

RE: Commonwealth v. Tammy Futrell
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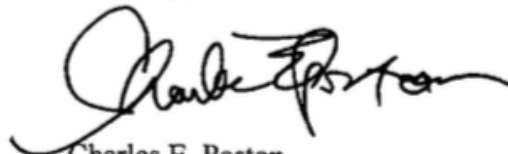
inconsistent with a conclusion that the infant died as a result of a criminal act." *Id.* at 221. In the same way, the Court finds SIDS to be fatal to the Commonwealth's position in the case at bar.

CONCLUSION

One of the concerns emphasized by the Commonwealth is the alleged substandard conditions at Little Eagles Day Care. Because of its affiliation with a church, the day care center is not subject to the regulations applicable to secular day care centers. The Commonwealth quite accurately argued that had Little Eagles Day Care been subject to the regulation and inspection required of secular day care centers, many of the SIDS risk factors would not have been present. While the Court is certainly sympathetic with the concerns expressed by the Commonwealth, the remedy for this situation lies in the sound discretion of the General Assembly, not with the judiciary.

The Court holds that there can be no proximate cause of death when SIDS is the sole cause of death because, by definition, no legal or medical cause of death can be ascertained. The Court, in following the Supreme Court of Virginia's decision in *Fairfax Hospital*, also holds that evidence of exposing an infant to SIDS risk factors cannot be used to prove proximate cause. Because there is no dispute that SIDS was the sole cause of Dylan's death, the Commonwealth, as a matter of law, cannot prove beyond a reasonable doubt that the Defendant's or her employees' alleged acts or omissions were a proximate cause of Dylan's death. Accordingly, the Court will dismiss the Defendant's felony homicide indictment.

Sincerely,



Charles E. Poston
Judge

CEP/AVB/nm