criminal charges for lack of probable cause would be decided only after resolution of A■■■■’s motion to disqualify Defendant Warren.

167. Defendant Warren’s conflict of interest denied A■■■■ due process to have a habeas hearing concerning whether probable cause existed to continue prosecution.

168. On March 15, 2013, Deputy Attorney General Daniel J. Dye entered his appearance on behalf of the Commonwealth in A■■■■’s criminal case.

169. On April 15, 2013, Defendant Warren withdrew her appearance from the prosecution of A■■■■ citing on the docket “lack of resources”.

170. On October 15, 2013, Deputy Attorney General Dye filed a motion of *nolle prosequi* stating, “On March 8, 2013 the Office of the Attorney General accepted this referral pursuant to the Commonwealth Attorneys Act. ... Following an independent review of this matter by the Office of the Attorney General is[sic] has been determined that there is insufficient evidence to pursue prosecution... the Commonwealth requests a nolle prosequi on all charges ... pursuant to Pennsylvania Rule of Criminal Procedure 585.” See Exhibit 3.

171. Pennsylvania Rule of Criminal Procedure 585 states, “Upon motion of the attorney for the Commonwealth, the court may, in open court, order a nolle prosequi of one or more charges notwithstanding the objection of any person.”

172. Without conducting any open court hearing, or any other type of hearing, or affording A ■ an opportunity to respond to the Commonwealth's motion, Judge James signed the order dismissing all of the charges against A ■ on October 23, 2013.

173. Dr. Levin's expert report references a February 24, 2011 report by Dr. Dias addressed to the Lycoming County Children and Youth Service agency concerning A.I.

174. Dr. Levin's expert report states, "I agree with Dr. Dias in raising concern about the possibility of benign extra-axial fluid collections of infancy with the possibility of secondary rebleed into these collections."

175. Dr. Dias, a Penn State Hershey Medical Center neurosurgeon, hosts an international conference on abusive head trauma every two years and is a recognized expert in shaken baby syndrome. Dr. Dias serves on the Pennsylvania Attorney General's Medical/Legal Advisory Panel on Child Abuse alongside Dr. Levin.

176. Dr. Dias states A.I. "had an ophthalmologic evaluation which by all reports demonstrated retinoschisis. He had a skeletal survey, which I am told showed fractured upper thoracic ribs bilaterally." Neither of these statements is true as Dr. Neutze's ophthalmologic exam prior to the surgery to drain A.I.'s subdural collections showed no retinal hemorrhages, retinoschisis or any abnormality of the retina, A.I.'s skeletal survey never reported any fractures at all and A.I.'s minor rib beaking was initially noted as normal on his abdominal CT scan.

177. With respect to A ■'s subdural collections, Dr. Dias acknowledges that A.I.'s "family history of macrocephaly suggest the possibility of benign extra-axial collections of infancy [BEAC]". However, due to reports of retinoschisis and rib fractures, Dr. Dias "has a very difficult time reconciling A.I.s injuries, when taken in toto, with anything other than inflicted trauma."

178. At the dependency hearing, A.I.'s rib beaking was well demonstrated to the Lycoming County Court of Common Pleas by Dr. Barnes and Dr. Mack. Then District Attorney Buehner observed Dr. Mack's presentation of the imaging showing how A.I.'s rib beaking was minor and did not even remotely appear to be fractures, which is why the GMC radiologists did not report any rib fractures on the skeletal survey and initial CT scan reports. See Exhibit 1.

179. Given that Dr. Dias and Dr. Levin reported that A.I.'s subdural collections were explained by A.I.'s BEAC, and that A.I.'s rib beaking was clearly demonstrated at the dependency hearing, Dr. Levin's hypothesis that the retinal hemorrhages and macular retinoschisis reported by Dr. Wilson during after A.I.'s neurosurgery to drain his subdural fluid collection were diagnostic of a shaking injury became the only evidence of abuse in the Commonwealth's case.

180. Dr. Levin minimized the importance of the A.I.'s rib beaking stating, "even if the fractures had a non-traumatic cause, this would not alter my opinion".

181. Dr. Levin has spent much of his career advocating and defending his vitreoretinal traction hypothesis that shaking causes extensive retinal hemorrhages in general and uniquely causes macular retinoschisis in particular.

182. In the year 2000, Dr. Levin stated, "Traumatic [macular] retinoschisis has never been described in children due to any entity other than SBS [shaken baby syndrome] so its presence is diagnostic."

183. Dr. Levin advocates the position that any retinoschisis in the macula is by definition traumatic pursuant to his vitreoretinal traction hypothesis and incorrectly uses the terms "macular retinoschisis" and "traumatic retinoschisis" interchangeably.

184. In 2004 and 2006 medical journals published case reports that contradicted and invalidated Dr. Levin's vitreoretinal traction hypothesis.

185. By 2007, the challenges to Dr. Levin's vitreoretinal traction hypothesis as the cause of retinal hemorrhage and retinoschisis mounted; one article published in the official journal of the American Academy of Ophthalmology in 2007 stated, "we therefore cannot support this aspect of the vitreomacular [vitreoretinal] traction theory as the mechanism of retinal hemorrhage formation."

186. On February 23, 2007, when asked under oath by Wisconsin Innocence Project Director, Keith Findley, whether retinoschisis was "pathognomonic [diagnostic] of shaken baby?" Dr. Levin replied, "Absolutely not." Notes of Testimony, February 23, 2007, Evidentiary hearing, Wisconsin v. Edmunds, 96-CF-555, p. 161.

187. In 2008, a published article containing a series of motor vehicle accident case reports further undercut and invalidated Dr. Levin's vitreoretinal traction hypothesis.

188. In 2009, Dr. Levin's vitreoretinal traction hypothesis was considered "CONTROVERSIAL" by the Royal College of Ophthalmologists. See Exhibit 2.

189. Given Dr. Neutze's initial pre-operative undilated exam that demonstrated no hemorrhage or retinoschisis whatsoever in the macula and posterior eye coupled with the development of severe retinal hemorrhage and macular retinoschisis after surgery to drain subdural collections described as under "extremely significant pressure", A.I.'s case clearly invalidates Dr. Levin's controversial vitreoretinal traction hypothesis in general and his claim that macular retinoschisis in particular can only and uniquely be caused by shaking.

190. The facts of A.I.'s case invalidate the vitreoretinal traction hypothesis that Dr. Levin has devoted his medical career to advocating and defending, thus giving Dr. Levin motive to collude and conspire with Defendant Warren in a criminal prosecution against A■■■■ to produce a report based on an assumption that lacked any factual support and lacked support from the medical literature, including literature co-authored by Dr. Levin himself.

191. A ■ seeks compensatory, punitive and other damages as the court may find appropriate for having to repeatedly prepare for trial and endure the criminal prosecution of an alleged crime for which no probable cause existed for over two years under the threat of possible conviction and under threat of arrest for failing to appear at multiple scheduled pre-trial conferences and multiple scheduled trial dates when Defendant Warren was in violation of Judge James' Order and was never ready to go to trial due to a lack of an expert report based on the facts of the case and the medical literature.

192. The foregoing averments place all Defendants on notice that their actions have caused Plaintiff, A ■ A. ■, harm including, but not limited to, the following claims, pursuant to the Fourth, Fifth, Sixth and Fourteenth Amendments of the United States Constitution and 42 U.S.C. §1981, §1983 & §1985, as applicable, against:

- I. Defendant Warren for failing to recuse herself and failing to refer the prosecution of the criminal case against A ■ to the Attorney General of Pennsylvania upon learning that A ■ filed a lawsuit against her private client, Defendant Montour County.
- II. Defendant Warren for failing to refer the prosecution of the criminal case against A ■ to the Attorney General of Pennsylvania because she would have to consult with her private client Defendant Montour County about her prosecution of A ■ in order to obtain approval for funding expert witnesses.
- III. Defendant Warren for failing to withdraw the criminal charges against A ■ when she knew or should have known probable cause that any crime had been committed no longer existed.
- IV. Defendant Warren, Defendant Kauwell and Defendant Montour County, for delaying, and conspiring to delay, the trial of the charges against A ■ to enhance the defense of, and/or in

- retaliation for, A ■■■ s civil suit against Defendant Montour County and its employees, Geisinger Medical Center, Dr. Bellino and Dr. Wilson.
- V. Defendant Warren, Defendant Kauwell and Defendant Montour County, for delaying, and conspiring to delay, the trial of the charges against A ■■■ to defer and/or avoid Defendant Montour County having to fund expert witnesses.
- VI. Defendant Warren for her policy of insisting that all delay be counted against A ■■■ for purposes of Rule 600 and/or A ■■■'s right to a speedy trial when Defendant Warren was still searching for an expert witness, was not prepared for trial and was in violation of Judge James' May 30, 2012 Order.
- VII. Defendant Kauwell and Defendant Warren for a policy of requiring all requests for continuance be referred to Defendant Warren and requiring that requests for continuance be submitted on a form with language that required A ■■■ to waive his right to a speedy trial.
- VIII. Defendant Warren for fabricating, and conspiring with Dr. Levin to fabricate, evidence in the form of an expert report that, without any basis in fact or the medical literature, assumed Dr. Neutze was so incompetent she missed observing two obvious major findings during an undilated eye exam.
- IX. Any other claim against the Defendants for which the above averments and/or additional facts discovered during litigation provide notice.

WHEREFORE, Plaintiff, A ■■■ A. ■■■ respectfully request the court enter judgment in favor of Plaintiff and against Defendants.

Respectfully submitted,

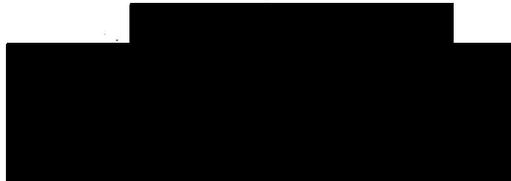
/s/ Mark D Freeman
Mark D. Freeman, Esq.

Attorney for Plaintiffs
PO Box 457
Media, PA 19063
V - 610-828-1525
F - 610-828-1769

DECLARATION

I declare under penalty of perjury that the foregoing is true and correct.

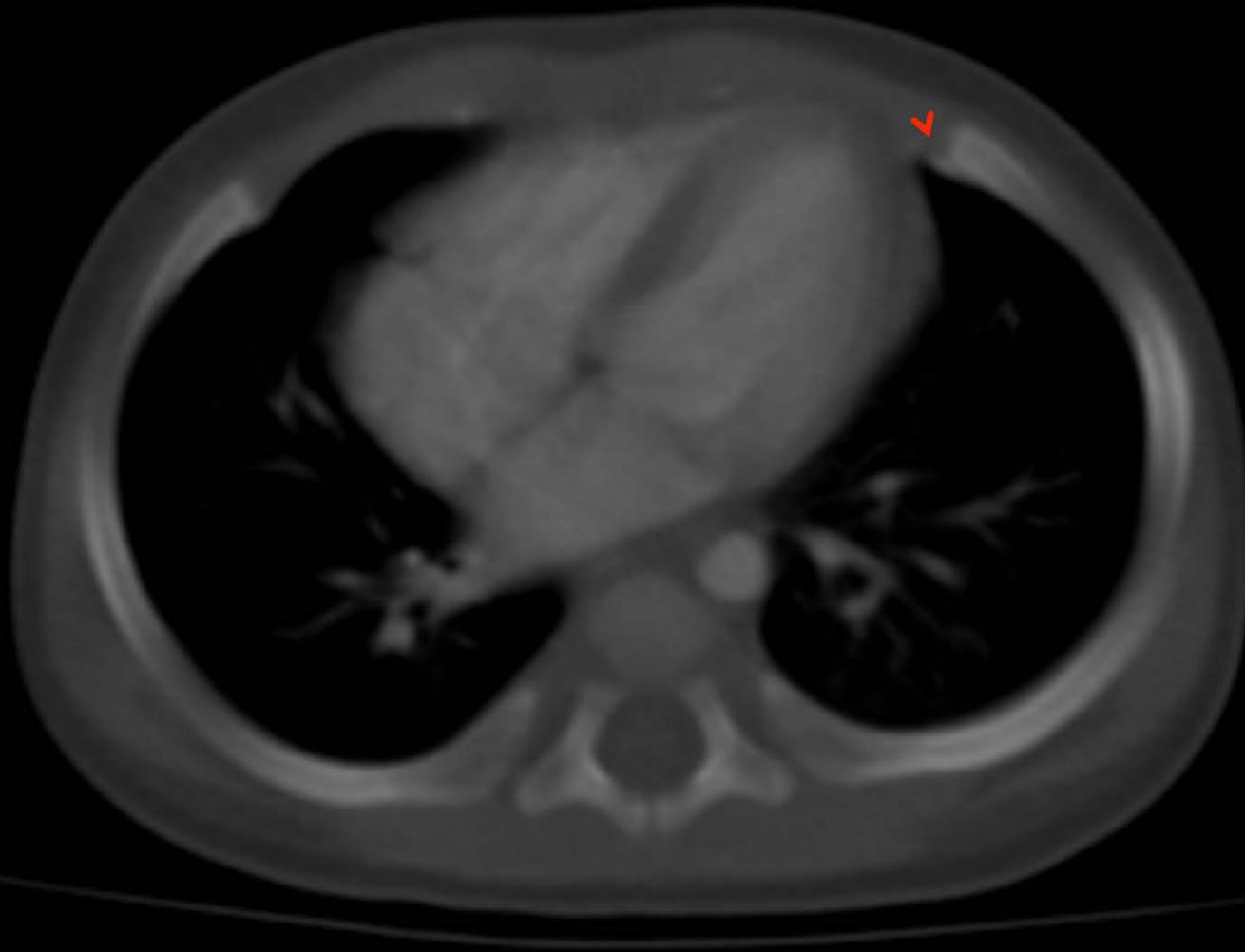
Signed this 13th day of November, 2013



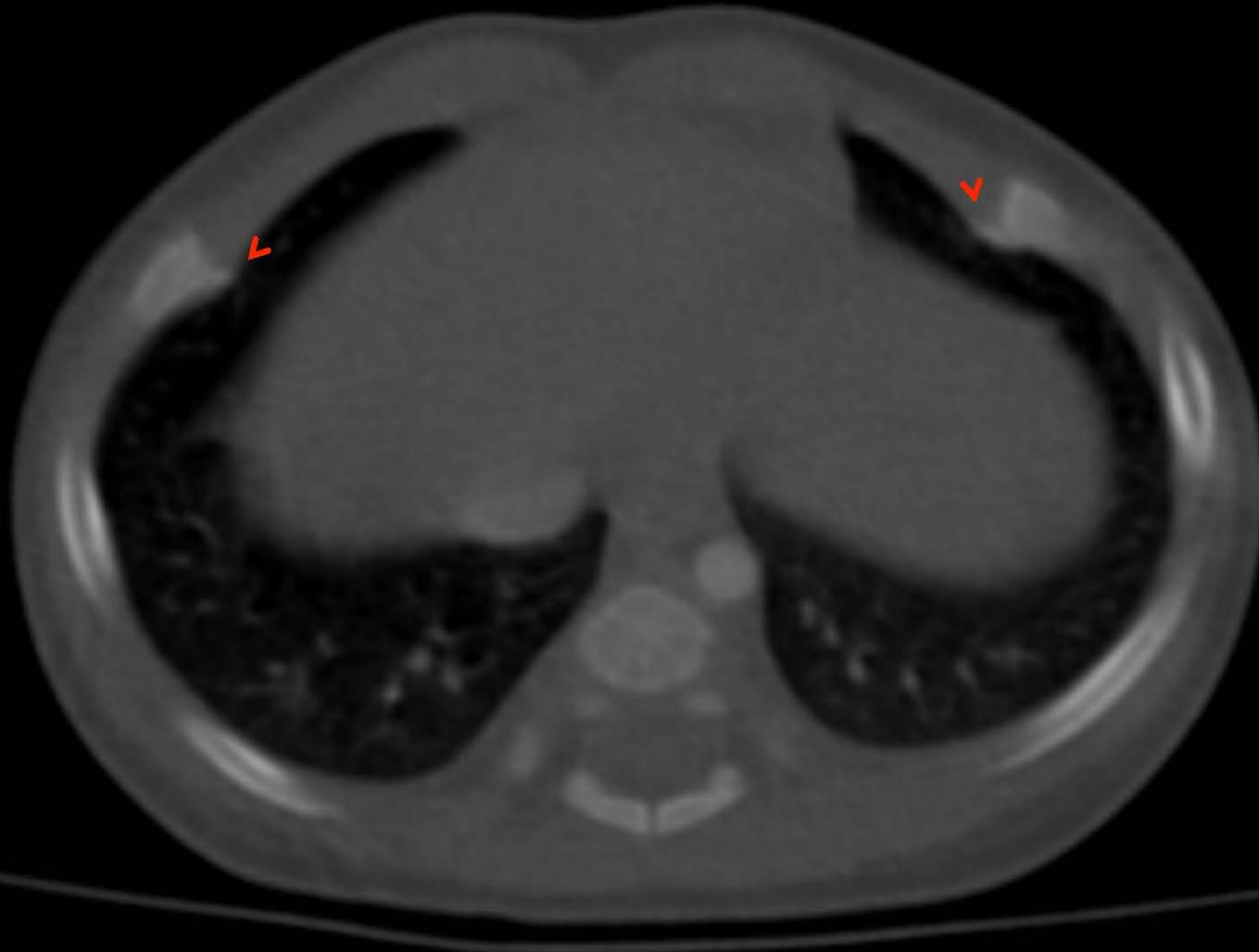
A.I.

Imaging findings ribs

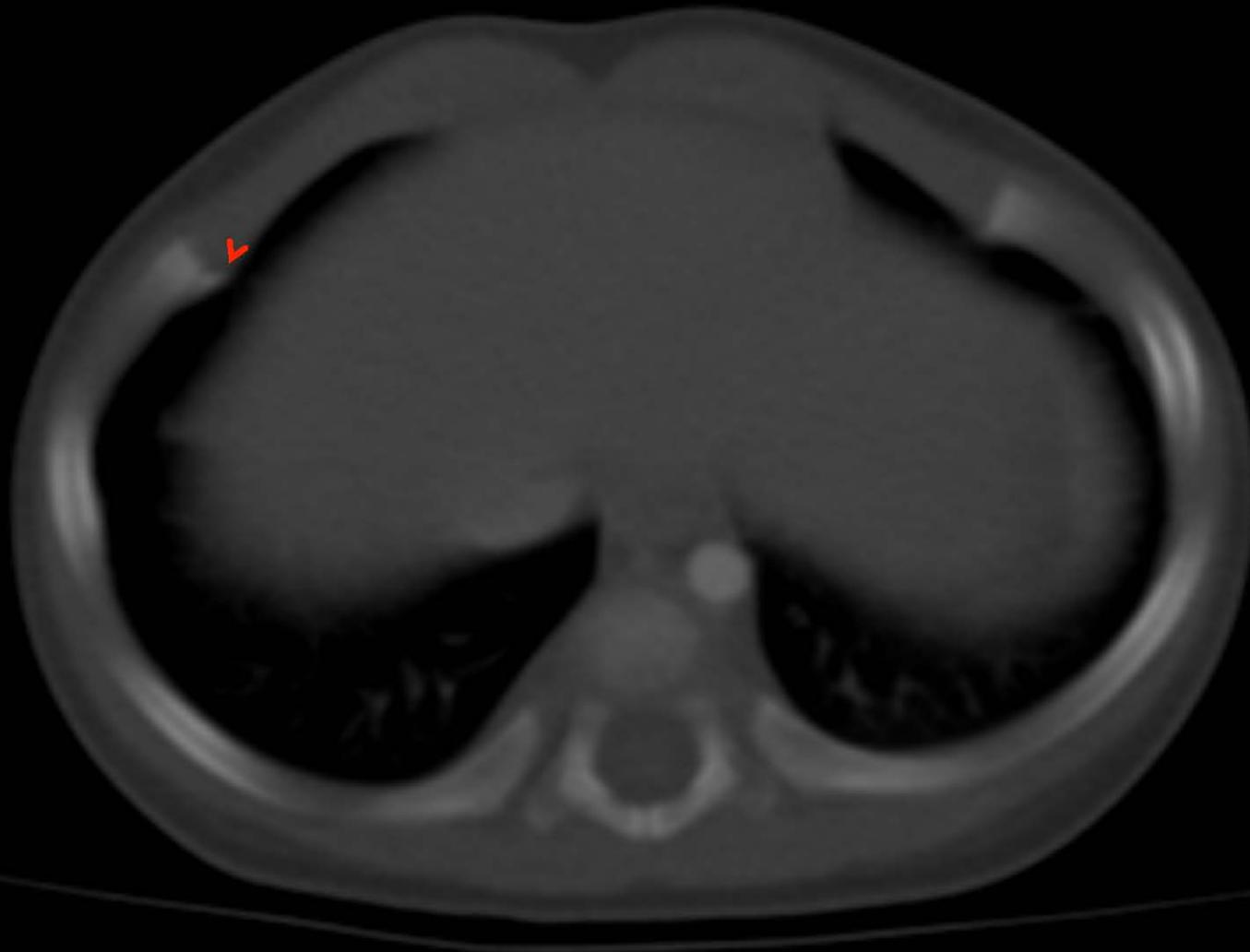
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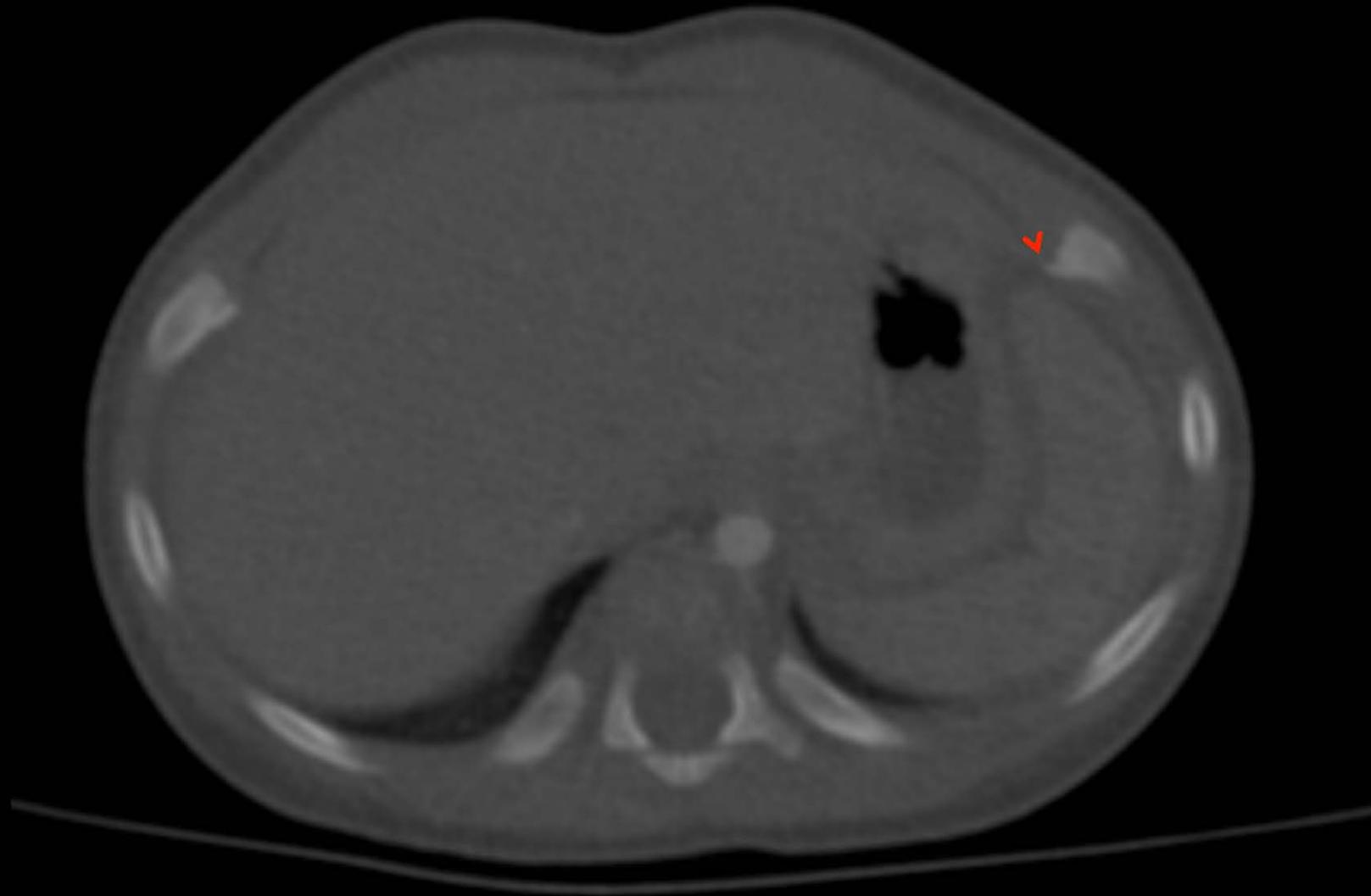
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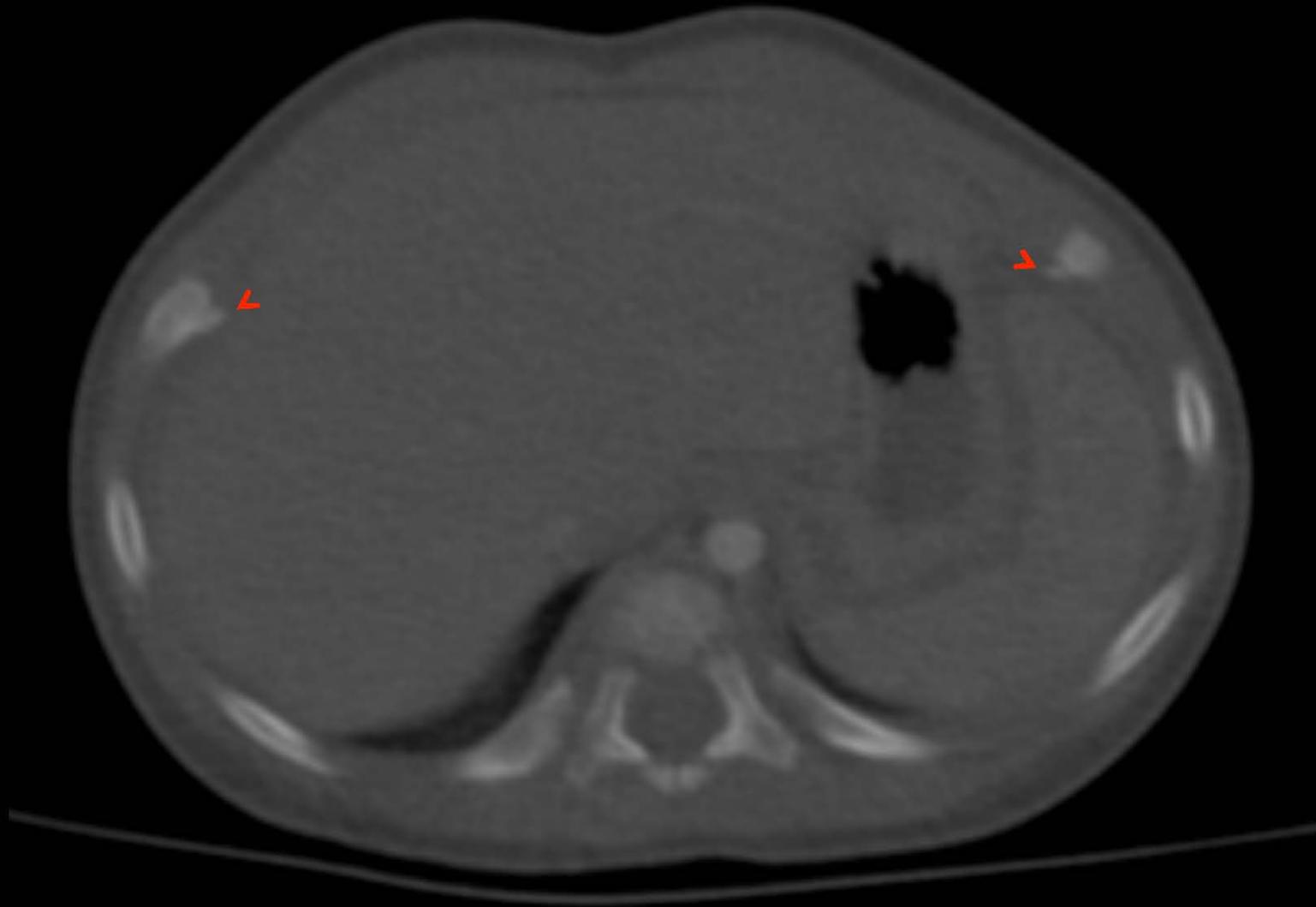
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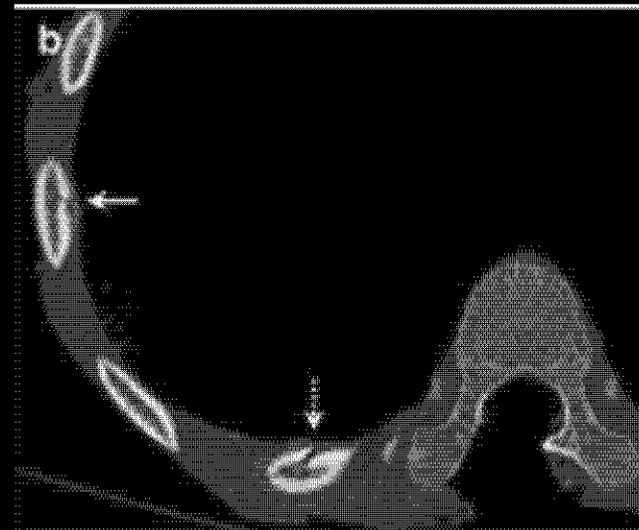
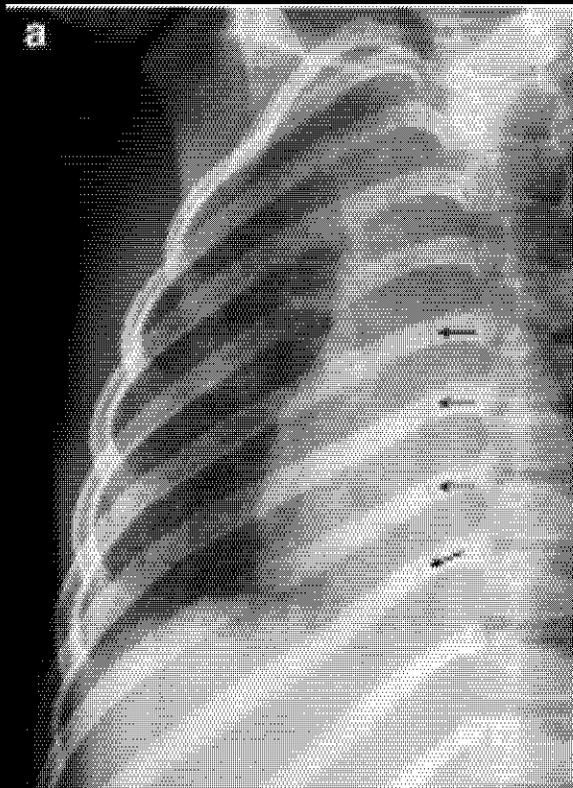


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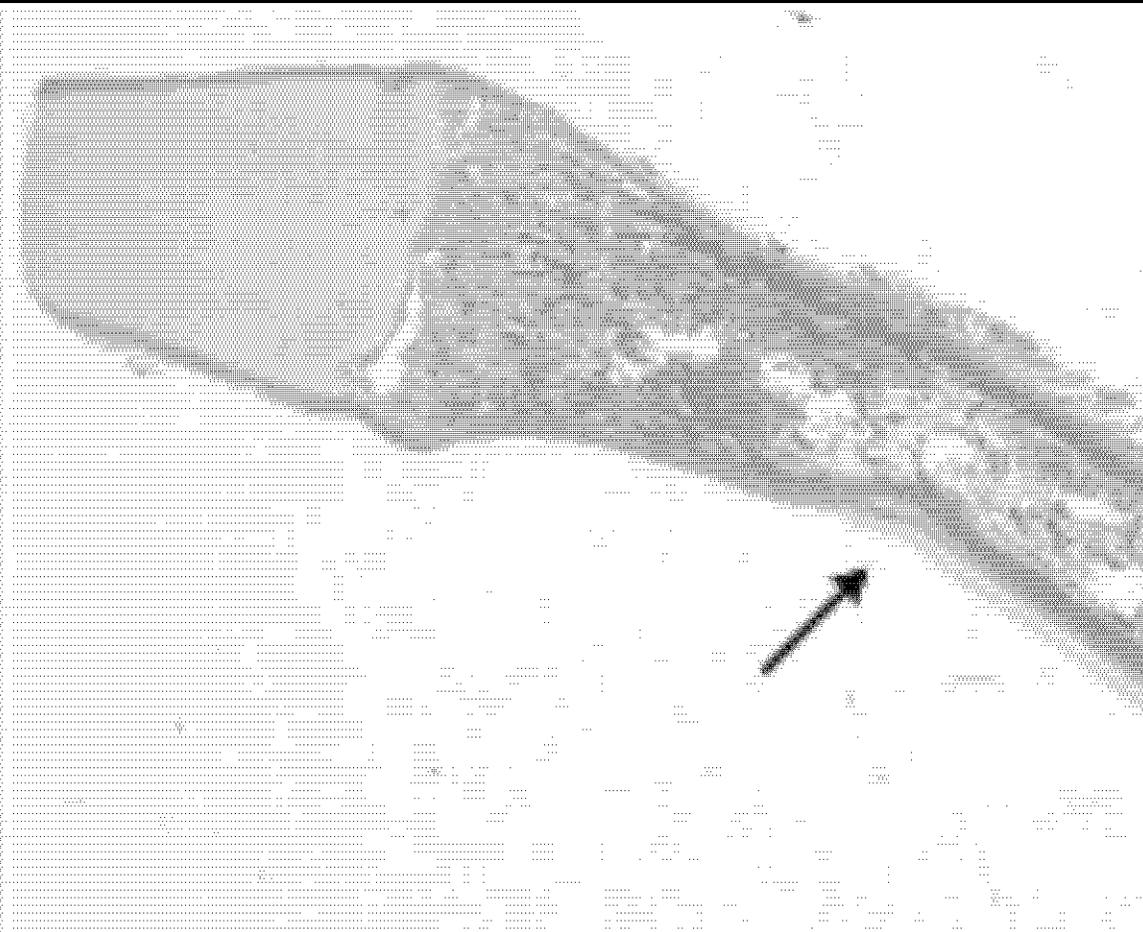
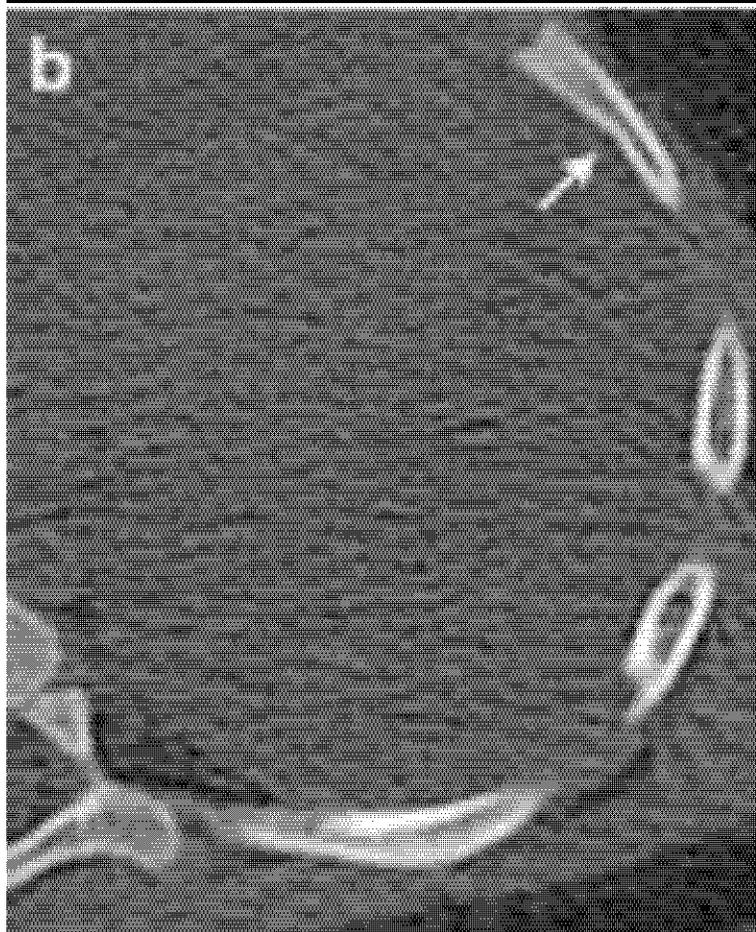




Hong 2011 Value of post-mortem Ct over radiography in imaging of pediatric rib fractures *Pediatr Radiol* DOI 10.1007/s00247-010-1953-7



Hong, 2011 (one month old, CPR fractures)



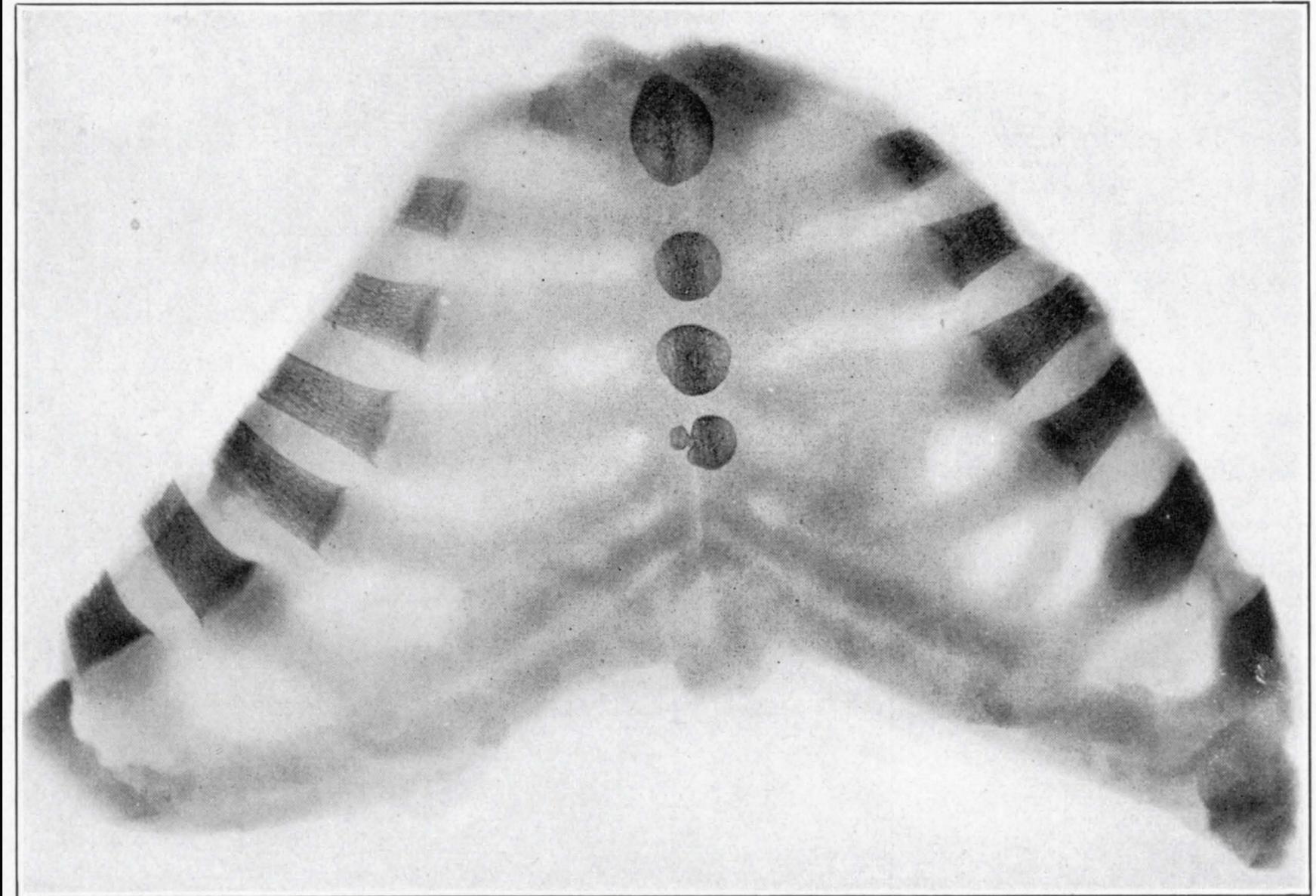
Hong, 2011: 6 month old, cause of death drowning



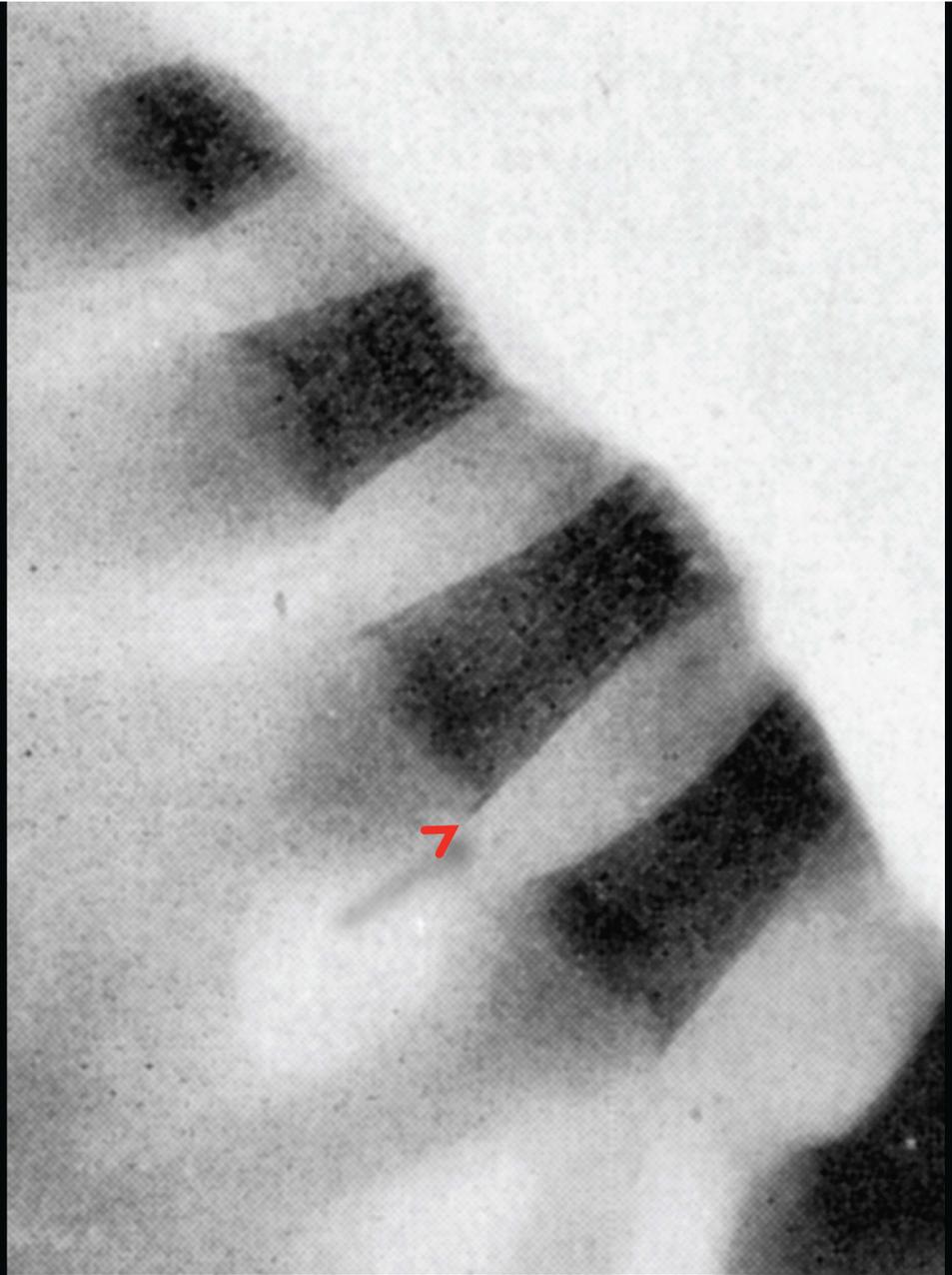
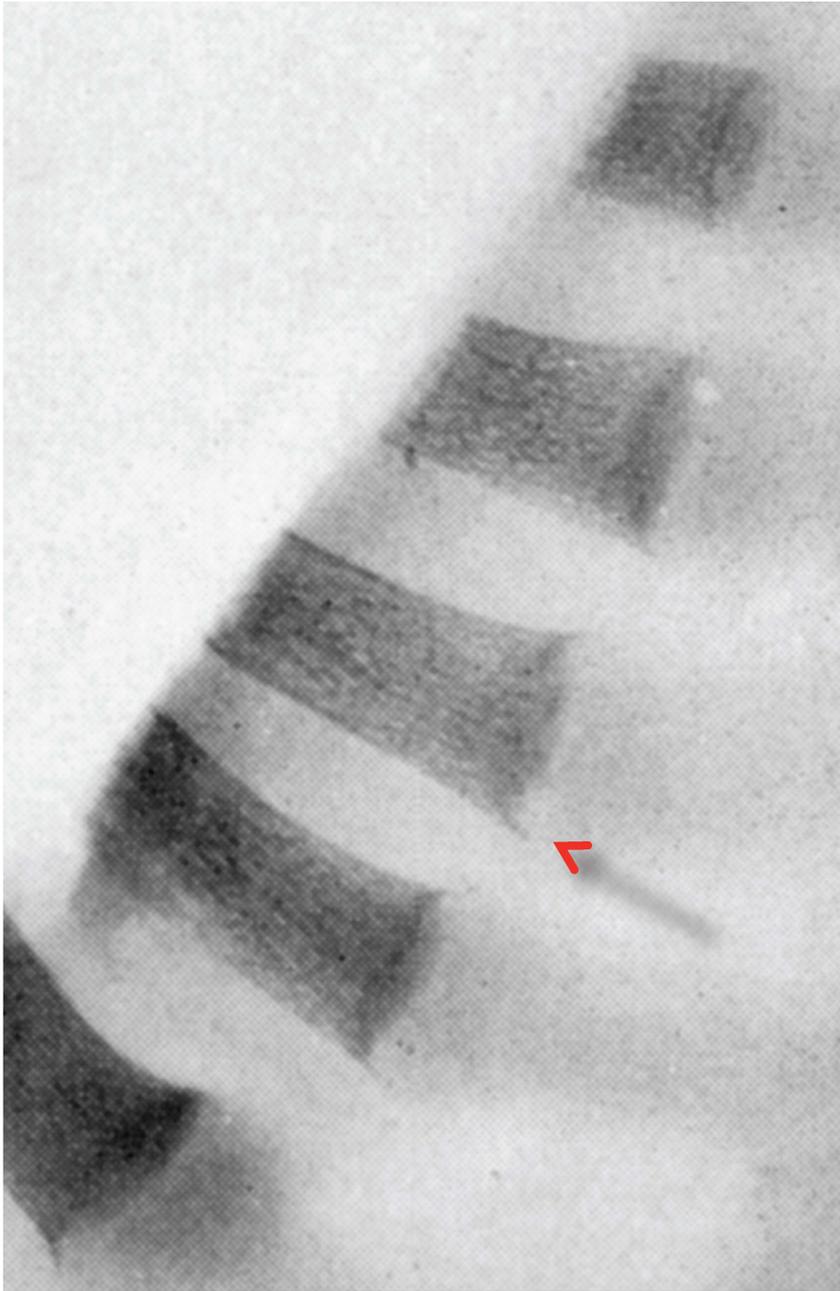
A.I, anterior rib irregularity



Hong, normal anterior rib irregularity



From Hess, Rickets, osteomalacia and tetany, 1929



Ribs

- ▣ Irregular anterior rib ends
- ▣ No discrete cortical break
- ▣ No evidence of pulmonary contusion, pleural thickening, or soft tissue swelling (no ancillary evidence of trauma)

- ▣ “Beaking” of the anterior rib well described in metabolic bone disease

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February 19, 2013

Susan M. Kauwell, Clerk of Court
Court of Common Pleas 26th Judicial District
29 Mill Street
Danville, PA 18721

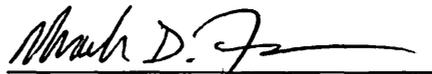
*Re: Commonwealth v. A [REDACTED] I [REDACTED]
Motion to Disqualify District Attorney Warren*

Dear Ms. Kauwell,

Enclosed please find Mr. I [REDACTED]'s motion to disqualify District Attorney Warren from prosecuting Mr. I [REDACTED] due to her conflict of interest.

Thank you for your anticipated courtesy.

Very truly yours,



Mark D. Freeman

MDF/wle

cc: The Honorable Thomas A. James, Jr.
Rebecca Warren, Esq.
A [REDACTED] I [REDACTED]

COMMONWEALTH OF PENNSYLVANIA : COURT OF COMMON PLEAS
V. : 26TH JUDICIAL DISTRICT
A ■ I ■ : MONTOUR COUNTY BRANCH
: CRIMINAL DIVISION
: :
: NO. CR-44-2010

**DEFENDANT'S MOTION TO DISQUALIFY DISTRICT ATTORNEY
REBECCA WARREN FROM PROSECUTING THIS CASE
DUE TO HER CONFLICT OF INTEREST BETWEEN HER DUTY OF
LOYALTY TO HER CLIENT, MONTOUR COUNTY, HER DEPENDENCE ON
ON HER CLIENT MONTOUR COUNTY TO FUND PROSECUTION
WITNESSES AGAINST MR. ■ AND HER DUTY AS PROSECUTOR TO
EXERCISE INDEPENDENT JUDGMENT**

To the Honorable Judges of the Court of Common Pleas of Montour County:

A ■ I ■, by and through his counsel brings this Motion to disqualify District Attorney Rebecca Warren and in support thereof avers the following:

1. On October 1, 2009, Rebecca Warren filed a petition in Commonwealth Court against then Governor Ed Rendell and other government entities on behalf on the Montour County Commissioners to compel the Commonwealth's contribution to the salary of the Montour County District Attorney. See attached docket.

2. In January of 2012, Rebecca Warren was sworn in as the new Montour County District Attorney replacing Robert Buehner who had served in that position for over 20 years.

3. In January 2012, Defendant A [REDACTED] I [REDACTED] filed a civil rights lawsuit naming Montour County as a defendant as a result of unconstitutional conduct by Montour County employees.

4. In January of 2012, newly sworn in District Attorney Warren continued to be the attorney of record representing Montour County in its petition to compel contribution towards the salary of the District Attorney of Montour County.

5. In May of 2012, District Attorney Warren filed a motion in limine to prohibit Mr. I [REDACTED] from mentioning Mr. I [REDACTED]'s civil rights suit during his criminal trial demonstrating that Ms. Warren was fully aware of the civil suit.

6. Without objection from Mr. I [REDACTED] the motion to exclude any evidence or mention of Mr. I [REDACTED]'s civil rights suit against Montour County during the criminal trial was granted by the Court.

7. Upon information and belief, from conversations counsel had with Ms. Warren, Ms. Warren had to go to the Montour County Commissioners to request funding for expert witnesses for the prosecution of Mr. I [REDACTED].

8. Ms. Warren withdrew from representation of Montour County on August 27, 2012.

9. It is Mr. I [REDACTED]'s position that a conflict of interest existed and continues to exist between Ms. Warren's duty of loyalty to a client/ former client, Montour County, a defendant in a civil right lawsuit, and her duty to exercise independent judgment as prosecutor of a criminal case against Mr. I [REDACTED], the Plaintiff in the same civil rights lawsuit, particularly when the circumstances giving rise to the Mr. I [REDACTED]'s civil rights lawsuit and his criminal prosecution are the same.

10. A criminal conviction of Mr. I█████ in this case would be seen by some as a vindication of the dismissal of the dependency petition filed by Montour County and the civil rights lawsuit filed by Mr. I█████.

11. In addition, it appears that the Montour County District Attorney does not have an independent budget for expert witnesses in the prosecution of criminal cases. It appears expert witnesses for the prosecution of Mr. I█████ are funded through requests made by Ms. Warren to, and subject to the approval of, Montour County, the defendant named in Mr. I█████'s civil rights lawsuit. In other words, Ms. Warren must consult with civil defendant Montour County in order to determine whether expert witnesses are funded in the criminal case against civil plaintiff Mr. I█████.

12. Notwithstanding the fact that another attorney represents Montour County in Mr. I█████'s civil rights suit, it is not known to what extent, if any, Ms. Warren may also be consulting with Montour County concerning Mr. I█████'s civil rights suit.

13. Given that Ms. Warren has represented Montour County in civil matters in the past, it would be natural for Montour County to consult with Ms. Warren now about Mr. I█████'s civil rights suit, especially in the context of Ms. Warren having to bring requests to fund expert witnesses in the criminal prosecution of Mr. I█████.

14. This situation in which Ms. Warren must consult with the defendants of Mr. I█████'s civil suit for funding of prosecution expert witnesses seems to present a significant conflict of interest between Montour County's defense of Mr. I█████'s civil rights lawsuit, Ms Warren's duty of loyalty to a client/ former client and Ms. Warren's ability to exercise independent judgment as a prosecutor.

15. It is Mr. I█████'s position that Ms. Warren's duty of loyalty to Montour County, and dependence upon her client Montour County for funding of prosecution experts in the case against Mr. I█████ clouds Ms. Warren's ability to exercise independent judgment as a prosecutor in this case.

16. District Attorney Warren judgment is sufficiently clouded to blind her to the fact that probable cause no longer exists to continue the prosecution of Mr. I█████. See the attached letter to Ms. Warren detailing the lack of probable cause.

17. An example of that conflict of interest and clouded judgment is evident even on the face of Dr. Levin's report.

18. Dr. Levin's report specifically addresses the allegations in the civil complaint, "I'm concerned that the Complaint from Mr. Freeman introduces multiple misquotes misuses of the medical literature and suggestions which might confuse the matter at hand. I would like to address some important points that need clarification from the Complaint."

19. Dr. Levin does not state whether District Attorney Warren provided him with Mr. I█████'s civil rights complaint or requested that Dr. Levin "address" the allegations in the civil complaint in his report to District Attorney Warren.

20. In the first instance District Attorney Warren files a motion in limine to prevent Mr. I█████ from mentioning anything about the civil lawsuit against Montour County at the criminal trial. Then Ms. Warren apparently provides Dr. Levin with a copy of Mr. I█████'s civil Complaint as part of the records he reviewed and Dr. Levin spends nearly an entire page of his 5-page report addressing "some important points that need clarification from the Complaint."

21. It is puzzling why the Commonwealth would produce an expert report making multiple references and a significant amount (20%) of the report addresses a matter the Commonwealth has asked not be mentioned during the criminal trial.

22. Interestingly, though Dr. Levin mentions in his report that he reviewed Mr. I█████'s civil complaint¹, nowhere in Dr. Levin's report does he mention that he reviewed the criminal complaint against Mr. I█████ or the affidavit of probable cause of Trooper Davis that gave rise to Mr. I█████'s arrest in this matter and purportedly was the reason Dr. Levin was retained by the Commonwealth.

23. Although Dr. Levin's report does not specifically say how he obtained Mr. I█████'s civil rights complaint, presumably, District Attorney Warren provided Dr. Levin with Mr. I█████'s civil complaint² and, at the same time, since there is no mention of it in Dr. Levin's report, Ms. Warren presumably failed to provide Dr. Levin with the criminal complaint against Mr. I█████.

24. Given that Dr. Levin's report to Ms. Warren states he reviewed Mr. I█████'s civil rights complaint, and nowhere in his report does Dr. Levin mention reviewing Mr. I█████'s criminal complaint, a prima facie case exists that District Attorney Warren has a significant interest in defending Mr. I█████'s civil suit clouding her ability to exercise independent judgment as a prosecutor.

¹ Dr. Levin states he believes that Mr. I█████ has "abandoned" his civil rights complaint. This is not true. See the United States District Court for the Middle District of Pennsylvania docket number 4:12-CV-00043, I█████ v. Bellino et al, publically available on the Federal Court Pacer system.

² If Dr. Levin was provided with Mr. I█████'s civil rights complaint prior to his retention by the Commonwealth, it begs the question, who provided it to Dr. Levin and what is his prior interest in this case, if any? If so, Mr. I█████ has a right to know how he obtained a copy and to find out with whom he may have been discussing Mr. I█████'s civil rights complaint prior to his retention by the Commonwealth as an expert witness. Given that Mr. I█████ is not permitted to mention his civil rights suit at trial, it would seem this issue should be resolved before trial.

25. This situation has been brought to Ms. Warren's attention and she has given no indication she intends to recuse herself from prosecuting this case. See the attached letter.

WHEREFORE, Defendant A [REDACTED] I [REDACTED] moves this Court to disqualify District Attorney Warren from prosecuting Mr. I [REDACTED] in this matter.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Mark D. Freeman", written over a horizontal line.

Mark D. Freeman

Miscellaneous Docket Sheet**Commonwealth Court of Pennsylvania****Docket Number: 505 MD 2009****Page 1 of 8****February 8, 2013****CAPTION**

Trevor S. Finn, John J. Gerst,
and Jerry R. Ward, Montour
County Commissioners,
Petitioners

v.

Edward G. Rendell, Governor of
Pennsylvania; Commonwealth of
Pennsylvania; General Assembly
of the Commonwealth of Pennsylvania;
and Rob McCord, State Treasurer,
Respondents

CASE INFORMATION

Initiating Document: Petition for Review

Case Status: Active

Case Processing Status: September 5, 2012 Pleadings Closed

Journal Number:

Case Category: Miscellaneous Case Type(s): Civil Action Law

CONSOLIDATED CASES**RELATED CASES****COUNSEL INFORMATION****Petitioner Ward, Jerry R.**

Pro Se: No

IFP Status:

Attorney: Voelcker, Laurinda Jo
Address: 105 East Market Street
Danville, PA 17821

Phone No: (570) 275-9100 Fax No:

Petitioner Gerst, John J.

Pro Se: No

IFP Status:

Attorney: Voelcker, Laurinda Jo
Address: 105 East Market Street
Danville, PA 17821

Phone No: (570) 275-9100 Fax No:

Miscellaneous Docket Sheet**Commonwealth Court of Pennsylvania****Docket Number: 505 MD 2009****Page 2 of 8****February 8, 2013****COUNSEL INFORMATION****Petitioner Finn, Trevor S.**

Pro Se: No

IFP Status:

Attorney: Voelcker, Laurinda Jo
 Address: 105 East Market Street
 Danville, PA 17821
 Phone No: (570) 275-9100

Fax No:

Respondent Rendell, Edward G.

Pro Se: No

IFP Status:

Attorney: Dunlap, Gregory Eugene
 Law Firm: PA Office of General Counsel
 Address: PA Ofc of Gen Counsel
 333 Market St 17th Fl
 Harrisburg, PA 17101
 Phone No: (717) 787-9336

Fax No: (717) 787-1788

Respondent General Assembly

Pro Se: No

IFP Status:

Attorney: Bloom, Jonathan F.
 Law Firm: Stradley, Ronon, Stevens & Young, L.L.P.
 Address: 2600 1 Commerce Sq
 Philadelphia, PA 19103
 Phone No: (215) 564-8065

Fax No: (215) 564-8120

Attorney: Dymek, Thomas Walter
 Law Firm: Stradley, Ronon, Stevens & Young, L.L.P.
 Address: 2600 1 Commerce Sq
 Philadelphia, PA 19103
 Phone No: (215) 564-8053

Fax No: (215) 564-8120

Attorney: Myers, Karl Stewart
 Law Firm: Stradley, Ronon, Stevens & Young, L.L.P.
 Address: 2600 1 Commerce Sq
 Philadelphia, PA 19103--7098
 Phone No: (215) 564-8193

Fax No: (215) 564-8120

Respondent Commonwealth of Pennsylvania

Pro Se: No

IFP Status:

Attorney: Hopkirk, Howard Greeley
 Law Firm: PA Office of Attorney General
 Address: Civil Litigation Section
 Strawberry Square 15th Fl
 Harrisburg, PA 17120
 Phone No: (717) 783-1478

Fax No: (717) 772-4526

Miscellaneous Docket Sheet**Commonwealth Court of Pennsylvania****Docket Number: 505 MD 2009****Page 3 of 8****February 8, 2013****FEE INFORMATION**

Fee Dt	Fee Name	Fee Amt	Receipt Dt	Receipt No	Receipt Amt
10/01/2009	Miscellaneous Docket Filing Fee	40.00	10/01/2009	2009-CMW-H-002353	40.00

AGENCY/TRIAL COURT INFORMATION

Court Below: Commonwealth
 County: Division: Commonwealth
 Order Appealed From: Judicial District:
 Documents Received: October 1, 2009 Notice of Appeal Filed:
 Order Type:
 OTN(s):
 Lower Ct Docket No(s):
 Lower Ct Judge(s):

ORIGINAL RECORD CONTENT

Original Record Item	Filed Date	Content Description
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Date of Remand of Record:**BRIEFING SCHEDULE**

Petitioner		Respondent	
Finn, Trevor S.		Commonwealth of Pennsylvania	
Brief		Brief	
Due: December 23, 2009	Filed: December 23, 2009	Due: November 30, 2009	Filed: November 10, 2009
Gerst, John J.		General Assembly	
Brief		Memorandum of Law	
Due: December 23, 2009	Filed: December 23, 2009	Due:	Filed: November 30, 2009
Ward, Jerry R.			
Brief			
Due: December 23, 2009	Filed: December 23, 2009		

DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
October 1, 2009	Petition for Review Filed Finn, Trevor S. Gerst, John J. Ward, Jerry R.		Petitioner Petitioner Petitioner	
October 5, 2009	Notice Exited Commonwealth Court Filing Office			
October 5, 2009	Certificate of Service Filed Warren, Rebecca Lee	Finn, Trevor S.	Petitioner	
October 13, 2009	Entry of Appearance Hopkirk, Howard Greeley	Commonwealth of Pennsylvania	Respondent	

Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 505 MD 2009

Page 4 of 8

February 8, 2013



DOCKET ENTRY				
Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
October 22, 2009	Entry of Appearance Smith, Gerald Stuart	McCord, Rob	Respondent	
October 22, 2009	Preliminary Objections McCord, Rob Document Name: Preliminary Objections/Motion to Dismiss		Respondent	
October 22, 2009	Memorandum of Law Filed McCord, Rob Document Name: BRIEF IN SUPPORT of Preliminary Objections/Motion to Dismiss		Respondent	
October 28, 2009	Entry of Appearance Dunlap, Gregory Eugene	Rendell, Edward G.	Respondent	
October 30, 2009	Preliminary Objections General Assembly		Respondent	
November 2, 2009	Preliminary Objections Commonwealth of Pennsylvania		Respondent	
November 2, 2009	Memorandum of Law Filed Commonwealth of Pennsylvania Document Name: BRIEF IN SUPPORT of Preliminary Objections.		Respondent	
November 2, 2009	Answer and New Matter Rendell, Edward G.		Respondent	
November 6, 2009	Argument Scheduled - Single Judge Feudale, Barry F. Document Name: On POs of all 3 respondents, set for 1/5/10 @ 10:00a.m. via telephone. CELL PHONES MAY NOT BE USED. Comment: Brief (5) in support of POs filed by the General Assembly are due 11/30/09; Respondents Rob McCord, State Treasurer & Commonwealth of Pa. shall file additional copies (5 total) of their briefs in support of their POs by 11/30/09; Petitioners shall file & serve a brief (5) in opposition to the POs of all respondents by 12/23/09.			11/09/2009
November 10, 2009	Respondent's Brief Filed Hopkirk, Howard Greeley Document Name: 5 additional copies per 11/6/09 order	Commonwealth of Pennsylvania	Respondent	
November 13, 2009	Respondent's Brief Filed Smith, Gerald Stuart Document Name: 5 additional copies of 10/22/09 brief	McCord, Rob	Respondent	
November 16, 2009	Praecipe for Withdrawal of Appearance Barrett, Linda Cadden	Rendell, Edward G.	Respondent	
November 25, 2009	Answer Filed Finn, Trevor S. Gerst, John J. Ward, Jerry R. Document Name: To PO's of State Treasurer & Motion to Dismiss		Petitioner Petitioner Petitioner	

Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 505 MD 2009

Page 5 of 8

February 8, 2013



DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
November 30, 2009	Answer to New Matter Finn, Trevor S. Gerst, John J. Ward, Jerry R.		Petitioner Petitioner Petitioner	
	Document Name: Petitioner's reply to Resp., Rendell's New Matter.			
November 30, 2009	Answer to Preliminary Objections Finn, Trevor S. Gerst, John J. Ward, Jerry R.		Petitioner Petitioner Petitioner	
	Document Name: Petitioner's answer to Resp., Cmwlth of Pa.'s PO's.			
November 30, 2009	Answer to Petition for Preliminary Injunction Finn, Trevor S. Gerst, John J. Ward, Jerry R.		Petitioner Petitioner Petitioner	
	Document Name: Petitioner's answer to Resp., General Assembly's PO's.			
November 30, 2009	Respondent's Memorandum of Law Filed General Assembly		Respondent	
December 23, 2009	Petitioner's Brief Filed Finn, Trevor S. Gerst, John J. Ward, Jerry R.		Petitioner Petitioner Petitioner	
December 30, 2009	Application for Relief Warren, Rebecca Lee	Finn, Trevor S.	Petitioner	
	Document Name: Motion for Leave to Appear in Person.			
December 31, 2009	Order Granting Application for Relief Feudale, Barry F.			12/31/2009
	Document Name: Petitioner's motion for leave to appear in person is granted. Arg. on the PO's filed by all 3 resps Comment: currently set for 1/5//10 @ 10:00a.m. via telephone, is CHANGED to arg. in Courtroom 5001, 5th Fl., PJC, 601 Commonwealth Ave., Harrisburg, Pa.			
January 5, 2010	Order Filed Leadbetter, Bonnie Brigance			01/06/2010
	Document Name: The Respondents Treasury Dept. & the State Treasurer are hereby dismissed from these proceedings.			
February 2, 2010	PO Sus. Compl PR Dis Leadbetter, Bonnie Brigance			02/02/2010
	Document Name: Opinion: 11 Pages Comment: The POs of resp., Commonwealth of Pa. & the General Assembly are SUSTAINED. The PFR is DISMISSED to the extent that petitioners seek relief against the Commonwealth & the General Assembly.			
February 9, 2010	Order Filed Leadbetter, Bonnie Brigance			02/09/2010
	Document Name: Mem. Op. filed 2-2-10 shall be designated Opinion and shall be reported.			

Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 505 MD 2009

Page 6 of 8

February 8, 2013



DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
February 26, 2010	Application to Amend Finn, Trevor S. Gerst, John J. Ward, Jerry R.		Petitioner Petitioner Petitioner	
	Document Name: Motion to Amend PFR			
February 26, 2010	Amended Finn, Trevor S. Gerst, John J. Ward, Jerry R.		Petitioner Petitioner Petitioner	
	Document Name: PFR			
March 8, 2010	Answer to Application to Amend Rendell, Edward G.		Respondent	
	Document Name: In opposition to motion to amend PFR.			
March 8, 2010	Application for Summary Relief Rendell, Edward G.		Respondent	
March 15, 2010	Application for Relief Commonwealth of Pennsylvania General Assembly		Respondent Respondent	
	Document Name: Motion to Respond to the Motion to Amend PFR			
April 19, 2010	Order Filed Leadbetter, Bonnie Brigance			04/19/2010
	Document Name: Petitioners' motion to amend PFR is GRANTED IN PART & DENIED IN PART: Petition may amend their PFR			
	Comment: to join the A.G. as a respondent. For the reasons set forth in the opinion filed 2/2/10, the motion to amend PFR to join the General Assembly of the Cmwth of Pa. as a respondent is DENIED. Petitioners are directed to file their amended PFR w/i 10 days of this order. FURTHER, the General Assembly's motion for leave to respond to the motion to amend PFR is DISMISSED AS MOOT. FINALLY, the application for summary relief filed by Respondent Edward G. Rendell, Gov. of the Cmwth, is DISMISSED AS MOOT with leave to file a responsive pleading to the amended PFR.			
April 27, 2010	Amended Finn, Trevor S. Gerst, John J. Ward, Jerry R.		Petitioner Petitioner Petitioner	
	Document Name: Petition for Review			
May 27, 2010	Answer and New Matter Commonwealth of Pennsylvania		Respondent	
	Document Name: to amended petition for review			
May 28, 2010	Answer Filed Rendell, Edward G.		Respondent	
	Document Name: Answer to Amended PFR			

Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 505 MD 2009

Page 7 of 8

February 8, 2013



DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
June 28, 2010	Answer Filed Finn, Trevor S. Gerst, John J. Ward, Jerry R.		Petitioner Petitioner Petitioner	
	Document Name: Answer to AG's answer & new matter to amended PFR.			
June 28, 2010	Answer Filed Finn, Trevor S. Gerst, John J. Ward, Jerry R.		Petitioner Petitioner Petitioner	
	Document Name: Answer to Rendell's answer & new matter to amended PFR.			
June 25, 2012	Order Filed Brown, Kristen W.			06/26/2012
	Document Name: Notice of Proposed Termination of Court Case - the court intends to terminate this case Comment: w/o further notice because the docket shows no activity in the case for at least 2 years. You may stop the court from terminating the case by filing a Statement of Intention to Proceed. The Statement of Intention to Proceed should be filed with the Chief Clerk at this Court by 8/24/12. If you fail to file the required Statement of Intention to Proceed, the case will be terminated.			
August 22, 2012	Filed - Other Voelcker, Laurinda Jo Voelcker, Laurinda Jo	Finn, Trevor S. Gerst, John J.	Petitioner Petitioner	
	Document Name: Statement of Intention to Proceed			
August 27, 2012	Entry of Appearance Voelcker, Laurinda Jo Voelcker, Laurinda Jo Voelcker, Laurinda Jo	Finn, Trevor S. Gerst, John J. Ward, Jerry R.	Petitioner Petitioner Petitioner	
August 27, 2012	Praecipe for Withdrawal of Appearance Warren, Rebecca Lee	Finn, Trevor S.	Petitioner	
August 30, 2012	Miscellaneous Brown, Kristen W.			08/30/2012
	Document Name: pet.'s having failed to file a Statement of Intention to Proceed pursuant to this Court's Comment: Notice of Proposed Termination dated 6/25/12, the Chief Clerk shall mark this matter closed.			
September 4, 2012	Order Filed Per Curiam			09/05/2012
	Document Name: our order dated 8/30/12 is vacated as improvidently entered. It appearing that the pleadings in Comment: this matter are closed, a status conf. is set for 10/9/12, at 10:00 a.m. via telephone conf., to originate from the chambers of a judge of this Court sitting in Hbg. Cell Phones May Not Be Used.			
October 9, 2012	Order Directing Status Report Quigley, Keith B.			10/10/2012
	Document Name: after conf. held this date and it appearing that resps. have made payments, and thus the matter Comment: may be rendered moot by further payments, the parties shall file a jt. status report by 4/9/13.			

DISPOSITION INFORMATION

Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 505 MD 2009

Page 8 of 8

February 8, 2013



DISPOSITION INFORMATION

Final Disposition:

Related Journal No:

Category:

Disposition:

Disposition Comment:

Dispositional Filing:

Filed Date:

Disposed Before Decision

PO Sus. Compl PR Dis

The POs of resp., Commonwealth of Pa. & the General Assembly are SUSTAINED. The PFR is DISMISSED to the extent that petitioners seek relief against the Commonwealth & the General Assembly.

Opinion

2/2/2010 12:00:00AM

Judgment Date:

Disposition Author:

Disposition Date:

Leadbetter, Bonnie Brigance

February 2, 2010

Filing Author:

Leadbetter, Bonnie Brigance

Final Disposition:

Related Journal No:

Category:

Disposition:

Disposition Comment:

Dispositional Filing:

Filed Date:

Yes

Disposed Before Decision

Miscellaneous

Notice of Proposed Termination dated 6/25/12, the Chief Clerk shall mark this matter closed.

Judgment Date:

Disposition Author:

Disposition Date:

Brown, Kristen W.

August 30, 2012

Filing Author:

Alex V. Levin, MD, MHSc, FAAP, FAAO, FRCSC
Chief, Pediatric Ophthalmology and Ocular Genetics

840 Walnut Street, Suite 1210
Philadelphia, PA 19107-5109
215-928-3240 (clinical office)
215-928-3914 (academic office)
215-928-3983 (fax)

October 31, 2012

Rebecca Warren
Office of District Attorney
County of Montour
Montour County Court House
29 Mill Street
Danville, PA 17821

Re: Commonwealth v. A [REDACTED] A [REDACTED] I [REDACTED]
Your File Number: CR -44-2010

Email montourda@gmail.com

Dear Ms. Warren:

As per your request, I have reviewed records provided to me in the above mentioned matter. I received over 6,000 pages of records printed out from the electronic medical record of the child, [REDACTED] (date of birth [REDACTED]/2009). In addition, I had verbal and email communication with Dr. Mark Dias with your permission, and reviewed his February 24, 2011 letter to Shelby Newcomer of Lycoming County Children and Youth which he provided to me. I also was provided with the Complaint filed by Mr. Mark Freeman on behalf of his client in the civil matter which I understand has since been abandoned. Please accept this letter as my summary of my findings related to this case.

I am board certified in Pediatrics, Ophthalmology, and Child Abuse Pediatrics. I practiced actively as a child abuse pediatrician from 1985–1986 full time and then part time from 1986 to 1988. I returned to practicing part time child abuse pediatrics at The Hospital for Sick Children in Toronto from 2002–2008. As reflected in my Curriculum Vitae, a large part of my career has been devoted to research and education in the field of child abuse and neglect in particular the ocular manifestations of abusive head trauma. I have published widely in the peer reviewed literature and have lectured in many countries throughout the world as well as many states throughout America on this topic. at the University of Toronto in 2001. I am licensed to practice medicine in both Ontario and Pennsylvania. I am currently the Chief of Pediatric Ophthalmology and Ocular Genetics at Wills Eye Institute. I have been continuously involved bed side care of children with numerous ocular problems, including retinal hemorrhages, and the effects of child abuse and neglect, over my entire post medical school career. I have been certified as an expert in both civil and criminal matters related to child abuse, on behalf of both the defense and prosecution, in many jurisdictions in Canada, and the United States as well as the United Kingdom. However, I rarely testify in court, no more than once or twice yearly if that.

After completing medical school at Jefferson Medical College, I did a full residency in pediatrics at Children’s Hospital in Philadelphia (1982-1985), followed by an ophthalmology residency at

Wills Eye Hospital in Philadelphia,(1986-1989) followed by a pediatric ophthalmology fellowship at the Hospital for Sick Children in Toronto (1989-1990). After two years in Philadelphia practicing in pediatric ophthalmology, I returned to The Hospital for Sick Children in 1992 where I spent the ensuing almost 18 years primarily as a staff pediatric ophthalmologist. I also obtained my Masters in Bioethics

This child was brought to Geisinger Medical Center in January 2010. The child was reportedly at home with the father. There is history that the child was somewhat irritable in the week preceding the hospital admission with decreased appetite and play. On the night before admission, he was up in the early hours of the morning and was still sleeping when his mother left for work on January 7. The child's father reportedly indicated that the child did not feed well on January 7 although there was no vomiting. When the mother returned home she became concerned that the child was dehydrated and not normally responsive, so the child was taken to Geisinger where there was no external evidence of injury. CT scan done at that time revealed bilateral large subdural (between the dura membrane that covers the brain and the brain itself) collections of blood with pressure on the brain such that one side was shifting to the other. The child did have a bulging fontanel (soft spot) at presentation with occasional "sun-downing" (downward gaze direction of the eyes) also consistent with increased intracranial pressure (high pressure inside the skull on the brain).

Two routine medical visits were missed by the child prior to presentation although I understand from Mr. Freeman's Complaint that these visits may have been missed due to insurance reasons.

There was apparently an un-dilated (small pupil) eye examination conducted by an ophthalmology resident for which the view of the retina inside the eye through the small pupil was inadequate. The record indicates that a "small glimpse" was obtained and did not show any visible hemorrhages. It was indicated that the child needed a full eye examination. This is the only preoperative examination that I can find in the record.

The child was taken to surgery for drainage of the subdural blood. At surgery, the collection was noted to be under significant pressure and a combination of the normal fluid that surrounds the brain (cerebrospinal fluid) and blood (serosanguinous).

On January 8, Dr. Thomas Wilson, conducted a full eye examination at 16:17 which showed too numerous to count retinal hemorrhages in both eyes extending out to the edge of the retina (ora) and "+2" areas of retinoschisis (splitting of the retinal layers). I'm not sure whether this refers to two separate areas of retinoschisis or a moderate elevation (traditionally we use a 4 point scale). He wrote in his consultation, "Examination is consistent with non-accidental trauma and cannot be explained by any other etiology".

As there was some elevation in the child's liver function blood tests, a CT scan was done of the abdomen which was normal with the exception of anterior rib fractures that lead to a review of a prior skeletal survey that indicated the fractures were indeed present although not initially appreciated by the radiologist who read the film.

The child subsequently recovered and had an optometric assessment by a Dr. Moon who is apparently a low vision specialist. I do not see any comment in her report regarding late retinal findings of retinoschisis such as circumlinear scars.

The child was otherwise well prior to this episode with the exception of well documented increases in the child's head circumference. Interestingly, it appears that the child had an enlarged head circumference noted *in utero* but at birth was only in the second percentile. The head circumference gradually increased over the interval until presentation at which time the head circumference was markedly enlarged (greater than 98 percentile) presumably due to the large subdural collections. I agree with Dr. Dias in raising concern about the possibility of benign extra-axial fluid collections of infancy with the possibility of secondary rebleed into these collections. I am not aware of any well documented case of such rebleeding associated with the traumatic eye findings seen in this child as well as the severe increased intracranial pressure. There is one paper in an internet based medical journal, unfortunately documented only by a hand drawing, which reports retinal hemorrhages in the setting of benign fluid collection.¹ However, the authors of this paper recognize that their child may have likely been abused in stating "the question of inflicted injury can never be dismissed completely" and "in the present case the involvement of the eyes seems severe in relation to the extent of the intracranial hemorrhage". There is no mention in that paper of increased intracranial pressure. In fact, it's difficult to ascertain how a hemorrhage from benign collections would occur, even if one did accept the fact that the brain injury could be secondary to such a bleed (which Dr. Dias does not). One theory might be that blood could track directly from the bleeding site around the brain down the optic nerve and somehow result in blood in the eye. This would be an example of Terson syndrome: the association of any kind of bleeding in the head with any kind of bleeding in the eyes. Our previous work² and empiric experience show us that Terson syndrome is extremely rare in childhood. Terson syndrome in childhood has not been reported with retinoschisis in particular or severe retinal hemorrhages as seen in this child with the exception of hyperacute elevations of intracranial pressure (not consistent with this child's history) as seen in infantile aneurysm. The second theory is that actually increased intracranial pressure as a result of bleeding could result in these hemorrhages. As reviewed elsewhere, increased intracranial pressure does not explain the findings seen in this child³.

In fact, the severity of retinal hemorrhages in the presence of retinoschisis, has only been reported in 2 cases of fatal head crush injury^{4,5}, fatal motor vehicle accidents⁶, and an 11 meter fall onto concrete⁷. These findings can also be mimicked by leukemia. Of course, in the situation of the current case of baby [REDACTED], there is no history of fatal crush injury, 11 meter fall, leukemia or motor vehicle accident. The child has no other known medical history which could have explained the ocular findings. These findings are however well recognized to be associated with abusive head injury characterized by repetitive acceleration-deceleration forces with or without blunt head impact (i.e. Shaken Baby Syndrome) as reviewed elsewhere.⁸

The brain findings, as recognized by Dr. Dias, and the rib fractures also support this diagnosis. I understand that Dr. Barnes and Squires had testified at a previous dependency hearing and raised the diagnosis of benign extra axial fluid collections of infancy and congenital rickets (to explain the fractures) although these diagnosis were not raised any time during the hospital admission. As I am not an expert in the areas of rickets, I will not comment further but will make it clear

that even if the fractures had a non-traumatic cause, this would not alter my opinion that the ophthalmic findings in this case along with the brain injury, in the absence of any other explanatory history, would be consistent with the diagnosis of abusive head trauma.

I'm concerned that the Complaint from Mr. Freeman introduces multiple misquotes, misuses of the medical literature, and suggestions which might confuse the matter at hand. I would like to address some important points that need clarification from the Complaint. I should add that the Complaint has multiple references to medical literature without citation which makes it difficult to specifically address many of the allegations.

At one point, Mr. Freeman correctly states that blood trapped under the internal limiting membrane over blood vessels in the retina is non-specific. I believe that he is actually quoting my published work in making this statement. Nonetheless, there is nothing in Dr. Wilson's notes to suggest that the retinoschisis which he observed was over blood vessels. This is a fairly typical finding that would have likely been specifically mentioned by Dr. Wilson, who, was trained by me as he did his fellowship at The Hospital for Sick Children. Usually, we do not refer to such blood collections as retinoschisis particularly when there is concern of possible injury. In Dr. Wilson's February 2011 letter he specifically mentions "macular retinoschisis" which almost by definition means that it is not over a vessel. Mr. Freeman incorrectly states that shaking a pig does not cause retinal hemorrhages. In fact, retinal hemorrhages have been found in the pig model.⁹ Indeed, it is the pig model which is one of hundreds of papers using clinical research on affected children, clinical research on children who have disorders that share findings with abusive head trauma, deceased children, animal models, mechanical models, and computer generated models, that show the importance of traction on the retina by the vitreous (jelly which fills the eye) in creating retinoschisis and retinal hemorrhages and thus the uniquely high association of retinal hemorrhages (approximately 85%^{10, 11}) in Shaken Baby Syndrome as compared to other forms of trauma or medical illnesses. Although this child did not apparently have a full work-up for coagulopathy (tendency to bleed) or thrombophilia (tendency to clot), the child did not have any significant evidence of coagulation disorders and I am unaware that subtle forms of coagulopathy in a child of this age causing the described retinal findings. Mr. Freeman suggests that the child had a low sodium level (hyponatremia) but in fact the value was only mildly low and there were no major shifts in sodium. It is only major shifts to extreme values in sodium which are associated with retinal hemorrhages and never with the kinds of hemorrhages seen in this child or retinoschisis.¹² Mr. Freeman reports that the child had "significant anemia" at birth but in fact the hemoglobin was only borderline low. There has never been a case in a child to my knowledge even with severe anemia, who had retinal findings similar to that seen in this child.¹²

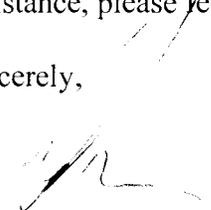
I also note that the child had metabolic screening in infancy ruling out the presence of a variety of metabolic disorders including one disorder known to be associated with mild retinal hemorrhages and macrocrania (large head): glutaric aciduria. Newborn screening does not rule out all cases of glutaric aciduria but the child does not have any findings on the CT scan which would be consistent with this diagnosis and this severity of retinal findings has never been reported in glutaric aciduria around the world with the exception of one unpublished case that I am aware of in which the child was also abused and did not have retinoschisis.

One of the confounding factors in this case is that the full eye examination did not occur until after neurosurgery. There is evidence that retinal hemorrhages can worsen during the hospital course of children who are victims of abusive head trauma.¹³ That the initial limited eye examination in this child showed no hemorrhages, is somewhat inconsequential as the optical challenges of viewing through a small pupil make it quite likely that an inadequate view prevented the detection of hemorrhages which may have been present. Nonetheless, we must consider the possibility that there were less hemorrhages, and perhaps hemorrhages less diagnostic of abusive head injury, prior to surgery. It appears that once an initial injury has occurred, and retinal blood vessel dysregulation ensues, that the process may continue unabated, with continuing hemorrhaging, that may be aggravated by such concomitant factors such as neurosurgery and increased intracranial pressure. However, other than the increased pressure, this child did not apparently have other contributing factors that would worsen hemorrhages (e.g. severe coagulopathy). In addition, I'm not aware of any case in which increasing retinal hemorrhages led to the severity seen here and in particular retinoschisis. My assessment of this case is based on the assumption that the retina as seen by Dr. Wilson was actually the retina, or close to the retina, that would have been seen on presentation had there been a dilated examination at that time. The fact that the initial examination by Dr. Wilson on January 8 was within our usual recommendation of approximately 24 hours for first examination, also supports that there were no major changes. In fact, it's also possible that the hemorrhages *lessened*, in the interval. So it is with some caution, that I make the conclusions herein understanding that intervening factors may or may not have induced minor alterations (worsening or lessening) to the appearance of the retina as viewed by Dr. Wilson on January 8, but even if so, one would not expect retinoschisis to develop spontaneously, and there is no evidence in the literature at all to suggest that such an event occurs.

In summary, the ocular findings seen in this child are strongly suggestive of a diagnosis of abusive head injury. The absence of external injury is actually much more common than the presence of such injury in cases of shaken baby syndrome. I can find no other satisfactory explanation based on the records provided to me or the world's medical literature

Thank you for allowing the opportunity to review these records. If I can be of any further assistance, please feel free to contact me.

Sincerely,



Alex V. Levin, MD., MHSc
Chief, Pediatric Ophthalmology and Ocular Genetics

Professor, Departments Ophthalmology and Pediatrics
Jefferson Medical College of Thomas Jefferson University

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February 12, 2013

Rebecca Warren, Esq.
DISTRICT ATTORNEY
29 Mills Street
Danville, PA 17821

*Re: Commonwealth v. A [REDACTED] I [REDACTED]
Lack of Probable Cause
Prosecutor Warren's Conflict of Interest*

Dear Ms. Warren,

I am writing to ask you as the District Attorney of Montour County to recognize that based on Dr. Dias' February 24, 2011 letter to Shelby Newcomer that your office provided to me on February 8, 2013, combined with Dr. Levin's report and literature he co-authored, there is no probable cause that a crime was committed in this case. There is also an ethical concern that you had, and continue to have, a conflict of interest in prosecuting Mr. I [REDACTED], who is the plaintiff in a lawsuit against a former client of yours, Montour County, arising out of the same facts for which you now continue to prosecute Mr. I [REDACTED].

According to American Bar Association Standards, a prosecutor has an ethical duty to refrain from prosecuting a case that lacks probable cause.

The prosecutor in a criminal case shall ... refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause. American Bar Association, *Advocate* Rule 3.8(a) Special Responsibilities Of A Prosecutor.

That Judge Schrawder found probable cause when these charges were instituted by former District Attorney Buehner does not mean that there is probable cause to now continue the prosecution. The expert reports that your office recently provided set forth very different facts than those presented by Dr. Bellino at the preliminary hearing. *See Rogers v. Thomas Jefferson University Hospital*, 23 Phila. 632, 635 (1992) (without good faith disclosure of the underlying facts, probable cause was not established as a matter of law).

In this case, Dr. Dias' February 2011 letter and Dr. Levin's October 2012 report reveal critical facts that were not disclosed at the preliminary hearing and that vitiate the probable cause found by Judge Schrawder. Specifically, Dr. Bellino did not disclose that the child's subdural collections were consistent with a condition known as benign extra-axial collections of infancy rather than repeated instances of abuse, that his head growth chart showed consistent head circumference expansion from birth until his presentation to Geisinger supporting a diagnosis of benign extra-axial collections of infancy, or that the first eye examination after admission to Geisinger showed no retinal hemorrhages.

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Benign extra-axial collections of infancy explain the subdural collection

Preliminary hearing: At the preliminary hearing Dr. Bellino testified, “It didn’t take long to perform a CAT scan of his head, which revealed some large fluid collections which appeared to be old blood around the brain as well as some new areas of bleeding as well.” N.T. p.23

February 24, 2011 letter from Dr. Dias to Shelby Newcomer: “This could be due to either volume loss or, alternatively, an element or pre-existing hydrocephalus such as would exist in benign extra-axial collections of infancy. [REDACTED] also has a moderate degree of occipital flattening which we see more commonly in children with macrocephaly and a picture of benign extra-axial collections of infancy.... The macrocephaly (large head) and family history of macrocephaly suggest the possibility of benign extra-axial collections of infancy (also sometimes referred to as benign external hydrocephalus or BEH) ... Importantly, this condition, in rare cases, can predispose infants to develop subdural hemorrhages with minor or no reported physical trauma.”

October 31, 2012 report from Dr. Levin: Dr. Levin reports, “I agree with Dr. Dias in raising concern about the possibility of extra-axial fluid collections of infancy with the possibility of secondary rebleeds into these collections. . .”

Retinal hemorrhages, sometimes severe, are reported to be associated with sudden changes in intracranial pressure and with benign extra-axial collections of infancy¹ thus providing an explanation for A [REDACTED]'s eye findings.

The head growth chart showed gradual head circumference growth

Preliminary hearing: Dr. Bellino testified at the preliminary hearing, “Well, interestingly if you look at [REDACTED]'s growth chart . . . his head size seemed to be rather reasonable until he got to be about two months of age or so and then the head size started growing significantly.” N.T. at 35.

February 24, 2011 letter from Dr. Dias to Shelby Newcomer: “Plotting these all out, his head circumference seemed to be gradually expanding since birth with no abrupt change in the trajectory of his head growth.”

Dr. Galaznik’s attached supplemental report with growth charts illustrates the gradual and disproportionate growth of young Amir’s head in contrast to Dr. Bellino’s testimony.

No retinal hemorrhages or macular schisis were seen in the initial eye examination.

Dr. Bellino, Dr. Wilson and Dr. Levin primarily rely upon the finding of macular schisis to render their opinion that [REDACTED] was abused. However, at the preliminary hearing, Dr. Bellino failed to disclose that Dr. Neutze, the Geislinger ophthalmology resident, did not find macular schisis or retinal hemorrhages of any type in the initial un-dilated eye exam. Dr. Neutze is now a board-certified ophthalmologist.

¹ Piatt JH; “A Pitfall in the Diagnosis of Child Abuse: External Hydrocephalus, Subdural Hematoma, and Retinal Hemorrhages”; *Neurosurgical Focus* 1999;7:1-8

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October 31, 2012 report from Dr. Levin: “There was apparently an un-dilated (small pupil) eye exam conducted by an ophthalmology resident for which the view of the retina inside the eye was inadequate. The record indicates that a “small glimpse” was obtained and did not show any visible hemorrhages.... One of the confounding factors in this case is that the full eye exam did not occur until after neurosurgery... My assessment of this case is based on the assumption that the retina as seen by Dr. Wilson² was actually the retina, or close to the retina, that would have been seen on presentation had there been a dilated examination at that time.” (emphasis added).

Dr. Levin’s assumption that Dr. Neutze did not see macular schisis and severe retinal hemorrhages because the child’s eyes were not dilated is contrary to the literature. Articles co-authored by Dr. Levin describe an undilated exam as follows:

Nonophthalmologists usually perform fundus examinations with a direct ophthalmoscope. Although this instrument does not allow the examiner to visualize the far periphery of the retina, *it provides an excellent view of the optic discs, maculae, and posterior retina.*³

The direct ophthalmoscope is only able to view the posterior pole; *defined as the optic nerve, the retina immediately surrounding the optic nerve (peripapillary retina), the macula, and the fovea. ...*⁴

*Although health care professionals other than ophthalmologists may be skilled at detecting the absence or presence of retinal hemorrhage, a full view of the retina and characterization of the number, types, and patterns of the hemorrhages requires consultation by an ophthalmologist using indirect ophthalmoscopy, preferably with a dilated pupil.*⁵

In this case, Dr. Neutze did not see retinal hemorrhages or macular schisis in the undilated examination. Dr. Levin’s assumption that she missed these findings is unmerited. While an undilated exam is admittedly a “small glimpse”, it is a small glimpse in which, according to Dr. Levin’s own papers, Dr. Neutze would have seen the macula, in which case macular schisis – a major finding – would have been obvious.

The assumption that Dr. Neutze missed retinal hemorrhages “too numerous to count” is also inconsistent with Dr. Levin’s 2003 article, in which he and his colleagues found an 87% accuracy rate when nonophthalmologists attempted to identify retinal hemorrhages through

² The question of why Dr. Wilson and/or Dr. Bellino failed to have Ar█’s eyes photodocumented with the specialized retina camera owned by Geisinger for this purpose was the subject of a defense motion in limine. Pursuant to Judge James’ Order, this will be the subject of a pre-trial motion for an adverse inference jury instruction regarding the lack of retinal photographs for independent review.

³ Morad, Y, Kim, YM, Huyer D, Capra, L, Levin AV “Nonophthalmologist Accuracy in Diagnosis of Retinal Hemorrhages in the Shaken Baby Syndrome” JPediatr 2003;142:431-4 (2003) (emphasis added).

⁴ Levin AV; “Ophthalmology of shaken baby syndrome”; Neurosurg Clin Am. 13(2002)201-211 (emphasis added).

⁵ Levin AV, Christian CW; “Clinical Report- The eye Examination in the Evaluation of Child Abuse; Pediatrics, doi:10.1542/peds:2010-1397. (emphasis added).

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undilated pupils.⁶ One would expect Dr. Neutze, an ophthalmology resident, to be at least as proficient – and likely more proficient – than a nonophthalmologist. Therefore, there is only a 13% or lower probability that Dr. Neutze missed the retinal hemorrhages and, by extension, a 13% or lower probability that Dr. Levin’s opinion is correct⁷. The probability that Dr. Neutze missed two major findings – macular retinoschisis *and* retinal hemorrhages too numerous to count – may well approach zero.

Based on the report and research of your own expert, you do not have probable cause that the child’s macular schisis developed before hospital admission. In this regard, I note that Dr. Patrick Lantz is presenting a well-documented case at the American Academy of Forensic Science meeting in Washington, D.C. later this month in which an infant developed retinal hemorrhage, retinal folds and retinoschisis *after* hospital admission. In that case, as in this, the parents were initially suspected of child abuse; however, the investigation was terminated when a natural cause for the subdural hemorrhage was identified. The same factors are applicable in this case.

The continued prosecution of a case in which your own expert reports do not support the charges violates the American Bar Association Special Responsibility Rules of a Prosecutor as well as Mr. [REDACTED]’s civil rights.

Dismissal of dependency proceeding

The dismissal of the dependency proceeding further supports dismissal of these charges. As you know, the child’s mother, Dr. B [REDACTED] B [REDACTED] [REDACTED], a board certified psychiatrist, was never suspected of harming [REDACTED] in any way. Dr. B [REDACTED] [REDACTED] maintained throughout the dependency that Geisinger had misdiagnosed [REDACTED]’s condition and steadfastly maintained her husband’s innocence and desired to have him return to the family home. Your client Montour County maintained that Dr. B [REDACTED] [REDACTED]’s position that her husband was innocent rendered her as having insufficient protective capacity and was the basis of your client’s dependency petition. After hearing the testimony of Dr. Bellino, Dr. Wilson and the Children and Youth caseworkers, the Court refused to make a finding of abuse and dismissed the dependency petition, holding that Dr. B [REDACTED] [REDACTED] was a ready, willing and able parent of the children notwithstanding that she continued to maintain A [REDACTED]’s innocence. The I [REDACTED] family has been happily reunited since the dismissal of the dependency in May 2011.

Conflict of interest

In my experience, criminal cases of this nature are generally dismissed when the family court dismisses the case without finding abuse or placing any restrictions on the family. In this case,

⁶ Morad, Y, Kim, YM, Huyer D, Capra, L, Levin AV “Nonophthalmologist Accuracy in Diagnosis of Retinal Hemorrhages in the Shaken Baby Syndrome” JPediatr 2003;142:431-4 (2003) (accuracy rate comparable to prior study).

⁷ Even this low probability is based solely on Dr. Levin’s controversial hypothesis that manual shaking causes retinal hemorrhage in general and retinoschisis in particular. Dr. Levin is the world’s foremost advocate of this controversial hypothesis, as evidenced by the “point counterpoint” articles published by the U.K.’s Royal College of Ophthalmologists’ journal Eye in 2009 in which Dr. Levin advocates this controversial hypothesis. See attached articles.

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however, I believe that the decision to continue the prosecution reflects an underlying conflict of interest.

From your motion in limine and our discussions I know you are aware that Mr. ██████ filed a civil rights lawsuit against Montour County in January 2012⁸, just about the time you were sworn in as District Attorney. I have also just become aware that you represented Montour County in a suit against the Governor of Pennsylvania and others to compel payment to Montour County for what is now, with your election as Montour County District Attorney, your salary. You have told me that Montour County also approved the payment of expert witness fees, including Dr. Levin's, for the criminal case.

What I have learned is that you did not withdraw from representation of Montour County until August 27, 2012. This means that for over seven months you continued to represent Montour County while you were prosecuting Mr. ██████, the plaintiff in a civil suit against the County. At the same time, you were consulting with your client about funding expert witnesses to support the criminal prosecution of Mr. ██████, which involves the same facts as the civil rights suit in which the County is the defendant. The fact that you were well aware of these considerations is demonstrated by your motion in limine filed in May of 2012 to preclude Mr. ██████ from mentioning the civil suit during the criminal trial. This circumstance raises a serious question about your independent judgment as a prosecutor in a case against Mr. ██████.

There is no dispute that you had a duty of loyalty to your client Montour County from January to August 2012, and that you still have a duty of loyalty to your former client, who is now your employer receiving compensation for your salary as a direct result of your former representation. It is my understanding the case you initiated on behalf of Montour County is ongoing at this time. It is my opinion that you should have recused yourself from the prosecution of Mr. ██████ based on the conflict of interest between this duty of loyalty and your responsibilities as a prosecutor. When I combine the lack of probable cause and your conflict of interest in prosecuting Mr. ██████ I am having trouble seeing your continued prosecution of this case as anything other than an effort to punish Mr. ██████ for filing a civil rights suit against the County.

Your motion for more time to obtain an expert due to your bizarre "Next Innocence Project Network" conspiracy theory, a conspiracy theory which you repeated in court during our last pre-trial conference, supports the conclusion that your continued prosecution of this case is in retaliation for Mr. ██████'s filing a civil suit. In my opinion, your conflict of interest is blinding you to the reality of the lack of probable cause in this case and leading you to accept bizarre conspiracy theories as the reason you had difficulty obtaining an expert rather than a lack of evidence. In addition to the ethical consideration of whether you should have recused yourself as the prosecutor in this case due to your representation of Montour County, the continued prosecution of this case in the face of a lack of probable cause violates Mr. ██████'s civil rights and appears to be retaliatory.

⁸ The statute of limitations for such civil rights claims is two years and since the events leading to this matter arose on January 8, 2010, the civil suit was filed days before the expiration of the statute of limitations on January 8, 2012.

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If you do not dismiss these charges, I will seek to disqualify you and your office from prosecuting this case. Before doing so, however, I ask that you consider whether there is any basis for this prosecution given Dr. Dias' letter and Dr. Levin's report. I also remain willing to discuss the merits of the case with you at any time.

Very truly yours,


Mark D. Freeman

MDF/wle

cc: A [REDACTED] I [REDACTED]

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1/30/13

TO: Mark D. Freeman, Esq.
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mark@markdfreemanlaw.com

RE: Case of

Infant: [REDACTED] DOB: [REDACTED]/09 Date of Presentation: 1/08/10
Defendant: Father - A [REDACTED] I [REDACTED] Mother - B [REDACTED] B [REDACTED] I [REDACTED]

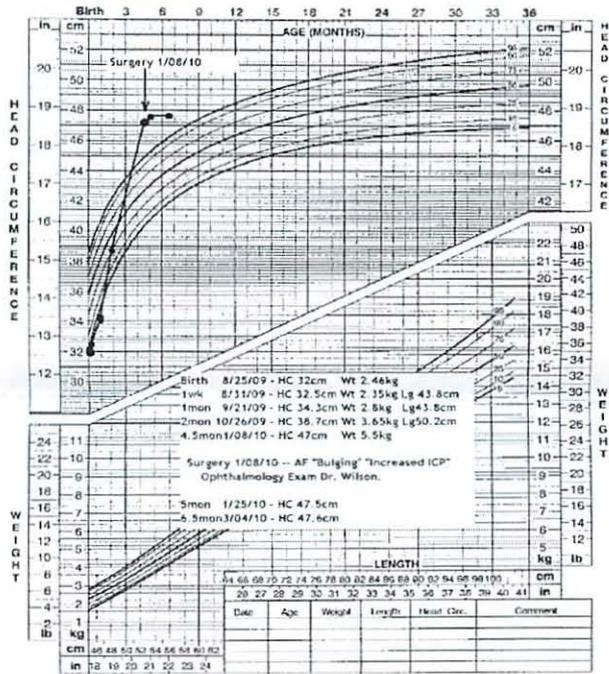
I was asked by Mr. Freeman to provide graphs of the growth data for weight, length, and head circumference contained in the medical records I was provided in the above case. This data is in the body of my report already submitted to Mr. Freeman. As requested I plotted this data on standard CDC growth charts and forward them to Mr. Freeman both in electronic format and attached below.

AVAILABLE GROWTH DATA

Growth Data:	Wt.	Lg	HC
8/25/09 (birth)	2.460 kg	49cm	32cm
8/31/09 (1 wk)	2.356kg	43.8cm	32.5cm
9/21/09 (1 month)	2.809 kg	46.7cm	34.3cm
10/21/09 sick	3.51kg		
10/26/09 (2 month)	3.65kg	50.2cm	38.70 (21.75%) AF-OK
1/08/11 (4 ½ month)	5.50kg		47cm
1/25/10			47.50 cm
Post Admission and surgery			
2/01/10 (5 ¼ months)	5.792kg	61cm	47cm
2/03/10 [69]	6.169	58.4cm	[not consistent with 2/01 data above]
3/04/10 (6 ½ months)	6.866kg		47.6cm

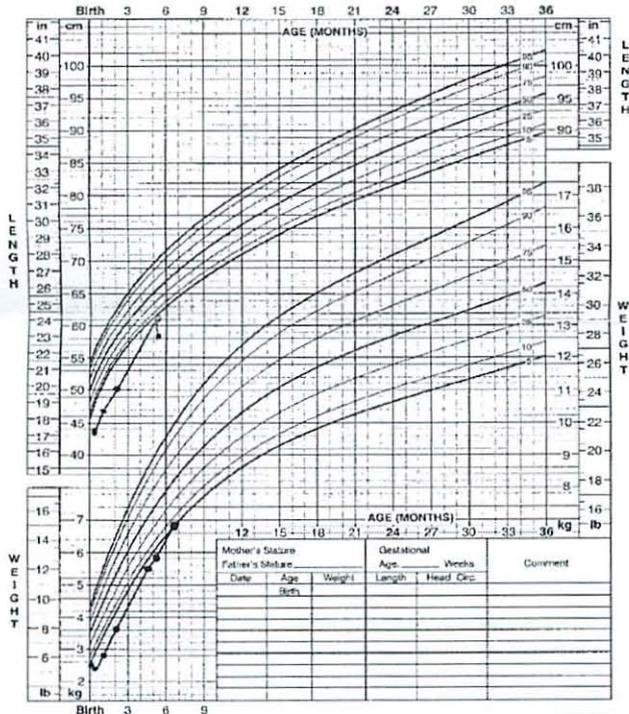

John G. Galaznik, M.D., FAAP

Birth to 36 months: Boys
 Head circumference-for-age and Weight-for-length percentiles Date of Birth [redacted] 09



Published May 20, 2000 (revised 10/1/03)
 CDC/NCE. Developed by the National Center for Health Statistics in collaboration with
 the National Center for Chronic Disease Prevention and Health Promotion (CDC)
<http://www.cdc.gov/growthcharts>

Birth to 36 months: Boys
 Length-for-age and Weight-for-age percentiles Date of Birth [redacted] 09



Published May 20, 2000 (revised 10/1/03)
 CDC/NCE. Developed by the National Center for Health Statistics in collaboration with
 the National Center for Chronic Disease Prevention and Health Promotion (CDC)
<http://www.cdc.gov/growthcharts>

John G. Galaznik, M.D., FAAP 1/30/13

John G. Galaznik

Vitreoretinal traction is a major factor in causing the haemorrhagic retinopathy of abusive head injury? – No

Eye (2009) 23, 1761–1763; doi:10.1038/eye.2009.200; published online 7 August 2009

For the past 20 years, vitreoretinal traction has been held to be a major mechanism for the generation of retinal haemorrhage in non-accidental injury in infancy. The presence of circinate macular folds, and a lesion termed 'traumatic retinoschisis' have been proposed as indicating severe vitreoretinal traction due to shaking, and by implication, only to result from the application of extreme violence. Some recent evidence, and clinical experience of the behaviour of partially detached vitreous, casts doubt on this hypothesis and this has implications for the degree of certainty with which the presence of retinal haemorrhage and circinate macular folds can be used as a marker for extreme violence done to an infant.

Child abuse is likely to be as old as humanity, but only recently has the combination of subdural and retinal haemorrhages with encephalopathy in infancy been recognised as being due, in some, if not all, cases, to inflicted trauma. The mechanism by which the trauma gives rise to the clinical findings remains the subject of hypothesis and conjecture.

Subdural haemorrhage (SDH) in abused children was first described by Tardieu.¹ Over 80 years later, Caffey described unexplained fractures of the long bones and SDH in 6 children,² but did not overtly cite inflicted trauma as the cause. It was a further 16 years before Kempe coined the term 'Battered Child Syndrome' to explain such findings.³

The first description of retinal haemorrhage (RH) in abused children was by Gilkes and Mann.⁴ They suggested that RH arose as a result

of a rise in the intracranial and the intraocular venous pressure, which could arise because of chest compression while the child was being shaken. Further descriptions of RH in abused children were given by Harcourt and Hopkins, who also described the visual impairment which could result not only because of ocular but also cerebral injury.^{5,6}

Guthkelch, a British neurosurgeon, first postulated that the cause of SDH in Battered Child Syndrome was a shaking injury, causing rotational forces within the cranium which disrupted vessels bridging the subdural space.⁷ He commented that, at the time, a 'good shaking' was considered by many British parents socially more acceptable and less dangerous than a blow to the head.

In 1974, Caffey coined the term 'Whiplash Shaken Infant Syndrome'⁸ and postulated that many battered babies were really shaken babies. In commenting on the pathogenic significance of ocular lesions in these children, Caffey agreed with other authors of the time that 'some of the affected infants are the victims of over vigorous manipulations (sic), not battering.' He went on to comment that: 'The pathogenesis of retinal hemorrhages in the manual WLS (whiplash shaking) of infants and children cannot be evaluated satisfactorily without a consideration of the incidence, nature and persistence of idiopathic retinal hemorrhages of the newborn.' before going on to cite an increase in blood viscosity and polycythaemia as the major causal factors.

The concept that retinal haemorrhage arose in shaking injuries because of vitreous traction on the retina was first proposed by Greenwald *et al* in 1986.⁹ They coined the term 'traumatic retinoschisis' to refer to the appearances described in their series, which consisted of five

children with features compatible with inflicted trauma (although criminal prosecution occurred in only one case). Cystic retinal lesions, partially or completely filled with blood, were described at the posterior pole in four cases, in two of which cysts developed (in one case after clearance of delayed vitreous haemorrhage) after an initial evaluation had shown retinal haemorrhage only. All five cases had reduced or electronegative ERGs in at least one eye, indicating damage to the inner layers of the retina. They proposed that back and forth movement of the lens during a shaking episode transferred tractional forces through the vitreous to the posterior pole of the eye, causing splitting of retinal layers. Further descriptions of circinate perimacular folds, considered to result from vitreoretinal traction attributable to shaking, followed.¹⁰

Pathological support for the vitreous traction theory came from papers by Massicote *et al*¹¹ and Green *et al*.¹² Massicote *et al* noted partial detachment of the vitreous except at the apices of retinal folds—confirming, in their view, the role of vitreous traction in the formation of folds.

Green *et al* found subhyaloid haemorrhage and retinal detachment to be most frequent at the retinal periphery and around the optic nerve—the sites of the strongest vitreoretinal adhesion. They did not, however, describe retinoschisis.

Massicote *et al* also noted massive retinal haemorrhage at the vitreous base in one of their cases, and described a haemorrhagic cavity beneath the internal limiting membrane in one of their patients, which they described as schitic. In fact, despite the continued use of the term ‘traumatic retinoschisis’, true retinoschisis, as opposed to separation of the internal limiting membrane, has never been described pathologically due to inflicted head trauma in children.

In contrast, Emerson *et al*,¹³ found retinal haemorrhage to be more common in the mid periphery of the retina rather than at the vitreous base. Furthermore, Emerson *et al* did not find vitreous detachment peripheral to macular folds and cast doubt on vitreomacular traction as the aetiology of circumferential macular fold formation. They proposed that venous leakage led to the formation of a haemorrhagic schisis cavity, which expanded, pulling surrounding retina centripetally into a circumferential fold.

In other respects, it seems unlikely that shaking of an infant would result in significant vitreoretinal traction, or that this would lead to retinal haemorrhage.

Clinical experience of the behaviour of partially detached vitreous, and of vitrectomy surgery, where attached vitreous may have to be peeled away from the retinal surface, suggests that vitreous traction on the retina causes retinal tears rather than haemorrhage.

Furthermore, the eye is ‘designed’ to rotate, for example during saccadic eye movements, during which angular

accelerations of up to 700° per second may be achieved, and the vestibulo-ocular reflex is likely to mitigate the effects of rotation of the head on the eye.¹⁴ Retinal haemorrhages are not observed after saccadic eye movements, nor in cases of nystagmus, or opsoclonus. Rotational forces are intentionally applied to the eye by some surgeons during strabismus surgery—the ‘spring back balance test’ of Jampolsky,¹⁵ without causing haemorrhage.

Neither does vitreoretinal traction explain the frequent finding of RH (and when looked for, SDH¹⁶) in normal neonates, nor why the frequency of RH is significantly increased (reaching up to 75%) after Ventouse delivery,^{17,18} indicating a role for venous congestion by suctional forces transmitted through the fontanelle.

Does the precise mechanism whereby retinal haemorrhage occurs, in cases of inflicted trauma, matter? It is clear that inflicted trauma can give rise to subdural haemorrhage, encephalopathy, retinal haemorrhage, subhyaloid and sub internal limiting membrane haemorrhage, and circinate macular folds; and it is very likely that these findings can arise from shaking an infant without any impact or injury. However without a clearer understanding of the processes involved in the pathogenesis of these findings, it remains impossible, despite the assertions of some authors,¹⁹ to be certain that all infants demonstrating them have been the victims of attempted, or actual, murder.

Conflict of interest

The author has been a paid expert witness in court cases related to child abuse.

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Vitreoretinal traction is a major factor in causing the haemorrhagic retinopathy of abusive head Injury? – Yes

Eye (2009) 23, 1758–1760; doi:10.1038/eye.2009.199; published online 7 August 2009

Retinal haemorrhage is a cardinal manifestation of abusive head injury characterized by repetitive acceleration–deceleration forces with or without blunt head impact (Shaken Baby syndrome). That shaking alone, in the absence of head impact, can result in severe, if not fatal, manifestations of this syndrome has been well demonstrated.^{1,2} The unique nature of repetitive acceleration–deceleration forces in accumulating forces experienced by the eyes has been supported by finite element analysis and corresponds to the areas of the eye where there is a predilection for retinal haemorrhage to appear in abusive injury: the peripheral and macular retina.^{3,4} Isolated accidental blunt head impact injury is rarely associated with retinal haemorrhage,^{5,6} and when retinal haemorrhage does occur, the haemorrhages are few in number and largely confined to the posterior pole, with the exception perhaps of fatal head crush injury^{7,8} and severe fatal motor vehicle accidents.⁹

Over the last 35 years much research has been conducted to aid us in understanding the pathophysiology of retinal haemorrhage in abusive head injury. Multiple research lenses have been used to examine this issue and each continues to indicate the important role of vitreoretinal traction. In part, this realization comes from the absence of viable alternative theory. There appears to be no correlation between retinal haemorrhage in abusive head injury and intracranial haemorrhage, increased intracranial pressure, or increased intrathoracic pressure.¹⁰ Although intracranial haemorrhage is commonly associated with retinal haemorrhage (Terson's syndrome) in adults,

it appears to be rare in childhood¹¹ and not associated with the severe haemorrhagic retinopathy seen in approximately two-thirds of abusive head injury characterized by repetitive acceleration–deceleration forces.¹⁰ Theories of increased intracranial or intrathoracic pressure leading to a restriction of venous outflow from the eye do not explain the absence of a clinical pattern of retinal haemorrhage consistent with venous obstruction in abused children and the very low incidence of papilledema.^{10,12} Models of increased intrathoracic pressure, which would theoretically result in retinal haemorrhage through a restriction of venous outflow, if not retrograde flow, such as coughing,¹³ vomiting,¹⁴ and seizures¹⁵ also fail to demonstrate retinal haemorrhage.

The distribution of retinal haemorrhage in abusive head injury parallels the vitreoretinal anatomy of infants, whereby the greatest adhesive forces are found in the peripheral and macular retina. These adhesive forces are particularly strong in infants. It was perhaps Greenwald *et al*¹⁶ who first recognized the importance of vitreoretinal traction when they described traumatic retinoschisis, a physical splitting of the retinal layers from this tension. Multiple studies have recognized the importance of this lesion, which may be accompanied by surrounding folds in the retina, which on postmortem specimens may still have vitreous attached at their apices. In a cat model, vitreoretinal shear has been shown to disrupt retinal vascular autoregulation, leading to patulous vessels that would be more likely to bleed.¹⁷ In humans, the unique damage to orbital tissues in settings of abusive repetitive acceleration–deceleration forces may also contribute to autonomic vascular dysregulation.¹⁸

Unfortunately, some researchers have tried to generate hypotheses based on impure data. A typical error is the mixing of various types of abuse to draw conclusions about the specific form of abusive head injury in which repetitive acceleration–deceleration forces have the major function. One large study examined 43 years of pathologic specimens, dating well before Shaken Baby syndrome was even recognized and including a multitude of fatal abusive injuries ranging up to 9 years old (an age well beyond the usual range for Shaken Baby syndrome), to suggest theories of retinal haemorrhage causation other than vitreoretinal traction.¹⁹ The researchers found retinal haemorrhage in only 46% of children at autopsy, far below the near 100% found in most postmortem studies, and a high incidence of papilledema, both confirming that indeed they were looking at a heterogeneous sample that included abusive injury from other causes such as pure blunt impact. Yet when one tries to dissect their results to isolate those children who were victims of the specific form of abusive head injury that interests us here, once again the findings of injury that characterizes the results of repetitive acceleration–deceleration forces and vitreoretinal traction-induced injury appear vitreous attached to retinoschisis lesions, intrascleral haemorrhage at the optic nerve–sclera junction, optic atrophy that can be unilateral, and six of the seven children with confessed ‘shaking’ who had severe haemorrhagic retinopathy.

Research examining the ocular manifestations of abusive head injury using a variety of strategies, including analysis of affected children both pre- and postmortem, examination of nonaffected children with clinical conditions, which in some way recapitulate aspects of the syndrome, animal models, mechanical models, and computer models, has independently directed us to the understanding of the critical role of vitreoretinal traction in this severe and unique form of injury resulting in retinal haemorrhage. The forces that perpetrators use on these children are far beyond that which occurs in the normal (and even surgical) ‘life of an eyeball’ and lead to a characteristic pattern of haemorrhagic retinopathy observed only very rarely in this age group from other causes. Perhaps the only frequent situation in which such severity of retinal haemorrhage can be observed, interestingly always in the absence of retinoschisis, is normal birth, in which the pathogenesis of the haemorrhage has been ascribed to the effect of prostaglandins,²⁰ which have a function in vascular autoregulation, thus providing a possible link to the biochemical pathway of retinal haemorrhage generation in abuse. The roles of other factors, such as increased intracranial pressure, increased intrathoracic pressure, hypoxia, serum sodium imbalance, thrombophilia, and coagulopathy, seem to be secondary,

if at all involved, but may be important in perhaps modulating the degree of retinal haemorrhage in any given child.

Conflict of interest

The authors declare no conflict of interest.

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IN THE COURT OF COMMON PLEAS OF MONTOUR COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :

vs. :

No: 44 of 2010

A [REDACTED] I [REDACTED] :

FILED
OCT 28 2013
SR-52612-26MO
Office of Attorney General
P.O. Box 2800 Harrisburg PA 17105

ORDER

AND NOW, this 13th day of October 2013 the Commonwealth's request for nolle
prosequi is GRANTED. Court costs to be paid by the County of Montour.

BY THE COURT:

Thomas James, J.
THOMAS JAMES, J.

ATTEST:

FILED PROthonotary &
CLERK OF COURTS OFFICE
MONTOUR COUNTY PA

2013 OCT 25 PM 2:58

CERTIFIED A TRUE
AND CORRECT COPY
THIS 13th DAY OF Oct 20 13
SUSAN M. KAUELL
CLERK OF COURTS
MONTOUR COUNTY

X *Susan M. KaueLL*

IN THE COURT OF COMMON PLEAS OF MONTOUR COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :

vs.

No: 44 of 2010

A [REDACTED]

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SUPERIOR COURT
CLERK'S OFFICE
HARRISBURG, PA

COMMONWEALTH'S MOTION FOR NOLLE PROSEQUI

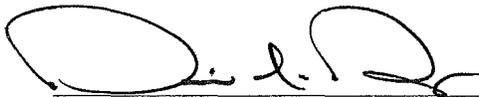
TO THE HONORABLE THOMAS JAMES, JUDGE OF THE SAID COURT:

AND NOW, this 15th day of October 2013, comes the Commonwealth of Pennsylvania by and through Daniel J. Dye, Deputy Attorney General, and respectfully submits the following:

1. In January 2010 the Defendant was charged with various crimes based upon an allegation of physical assault.
2. This matter was referred to the Office of Attorney General on March 5, 2013 by the District Attorney of Montour County citing a lack of resources.
3. On March 8, 2013 the Office of Attorney General accepted this referral pursuant to the Commonwealth Attorneys Act.
4. Following an independent review of this matter by the Office of Attorney General it has been determined that there is insufficient evidence to pursue prosecution.

WHEREFORE, the Commonwealth requests a nolle prosequi of all charges on docket 44 of 2010 pursuant to Pennsylvania Rule of Criminal Procedure 585.

Respectfully submitted,



Daniel J. Dye
Deputy Attorney General
FOR THE COMMONWEALTH
I.D. No. 205638

IN THE COURT OF COMMON PLEAS OF MONTOUR COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :

vs.

No: 44 of 2010

A [REDACTED] I [REDACTED]

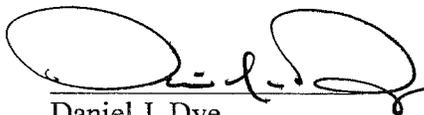
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PROOF OF SERVICE

I hereby certify that on this date a copy of the foregoing motion was served to the person and address set forth below via United States Mail:

Mark D. Freeman, Esq.
Attorney for the Defendant
PO Box 457
Media PA, 19063

DATED: 10/15/13



Daniel J. Dye
Deputy Attorney General

Please return service upon:

Daniel J. Dye
Deputy Attorney General
Office of Attorney General-Criminal Prosecutions
16th Floor, Strawberry Square
Harrisburg, PA 17120

2013 OCT 21 PM 11:46
OFFICE OF ATTORNEY GENERAL
CRIMINAL DIVISION