*Commonwealth v. Santos*, 94 Mass. App. Ct. 558 (2018) [[Full Opinion](http://masscases.com/cases/app/94/94massappct558.html)]

Summary by Katy Krywonis, CAFL Training Unit

This case is the first reported decision to address the offense of reckless endangerment of a child by inadequate supervision. The Appeals Court vacated the dismissal of a complaint charging the defendant mother with reckless endangerment of her three year old daughter. The Court held that once the mother discovered her child was missing, she had a duty to search for her. Evidence that she stopped searching and failed to enlist others to search established probable cause that she wantonly or recklessly failed to take reasonable steps to alleviate a substantial risk of serious bodily injury to the child. This case is important to CAFL practice because it shows how courts should consider claims of inadequate supervision.

*Facts*: The police received a report of a three year old female child found wandering alone in the elementary school playground. School employees had reported finding the same child alone in the playground a few weeks earlier. The responding officer arrived at the school and saw the child in the nurse’s office. She was wearing a T-shirt and diaper and had bare feet, but was in good health with no cuts or abrasions. Meanwhile, another officer was dispatched to the family’s apartment located two-tenths of a mile from the school. He rang the doorbell and pounded on the door, but no one responded. Dispatch then placed a telephone call to the apartment, and the defendant came to the door. It appeared that she had “just awoken from sleeping” and “was not alarmed, panicked, or crying." She did not ask the officer for help finding the child. The officer asked the defendant if she knew where her daughter was, and she replied, “At the playground?” The defendant explained that she had set the child down in the living room to watch cartoons while she used the bathroom upstairs for ten to fifteen minutes. When she came back down, the child was gone; the door to the apartment was open; and the key to the deadbolt had been inserted from the inside. The defendant said that she looked for the child for about ten minutes and then “just assumed she was playing with a neighbor[’]s child.” When the officer asked why she did not call 911, the defendant replied, “That was my mistake.” The officer then drove the defendant to the school and reunited her with the child. The child’s father arrived at the school, too. DCF workers interviewed both parents. The father stated that he installed a deadbolt on the apartment door after the earlier incident and instructed family members to hang the key on a high hook in the kitchen. But the defendant thought that her teenage son may have left the key on the counter where the child could reach it. The defendant was charged with reckless endangerment of a child under G.L. c.265, §13L. She filed a motion to dismiss the complaint for lack of probable cause. Her motion was allowed and the Commonwealth appealed.

*Discussion*: Probable cause requires “reasonably trustworthy information sufficient to warrant a reasonably prudent person in believing that the defendant has committed the offense.” Reckless endangerment of a child requires proof that the defendant “wantonly or recklessly engage[d] in conduct that create[d] a substantial risk of serious bodily injury or sexual abuse to a child or wantonly or recklessly fail[ed] to take reasonable steps to alleviate such risk where there [was] a duty to act.” Determining whether a caregiver’s inadequate supervision gives rise to probable cause to believe that they committed the crime of reckless endangerment of a child is a fact-specific inquiry that requires consideration of the totality of the circumstances. Relevant circumstances may include the gravity and character of the possible risks of harm; the degree of accessibility of the defendant; the length of time of the abandonment; the age and maturity of the child; and the protective measures, if any, taken by the defendant.

Considering the totality of the circumstances here, the Appeals Court concluded that the defendant’s conduct once she discovered that the child was missing gave rise to probable cause that she “wantonly or recklessly fail[ed] to take reasonable steps to alleviate” a substantial risk of serious bodily injury to the child. After searching for ten minutes, the defendant “just assumed” that the child was playing with a neighbor’s child and returned home. She did not call the police or have immediate plans to continue searching for the child herself. The Court, relying on “common sense,” determined that a three year old left unattended outside faces serious risks of harm. The Appeals Court concluded, though, that the defendant’s actions before she stopped searching did not establish probable cause.

*Practice tip*: If you represent a parent in a care and protection case involving a wandering child like this one or other allegations of inadequate supervision, keep in mind the possibility of criminal charges. You need to consider the potential harm if the parent client testifies at the 72-hour hearing and is facing or could face criminal charges because the District Attorney and other parties could have access to the hearing record. You should also advise the client not to talk to the police or Court Investigator without you. For more on what to do if your client is facing criminal charges, see the summary of *Care and Protection of M.C.*, 479 Mass. 246 (2018), on the CPCS website at <https://www.publiccounsel.net/cafl/professional/relevant-statutes-and-case-law/summaries-of-recent-decisions/>.

If you are appointed to a care and protection with similar facts, you can use this case to argue that the allegations do or do not establish that the child was placed in danger of abuse or neglect. Don’t forget the court must also find that immediate removal is necessary to protect the child, certify that continuation of the child in their home is contrary to the child’s best interest, and determine whether DCF made reasonable efforts to prevent or eliminate the need for removal.

Think this case sounds *a lot* like the Church family from Trial Panel Certification training? We do, too!