

Effective investigation of child homicide and suspicious deaths

David Marshall

Blackstone's Practical Policing, Oxford University Press, 2012

Book review by Sally Ramage, editor, *The Criminal Lawyer, Bloomsbury Professional*

This welcome addition to Blackstone's Practical Policing series, Oxford University Press, includes chapters on the investigation of childhood deaths; guidance; legislation; child death offences; homicide, case management; and a chapter on non-suspicious child deaths. It is a useful expansion of the topic published for senior investigation officers, also published by Oxford University Press.¹

Some criminal offences that are at issue are the offences of:

- (i) Child destruction
- (ii) Administering drugs or using instruments to procure an abortion
- (iii) Supplying or procuring poison, noxious thing or any instrument or thing whatsoever to cause an abortion
- (iv) Concealing a birth, by secret disposition of body whether child died before or after birth
- (v) Prevent lawful burial- conceal corpse-dispose of or destroy dead body, etc

An offence that has not been mentioned is the death of a child in the care of a local authority or in a borstal establishment.²

It is fitting that Lord Laming was invited to write the foreword to this new book because Herbert Laming, a life peer since 1998, had been appointed to head the inquiry into the tragic death of a little girl, Victoria Climbié.³

In his foreword, Lord Laming said that:

'Some of the evidence to the Victoria Climbié inquiry made clear that the work undertaken by the Police Child Protection Teams was not given a priority. Indeed in some quarters it was referred to in rather disparaging terms.'

This, in hindsight, surprises no legal academic, since social workers are at the opposite spectrum to police officers, in many cases.

¹ Cook, T. and A. Tattershall, (2011) *Senior Investigating Officers Handbook*, Oxford: OUP.

² Although in the UK police do not 'taser' children, this article draws attention to children's deaths.

Editor, (2011) 'Could a \$10m fine imposed by a US court spell the beginning of the end for the controversial stun gun firm?' *New Scientist*, p.24.

³ Dept of Health and the Home Office, 'The report on the Victoria Climbié inquiry', London: HMSO, 2003 (Cmd 5730). This report was published on 28 February 2003, led to many child protection reforms, and included the formation of the *Every Child Matters* programme (This was disbanded by the present government when they came to office. See article in *The Criminal Lawyer*, Issue 206, Jan-Feb 2012).

The unlawful death of Victoria Climbié



Picture 1: Victoria Climbié, deceased

Victoria Agnes Climbié was an eight-year-old who was born in 1991 and who, in the year 2000, in London, was tortured and murdered by her guardian and the guardian's boyfriend. Her death struck a chord in the nation and an inquiry was subsequently ordered into how and why she had died and whether her death could have been prevented by the State. The report by Lord Laming⁴ made numerous recommendations related to child protection in England. The little child had been burnt with cigarettes, tied up for many hours at a time, She had been beaten with bicycle chains, hammers and wires during which time many State agencies had been involved and none had foreseen or tried to prevent her death by removing her from her killers. The agencies at fault were the police, the social services, four local authorities, the National Society for the Prevention of Cruelty to Children (NSPCC) local churches and the National Health Service.

Multi-Agency Risk Assessment

On June 13, 2010⁵ Mr Paterson asked the Secretary of State for the Home Department of the United Kingdom's government about domestic violence in Shropshire today and the reply he received illustrated what should be done in many other parts of the country, especially a domestic violence forum, and a specialist court. Mr Alan Campbell's reply to Mr Paterson was as follows:

'The National Domestic Violence Delivery Plan sets out the [Labour] Government's Framework to support victims and manage perpetrators. Key initiatives identified in this Plan are being taken forward in North Shropshire to reduce the incidents of domestic violence, these include;

⁴ Baron William Herbert Laming, CBE, a qualified social worker by profession, became Convenor of the Crossbench Peer in the House of Lords in September 2011.

⁵ Hansard, col.1390W, April 7, 2010.

a Multi-Agency Risk Assessment Conference (MARAC) which covers the whole of Shropshire and focuses on high risk victims; an Independent domestic violence adviser to support the cases identified at the MARAC, providing protection and support and helping to reduce repeat incidents of domestic violence; a specialist domestic violence court located in Shrewsbury; and a dedicated domestic violence forum which also provides practical support to victims such as mobile phones and home safety packs.'

Cruelty to a child

The book includes in chapter five, the subject of suspicious child deaths and related child death offences (see pages 125 to 158). A person has parental responsibility for a child under the Children Act 1989 if he is the child's parent or he is otherwise liable to maintain the child or has care of the child. The section 1 offence includes the word 'wilfully', thus clarifying that the offence of cruelty to a child requires *mens rea* on the part of the accused as to the risk of unnecessary suffering or injury to health resulting from the neglect and if the offence committed involves failure to provide adequate medical aid, the requirement of wilfulness is satisfied if the accused was aware that the child's health might be at risk if medical aid was not provided or where non-awareness of this risk was due to the accused not caring whether the child's health was at risk or not.

The nature of child cruelty

For the offence of child cruelty under s.1 Children and Young Persons Act 1933, the assault must be more than common assault or battery. Submission by a child to a person in authority does not signify consent. The term in the offence, 'ill-treat' signifies continuity of conduct.

Domestic Violence, Crime and Victims Act 2004

The DVCVA made provision about homicide; made common assault a criminal, arrestable offence; made provision about the execution of warrants and the enforcement of orders imposed on conviction; and made provision about the recovery of compensation from offenders. Section 5 of the DVCVA created the criminal offence of causing or allowing the death of a child or vulnerable adult. This offence is committed where a child or vulnerable adult dies as a result of an unlawful act of a person who was a member of the same household as the deceased and who had frequent contact with them.

Causing the death: s. 5, Domestic Violence, Crime and Victims Act

The defendant must either have caused the death, or should have been aware that the deceased was at significant risk of serious harm and failed to take reasonable steps to prevent that harm.⁶ It is noted that the term 'significant risk' in this offence has been defined to be one of 'serious physical harm', but sadly, the term 'serious physical harm' is not defined and so what must be shown is that the defendant failed to take

⁶ This offence was introduced to resolve the problem that arose when it cannot be shown which member of the household caused the death and all members of the household will be liable for such a death.

such steps as could reasonably be expected to be taken to protect the victim from the risk.

Baby Peter Connelly's injuries prior to death

Since the death of Victoria Climbié, there have been many other murders of little children, none more heart-wrenching than the death of 'Baby Peter Connelly, a 17-month old toddler who died after suffering more than 50 injuries over an eight-month period, during which he was repeatedly seen by Haringey Children's Social Services and NHS health professionals.⁷



Picture 3: Baby Peter Connelly

Baby P's post-mortem report



⁷ The whole world's newspapers have reported on Britain's child abuses, many of which are domestic violence offences resulting in deaths and serious injuries, the most notorious being the death of 'Baby Peter' who died of horrendous injuries.



Pictures 3,4,5,6. Baby Peter Connolly's injuries

The post-mortem examination on Peter Connolly revealed the toddler had suffered: eight broken ribs; a broken back, with another area of bleeding around the spine at neck level; bruises, cuts and abrasions, including a deep tear to his left ear lobe; severe lacerations to the top of his head; blackened fingernails and toenails, with several nails missing. The middle finger of his right hand was without a nail and its tip was also missing. There was a tear to his fraenum; and loss of one of his front teeth which had been knocked out and found in his colon because he had swallowed it. A total of 22 injuries were inflicted on baby Peter Connolly.⁸

The coroner's duty

Under s.1, Coroners and Justice Act 2009, it is the duty of the coroner to investigate all deaths where there are grounds to suspect that they are either caused by violent or unnatural deaths; or the cause of death is unknown or the deceased died whilst in custody or otherwise in state detention. Under s.5, the coroner must ascertain the cause of death.

Enhanced post-mortem

Chapter 5 of this book, the author, David Marshall, explains that an enhanced post-mortem⁹ examination is an invaluable source of information in 'suspicious' child deaths. What is meant here is a medico-legal autopsy. A medico-legal autopsy or forensic or coroner's autopsy seeks to find the cause and manner of death. This type of autopsy is generally performed, as prescribed by applicable law, in cases of violent, suspicious or sudden deaths. Such an 'enhanced post-mortem' must be authorised by Her Majesty's Coroner and such a post-mortem will require a paediatric pathologist and a Home Office forensic pathologist '*working together in tandem combining their respective areas of expertise- one in child deaths and the other in homicide*' (page 130).

⁸ On November 11, 2008, Baby Peter's mother, her boyfriend and a lodger were convicted at the Old Bailey Court in London, of causing or allowing his death. His mother's boyfriend had begun to abuse the little boy from the age of nine months until the child finally died in his bloodstained cot.⁸ Note that convictions for allowing the death of a child (or a vulnerable adult) contrary to the Domestic Violence, Crime and Victims Act 2004 s.5(1), are upheld if someone is of the same household, even if they did not actually strike the child who had died. Such a person should have been aware that the deceased was at significant risk of serious harm and failed to take reasonable steps to prevent that harm. Note that in the case of Baby Peter, both his mother and her boyfriend were themselves children in the care system and the boyfriend especially was of a low IQ and known to the authorities for animal cruelty. The baby's maternal grandmother was also known to the authorities for drugs and alcohol abuse.

⁹ A post-mortem is the examination of a body after death. It is also known as an autopsy. Post-mortems are carried out by pathologists (doctors whose specialty is the medical diagnosis), who aim to identify the cause of death.

It is of note that research has revealed that half of post-mortem examinations reveal findings that had not been suspected before the examination.¹⁰ The author, David Marshall, refers (at page 56) to the Association of Chief Police Officer's 'Guide to investigating unexpected deaths and serious untoward harm in healthcare settings'. Note also, the *UK Autopsy Protocol from the Kennedy Guidelines 2004*, included as an appendix in this book (pages 273 to 278). Note however that a more recent medical paper, published in 2011, revealed results of a study where Sudden Unexpected Death in Infancy (SUDI) was the commonest presentation of post-neonatal infant death in the UK. This audit reviewed current practice in the investigation of SUDI deaths, with particular regard to the practice of microbiological sampling in emergency departments (ED) compared with samples obtained at the time of autopsy for establishing the cause of death, as suggested by current guidelines. Coronial autopsies performed for the indication of SUDI over a 4-year period at a single specialist centre were reviewed with particular regard to the findings of microbiological investigations performed in ED compared with those performed at the time of autopsy. Of 229 SUDI postmortems performed during the period, there were 136 cases in which both bacteriological samples taken in ED and at autopsy were available, including 109 with blood cultures taken at both time points. 66 cases had sterile blood cultures in ED of which 37 showed positive microbiological growth from autopsy samples including 9 cases with group II pathogens. Group II pathogens were identified from ED samples in 6 of the total cases; all but 2 cases of *Staphylococcus aureus*. *The study revealed that* blood cultures obtained at autopsy are associated with a significantly higher rate of positive microbial cultures compared with blood samples taken in life. However this did not mean that a final infective cause of death would have been missed if ED sampling had not been performed.¹¹

Post mortem research is crucial to understanding cases of sudden, unexpected death in children. Following the Alder Hey organ retention scandal, in which children's tissue was retained for research without consent, recent changes to legislation and coroners' rules have made it difficult to carry this out. Most cases of unexplained death in children are automatically referred to the coroner, who cannot authorise tissue to be kept for research without explicit parental consent. Unfortunately, many coroners are neither trained, nor have the resources, to seek parental consent, and contacting newly bereaved parents to get it is often seen as unethical, say the authors. As a result, tissue is disposed of, as it must be by law, (Human Tissue Act 2004) and so lost to research. In a bid to reverse this trend, researchers at the Institute of Child Health and Great Ormond Street Hospital in London, piloted a telephone consenting system as part of a Department of Health 'less invasive autopsy' study. Before the post mortem, a family liaison sister, experienced in dealing with bereaved families, contacted 32 sets of parents, whose children were aged between one day and seven years when they died. On average, she approached parents two days after their child's death, to ask if they would consent to non-invasive (MRI) imaging of their child. It appears that that the opportunity to discuss the post mortem process soon after death with a bereavement

¹⁰ Roll-on J, Benbow EW, Hasleton PS (2005). "Discrepancies between clinical and autopsy diagnosis and the value of post mortem histology; a meta-analysis and review". *Histopathology* 47 (6): 551-9.

¹¹ However, today, it is not easy to conduct research using tissue samples. The following guideline was published by Great Ormond Street Hospital.

nurse was beneficial. Civil Procedure Rules, Coroners Rules and Criminal Procedure Rules apply.¹²

Another notorious child death

Another widely publicised case such as Baby Peter's was the case of *R v Abid Ikram and Sumaira Parveen*¹³ in which the two defendants had been charged with counts of murder and causing or allowing the death of a 16-month-old child contrary to the DVCVA s.5. A post mortem found the toddler to have numerous bruises and abrasions, as well as a broken leg and a laceration behind the knee. Baby Talha had been placed in foster care after his father left him alone at home in March 2006, but was allowed to return to Abid Ikram in June 2006, and within two months the baby was dead.¹⁴



Picture 7: Tahlah Ikram, deceased

Protection Order in Crime and Security Act 2010

Lobbying for the Protection Order in the Crime and Security Act 2010 was mainly done by the NSPCC, whose 2003 report, *Which of you did it?*, revealed that each week; two or three infants in the United Kingdom suffer serious injury or death when in the care of adults who ought to have been protecting them. This report followed the NSPCC 1999 report, which alleged that its findings were that around 1 million children in Britain were impoverished, injured and abused.

30 homicides committed annually by schizophrenics

The aim of the orders in this Act is to stop the violence short of serious consequences such as homicide. It is to be noted, regarding homicides, that the *National*

¹² See Cooper, J. (2011) *Inquests*, Oxford: Hart Publishing.

¹³ [2008] EWCA Crim 586.

¹⁴ 'Seven missed chances to save life of boy tortured to death by sadistic step-mother, *Daily Mail*, 1.9.2007. See <http://www.dailymail.co.uk/news/article-480512/Seven-missed-chances-save-boy-tortured-death-sadistic-stepmother.html>, accessed on 13.3.2012.

Confidential Inquiry (NCI) into Suicide and Homicide by People with Mental Illness published a report, following research it conducted into all suicides and homicides by mental health patients over a 5-year period (April 2000 to December 2004), with findings that over 50 homicides are committed each year in England and Wales by mental health patients, although the risk of random killings by mentally ill people has not risen in the past three decades. Of the average 600 homicide convictions per year in England and Wales, around 30 in number (5 per cent) are committed by people with schizophrenia.¹⁵

Homicides in the UK

Murder rates according to the United Nations, shows that England and Wales have favourably low murder rates. A decade ago, England and Wales featured as the 13th best country with low murder rates.¹⁶ Currently, the UK Home Office website states that England and Wales is the eighth lowest murder rate country.¹⁷ One reason for the alleged improvement may be due to more domestic violence prosecutions in the courts.¹⁸ An intention to commit grievous bodily harm neither is nor clearly proved to be the *mens rea* of murder as in *Attorney-General's Reference (No 3 of 1994)*.¹⁹ Lord Mustill stated that the *mens rea* for murder is an intention to kill or cause grievous bodily harm to the victim, not simply an intention to kill or cause grievous bodily harm to someone. If the death of someone other than the intended victim was caused, then the doctrine of transferred *mens rea* could be used to convict a defendant of murder.

Conclusion

This is a very welcome specialist police book of best practice by David Marshall. He has concentrated the subject in one place. However, other police books, such as *Blackstone's Criminal Law and Procedure* and *Senior Investigating Officers' Handbook*, both assist in broadening and improving understanding of the subject.

¹⁵ This report argued that the indications are that community care has not increased the risk to the general public. (The full report and the executive summary can be found at <http://www.medicine.manchester.ac.uk/psychiatry/research/suicide/prevention/nci> (Accessed 12 March 2012).

¹⁶ See table above, extracted by the writer from the United Nations data.

¹⁷ In 2004 the UK passed the Domestic Violence, Crime and Victims Act. In 2006 the UK Safeguarding Vulnerable Groups Act 2006 (SVGA) in complying with the European Convention of Children's Rights 1996, Article 4 which obliges state parties to take all appropriate legislative and other measures for the implementation of the rights recognized in the Convention. The UK Crime and Security Act 2010 passed further measures re the SVGA.

¹⁸ Although in many cases of domestic violence, the complainant withdraws their complaint, today the case can continue if the Crown Prosecution Service ('CPS') decides that it should.

¹⁹ [1997] 3 WLR 421.