Midwifery manslaughter case R vs. Jenny C

- What happened
- Informed choice
  - See HDC report on case 04HDC05503
- Appropriate investigation
- Competence vs. discipline vs. civil vs. criminal
- How it got to become a criminal case
  - See HDC report
- Trial
- Expert witnesses

HDC report

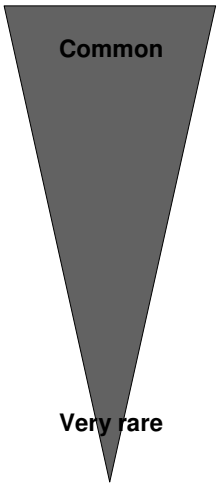
"There is a place for the criminal law in the clinical setting where a health practitioner kills a patient by reckless acts or omissions. But in cases of unexpected patient death, even where gross negligence may be proved, a manslaughter prosecution is likely to do more harm than good. It delays and frustrates the regular mechanisms for health practitioner accountability. Most importantly, no health practitioner is likely to share their mistakes in a peer review setting if Police search and seizure is a possibility. The real causes of patient deaths will remain hidden, and the potential to learn from mistakes will be lost."

HDC report

"The prosecution in this case has taken a toll first and foremost on Ms B and Mr and Mrs A, but also on the ODHB staff and the wider midwifery profession, and has cast a long shadow on my investigation. It highlights the need for careful reflection by the Police and the Crown prosecutor whenever such a prosecution is contemplated."

Expert evidence in NZ

- ACC cases
- HDC investigations
- Coroner's courts
- Competency hearings
- Disciplinary hearings
- Civil cases
- Criminal cases



Expert evidence

- Finding experts
  - Prosecution: three experts for committal hearing
  - Defence: some approached and declined
    1 nominated by NZCOM
    1 engaged <6 weeks pre-trial
    1 engaged during the trial
- Experience of experts
  - 3 on HDC or ACC list
  - 1 experienced and involved in teaching
  - 2 neither

The experts

- Two senior midwives
- Two obstetricians
- Two neonatal paediatricians

Variability of expert evidence

- Expert evidence changed from pre-trial to committal to trial
  - Probably reflect an evolution of opinion as the course of the legal process unfurled.
- Experts disagreed on significant points
  - Data from written opinion to police
    evidence to committal proceedings
    testimony at the High Court trial
  - Disagreements not all reflecting which side had engaged the expert

Particulars of the charge

1: failure to recommend transfer to hospital at an early stage of labour

- Not particularly contentious
- Main issue was of informed consent
- More a professional issue rather than contributing to the death of the baby

Particulars of the charge

2: failure to notify obstetric and paediatric staff on admission

- Major departure from accepted standards and grossly negligent.
- Not notifying staff more a matter of courtesy and not a major departure, particularly in view of mother's strong opinions.

Particulars of the charge

3: failure to recommend antibiotics

- Agreed: antibiotics in labour were indicated
  mother febrile and may have had amnionitis

- Early pneumonia and positive blood culture indicated infection before birth
- Fetal infection played a significant role in the death
- Baby's white blood count abnormal
- Pneumonia not present at birth (pathologist's evidence)
- Unlikely to be fetal infection
- White blood count normal
- Infection occurred after birth and was a mechanism rather than cause of death

Particulars of the charge

4: failure to adequately monitor the fetal heart rate during labour

- Agreed: short recordings, poor quality,
  better recordings indicated (but consent issues),
  tachycardia, but variability and no decelerations seen
  - » Quality of trace made interpretation difficult and there were differences in interpreting what this meant, in particular the likelihood of decelerations and interpretation of variability

- Alarming trend over last 40 minutes
- Recordings show a 'terminal trend'
- Recordings indicate that the baby is dying of asphyxia (= hypoxia)

- No downward trend seen
- Such fluctuations common before birth
- Would not pick terminal trend
- Recordings do not show evidence of acute hypoxia

Additional issue

Technique of delivery

- Issue: breech presentation and
  mother in 'supported squat' position.

- Maternal position made it impossible for midwife to maintain head flexion
- Midwife would have to be behind the mother to do this

- The position restricts access to baby and would not recommend it
- Head flexion occurred and birth was effected
- Baby delivered rapidly anyway, indicating flexion

Particulars of the charge

5: failure to summon immediate emergency assistance when the fetal heart disappeared

- Not calling immediately for help was grossly negligent
- This resulted in a devastating delay for the baby
- Poor resuscitation (by midwives) contributed to the outcome

- Failure to call for help immediately not a major departure and did not contribute to the death
- Midwives resuscitation technique was correct

Discussion points

- Number of experts called
  - Should not rely on single expert in each specialty
- Adversarial nature of proceedings
  - Unfamiliar to health professionals
- No ability to explore consensus
- ?Meeting of experts pre-trial

- How does jury decide on such evidence?