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Case No: MW11C00114

Neutral Citation Number: [2012] EWHC 4258 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/11/2012

Before :

MRS JUSTICE PAUFFLEY

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Re MR (a child) (fact finding: physical injuries)

Camille Habboo for Kent County Council
Tina Cook QC and Philip Squire for the mother, KR
Piers Presdee QC and Jacqueline Wehrle for the father, NR
Anna McKenna for the Children's Guardian, Ms Norris

Hearing dates: 5th – 14th November 2012

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Judgment

Mrs Justice Pauffley :

1. On 1st December 2011, at 07.10 a couple walked in to the Accident and Emergency Department of Darent Valley Hospital carrying a car seat containing their 30 day old infant son. At 07.25, whilst the baby was in triage, he went into cardiac arrest. Had it not been for the highly skilled interventions of the medical staff at Darent Valley and also at King's College Hospital, I am as sure as I can be the baby would have died. Subsequent investigations revealed he had suffered horrific and life threatening injuries. Mercifully, the child has survived though his long term prognosis will not be apparent for some years yet. It is by no means clear as to whether there will be developmental consequences arising out of what happened to him on that fateful night last year.

2. This hearing has been to establish what part, if any, the parents played in the child's dramatic deterioration and other significant injuries sustained in the hours and days before hospital admission. One of the key questions is as to whether the majority of the most serious bony and thoracic injuries resulted, as the father contends, from his inexpert attempt at resuscitating the child following an episode in which he had gone blue. The local authority, relying upon the opinions of the treating and forensic medical experts contends that, in all probability, the child was already grievously injured before any resuscitative effort; and that if, in truth, there was any attempted CPR it happened after an episode of inflicted injury rather than in response to some naturally occurring event.

3. One of the other critical questions for decision is as to whether the mother was, as she says, truly unaware as to what had happened at the family home in the hours leading to the drive to hospital. Increasingly as the hearing has progressed, the extent of her knowledge, the potential for some involvement on her part and also her credibility have come under scrutiny. And it is puzzling to say the least that there are so many questions surrounding her accounts of what happened that night when the following are taken into account. First that the mother separated from the father more or less immediately after the child's admission to hospital; and so far as anyone knows there has been no further contact between them. Second, that she holds him responsible for inflicting all of the injuries and maintains she has done nothing herself to harm the child. And third, that she is not accused by the father of having done anything to cause the 1st December life threatening injuries though he hints that she, rather than he, may have caused a frenulum injury two days before hospital admission.

Essential background

4. The child who was so badly injured is M. He was born in October 2011 so now he is just over a year old. His mother is KR, who is 34. Her history includes periodic bouts of depression, though not during the currency of her relationship with the father, self harm and poor mental health. She was, by all accounts, an anxious new mother. M's 36 year old father is NR who, in recent times, has been portrayed by the mother as a controlling, manipulative individual who failed to support her as he should. The parents' relationship began in about 2000. They married in 2008, lived in the home they had purchased together and were well supported by both maternal and paternal grandparents all of whom lived close by. Prior to M's birth, the mother had good employment in the retail industry. The father likewise had a steady job working for the local authority in the testing of electrical appliances.

5. M's arrival was greeted by everyone in the family, particularly his parents, as a very welcome event. M and the mother were discharged from hospital on 2nd or 3rd November just a couple of days after his birth. His only difficulty in the first fortnight was that because his tongue was tied he was unable to breast feed. A situation which caused both him and his mother some distress and frustration. But the father had a fortnight's paternity leave from his employment so was on hand to lend assistance. Then there was a week when feeding issues had been resolved by the commencement of formula milk. On 28th November, M was taken to the GP because he had developed a cold and was prescribed nasal drops.

6. A routine was developed in which the parents took it in turns to look after M overnight – one night on, one night off alternating between them – a pattern which continued right up to the time when the baby was taken to hospital.

7. Overnight between 30th November and 1st December, it was the father's turn to look after M.

8. As Miss Habboo's excellent chronology relates, events at the Hospital moved extremely fast on the morning of 1st December. After their arrival at 07.10 at a time of shift changeover, M was seen in triage at 07.25 where he promptly went into cardiac arrest. The resuscitation team was called and a very large number of nurses and doctors were summoned to assist in the effort to save M's life. At 07.31 the paediatric cardiac arrest team arrived together with a consultant from the intensive care unit. The consultant paediatrician was at M's side by 07.58. By 08.52 the police were in attendance. At around noon on the same day, M was transferred to King's College Hospital for specialist treatment. He was accompanied there by his mother and maternal grandmother. They were joined by a police officer, Heather Willmore, who spent most of the day supporting the mother and trying to understand from what she volunteered in answer to questions just what had happened to cause M's collapse.

Burden and standard of proof

9. It is for the local authority to prove its case – in this case that M suffered non accidental injury. Neither the mother nor the father has to prove anything. I remind myself that the test to be applied to the identification of perpetrators as to any other factual issue in the case is the balance of probabilities, nothing more and nothing less.

10. In relation to inherent improbability, as Baroness Hale observed in *Re B (Children) (Care Proceedings: Standard of Proof) [2009] AC11*, "It may be unlikely that any person looking after a baby would take him by the wrist and swing him against the wall, causing multiple fractures and other injuries. But once the evidence is clear that that is indeed what has happened to the child, it ceases to be improbable. Someone looking after the child at the relevant time must have done it. The inherent probability of the event has no relevance to deciding who that was. The simple balance of probabilities test should be applied".

11. It is also established that there is no obligation upon a judge to decide who has harmed a child if he cannot. If he can, the judge should identify the probable perpetrator but he should not strain to do so. Where a judge is considering an 'uncertain perpetrator' finding, he must be satisfied in relation to each potential

perpetrator that there is a 'real possibility' on the evidence that that individual inflicted the injuries.

12. When considering issues of credibility, I remind myself that there are many reasons why a person in proceedings such as these might lie. They may do so for a whole host of motives. Not necessarily because they are culpable but, for example, to protect someone else; or in an attempt to bolster up a just cause, or out of shame or from a wish to conceal disgraceful behaviour from their family. The mere fact that a potential perpetrator lies is not in itself evidence of guilt. It would almost never in this situation be sufficient evidence of culpability to establish that someone had lied. It is an altogether more subtle and delicate process than that.

13. It is curious phenomenon that in the quest for the truth, exploration of potential lies and inconsistencies is often of key importance. So, too, is gaining an understanding of the reasons behind obvious deceit. The two most obvious possibilities in the current context for telling lies are self protection or defence of another.

The acute, 1st December 2011, injuries

The cause of M's thoracic injuries

14. So I turn to what is surely the most important issue for decision, namely the cause of M's thoracic injuries – those which occurred in that part of his body which lies between his neck and his abdomen. It's necessary first to relate the broad extent of those injuries before turning to the medical opinions as to causation and to consider the explanation proffered by the father.

15. If my addition is correct, M had no fewer than 10 fractures to his ribs on the right and 16 on the left; several were posterior (i.e. at the back). 8 of his ribs were fractured more than once. In addition, he had midshaft fractures of both collarbones (clavicles), the right more severe than the left. As a consequence of trauma to the chest, M also suffered left sided haemothorax (blood in the fluid filled space which surrounds the lungs), a moderately large right-sided pneumothorax (air within the pleural cavity), considerable surgical emphysema (air within the soft tissues beneath the skin) in the right armpit, above both collar bones, in both sides of the neck as well as over the outside of the skull to the top of his head; and a pneumomediastinum (air within that part of the chest which contains the heart, major blood vessels, trachea and oesophagus).

16. Dr Chapman agrees with Dr Fairhurst that the pneumothorax could have been the result of one or more rib fractures. However in his experience, pneumothorax does not lead to pneumomediastinum or subcutaneous emphysema. He said in evidence he believes that the pneumomediastinum probably resulted from direct trauma to the chest because of the number of rib fractures and the bleeding into M's chest. Dr Ward also favoured a compressive injury as the causative mechanism again because of the associated injuries.

17. The haemothorax, pneumomediastinum, pneumothorax and surgical emphysema in the view of the medical experts were the cause of M's collapse and presentation at hospital in full cardiac and pulmonary arrest. The single question which arises is as to whether M's very serious condition was caused by the father's over zealous attempt at

CPR after a 'blue episode' in which he appeared to stop breathing or as the result of inflicted injury.

18. There is no support from any of the doctors, either those who gave oral evidence or those whose contribution was in the form of written reports, for the assertion that M's most serious injuries resulted from some misguided application of force during a resuscitation effort. Dr Chapman's evidence was that both the number and pattern of M's rib fractures makes the father's version of events unlikely.

19. Rib fractures only rarely occur as the result of CPR and when they do, so the research shows, it is usually as the result of trained hospital medics applying forces which would not be employed by lay people. In a child of this age, the ribs are softer and more pliable than in an adult so that a break involves considerable force.

20. Perhaps of most importance is the incontrovertible medical evidence which is that posterior fractures cannot be caused as the result of pressure applied whilst the infant is lying on his back. They occur when the posterior end of the rib is levered or snapped over the transverse process of the spine; and require very significant compressive forces. As Dr Kenny relates, posterior rib fractures result from encircling compression applied with excessive force to the chest wall by adult sized and strength hands.

21. NR has never explained or demonstrated any action of the kind described by the doctors as being necessary so as to cause the posterior rib fractures. At no time has he said he picked M up around his chest and squeezed him with great force or anything of that kind. His demonstration during the course of his video recorded first police interview of picking M up out of the blanket and, so it appeared to the police officer, squeezing the chest area, was firstly denied to have been squeezing by the father and secondly it was devoid of forcefulness.

22. Both in police interview and also when giving evidence, NR re-enacted what he maintains he did in terms of attempted CPR. He did not reveal any kind of powerful compressive force either when he was showing the police a single handed action or when, in court, he used both palms, one overlaying the other. His demonstrations were of quite gentle, repeated but regularly applied downward pressure with the baby lying flat.

23. As Mr Pressdee QC suggested in his Position Statement in preparation for this hearing, absent some form of essentially innocent explanation and context, what befell M in the early hours of 1st December can only be viewed as an inexplicably brutal and savage attack on a vulnerable and defenceless child. And I agree with Mr Pressdee when he emphasises how crucial it has been for me to make some assessment of the father, informed as I have been by the thoughtful evidence of Mr Branston, consultant psychologist.

24. The father said in evidence that he is not sure if he caused all the injuries but none of them was "done with any intent" to harm M. He did what he thought was the right thing. He didn't know what he was doing. He had thought it best to have M in a straight line and tilt his head backwards. He had "blown into his chest to inflate it" and had then "pushed down with (his) hands to push all the air out." He had used a "reasonable amount of force" and the "only thing (he) knew was that speed was of the

essence." He had had to "do it longer the second time." He believed it "took 4 or 5 attempts" as he recalls "rather than 2 or 3" as on the first occasion. NR's "only thought was, he said, to get M breathing" after he had gone blue. It was a "judgment call" though NR is "not saying it was the right one." He "freely admits that in the course of bringing M back to life, (he) injured him". He went on to say, "I'd rather visit him once and when he's older than visit a grave because he's not with us."

25. **Overall, and having taken all of the available information into account including Mr Branston's advice, I find myself in no doubt at all as to how the thoracic injuries were caused. They did result from what was almost certainly a sudden, explosive loss of control on the part of NR in which M's chest was subjected to excessively forceful squeezing and compression.** The episode in which those injuries were inflicted itself may well have been, as Dr Chapman said, "one swift event" after which M became obviously unwell quite quickly, turning blue and very quiet.

26. Common sense dictates that even the most frenzied attempt at CPR on the part of perhaps an extremely agitated, panic stricken and clumsy parent simply could not account for the number and distribution of M's thoracic injuries. Put another way, no sane parent who was genuinely trying to resuscitate his child would injure him so badly as to almost extinguish life.

27. But the thoracic injuries cannot and should not be viewed in isolation. M was also found to have suffered a fractured humerus (the long bone in his upper arm) as well as a grossly bruised penis, a torn frenulum and a number of bruises at other sites as well, including a deep one to the side of his left nipple. My findings in relation to those other injuries which required different and quite separate mechanisms to that which caused the thoracic injuries have relevance and it is to those that I now turn.

The fractured humerus

28. According to the medical witnesses, M's fractured humerus in all probability was caused as the result of a gripping or levering as well as a twisting force applied to the arm. The father has described and sought to demonstrate a mechanism which resulted from his efforts to free M from a blanket on the second occasion when, he says, he had stopped breathing. He gave a complicated account in chief which began with detail as to the layout of the ground floor at the family home, saying that when he arrived at the stairs he realised M had stopped breathing again so he "had to get him out of the blanket" in which he was wrapped. NR said he had "just lifted him up so that the blanket fell away". He had lifted him "with (his) two hands" and "brought one of M's arms up". He "wasn't very gentle but had been more interested in bringing M back to life". He went on, "If I injured him in bringing him back to life, he would recover… Speed was more important that technique".

29. In his written evidence, the father said he had "yanked the blanket off" (M) and might have hurt the arm as he did so because he "was quite rough" which is significantly different from the account he gave in his oral evidence. But neither mechanism, in my assessment, begins to explain how it was that M's arm came to be broken. **It must have been a significantly forceful twisting action; and I reject the assertion that this injury resulted from some kind of panicked response to a child who appeared to have stopped breathing. I find that the father's demonstrations and**

explanations of what occurred cannot account for the break to M's arm. Responsibility for that injury as well lies with NR.

The bruised penis

30. The bruised penis and the explanation for it, as provided by the father, represent – for me – one of the most curious and noteworthy features of the entire evidential canvas. Throughout the past 12 months and during his evidence last week, NR has persisted in his description of an accidental collision between his knee and M's penis which occurred whilst he was changing a nappy at the maternal grand parents' home the weekend before M's admission to hospital, so some four days previously.

31. In evidence, NR said he had lent forwards to get something out of a changing bag and he thought his "knee connected with M's penis". He had immediately pulled back; M had peed but made no sound. NR has no other explanation as to how the bruise was caused.

32. There are several colour photographs of the bruising to M's penis taken at Darent Valley Hospital on 1st December. On any view, it is a truly shocking injury, extending from the tip to the shaft – deep, dark purple bruising. Eight days later on 9th December at Kings College Hospital it was observed to be resolving but still dark purple. Dr Ward said in evidence that the penis has very little subcutaneous tissue for the red blood cells to rise through and thus the injury would evolve very quickly into a red / purplish bruise. Dr Kenny's advice is that most bruises are still red / bluish / purple with swelling during the first 24 hours.

33. In the opinion of Dr Kenny, the penis injury is more likely to have been due to focal, very intense crush pressure as in twisting, pinching and biting. She considers that anatomically and mechanically, the penis injury could not have resulted from the father kneeling upon it. Moreover, in the opinion of the paediatricians, if conscious at the time when the injury was inflicted, M would have screamed or cried out in pain. Immediate pain only wears off slowly and he would have been inconsolable for a few minutes.

34. There are several factors in addition to those arising from the medical evidence which impel me to reject the father's explanation as to how M's penis came to be injured. I mention them in headline form as follows: NR's assertion that M did not react at all, other than peeing, is utterly incredible if, which I believe it did, the injury occurred when M was conscious. If it had happened at the home of the maternal grandparents, then no one present could have failed to notice the noise M would undoubtedly have made. The father's initial account was that the bruising was visible from 27th November. If that had been true, then the mother would have seen it and reacted. At the very least she would have phoned her mother for advice and asked the father how the bruise had been caused. She took M to the GP on 28th November because of his cold symptoms. If the penis bruise had been present that morning, the overwhelming likelihood is that KR, a nervous first time mother, at the very least would have drawn it to the doctor's attention. In his police interviews and also in his written evidence, the father maintains that both his wife and mother in law knew about the accidental penis injury. Neither of them supports that contention. In a vain and really quite pitiful attempt to explain away the discrepancies, NR sought to suggest he is having memory problems and that is why his evidence does not coincide with what he said at the time.

35. In his evidence, the father was asked whether he'd seen M naked after the alleged accident on 27th November. He said he wasn't sure he had and, again, wasn't sure whether he saw the bruise on the penis. In cross examination, he said he didn't remember changing the nappy and seeing the bruise in that timeframe. If he had, then NR said he would have mentioned it to his wife.

36. **Overall in relation to the penis injury, as I find, the father has told and held to a series of obvious, flagrant and highly significant lies. He was responsible for that awful injury. His lies clearly demonstrate how far he is prepared to go in his efforts to seek to exculpate himself. The fact that his assertions are so easily shown to be false has a relevance which goes beyond the circumstances surrounding the injury itself.**

Timings for the acute injuries

37. The timings provided by the father for the occurrence of the acute injuries were broadly consistent, varying between 04.00 and 05.00, throughout his discussions with the doctors at Darent Valley, with PC W, in his two police interviews of 1st December 2011 and 11th May 2012 as well as in his Children Act statement of February 2012.

38. Miss Habboo is right to emphasise the curiosity of the father's oral evidence in which he sought to say, for the very first time, that he had made assumptions and mistakes about the timeline on 1st December. He said in chief he had "no idea what the time was" when he got up to feed M on the second occasion that night. Later he said he'd been wrong when he had said he'd taken M back downstairs for a feed at 04.00 / 04.30. He had thought it was much earlier than it was and he knows that now because of the time they arrived at the hospital which was very shortly after 07.00. He seeks to significantly alter the timings so that M awoke at 06.00 rather than between 04.00 and 05.00.

39. The reality surely, as emerged when Miss McKenna cross examined NR, is that the timeframe was all too well known to him because there was a kitchen clock, clearly visible on the police photographs, showing the correct time. He had to agree it was there and that it was working. That much is beyond argument as the result of the police forensic work. It also emerged from the mother's account that there was "a clock at the bottom of the bed" in the parents' bedroom as well as one which was behind a curtain. Moreover, in the police photograph of the sitting room at the foot of a sofa, there is on close inspection as the father accepts a watch though he suggested it was not working.

40. I simply did not believe NR when he said he hadn't looked at the kitchen clock. Set against the copious number of occasions when he has given a time for M's second feed of the night, his most recent attempt to shift the time frame is both incredible and fundamentally unreliable. It seems very probable indeed that he has sought to reduce the timeframe in order to minimise the extent to which he (and the mother) could be criticised for failing to act more swiftly when M was so gravely unwell.

41. Finally in relation to timings, I mention in passing the evidence of Mrs H, M's maternal grandmother. When she was asked about a snippet of information provided on 1st December by the mother to PC X in her presence, Mrs H gave a long explanation about the clock in the bedroom, how she didn't think the mother had been

able to see it and that "any time she gave would have been very vague". Mrs H and NR appear to me to have a common cause in relation to timings which represents a further oddity which I am unable to explain.

Overall in relation to the acute injuries

42. **My findings in relation to the acute injuries – those which had been inflicted in the hours preceding M's arrival at hospital on 1st December – are that none resulted from accident and the father is responsible for having inflicted all of them. Though it is impossible to be certain as to the order in which they occurred, because the parents' evidence is so obscure, it seems likely that the scenario suggested by Miss Habboo when she cross examined NR is the correct one.**

43. Miss Habboo mooted that M may have peed in the father's face causing him to lose control; and he did agree that he was "not a great fan of being peed on" though denied that he had either become annoyed or lost control. It may be material to note that when the mother had nudged him awake to get up and feed M at 04.00 or, at the latest, 05.00 he was probably tired because, during an early interview, he said it had taken an hour and a half to settle M back to sleep after his 01.00 feed. It may also be relevant that the father has a long standing back condition which makes it very uncomfortable for him to get down on the floor as he was when changing M's nappy in the early hours.

44. **Whatever the precise circumstances, I find that the father either squeezed or pinched or, in some other way, crushed M's penis so as to cause that shocking injury. M, in all probability, reacted to the extreme pain inflicted upon him by screaming or crying out and he did so for some time. At some stage, NR yanked and twisted M's arm with an excessive degree of force so that the humerus was broken. The likelihood is that M reacted with extreme distress in response to great pain. The most likely scenario is that the devastating crush injuries to M's chest which almost cost him his life occurred as the final insult.**

45. Whether or not, in the immediate aftermath of those assaults, the father attempted his own version of CPR is impossible to say. He may have done. If he did, then it is possible he created an even worse situation for M but he may also have resuscitated him; and thus part of his consistently given account may be true. However, that is not to detract from my core findings as to how M's injuries were caused.

Earlier injuries – the frenulum

46. The frenulum injury has generated exploration of every surrounding last detail essentially because the possibility arises that the mother as well as the father could be the perpetrator. NR denies he did anything to hurt M's mouth by forcing a feeding bottle into his mouth. He maintains that whenever he telephoned from work, he would hear M crying in the background and when he arrived home, he would find his son exhausted. When confronted with the assertion that if he did not cause the frenulum injury, it must have been KR, there was a very long pause before NR said, "I don't know if she caused it. I only know what happened when I was there".

47. In his police interviews, the father had said KR "must have done it". He thinks the reason he said that was because of the rota system which led him to believe KR was 'on duty' overnight and therefore could have been responsible.

48. In the submissions on behalf of the mother, it was mooted (and for the first time) that the injury in M's mouth was inflicted on 1st December rather than becoming apparent, as all of the available material suggests, in the early morning of 29th November so two days before hospital admission. I am bound to say that assimilating the extant material from the student midwife, the mother's telephone records for the very early morning of 29th November showing a call through to the Hospital she says for advice as well as the accounts of both parents as to how there were spots of blood from M's mouth which found their way onto the father's T shirt I find it quite impossible to find that the frenulum injury occurred other than when the parents say it did.

49. Moreover, I am surprised by the language used within Miss Cook's final submissions when describing the frenulum injury. It is said variously that M had suffered "great violence", that he was "seriously wounded" and that the father had inflicted "an appalling attack". Dr Kenny makes clear, and I entirely agree, that compared with the more overwhelming events of 1st December, the frenulum tear was a "relatively minor incident".

50. **The findings I make overall as to the torn frenulum is that in all probability it was caused when the father roughly and forcefully pushed a feeding bottle into M's mouth when attempting to feed him over night between 28th and 29th November.** One of the reasons I find it straightforward to find as I do and also to exculpate the mother as a potential perpetrator is that in my evaluation the chances that she as well as the father inflicted injury is so unlikely as to be safely rejected as a possibility.

51. But there are other matters as well which impel me to that conclusion. It is comparatively easy to assess the mother's behaviour that morning and later on that day as the actions of an innocent woman responding to what she was told about the source of a cut inside the baby's mouth. She would not, in my assessment, have drawn attention to an injury which she herself had inflicted by the making of several 'phone calls and by the remark she told the police she had made to the student midwife, namely that they'd had their first 'major catastrophe' – a comment which, almost certainly, was an attempt on the mother's part at humour.

52. The mother's defect is that she so readily accepted the explanation with which she was provided by the father for the cut, namely that M had scratched himself with sharp nails causing the bleed. In evidence, NR said M's nails were "very, very sharp." KR said she knew there was blood coming from the cut to the flap under his lip but she didn't know the 'horrificness' (sic) of it. She had automatically assumed the cut must have been from M's fingers having been in his mouth and 'yes, they were relatively sharp finger nails'.

53. I remind myself that M was less than a month old when his frenulum was injured. As a matter of common sense it is highly unlikely that he would have been able to exert sufficient force or that his fingernails would have been sharp enough to lacerate any part of the skin within his mouth. Dr Ward rejected the suggestion that M could have caused the injury himself. Dr Kenny regarded the parental explanation as implausible.

54. It does surprise me that the mother, anxious and involved as she clearly was in every other aspect of M's life, did not herself inspect his mouth to see the source of the blood if, in truth, she did not. But in the overall scale of what went so tragically wrong for M, the injury to his mouth was relatively trivial.

55. The final noteworthy element of the circumstances which surround the frenulum injury is the advice apparently given by an unspecified member of the staff on Cedar Ward at Darent Valley Hospital. It was, according to the mother, that because M was continuing to feed properly, she should "basically just keep an eye on him". As Dr Kenny observes, historically frenulum tears were a common NAI (non accidental injury) in babies and young children. Dr Ward's advice was that if she had been confronted with a similar situation involving a very small baby, she would have probably said the child at least should be seen by the GP. I agree; and need hardly say that if a doctor had examined M on 29th November discovering a significant tear to his frenulum the likelihood is that there would have been some inquiry as to how that injury had occurred.

The mother's involvement: what did she do: what should she have done?

56. I turn next to consider what involvement, if any, there was on the part of the mother in the events of 1st December. The evidential background as to this aspect of the case is complicated to say the least. The parents do not agree, for example, as to whether the mother was awake or not in the hours preceding M's journey to hospital.

57. In her January 2012 statement, KR confirmed she had woken in the middle of the night, could not recall the exact time but believed it was around 04.30 because that was the time M normally woke for a feed. She'd heard M sniffling and woke up the father who took him downstairs because all his feeding equipment was in the kitchen. The statement goes on to describe the cat coming into the bedroom and KR says she "was sat on the bed stroking the cat". She confirms that "the next part is a slight blur" to her although she recalls sitting in the hallway as the father came up the stairs with M. She remembers seeing M's head looking very puffy and he looked "very pale."

58. In her police statement the mother said she couldn't remember if she had gone back to sleep but "the next thing (she knew) she was either sitting or standing in the hallway" She was "waiting in the hallway because the hallway lights are always on". She didn't know why NR was so long downstairs but she was getting worried. She couldn't remember if he had shouted at her from downstairs. She didn't know if M was crying more than normal because with NR he cried an awful lot. She had become so used to him crying with the father that she "didn't think about what was going on down there". If she'd heard any raised voiced she would have been downstairs "like a whippet."

59. In evidence, the mother said she had assumed it was 05.00 because that's when M usually had a feed. She remembered the cat jumping on the bed and then she remembers "leaning on a tiny bit of wall between the nursery and the bedroom". The 'blur' surrounds how it was that she arrived at the upstairs hallway. She confirmed what she had told the police namely that she was awake the whole time NR was downstairs with M. She does not know why she has said different things. M's head was "all squashy and bigger than it should have been". The father had not told her

anything about CPR or M having stopped breathing. She had taken "one look and knew (they) had to take him to hospital."

60. It is curious to say the least that neither the maternal grandmother nor the mother's sister seemingly had no idea that the mother was awake throughout. Mrs H said KR "had never" told her that. The mother's sister's perception was that KR "must have dozed off" and it had been "her impression that she was in bed". She believed her sister "must have been asleep". KR had "never spoken to her about being awake."

61. NR's account about the mother's wakefulness is markedly different to her own. He said in chief that when he arrived upstairs KR was asleep and "in the dark". He had roused her and said they had to take M to hospital. In cross examination, the father was emphatic. He is "very sure she was not on the stairs; and it's not true she was in the hallway. She never came into (his) vision. At no point did (he) see her. When (he) went upstairs she was in bed and asleep".

62. It is all extremely odd.

63. The evidence from the various members of the administrative and medical staff at Darent Valley Hospital sheds further light upon the extraordinary circumstances which surrounded M's arrival at hospital and his parents' responses to what was asked of them. At 07.03 the mother approached the reception desk in A&E and said, "my baby hasn't been well and there was an incident in the night". Ms S, the receptionist was clear when challenged that the mother had indeed used the word "incident". In evidence, the mother sought to explain that perhaps she was referring to M having been sick (as he had been the previous evening) but she did not know there had been an incident.

64. A health care assistant in paediatric A&E, saw the parents walking in to the hospital at 07.10 that morning. They had not appeared to her to be in any kind of rush – they were just walking in. There didn't seem to be much urgency in their behaviour when told there was a shift change in progress and they'd be seen in a minute. Without urgency in her voice the mother had said, "That's OK but he's only a month old". When called in and asked by Nurse K why M had been brought to A&E, the mother said "he has water on the brain". Later she had said, "it's all my fault, I should of (sic) done the night feeds myself". When challenged by Miss Cook QC as to whether the mother had in fact wanted M to be seen as soon as possible, the health care assistant said that had not been her impression. Later on, she said it had been immediately apparent to her, as soon as M had been lifted out of the car seat, that something was very wrong with him. It "didn't square with the manner in which he'd been brought in to A&E".

65. Staff Nurse C saw the parents in 'resus'. She vividly recalled how very unwell, pale, and blue M was; and that he was a very sick baby. Nurse C initially said the parents were reasonably relaxed. She later agreed a more appropriate word would be 'calm'. It was incongruous – a baby so sick and parents so calm. The father had mentioned several times whilst the mother was sitting beside him that he was worried he had damaged the baby by pressing on his chest to get him to breathe again. Nurse C did not believe the mother had reacted when the father said that. She had been sitting there and was tearful, not distraught, but Nurse C acknowledges how differently people will react in similar situations.

66. When Nurse A undid M's nappy in resus to check for a femoral pulse she immediately noticed his penis was black. When, later, she moved her hand to the back of M's head she could feel it was extremely soft and had a boggy swelling. She believed it could have been brain matter; she felt so sick and distressed she had to leave the area. Nurse A did not believe the mother could have missed the boggy swelling to M's head if she had been travelling with him in the car to hospital.

67. Dr JK, paediatric SHO, saw the parents at around 07.32 that morning. Her notes written up a little while later on the same day reveal that in the course of describing what had happened, the father said that he had tried to give M CPR, he had started to breathe again but vomited. He woke the mother up and gave the baby to her to change his clothes. When Dr K asked the parents about the three hours between the CPR and getting to hospital, they told her they were just getting ready. Both had been speaking and answering the doctor's questions. The mother had started to cry and asked Dr K was it because they had taken so long to bring the baby that he was so sick. Dr K confirmed, when cross examined, that although the mother's focus had been upon the baby she had also been listening to her as well. The father had been standing beside the mother during their 5 to 10 minute conversation. They had accepted, so it seemed to Dr K, in an indirect way that they were late – and she reiterated the mother's question about taking so long to bring M to hospital.

68. When the consultant, Dr Kh interviewed the parents between 09.40 and 11.30 the father had given the main history. He records the mother as having been "very surprised" that the baby had been given CPR by the father and he had not mentioned it to her. The father agreed. In evidence, Dr Kh said he had not known when he discussed matters with the parents that the father had previously described attempted CPR in the mother's presence to three individuals, the SHO, Nurse A and Nurse C. He added this – that the mother had looked at the father when he was talking about CPR and said, "You never told me that!" or it might have been "Why did you not tell me this?"

69. During the course of the day following on from M's transfer to King's College Hospital, the mother was supported and gently questioned as to the event of the previous night by a police officer, LW. Her manuscript note contains the following – "half 4 – 5 ish in the morning M seemed limp and lifeless. C (a reference to the mother) could see his head and it looked like it had fluid on it. M looked a funny colour…. (The father) had him in his arms. Changed his bottom – I knew this was stupid, I wanted him clean".

70. Although LW did agree with Miss Cook that the mother had been "distraught and all over the place" she was clear in denying the suggestion that the mother had never said she'd changed M. She said, "No, absolutely not does it ring any bells that she did not change him". LW agreed with Miss McKenna that her manuscript notes record the important information from what was a volunteered account and that the words 'I know this was stupid, I wanted him clean' could have had quotation marks around them because that was exactly what the mother had told her.

71. The evidence from the medical and administrative personnel at Darent Valley Hospital as well as that of PC LW was of high quality. None of the witnesses had the slightest reason to exaggerate, embellish or distort their versions of events. Each of them seemed to me to be providing an honest and reliable account of what they saw

and heard that day. I do not agree with Miss Cook's suggestion that their evidence is of an insufficient standard to be probative. It was. Their combined account cannot be reconciled with the mother's description of how events unfolded at home that night.

72. The mother may have been, and probably was, distraught and "all over the place" as many of the witnesses agreed but that does not detract from the salient pieces of information she provided. **I find that she did say what the A&E receptionist, the nurses, doctors and police officer have noted and reported. I also find, as a fact, that she (as well as the father) did present as calm, untroubled parents when they arrived at Darent Valley; and that there was a incongruity between their presentation and the very sick, dying child they had brought for treatment.**

73. Some parts of what happened that fateful night will remain shrouded in mystery until the time when one or other or both parent decides to tell the entire version of events from his / her own perspective. Endeavouring to understand why the mother has reacted as she has to the case against her as comprised within the accounts from Darent Valley and PC LW has been one of the more complex elements of this investigation.

74. Some parts of the evidence are simply inexplicable. I mention in particular the divergence between the parents as to whether the mother was awake or asleep when the father came upstairs with M. It makes very little sense if the mother is seeking to portray herself as someone who has done everything in her power to protect her infant son, to place herself at the top of the stairs for the last 10 minutes or so of whatever was happening downstairs; but that is exactly what she did. She also said in evidence, that she went to the hallway because she was getting worried. She had "a hunch that something wasn't right". KR agreed that her husband had been downstairs with M for a very long time – either 04.30 to 07.00 or 05.30 to 07.00. She said she didn't know why she had not gone down. "It must have been the case" she said that she "heard what was happening downstairs". She said she didn't know what was happening but wishes she had tried to find out. At the very end of her evidence, in re-examination, KR said she had "just thought NR was cleaning M not beating the living daylights out of him". She was, she said, "still a new Mum"; she "wasn't 100% on the cries. "It was just a new cry" to her – she "didn't know what it meant".

75. Thus, even on the basis of the mother's own testimony there is an evidential basis for concluding she knew something was badly amiss and failed to intervene so as to protect M. As she described her inaction, KR was convulsed with sobbing as she was at various times throughout her evidence. **Exactly what she knew, exactly what she did or did not do is far from clear because neither parent, thus far, has told the truth. In the mother's case notwithstanding a firmly worded effort on my part to encourage her to say more – a theme later taken up by Miss Cook. Where was the mother during the two to three hours that the father was with M? I simply do not know and my lack of knowledge stems from the fundamentally unreliable nature of both parents' accounts.**

76. Other elements of what happened that night for me are very clear indeed. **I find that KR did indeed change M's nappy before he was taken to hospital because she wanted him to be clean. I find that she has lied when she denied doing so and simply because she knows full well that her position is significantly weakened if she was involved in a nappy change after the penis injury was inflicted. In other**

words she has lied to protect herself and to seek to minimise her role in the events of that night.

77. **I also find that KR did see M's injured penis which must have looked red, if not purple, and swollen.** I reject the suggestion made by Miss Cook in her final submissions as to the possible presence of Sudocrem which may have obscured any injury. If there had been Sudocrem it would surely have been noted at Darent Valley as a masking agent. As it was, when M's nappy was opened in 'resus', there is no mention whatever of any cream. No witness has described or been asked to consider whether there was cream.

78. In similar vein, arising out of Dr Ward's advice as to the very rapid evolution of bruising in the penis, I dismiss the suggestion on behalf of the mother that there is no reliable evidence so as to safely find the bruise was apparent before M left home for hospital. **It was there, KR saw it. The reason she now lies about its presence is her realisation as to the conclusions which will be and are drawn about what she knew and how she failed to act.**

79. **I also find that the mother did indeed say to PC LW that M was 'limp and lifeless' at 04.30 to 05.00 in the morning.** The mother says that if she'd known M was limp and lifeless she would have phoned 999. She will agree only that she said he was 'very, very pale'. Whilst I altogether agree with Miss Cook that **the comment** to PC LW does not place the mother at the scene of the assault, it **does link her very closely indeed to the immediate aftermath.**

80. In that regard, I found the evidence of the maternal grandmother, Mrs H of great interest. She was asked about the discussion with PC LW at KCH because she, too, was present. Mrs H gave a spontaneous account as follows – "during the discussion, KR was not really able to talk. The PC asked questions. KR answered to the best of her ability. All she said was, 'I didn't hurt him and why didn't NR tell me about the CPR. If I'd have known about CPR, I'd have dialled 999. I didn't know about all of this.'" Mrs H added that the language her daughter had used was somewhat more colourful. Asked later to consider some of the detail contained within the police officer's note, Mrs H gave a long explanation about timings and how she believed KR would not have been able to give anything other than a very vague time because of the position of the clock in the bedroom. Mrs H could not remember the phrase 'limp and lifeless', nor did she remember KR saying anything about changing the nappy.

81. There was, in my assessment, a quite remarkable cohesion between the evidence of Mrs H and her daughter as to the key elements of PC LW's note. I have already found the police officer's evidence more reliable than that of the mother. Either the grandmother's memory was at fault or, in the evidence she gave, she was seeking to align her account with that of her daughter out of maternal loyalty. I am unable to say which.

82. The other strand of what happened at home, revealed by the combined evidence of the Darent Valley Hospital staff is that **the mother knew there had been "an incident" in the night and I so find**. She lied when she sought to relate that remark perhaps to M having vomited the previous evening. Her knowledge as to what occurred is greater than she has been prepared to divulge for reasons which are impossible to know.

83. The other bizarre element of the mother's reaction to M's condition is to be found in what she said about his misshapen, swollen and boggy head. In evidence and in interview, the mother has said again and again she accepted what the father had told her about M's head. That it resulted from "the fluids from the cold" as the mother says she had been told by the father, simply defies belief. It is such an utterly absurd explanation that any parent, however medically ignorant, would realise at once it was nonsense.

84. **So whilst I do not find that the mother should be within the pool of possible perpetrators, I do find that she knows more than thus far she has revealed about what happened that night.** One of the main reasons why I reject the possibility that she should be included as a potential perpetrator is because of the father's acceptance that he alone was responsible for the acute injuries albeit on his case accidentally. Why the mother did not phone for an ambulance when she first saw M's swollen, boggy and distorted head is hard to fathom. Why she accepted the father's ridiculous explanation is bewildering to say the least. Why she did not take immediate action in response to finding M's penis so swollen and bruised is similarly impossible to understand.

85. **I do find that KR failed M and badly so on the morning of 1st December.**

86. Finally, it is inescapable that in addition to everything else **I am impelled to find that both parents delayed seeking out medical attention for M for an unacceptably lengthy period.** It is impossible to understand why they took so long to get medical attention, ensuring for example that he was clean before setting off for hospital and maybe even pausing to feed the cat. **The only possible explanation for their reluctance to bring M to the attention of the doctors is that they were motivated by self interest. I am unable to be more precise than that because neither parent has given a full or accurate account – of that I am convinced.**