

12 June 2024

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Housekeeping

Wednesday, 12 June 2024

(11.00 am)

(Delay in proceedings)

(11.38 am)

(In the presence of the jury)

MR JUSTICE GOSS: Just by way of explanation as to what's been going on before you came into court, for those who weren't here, the jury were brought into this courtroom to have explained to them the use of the iPads with which they have been provided for the duration of this trial. That is something that was undertaken in the presence of the defendant and all the lawyers in the case and obviously my presence as well. In future, the jury will not come in until the court is ready for the trial to proceed, but today was the exception to the rule for the reason that I have just given.

Thank you very much. We are now in a position to proceed. Would you give the warning, please?

(Pause)

Thank you very much. I repeat the importance of that warning to those who are attending this hearing and to people who are present in this courtroom.

Yes, Mr Johnson.

Opening by MR JOHNSON

MR JOHNSON: Thank you, my Lord.

Are you all experts in using the iPad? If you are you're doing better than I am. For reasons that I'll explain to you in a moment, we'll also give you some more traditional paper material

and if you're my sort of age you might find that a bit more easy to navigate.

As his Lordship told you yesterday, together with my learned friend Mr Driver who sits behind me, I prosecute the case. Lucy Letby is represented by my learned friends Mr Ben Myers King's Counsel and Ms Fiona Clancy, who sits behind him.

Lucy Letby, as you know, is charged with a single offence of attempted murder so far as you are concerned.

As his Lordship told you yesterday, and as I'm sure all of you or certainly most of you knew anyway, there was a very long trial about a year ago, in which Lucy Letby was convicted of seven murders and seven attempted murders. Those seven attempted murders relating to six other children. So seven other children were murdered, six others she attempted to murder, one of them twice, so that makes 13 children, and here we are dealing with a baby called [Baby K], who is the fourteenth.

All that happened, as again you probably already know, whilst Lucy Letby was working as a neonatal nurse in the neonatal unit at the Countess of Chester Hospital in Chester.

Those other cases that I have mentioned do have an importance in this case because we suggest it's not because you should convict her of this case because of what she's done in other cases, but what we are suggesting is the relevance is it gives you significant evidence as to what her intention was at the time we say, we allege, she did things or something to [Baby K].

So putting it in a nutshell, really, we are saying, we assert that her status as a multiple murderer and attempted murderer is an important piece of the evidence that you can, if you wish, take into account when you are considering whether we have proved, whether we have made you sure, that she attempted to murder [Baby K].

I'm going to -- before I get down to an explanation of the facts of the case, I'm going to give you some more documents, if I can, so if we could hand those out now, I'd be very grateful. I'm going to take this really slowly because there's quite a lot of information and it comes from a number of different sources, which if I deal with it too quickly, may become a bit overwhelming.

(Handed)

It might be an idea to hand these out category by category and I'll give you an explanation as each comes.

It may speed things up slightly, although, as I said, speed isn't really my objective here.

What you've got there, ladies and gentlemen, and this is all that's ever going to go into this file, it's not a file that we are going to fill up as the case goes on, is what's called a neonatal unit review schedule.

You can see "NNU" -- as his Lordship said, we live in a world of acronyms -- so neonatal unit, "review schedule" and "[Baby K]". That's the first page.

On the second page -- we'll deal with this all in the evidence, it's just an explanation for you at the moment.

What you have there is a visual representation of the floor plan of the unit, and I'll come to that a bit later, but the top one is the floor plan at the beginning and the population distribution. The bottom one is the floor plan with the population distribution at the end. So really, the important thing at this stage to notice as the difference between what's at the top and what's at the bottom is that in nursery 1 you will see that [Baby K] was there at the end of the shift but she was not there at the beginning. The reason for that is very simple: she was born during the shift. Okay?

So far as the other children in there are concerned, they are all anonymised to the extent that we've used initials. Okay? That's to preserve the anonymity of those other children. Their names aren't relevant to these proceedings, but where they were, and who was with them may be relevant. That is essentially the point of this document. All right?

I will deal with this in much more detail during the evidence, but it's just to give you an explanation of what this actually is.

If you look over the page to page 3, you can see there's a lot of blue font. The blue font is font that reflects the fact that, so far as the children are concerned whose identities or initials are in the fourth column, the blue font relates to records made about them by Lucy Letby. Anything not in blue is a record made by somebody else other than Lucy Letby.

If you go to the "member of staff" column, which is the penultimate column you'll see the names of those other members of staff.

For example in black you have Joanne Williams, Sophie Ellis, Caroline Oakley and Valerie Thomas. And if you turn back a page

to page 2 you will see where those members of staff were primarily located during the shift. All right?

The system, so that you understand, is that each child on this unit had a nurse that was designated to their care primarily. Obviously, other nurses will be involved, but there was always one nurse in respect of each child who is referred to as the designated nurse.

Going back to page 2, you can see that at the beginning of the shift, in nursery 1, there was a nurse called Caroline Oakley, who was the designated nurse for the two babies.

In nursery 2, Lucy Letby had two children, AR and GT. Joanne Williams had the third child in there. If you look to the second half of the -- the bottom half of the page you'll see that Joanne Williams became the designated nurse for [Baby K]. Okay? So that's the system.

The point of this document, so that you understand -- you may think it's often very helpful to understand what the endgame is, what the point of something is before you start to read what it says. The point of this is that it is a record, it is a tabular representation of the records for all the children on the unit at the time of these events. So it will show you where any particular nurse on the shift was making a record and the time that the record was made. That may well, and we suggest it does in this case, become quite relevant because what you will see from this document is that the two children that Lucy Letby was the designated nurse for were in nursery 2, but the events relating to [Baby K] all happened in nursery 1. Okay?

So the reason why we say the evidence in due course will show that Lucy Letby was in nursery 1, we will suggest, gives rise to certain questions. Okay? So that's the gist of the point of it. I'm not going to go through this now. I think we can probably put it away until tomorrow when I will call a witness to deal with this document in detail.

If we can move on to the next document, please.

(Pause)

Ladies and gentlemen, it's no part of my function to tell you what to do. You decide what you want to do.

I'll make a suggestion that you might want to put your initials on the front of these documents as they come to you because sometimes when documents are collected by the court staff at the end of the day, over a weekend for example, it is possible things get mixed up and if you write things on these documents

then plainly getting your own version of it back may be rather more helpful than getting somebody else's. By that, I'm not suggesting that you should be writing things on these documents, that again is entirely a matter for you. All right?

This document, which is called the sequence of events -- and I'll probably fall into the acronym and start saying SOE, that's what I mean by SOE, sequence of events -- is in effect very similar to what Mr Murphy just showed you on the iPads. So each tile -- and I'll deal with tiles in a moment. So if we open this up and go to page 2 -- and the page numbers are very small, which isn't very helpful, but hopefully you can see them. If you go to page 2 you can see that this is a table. The entries are numbered in the left-hand column sequentially through the document from entry 1 to entry 302 on page 34.

Those entry numbers correspond to the tile numbers on the iPads, so if I could just ask Mr Murphy to put up tile 1. There you see on tile 1 "Facebook search history". If Mr Murphy clicks on that tile -- and you can do this for yourselves on the iPad -- it then brings up what in effect you have there in paper form on page 2 under "Activity/event description". Okay?

So it's a different way of getting to the same material. The reason we've done this is because we recognise that we all think in different ways and some people may find this much more helpful than the iPad, other people may find the iPad much more helpful than this. We're not suggesting that you should use one or the other or even both. You will do what helps you to remember the information. But as you will see, as we go through this case, generally speaking entries are colour-coded so that if you're looking for specific things you can flip through these documents and hopefully it's relatively easy to identify what is where. So that's the point of all this.

I'm not going to deal with this again in any detail now. This will be dealt with either at the end of today or, I think more likely, tomorrow. We will go through this, I'm afraid, line by line. I'm going to go through a lot of or some of this material as part of my explanation to you now, albeit the way I will do it as part of the explanation to you now will be through the medium of the iPad and the screen. But the same material with the same numbers is in this document.

The reason we haven't put this in the same file as the NNU review is because sometimes you might want to look at them side by side and that's very difficult if they're in the same file.

One problem that does occur from time to time, and some of you I'm sure will be familiar with this, is sometimes these spines disintegrate. Hopefully, this trial isn't so long that that's

going to happen, but beware because they can unravel if, for example, you leave just a couple of pages on your desk, put your hand on it and leave the rest hanging over the rest of the desk, the weight of the paper may cause the thing to explode. So I've issued the warning. Almost inevitably, it will happen, but please be aware because sometimes it's quite difficult to put these things back together. But there we are.

The third item I would like to give you, please, ladies and gentlemen, is a small ring binder.

(Handed)

MR JUSTICE GOSS: You will become very adept at moving these bundles around on the small working space that you have.

What will happen is that if someone wants to draw your attention to a particular binder or file, you'll just bring that one up and put the other ones on the floor.

MR JOHNSON: There's a plastic thing on the front and if you slide your hand in, the thing runs away, but if you tip it up, you get some flags that, if you're that sort of person, which I am, are quite helpful.

If we look in here, ladies and gentlemen, behind divider 1 we've got the indictment, which sets out the charge that we have the task of proving so that you are sure.

Behind divider 2 is a glossary and the glossary contains, in alphabetical order, some medical terms which will be used during the course of these proceedings. So we will try on each occasion that these terms are used, at the beginning at least, to deal with what they actually mean. If you are in any doubt as to what they mean, hopefully you will find a definition here, and these are agreed definitions between the parties for the purpose of these proceedings.

Behind divider 3 are some agreed facts. The point of agreed facts is that they save a lot of time.

Sometimes, for either the prosecution or the defence to prove a specific fact would otherwise involve calling a witness, reading a witness statement, that sort of thing, whereas in fact what's really sought to be proved is a very simple proposition.

If the prosecution and the defence agree then we can put those facts into a written list, which you have, and you can and should accept these agreed facts as facts that have been proved in the case. All right?

MR JUSTICE GOSS: I'm sure you understand that. It's obviously the most efficient and effective way, where possible, to place agreed evidence before you. There's quite a wealth of detail in the agreed facts, but the important thing is all these agreed facts are evidence in the case. As you know, and you'll hear again and again, you are trying this case on the evidence that's placed before you. The significance of any piece of evidence, the weight to which you attach to any piece of evidence, is entirely matters for you as the judges of the facts. This is agreed evidence.

Similarly, when a witness's statement is read to you, that is agreed evidence and I'll give you a little further direction about that when we come to that. But this is the first important direction in relation to agreed facts, agreed evidence, for you to consider.

MR JOHNSON: Thank you, my Lord.

Behind divider 4 is a bigger version of the floor plan that I showed you in the neonatal unit review.

What this shows, on the right-hand side of the page, in green is the neonatal unit. On the left-hand side of the page, that unit has been expanded so that it's more easy to read what's on the plan.

The doors with locks on are in red with a lock and so on. And again, we will deal with this in detail in the evidence and as part of this explanation to you I'll show you what we've called the walk-through video.

So somebody has videoed the unit and I'll play that to you as part of this opening explanation to you so that you can visualise what it is the witnesses, when they come, are actually talking about.

If you turn over the page to the second page you've got an even clearer, I hope, floor plan representation of the neonatal unit at the Countess of Chester Hospital at the time. This no longer exists, but this is the way it was back in 2016 when these events took place.

Behind divider 5, a bit more than a thumbnail, but some small photographs showing the layout in nursery 1, which is the room that we will be concentrating on in this trial. So slightly counter-intuitively, photograph number 1 appears in the bottom left-hand corner of the page if you are looking at it in landscape, photograph 6, the top left-hand, so it runs anti-clockwise from the bottom left-hand corner to the top left-hand corner, and the location from which each of these photographs is

taken is shown on the plan, the floor plan, in the middle between the photographs with the cone from the number showing the direction in which the camera was pointing. All right? So again, this will become significant in aiding your understanding of the explanations that the witnesses will give you in due course.

For example, photograph 1, I'll only deal with that for now. You can see that that is a photograph taken from the end of the nurses' station with nursery 1 to the right-hand side and off the picture of where the person taking the photograph is standing, whereas for photograph 2, the photographer is standing slightly to the right of where the photographer was standing in photograph 1 and pointing the camera through one of two doors into nursery 1. Okay?

Again, this is a lot of information coming at you fairly quickly. You'll be well familiar with this within a couple of days.

Divider 6 is sub-divided into 6A, 6B, 6C, D, E, F and G. These dividers, divider 6, reproduce the source documentation that underlies quite a lot of the material in the sequence of events. So as we will see, when we look at the sequence of events, when drugs are being given at a certain time by a certain person may be very important. Okay? You have this material in the digital file on the iPad, but again sometimes you may feel the need to have two or even three sources of information open at the same time and that's not always easy to do if you're just using the iPad. Some of you may be completely at home with that, something I struggle with, but some of you I'm sure will be able to do it.

This, for some people, is an easier way of achieving the same objective. So giving you the same information in different forms substantially increases the likelihood of you being able to find what you want, basically. So that's really our objective. So whilst it may seem to overcomplicate things, and if you find that is what we've achieved here then I apologise, it may be that for many of you this will actually make the process easier.

At the moment the remaining dividers are empty.

They will be filled in due course with details of what Lucy Letby said to the police when she was interviewed.

I'm going to play the walk-through video to you in a second, but just before I do that, I just want to explain to you what the point of me telling you anything at this stage is. It's important to remember, as I think his Lordship told you yesterday, that what barristers say to you, unless we are reading agreed facts or agreed statements of witnesses, what we

say to you is not the evidence. Okay? We will try to persuade you from our opposing points of view what the evidence actually proves, but what we say is not the evidence.

The point of me talking to you at the moment -- and when I have finished, Mr Myers speaking to you -- is to give you an idea of where we're coming from, in effect, what we are suggesting you should be looking out for, so you get an idea about what's in store. That may help you. If we're doing our jobs properly, it should help you in due course to identify what may be the important bits of evidence that you need to be looking out for.

Okay? So that's really the point of an opening: it gives you an idea of where the battle lines are, if you like.

You can find this information in lots of different places now, as you already know. But if we just go back, please, to divider 4, what we have there is the floor plan. What I'd like to do now, before we move on to the allegation, is to just play to you the video that was taken of the unit as it was back in 2016.

MR JUSTICE GOSS: Yes, certainly.

MR JOHNSON: If you just pause there. You'll probably wonder what Op Hummingbird means. It just means Operation Hummingbird and that's the generic name for the case. It has no significance so far as you are concerned.

(Video played to the court)

Just pausing there, the door that we're about to go through, if you look at the plan --

MR JUSTICE GOSS: I'm really sorry to interrupt you, but my screen's just fuzzy.

(Pause)

MR JOHNSON: That's the door we're about to go through, it's the one at the bottom.

MR JUSTICE GOSS: Is it best to turn to the second page then, Mr Johnson?

MR JOHNSON: Probably, yes. The one at the very bottom of the page, thank you, my Lord.

(Video playing continued)

You can see that described on the plan, blood gas.

(Video playing continued)

Can we stop there, please? The controlled drug cupboard, drugs that are controlled by the Misuse of Drugs Act, and that includes, for the purposes of what you are going to be hearing about, morphine, which is sometimes known as heroin, a painkiller, and used to sedate patients, and it features in this case. So you might just want to make a mental note of where that is on this video. Thank you.

(Video playing continued)

So that was nursery 1, ladies and gentlemen, after the unit had been cleared out in effect. So if we just go back to divider 5 in the jury bundle, please, so the white file. You can see that our guide on the video walked round what was in effect a deserted room, but these photographs were taken when the unit was operational. You can see that photograph 2 is looking into nursery 1, through the doorway that that lady who's on the video has just walked out of, so the view in.

And you can see incubators there.

Photograph 3 is back towards the entrance doors that the narrator and the camera operator came through at the beginning of the video.

Photograph 4 is taken from just inside the first door to nursery 1 that the camera went into in the video, looking into the far right-hand corner, and you can see where the incubators were at the time.

Photograph 5 is just the other side of that part wall that comes out from the wall -- comes out at 90 degrees from the wall in which the two-doorways are set and looks towards the same general area as the direction of photograph 4.

Then finally, photograph 6 is taken from inside the doorway that the camera just exited, looking back into the room at either the first or the fourth incubator, depending on whether you've counted from the right or the left of the plan. Okay? So again, this is material that we will deal with as part of the evidence, but just on the basis that repetition helps us all to understand things and seeing things visually often helps many people more than a description given in words.

So far as this case is concerned, this is the critical room, nursery 1. Because different people were at different points at different times, we'll just continue the video tour to understand the interrelationship between the locations in the unit.

Thank you.

(Video playing continued)

What we can see in that area now, ladies and gentlemen, is a small desk and two chairs, but what there was there at the time, if we look back at the photographs behind divider 5, that single sheet, was a long desk. You can see one of the blue chairs is in the same general area, but there was a much longer desk there at the time and you can see that that's described on page 2 behind divider 4, so just going back a page, as the nurses' station.

That's an important location in the context of the evidence you're going to hear as well, so make a mental note of where the nurses' station is and, in particular, its relationship with the location of nursery 1 and the doors into nursery 1.

Just looking at that video screen at the moment, and superimposing that on to what we can see on page 2 behind divider 4 of the printed maps, you can work out for yourselves, really, that that open doorway there (indicating) is -- I think should be nursery 3 or nursery 4. It's probably the foreshortening effect of the camera, but we'll see in a moment.

(Video playing continued)

Stopping there, please. These windows, when you come through either doorway into nursery 1, are the windows that are on the far side of the nursery. Okay?

Although they're windows, you probably don't need a barrister to tell you that you can't see through them because -- there's the picture.

(Video playing continued)

If we just go back to the digital sequence, please.

I know Mr Murphy's told you this, but I'll just repeat it. The top left-hand corner in yellow, you can see [Baby K] and it says "Objects list".

If you click on objects list, there's the video.

Any time you want to watch that video, you can watch it.

It's there for you. There will be other videos as well demonstrating various medical techniques which some of you at least won't have seen before but which are relevant to this case.

Moving back, please, to divider 1 and the indictment, the critical date so far as this case is concerned is 17 May 2016 -- sorry, February.

17 February 2016.

What you will hear evidence about in due course is that by this stage, Lucy Letby had murdered five children. She murdered a child called [Baby A] -- you'll have all this in writing, okay. She had murdered a child called [Baby A] on 8 June 2015, a child called [Baby C] on 14 June, [Baby D] on 22 June, [Baby E] on 4 August, and [Baby I] on 23 October.

She had also attempted to murder [Baby B] on the night of the 9th and 10 June, who was a twin to [Baby A]. She had attempted to murder [Baby F], who was the twin of [Baby E], on 5 August 2015. And she had attempted twice to murder a child called [Baby G] on the 7th and 21 September 2015.

After what we allege she did to [Baby K] happened, Lucy Letby went on to murder two of three triplets called [Babies O & P] on consecutive days, on the 23rd and 24 June 2016.

By then, she had also tried to murder two other children, a pair of twins, [Babies L & M], on 9 April and finally, so far as this list is concerned, a boy called [Baby N] on 3 June 2016.

Again, that will be part of the agreed facts if you were to look for it now behind divider 3, you wouldn't find it there yet, but you will get it in due course, you will get the list. But as a matter of fact, many of these events are also in the sequence of events, so if we can go, with Mr Murphy's assistance, to tile 1 of the sequence. Click on that, please. It takes us to a digital document where we have marked the time of death of [Baby A], followed the next day by Lucy Letby searching for his mother, a lady called [Mother of Babies A & B], on Facebook.

The next day, the twin [Baby B], Lucy Letby attempted to murder and has been convicted of that offence. And that evening was again searching for [Mother of Babies [A & B].

On Sunday, 14 June, the death of [Baby C].

Later that day, searching for [Parents of Baby C].

Monday, 22 June, the death of [Baby D].

A couple of days later, searching again for [Mother of Babies A & B]. And then a minute after having searched for [Mother of

Babies A & B], so a minute later, searching for [Parents of Baby D], who were the recently bereaved parents of [Baby D].

These aren't the only Facebook searches that Lucy Letby did. She did, as we will hear I'm sure, search for parents of other children who haven't featured in any criminal case. Okay? So we're not saying that the simple fact of a search necessarily proves anything, but Lucy Letby undoubtedly murdered [Baby A], attempted to murder his twin and undoubtedly murdered [Baby D] and [Baby C]. Not only was she searching for their parents but you may think interestingly there, at 21.51 on 25 June, she was searching for [Parents of Baby D] immediately after having searched for [Mother of Babies A & B], the mother of the twins, [Babies A & B]. So that's the significance, we say, of that evidence. It won't surprise you to know, as we run through the chronology, we'll get to a point where she was searching for somebody or some people connected with [Baby K]. That's at the end of the chronology, so I'm just flagging up for you what the relevance of this is.

Tile 2, please. More Facebook search history. This information marks the death of [Baby E], the murder of [Baby E], and the attempted murder of his twin, [Baby F]. We see, as before, the next day, a search for [Mother of Babies E & F], which was repeated a couple of weeks later, on 23 August.

Tile 3, please. Still searching for [Mother of Babies A & B].

Monday, 7 September, the first attempt that Lucy Letby made to murder [Baby G], later that evening searching for the [Mother of Babies E & F].

21 September, the second attempt to murder [Baby G]. Later that evening, searching for [Baby G]'s mum.

[Baby I], another of the children Lucy Letby murdered. There was an event, I should say, leading -- there were several events leading up to the murder of [Baby I] on 30 September, 13 October, the 14th and the 23rd, and they were separated by searches not only for [Mother of Baby I] on 5 October at 01.16 but also, either side of that, a couple of days before, for [Father of Baby D].

And significantly again, you see, a minute after having searched for [Mother of Baby I] on Monday, 5 October, Lucy Letby was searching for [Father of Babies E & F], children that she had murdered and tried to murder.

There's more material there, but again we'll -- I'm not going to take you through this document line by line because we'll deal with it in evidence.

Next, please, tile 4 has essentially very similar information. I'm not going to run through this. I'm sure you understand the point by now.

At the end of the sequence we have tile 301. Here we see Lucy Letby again searching for [Mother of Baby I], but more significantly the times of events concerning the twins [Babies L & M], and also [Baby N] and [Babies O & P], who were two of three triplets that Lucy Letby murdered, and you can see searches there associated with those events.

I'm going to go back to the sequence now, ladies and gentlemen, and as part of the sequence I'll deal with the [Surname of Baby K] Facebook search. That will come at the end. So tile 6, first of all, dealing first with [Baby K]'s birth.

So just after 9 am, so 09.05, as you can see, on Monday, 15 February, [Mother of Baby K], who is [Baby K]'s mum, rang the Countess of Chester with worrying symptoms. The symptoms are on the next tile, paragraph 7.

I'm going to go into a little bit more detail here, more to demonstrate how this digital document works. So [Mother of Baby K] arrived at hospital at 09.58. You can see that time in the black bar. On arrival, initial triage assessment, and some medical shorthand that will be explained to us. [Mother of Baby K]'s temperature, pulse, blood pressure:

"Contractions, irritable uterus, palpable PV loss, PV blood."

If Mr Murphy then clicks on that, please. It gives you the original document. So as we call the medical and the nursing witnesses, we will deal with all these documents. I'm in no position to talk, but some of these doctors at least have fairly appalling handwriting. That's really the point of the previous page: the handwriting has been transposed into typescript on the previous page. You can see there the information. Okay?

Going back to the sequence, please, to tile 9. You can do all this on your iPads, I'm sure you understand that.

(Pause)

Occasionally, we get a gremlin. Not surprising.

MR JUSTICE GOSS: You can get it up in a flash on the iPad.

MR JOHNSON: Yes. Your Lordship can, I can't.

Tile 9. I'm not going to go to the source material here, but if we click on the typed version of it, what we see there is a note at midday, showing that on the 15th the medics believed that [Mother of Baby K]'s cervix was dilated and she was in preterm labour. So [Mother of Baby K], or [Baby K], was very, very premature. At this stage 24 weeks plus 6 days, you probably all -- most, if not all, of you know a standard pregnancy is anything between about 38 and 40 weeks, so this is very, very premature. But [Mother of Baby K] was in labour, having presented herself to her local hospital.

If we move on to tile 10, please. If we scroll down a bit. Midway down that section you can see the words:

"Explained re need for an in utero transfer."

What that means is that the objective for a safe delivery of a child that was this premature, like [Baby K], was to get [Mother of Baby K] to the most specialist level of hospital. But the delivery units -- maternity units around the country are essentially put into three categories. A tier 3 or tertiary centre is the top category, for example St Mary's in Manchester.

Chester falls within the Mersey/Cheshire area and at the time there were two tertiary centres that dealt with the most premature deliveries. One was the Liverpool Women's Hospital in Liverpool 8, Liverpool city centre, and if you know where that is, and the other was at Arrowe Park, which is near Birkenhead, just off the M53. So the objective, because [Baby K] was so premature, was to get [Mother of Baby K] to either -- well, to get her to a tertiary centre.

Tile 11. Looking in the top right-hand corner of the screen first of all, you see this is a note of Dr Sara Bringham. She was the consultant obstetrician on duty at the time, and again you probably all know this, but it's important that we explain. A consultant obstetrician is the most senior level of doctor whose specialty is pregnancy, childbirth and the time immediately after the birth.

Here we can see that Dr Bringham's notes show -- it's all medical shorthand:

"24+6/40."

Do you see that? Which means that the gestation of the foetus, soon to become the baby, [Baby K], was 24 weeks plus 6 into a forty-week pregnancy. That's what the shorthand means.

We can see there, I think it's further down, it may be actually in the notes themselves, I'm not going to go to the notes now, but what the notes tell us is:

"We will need to transfer to level 3 NNU."

So this is a repetition of what I've just in effect explained to you: because of the fact that [Baby K] was so premature, the objective of the medics was to get [Mother of Baby K] to the most specialist level of hospital as soon as possible.

Usually, the lower level of gestation that a level 2 hospital like Chester would be expected to cope with was 27 weeks, so [Baby K] was a week and a day below what would usually be the most premature level that Chester would be expected to deal with.

But as always, the best intentions of people are often frustrated by events, and events overtook the best efforts of the medics here because one of the things that has to be considered in transferring a lady who is in labour with a very premature child is the balance of risk. The risk here was that if [Mother of Baby K] had been transferred, she might well have delivered in an ambulance on a motorway, and it won't surprise you to know that, albeit a level 2 hospital usually only deals with children of 27-weeks-plus gestation, that's a much better prospect than being born in the back of an ambulance.

So the decision was taken, particularly as it happened on this occasion the nearest level 3 centre was actually at Preston -- not in Liverpool and not in Manchester but Preston -- the decision was taken to keep [Mother of Baby K] at Chester. That fact is recorded at tile 12, so if we just move on one. There you see:

"Confirmed hospital: Preston. Non-completion reason: cancelled patient, unstable to transfer."

So that is the reason why [Baby K] had to be born in effect at Chester. That decision you see is timed at 14.31 on 15 February.

Now, faced with the imminent arrival of a very premature baby, one of the things that is done is that the mother is given a dose or doses of steroids, which help the very premature lungs of the premature child to develop and assist the child to breathe when it is born.

[Mother of Baby K] received that treatment, she was kept under close observation and, no doubt for very good reason, the arrival or the impending arrival of such a premature baby was inevitably a subject of interest for the staff in the neonatal

unit because if and when [Baby K] was born, it was inevitable that, given her prematurity, she would be admitted to the neonatal unit.

We have copies of messages which Lucy Letby was sending at about this time on her phone and she was receiving, and many of these messages are in the sequence of events. So for example, if we go to tile 29, you can see the first part of the message sent by Lucy Letby to Ailsa Simpson refers to a conversation they've been having in previous texts that you will see in due course, but I'm not going to deal with them now because they're of peripheral relevance. You can see after the smiley, it says:

"24-weeker wanted NVD [normal vaginal delivery] so was 6 centimetres when we left this morning."

This is on the morning of the 16th. Then talking about another male child who was on the unit.

Ailsa Simpson replied at tile 35, amongst other things:

"It's a shame that mum wasn't stable enough to be transferred out."

So here we have, in effect, corroboration or confirmation of what's recorded in the medical notes in texts that are passing between the nursing staff, which on this occasion included Lucy Letby. You can see that final message, 16 February at 19.08, which was about -- [Baby K] was born at 2 o'clock the following morning, I think 02.12, from memory. So not long before [Baby K] was born.

Tile 38, please. Moving on through, we can see that by 01.20 in the morning of Wednesday, 17 February, [Mother of Baby K] was about to give birth:

"Fully dilated, bulging membranes. Should we AROM to expedite delivery?"

Artificial rupture of membranes. I don't think, as a matter of fact, that one is in the glossary, but that what's it means.

This is the note of Dr Jonathan Ford, who you can see from the name badge, if you like, in the top right-hand corner, was a specialist registrar. I'm sure again you probably all know this, but a registrar is the grade of doctor that falls between -- consultant is the top grade, registrar and then senior house officer was the way things were arranged at this hospital at this time. So in effect, a middle-ranking doctor.

[Baby K], as I just said, I think, was born at 02.12 that morning. Immediately following her birth, she did remarkably well for a child of such prematurity and tile 48 is the notes made at the time of birth. Amongst other things, you can see something called an Apgar score at the bottom. You will find in the glossary on the first page, behind divider 2, a reference to an Apgar test. It's the first page behind divider 2. It reads as he will follows:

"The Apgar. A scoring system that evaluates the physical condition of the newborn at 1 minute after birth, again at 5 minutes after birth, and also at other times."

And the example is given of 10 minutes after birth:

"The newborn receives a total score, Apgar score, that ranges from 0 to 10 based on rating colour, heart rate, respiratory effort, muscle tone and reflex/irritability. Scores of 7 or above indicate that a baby is in good condition."

So you see from the readings that were recorded for [Baby K] that at 1 minute, she was 4, but at 5 minutes, 9, and also 9 again at 10 minutes. So that's why I say that for a child of her prematurity she was doing exceptionally well.

We know where Lucy Letby was when [Baby K] was born, because there is a computerised record that was automatically timestamped by the computer and it's at tile 50. It's the fourth page of the document. We'll have to go, I think, to the document itself, please.

It's at 02.14, I think it's the fourth page of this.

(Pause)

The system is misbehaving a bit at the moment. That won't surprise you with technology. That's why I gave you the paper as well. The system does show that Lucy Letby has countersigned -- there we go. 02.14.

There in the middle of the page. Thank you. 02.14 on the 17th "Co-signer: Lucy Letby" in that section. You see Sophie Ellis is the -- a lot of these events of giving medication to children have to be accounted for by a nurse and countersigned by another nurse, so there are two signatures. The digital signature is imposed on the document by the nurse in question entering their personal code into the system and then it's timestamped automatically by the system.

So this is a bit of a side wind, but the reason I'm mentioning it is just to show you the level of detail that we've got here

and hopefully to give you a practical introduction to the documents. So we are about to have a break for lunch, but if you can just get out the big black files, please, and go to page 4 of 10.

Almost exactly midway down the page we have [Baby K]'s birth marked at line 66 and then at line 67 this event which we see on this specific tile. And it's in blue text because, as I said to you before, anything signed for by Lucy Letby is in blue. The user, Sophie Ellis, in the penultimate column, co-signer Lucy Letby. I'm reading from right to left. An e-prescription under record type. The time, 02.14, and the date, 17/02.

Just while we're there, and literally my final point before we break, you notice that from the moment [Baby K] is born at 66 there are a lot of entries that are shaded in yellow and those entries that are shaded in yellow are [Baby K]'s entries so that you can put those into the context of what was going on with other children.

So the particular entry I've just referred you to on the screen, line 67, relates to the child RN. It's a bit like a jigsaw puzzle, all these different pieces of information. The best way -- what we're giving you in effect with this document and with the sequence of events is the pictures of the jigsaw puzzle in the right order, because if we just left you to sort it out for yourselves it'd be a ridiculously complicated time-consuming task. All right?

My Lord, that may be a convenient at the moment.

MR JUSTICE GOSS: It is certainly a convenient moment to break off.

So we're going to have a break now and you are obviously acquiring information. Don't be concerned about trying to assimilate every particular fact or detail you're being given at this stage. This is very much an introduction by Mr Johnson to the evidence that is going to be gone through in due course, so don't worry about that. It's really just ensuring that you're understanding these documents, as I'm sure you are, because you're being taken through them very carefully.

Could you be ready, please, to come back into court at 2.15, that's an hour and 10 minutes, to give you an opportunity and everyone else to get refreshment and the like. Please don't talk to anyone, even each other, about this case or anything to do with this case. By all means speak to each other, but nothing to do with this case or anyone involved in this case. You are still subject to that direction.

I didn't check with you this morning, but I assume you did obey me when I said to you to read through "Your Responsibilities as a Juror" which has all that information in there.

So ready to be back in court at 2.15, please.

Thank you very much. Leave everything here. You leave everything here when you go, apart from your personal possessions, each time you come in and out of court.

(In the absence of the jury)

MR MYERS: My Lord, I don't want to eat further into lunchtime now, but before we conclude today may I return to the issue of Ravi Jayaram and the item that was identified in the course of legal argument and the requests we make we seek assistance of the court with, in obtaining further information as to what that relates to? I don't propose to deal with that now unless we're invited to because I see the time, but perhaps before the end of today. It's a discrete matter but perhaps I could raise that with your Lordship.

MR JUSTICE GOSS: Yes. How long do you anticipate it will take?

MR MYERS: Five minutes.

MR JUSTICE GOSS: Shall we deal with it at the end -- towards the end of the day, in other words after the jury have left court?

MR MYERS: Yes, I anticipated that. I didn't mean after lunchtime. It's just so your Lordship knows.

MR JUSTICE GOSS: In relation to the assembly of the court, that would be the most convenient time to do it.

MR MYERS: Thank you.

MR JUSTICE GOSS: I wasn't actually concentrating. Has the defendant got copies of these documents?

MR MYERS: Yes, I understood she had, my Lord.

MR JUSTICE GOSS: Good, thank you very much. I didn't know whether they were already there. Thank you very much indeed.
2.15.

(1.04 pm)

(The short adjournment)

(2.15 pm)

(In the presence of the jury)

MR JOHNSON: Welcome back, ladies and gentlemen. I'm going to take you now to the point at which [Baby K], having been born at the Countess of Chester, was admitted to the neonatal unit. But just before I do that, we'll deal with tile 51, please, Mr Murphy.

These are retrospective notes made by Drs Jayaram and Smith. Because it was into their care that [Baby K], having been born, was passed. At 02.32 that morning, [Baby K] was intubated by the registrar Dr Smith, who was working under the direct supervision of the consultant Dr Jayaram.

Rather than perhaps me try to explain what intubation involves, I'm going to play you another video, which makes it very clear.

(Video played to the court)

If you look carefully at the tube, ladies and gentlemen, that is going down the baby's throat, it's not entirely clear, but you will probably get a pretty good idea that there are marked measurements on the tube. So what you'll hear about in due course is that these tubes are marked off as being however many centimetres and subdivisions of centimetres at the lips.

Okay?

So the end that's down in the windpipe is zero.

Then you are counting back to whatever is the reading at the lips, which gives you how far the tube should be in when you check it on the X-ray, so that you know that a tube -- and in this case you'll hear that [Baby K]'s tube, I think it was either 6 or 6.5 centimetres at the lips. This becomes very important because, as you will hear, there were multiple, three on this occasion, occasions when this tube moved and that really is what this case is all about. Okay?

So just having watched that video and with it fresh in our minds, you've seen the tube being clamped, and then it being tied in place, and that is whilst -- I'm sure the doctors will tell you in due course that cannot eliminate the possibility that a tube will move, but it is taking all reasonable steps to ensure that it doesn't move. You will understand what the consequences of the tube moving can be, I'm sure, without me having to explain.

If we can continue with the video, please.

(Video playing continued)

As these videos are played to you, ladies and gentlemen, they'll be embedded in that iPad that you've got, so go into that menu at the top left, "Objects"

I think it's called, and you'll be able to remind yourselves when you need to.

So [Baby K] was intubated, she was given surfactant, which is the substance that the narrator just told you about on the video, to help the lungs be more pliable, and she was then immediately admitted to the neonatal unit at 02.40. So born just after 2 o'clock, intubated 2.32, admitted to the neonatal unit at 02.40.

Just pausing at that point in time, if you like, if we go to tile 36 of the sequence and scroll down, please. I'll just explain this to you from the top if I may. At the top of this graphic you have the various levels of medical staff, first of all, that were on duty or on call.

Dr John Gibbs was what's called paediatrician of the week. You'll be hearing from Dr Gibbs this afternoon, as it happens, and he will explain to you the systems that were in place in the neonatal unit at this time.

The on-call consultant, in other words the out-of-hours senior doctor, was Dr Jayaram. Again, from whom you'll be hearing, albeit in his case it'll be early next week. He was involved with Dr Smith whose name you see further down under the clinical staff, along with the night senior house officer, Dr Laura Lo.

Moving to the nursing staff, the registered nursing staff, in other words the qualified trained nursing staff, four in total to cover the unit that night: Caroline Oakley, again, who will be a witness; Joanne Williams, also a witness; Lucy Letby, the defendant; and Sophie Ellis. Then finally, the nursery nurse, otherwise known as a band 4 nurse, Valerie Thomas.

Then moving down the page, please, you've got another source of reference. That's the graphic which is also in the NNU review document that we looked at earlier in the black file.

So what we see then, as I dealt with partially before, is Caroline Oakley who was, as you know, the shift leader, responsible for the two babies in intensive care in nursery 1.

And in nursery 2, Lucy Letby responsible for AR and GT. Joanne Williams for RN.

Nursery 3, Sophie Ellis responsible for two there and one in nursery 4. And Valerie Thomas for two in nursery 4 and one in nursery 3, together with a sort of supervisory role for a baby in transitional care.

That's a baby who's not in any of these four nurseries but was on the verge of being ready to go home.

Given her extreme prematurity, [Baby K] was taken straight into nursery 1, pending her transfer out to a level 3 hospital. As I've already pointed out, there were two other babies in there, KC and HC.

Just one point, a point I've already made: Joanne Williams, of course, being the registered nurse who only had one baby, she was given or she was designated as the nurse to care for [Baby K].

Tile 52, please. Between 02.36 and 02.50, Lucy Letby was making notes for the baby AR, who was one of the two for whom she was the designated nurse in nursery 2. If we go to the document, please, Mr Murphy, I'll show you where that information comes from.

So we can see there that the note has been created and logged on the system at 02.36 and Lucy Letby signed out of the note at 02.50. So that's where we get the times from.

(Pause)

Tile 57, please. At 02.45 [Baby K] was given the surfactant that I was talking about earlier. I think I suggested mistakenly she was given it earlier; she wasn't, she was given it at 02.45.

As you saw in the graphic, it's administered down the ET tube, and the digital prescription for that is timed at 3 o'clock, which I won't put it up, but that's at tile 62.

At tile 63, please, we move now to 03.00.

Intravenous fluids were set up for [Baby K] by Nurses Joanne Williams and Caroline Oakley, who you will remember is the other nurse who was a designated nurse for patients in nursery 1. So this is a two-nurse job, and the intravenous fluids are the means by which a premature baby is fed initially.

At that time, at 3 o'clock, Lucy Letby was making an entry on the notes of one of her children in nursery 2, child GT. If we go to the very next tile, tile 64, and we go to the underlying document, we can see that she was doing that between 03.02 and 03.12 -- I think that's 03.03 to 03.04, but I think there may be

a -- at the top left-hand corner of that page, yes, you can see there's a sequence of notes. So 03.04 to 03.09, and then scrolling down again, an activity date there of 03.12 to 03.12. So she was engaged in nursery 2, [Baby K]'s in nursery 1, between about 3 o'clock and just before quarter past 3.

As Lucy Letby was finishing her note, if we hold that time of 03.12 in our minds and go to tile 74, please, we can see that Joanne Williams was entering the neonatal unit, having been to the labour ward. There's a bit of confusion here. If you look at the wording of the tile there, it says, "Maternity neonatal to labour ward", which would suggest that you're going from the neonatal unit into the labour ward, wouldn't it? And the reason it appears like that is because, if we go to the document that underlies this, 03.11, we can see -- if you can highlight the line, please, Mr Murphy.

Thank you. That's what the document says. But enquiries after the event establish that that had been mislabelled in the computer system. In fact, it's the other way round. So although it suggests it's someone leaving the NNU to go to the labour ward, it's actually Joanne Williams coming from the labour ward back into the neonatal unit.

At 03.15, tile 75, Dr Jayaram made a call to the transport service to arrange [Baby K]'s movement to a level 3 hospital. This isn't Dr Jayaram's notes, this is a note made by the transport service, so this is independent of Dr Jayaram. At that time Lucy Letby was giving medication to the child GT, having just finished the notes at 03.12. We'll get the time at 03.15 from tile 77, please, Mr Murphy.

So this again is a double-signed entry, signed by Lucy Letby and by Caroline Oakley. I'll keep repeating this, I hope it is not annoying you, but is just to sort of embed it in your brains that Caroline Oakley, of course, was in nursery 1, she was the designated nurse for patients in nursery 1.

At 03.30, so coming very close now to the time of the incident that we allege was an attempted murder, at 03.30, going to tiles 82 and 83 -- and either will probably do. Go to the document, please, Mr Murphy.

Reading across the top there, into the 17th, just under where it says "17/2/16, 03.30", we can see that Lucy Letby has there -- if we run down that, please, to the bottom, the initials "LL" at the bottom -- recorded the vital signs of that child, which Lucy Letby timed at 03.30.

Also at 03.30 a lot of things were being recorded.

You will remember, as we looked at the video of nursery 1, that I stopped the video and pointed out the controlled drugs cabinet and mentioned morphine. If you go to -- it's in the neonatal review at line 122.

(Pause)

The same information is at line 84 of the sequence of events bundle, which is the spiral-bound bundle, page 13 at the top. It's also in the digital version at tile 84. So line 84 or tile 84 of the sequence, line 122 of the neonatal review. So the same information from three different sources.

If we look at the underlying document, please, Mr Murphy, which is the controlled drugs register, this is slightly more difficult to interpret because it's all handwritten.

But scrolling down, please, to the 17th near the bottom there, we can see "FI [Surname of Baby K]", so "[Female infant] [Surname of Baby K]". It's important, this point, because [Baby K] hadn't been named at this point. Okay?

"1x50ml. J Williams [signature]. Lucy Letby [signature]."

If we scroll up to the top to work out what we're talking about, we can see there right at the top written:

"Morphine in 10% glucose syringes."

So that was being prepared at 03.30. This is a sedation drug -- a painkilling and sedation drug.

One of the reasons [Baby K] was to be given morphine was because she had been intubated. You'll remember the narrator on the video said that often babies who have breathing tubes in and are on a ventilator have to be sedated so that they don't interfere with the tubes.

It's common sense, isn't it?

Nurse Williams, Joanne Williams, also recorded the vital signs of [Baby K]. If we go back to tile 85, please, the next tile I should say. You'll get very familiar very quickly with all these documents, ladies and gentlemen, because most of them look the same. If we can go to the document, please.

This one starts at 02.45 because that's when [Baby K] was admitted to the NNU. You see "Name: baby girl [Surname of Baby K]" or "Female infant [Surname of Baby K]". 3.30 is the second column.

If we scroll down, please, we see there, there's a number of readings which will be explained to you, and JW for Joanne Williams.

I am sorry to repeat a lot of what I'm saying, but it all needs to be contextualised. So if we just go back to the population distribution charts. For those of you who still have out your neonatal reviews, probably page 2 is the best place to look for this, please.

Joanne Williams, as we see from the position at the end, was the designated nurse for [Baby K]; her name appears where I'm pointing. You see the other nurse in that nursery was Caroline Oakley. So two nurses in the nursery with [Baby K].

But we know that just before 03.40 Caroline Oakley was off the unit, and we know that because if we go to tile 93, we have the door swipe data of Caroline Oakley coming back into the unit. We can't say when she left, because that's just a push button exit, but we can say when she came back, so we can confidently say that immediately before 03.40, Caroline Oakley, who was the other nurse in nursery 1, was off the unit.

We also know that Valerie Thomas, the level 4 nurse, who you can see was looking after babies in nursery 4 and nursery 3, was also off the unit, that's tile 94, because she too is recorded by the system as coming back in at 03.40.

At that time, at 03.41, Dr Jayaram was on the phone at the nurses' station. You can see the nurses' station marked in that plan on page 2 in the neonatal review.

We know that because the transport team, so somebody on the end of a phone somewhere else, was making a record of the conversation with Dr Jayaram at 03.41. That's tile 95. Can we go to the record, please, Mr Murphy?

There you are. Four lines down:

"03.31. Called Arrowe Park Hospital to check they can accept baby on shift."

Sorry, no, I've got that slightly confused, I think.

Sorry, 3.41, yes, sorry:

"Called Dr Jayaram back with the above plan and he was agreeable totally with all of the above."

So two nurses off the unit, just up to 3.40, Dr Jayaram distracted by a telephone call coming in from the transport team

that had been updating him about what had been going on. And it was at about this time that [Baby K] collapsed.

The allegation that we make against Lucy Letby is, we say, very straightforward. Nurse Joanne Williams, who was the designated nurse for [Baby K], will tell you that she left, having stabilised [Baby K] at 03.30, and we saw all the readings that she took, the signing out of the morphine with Lucy Letby, Nurse Williams left the unit and went to see [Mother of Baby K], [Baby K]'s mum, in the delivery suite. So she left the ventilated and very premature [Baby K] for that sole purpose and she wouldn't have been gone long, and she wasn't gone long.

Dr Jayaram was distracted, Caroline Oakley, the other nurse in nursery 1, had been out of the unit.

Valerie Thomas had been out of the unit. That would leave Sophie Ellis and Lucy Letby in the unit, covering four nurseries.

While Nurse Williams was out of nursery 1, Lucy Letby was in there with [Baby K]. She was in there on her own and [Baby K] collapsed because that is what Dr Jayaram saw when he walked into nursery 1, having spoken to the transport team.

Nurse Williams had left [Baby K] connected to a ventilator that was breathing for her. [Baby K] was connected to another machine that was checking her heart rate and her saturations. By saturations, again you probably all understand it, but I'll explain, the oxygen level in the blood. Those machines are set to predetermined parameters so that if either the heart rate or the -- not the breathing rate because you're on a ventilator, but if the heart rate or the oxygen saturations in the blood fall below a predetermined level, alarms will sound. If there was an issue, those alarms would have sounded, but they didn't.

The reason the alarms didn't sound was because somebody had disabled them. So when Dr Jayaram walked into the nursery, he saw Lucy Letby was standing over [Baby K]. [Baby K]'s blood oxygen, her saturation levels, were falling, but the alarm was not sounding. Not only that, but Lucy Letby was doing nothing.

We say that in those circumstances, the only reasonable thing for a nurse to have done was either, or both, to call for help and/or to use the Neopuff, which you saw on that video, to breathe for the child.

The reason [Baby K] was desaturating was because that ET tube had become displaced. We suggest that the fact that Lucy Letby was doing nothing and the fact that the alarms were not sounding is evidence from which you can conclude that it was Lucy Letby, the convicted murderer, who had displaced the tube.

If we go to Joanne Williams' notes, made after the event, at 101, she recorded -- if we could just click on it, please -- the fact that the tube had displaced. Do you remember seeing in the video that CO2, that carbon dioxide detector? I think the medics refer to it as a capnograph. That wasn't changing colour. So you can see:

"Approximately 45 minutes later, began to desat to 80s."

In a child of this age that's very dangerous:

"Dr Jayaram in attendance and on examination, colour loss visible [that's a reference to [Baby K]] and no colour change on the [CO2 detector]."

That means no carbon dioxide coming out, therefore the tube is in the wrong place:

"Therefore [query] ETT dislodged. Removed and re-intubated on second attempt with a 2.5 ETT measuring 6.5 centimetres at the lips."

You understand what that means because I think I explained that to you before lunch.

So it's a very simple factual issue we say in this case. If that tube was displaced, how did it happen?

Dr Jayaram made notes about it, about an hour later, at tile 125. I won't go into them now because you'll be hearing from Dr Jayaram, but in the immediate aftermath of this incident, [Baby K] was given what's called a loading dose of morphine.

First of all, she was given a bolus, which is a simple injection of morphine, and then given a loading dose, which is a dose, which is part of a drip, which is designed to keep the level of morphine in the body at a set level. So it's designed to sedate the child, to guard against the possibility that this very, very premature child had wriggled so much that she had extubated herself.

Just as Lucy Letby had signed out the morphine with Joanne Williams at 03.30, so she was involved in the administration of the morphine dose and then the infusion, which were both timed at 03.50. If we go to tile 103, into the document, please, if we could just concentrate on 03.30 on the left-hand side of the page, which you'll see is the first column that's actually filled in in manuscript, you can see right at the bottom the initials are JW. But you'll see that the writing just above that says:

"03.50. 100 milligrams per kilo."

I don't know if it's milligrams or micrograms per kilo of morphine. We say that's Lucy Letby's handwriting.

So we say in effect, Lucy Letby had been caught virtually red-handed by Dr Jayaram, and this event wasn't the only time that [Baby K] desaturated and displaced her tube on that shift. It happened twice more and on each occasion we say the evidence establishes that Lucy Letby was there, remembering, of course, that her designated children were in nursery 2, but [Baby K] was in nursery 1.

The second desaturation was at about 06.15 that morning according to Dr Jayaram's notes or 06.30 according to Joanne Williams' notes. But before we get to that point, we can see from [Baby K]'s notes that Lucy Letby became closely involved with [Baby K], despite the fact that her children were in nursery 2 and despite the fact that Joanne Williams, her primary responsibility was [Baby K], the extremely premature baby, her other child was in nursery 2 where Lucy Letby should have been. In other words, Lucy Letby, despite having primary responsibility for what's going on in nursery 2, was making [Baby K] very much part of her business.

At tile 109, at 04.20, so about half an hour after [Baby K] had desaturated in the circumstances I've just explained, Lucy Letby and Caroline Oakley signing and co-signing for medication given to [Baby K] whilst Joanne Williams was coming back from having seen [Baby K]'s parents again. We get that information at tile 111, please.

At tile 119, 20 minutes later or so, medication being given to [Baby K] by Lucy Letby and Caroline Oakley.

Caroline Oakley of course was supposed to be in nursery 1.

At tile 124, between 04.48 -- I won't go to the records now but the records end at 05.07 -- Joanne Williams, [Baby K]'s designated nurse, was completing nursing notes for [Baby K], and while she was doing that, Lucy Letby and Nurse Caroline Oakley were giving further medication to [Baby K]; tiles 126 to 128.

At 05.23, tiles 133 to 135, 05.23, Lucy Letby was again involved with [Baby K] alongside Joanne Williams.

At tile 143 at 05.53 in the morning, another note from the transport team, timed at 05.53 to the effect that Dr Jayaram was very keen to get [Baby K] to Arrowe Park Hospital, the tier 3 centre, and you can see the second line:

"Dr Jayaram keen not to miss window of opportunity whilst baby stable."

So that's just before 6 o'clock.

Not long after that note was made, Lucy Letby went through the formality of booking in [Baby K] to the neonatal unit. Go to tile 148, please, and go to the original note, please.

On the right-hand half of the page, we can see Lucy Letby's initials there. She created the booking-in document at 06.04. It was then closed at 06.10.

If we scroll down, please, then on to the next page, please.

You see there, time 06.10, this is all self-populating material. It's interesting, if you look, one of the pre-populated bits of information that comes up for a child in [Baby K]'s position there:

"Neonate care of ET tube [endotracheal tube].

Patient has an artificial airway [asterisk] secure ETT to taped bonnet. Retie tapes with two nurses in case of accidental extubation. Record tube size and length.

Monitor patient's tolerance of ET tube to aid compliance."

This is all in the checklist.

Much of that information that Lucy Letby had entered into this computerised form, or this computerised record, was taken from a handwritten form that had been completed when [Baby K] was admitted to the neonatal unit.

I don't know, in your -- I'm not quite sure whether every single document is yet in your... I'm going to ask you to look at the handwritten form, please. I'll just find it for you. It's behind divider 6 of B. If Mr Murphy would do me the favour of scrolling back up this display that's on the screen, please.

What we see on the screen is the time the record was created:

"Mother's name, father's name. Date of delivery.

Time of delivery. Admission time. Gestation. Delivery time. Normal delivery. Gestation 25 plus zero. Weight 692. Transfer mode: Resuscitaire. From ward 35.

Please specify extreme preterm. Temperature.

Respirations. APEX SpO2 [which is oxygen saturations] 93% in 80% oxygen. Admitted due to extreme prematurity.

Parents interviewed by J Williams/Ravi Jayaram.

Equipment explained by J Williams."

You will find all that information in this handwritten document and the relevance of it being in the handwritten document is significant because the handwritten notes are kept with the baby on the incubator. So in order for Lucy Letby to create this record between 06.04 and 06.10, she would have had to get the records for [Baby K] from the incubator. And once she had completed the record, the digital record that's on the screen, she would have had to have returned the handwritten records to the incubator.

In between those times that you see on the screen, 06.04 and 06.10, an X-ray was taken of [Baby K]. That is at tile 149. If we could just click on the document, please.

This is timed at 06.07 and 23 seconds, as it happens, and as we'll see from the document itself in a moment. Okay? It was taken by a radiographer called Anne Kember, using a mobile X-ray machine. In other words, the X-ray itself was taken in nursery 1. And so that you understand from the very beginning, I'd like to show you the video of how this is done because it's an important part of the narrative to understand the allegation that we are making.

(Video played to the court)

Thank you. If we could go to the X-ray itself, please, Mr Murphy, which was tile 149.

If we just stop there, actually. You can see there, this is the report by the radiologist, so the doctor who interprets the X-rays, saying:

"ET tube [that's the breathing tube] in satisfactory position. NG tube in satisfactory position with its tip in the gastric body."

So that's a feeding tube. It goes into the stomach.

Do you remember on the intubation video they said it's a good idea to have an NG tube in because that stops them from putting the breathing tube into the wrong hole? So they have a choice of two holes, in effect: one into the lungs, one into the stomach. So the oesophagus or into the lungs.

If we go to the image itself, please, Mr Murphy.

The time of this, the time recorded on the machine, is 06.07.23 which was the time I gave you before, and if that time was correct, it would fall during the time that Lucy Letby was doing the admission notes, which started at -- which was 06.04 to 06.10 or thereabouts.

The time isn't correct or we cannot confidently say that that time is correct. But the picture is correct in that it shows that the ET tube, the breathing tube, is in the correct position. The way that we establish the precise time the picture was taken is by looking at the movements of the radiographer, the machine operator, Anne Kember.

At tile 150 she is recorded in the door swipe data as coming to the labour ward at 06.08 and then, a minute later, at tile 151, through -- do you remember this is -- I can see one of you has got there before me.

This is coming in -- it's the other way round, it's that one that's wrongly labelled. So this is coming into the neonatal ward with the machine. So that's why we are not confident that the precise time on the X-ray image is correct, but it's after 06.09. We know that the process takes 10 to 15 minutes. We know that when the image was taken, the tube was in the correct place.

So bearing all that in mind, within 5 minutes or so of the image being taken, the tube had displaced again.

And who was it that had been taking the notes to and from the baby? We say that that is not an innocent coincidence.

What we say about this episode, this incident, is that having been caught in effect red-handed by Dr Jayaram, Lucy Letby was now trying to create the impression with her colleagues that [Baby K], of 25 weeks' gestation and heavily sedated with morphine, was habitually dislodging her own tube.

But there was a third episode as well. That happened at the time that the night shift was handing over to the succeeding day shift. The handover is between 07.30 in the morning and 8 o'clock. This is another episode, we say, of Lucy Letby seeking to create the impression that [Baby K] was habitually self-extubating; I say extubating. As you'll hear, this wasn't extubation, this was the tube going in, not coming out. We say that this episode will inform your interpretation of what had happened that was witnessed by Dr Jayaram at about 03.45/03.50.

[Nurse B] was the shift leader for the nursing staff that came on for the day shift on Wednesday, 17 February. Because of her role as the shift leader, she came in early and, as she came in, she heard a call for help. The call was coming from nursery 1, it concerned [Baby K], but it was not coming from Joanne Williams, [Baby K]'s designated nurse, it was coming from Lucy Letby, who we say should have been in nursery 2 handing over or preparing for the handover of her babies to the nurses coming in for the day shift.

Lucy Letby was at the incubator of [Baby K] in nursery 1. [Nurse B], daytime shift leader, Dr Jayaram the overnight consultant, Nurse Mel Taylor, another one of the day shift, a senior nurse on the day shift, and Nurse Joanne Williams, the designated nurse for [Baby K] overnight, all went in, according to [Nurse B]. And there was Lucy Letby, using that Neopuff device that you saw that's put over the end of the ET tube, helping [Baby K] to breathe. As I said before, that tube had gone in, in too far; not a little bit, it had gone in 1.5 centimetres.

Now 1.5 centimetres doesn't sound a big distance, does it? But when you consider this tube was only 6.5 centimetres at the lips to get into the windpipe, 1.5 centimetres is almost -- I can't do the mental arithmetic. It's between 20 and 25%, that sort of order, isn't it? It was pulled out, the tube, and [Baby K] picked up straightaway.

So the same problem that had happened when Joanne Williams had gone to see [Mother of Baby K], that was witnessed by Dr Jayaram as he walked into nursery 1 at 03.50 or thereabouts, it happened just after an X-ray where the tube had been in the correct place at a time when Lucy Letby had been taking the notes to and from nursery 1 when she had charges in nursery 2, and again at 07.30 in the morning at handover when Lucy Letby should have been in nursery 2 preparing to hand over her children and the nurse who was looking after [Baby K] wasn't there.

We say that that is coincidences too far. As I say, Lucy Letby trying to create the impression, having been caught almost red-handed, create the impression that that this child had a particular problem.

Thereafter, on the day shift -- I'm going to deal with things quickly at this stage and we will deal with them in detail in due course.

If we go to tile 181, please, Mr Murphy. This is the handover at 07.30. Could we just click on the tile, please, Mr Murphy?

We can see that the nurse to whom [Baby K] was handed over was Melanie Taylor. She carried out observations at 7.30 to 8

o'clock, that's the time that [Baby K] was -- just after [Baby K] had desaturated.

At tile 189, the night shift designated nurse, Joanne Williams, updated her notes by quarter past 8 or thereabouts. In there, she recorded the further two desaturations. I'm not going to go to them now, I'm just telling you about them.

At tile 197, please, this is 08.50, so about an hour or so after the day shift had started, the transport team arrived to move [Baby K] to the tertiary centre.

At tile 263, at noon -- it must be 264, I've made a mistake there, tile 264, [Baby K] was moved into the transport incubator. That's at noon. Then 25 minutes later, at 269, 12.25, [Baby K] was handed over to the team that was taking her to Arrowe Park.

Then at tile 292, Lucy Letby replied to a text she'd been sent by a friend asking how busy the night shift had been and she replied:

"25-weeker delivered so fairly busy. How's your mum?"

Tile 297, please. Three days later, at 05.28 in the morning of 20 February, [Baby K] unhappily died at Arrowe Park Hospital. I make it perfectly clear, ladies and gentlemen, we are not suggesting that what Lucy Letby did caused the death. We are suggesting that Lucy Letby tried to kill [Baby K].

At tile 301 we have a tile I showed you earlier relating to events relating to other children after [Baby K]'s stay at Arrowe Park.

Then something I referred to earlier: 2 years later, on Friday, 20 April 2018, if we can go to that, please -- Mr Murphy, I've forgotten to give you the tile number. I think it may be the very final tile. It is.

Tile 302.

On Facebook, Lucy Letby searched for "[Surname of Baby K]". Two years and 2 months and 3 days later, searching for "[Surname of Baby K]" at 23.56 at night.

That in itself proves nothing. When you take it with all the other circumstances surrounding what happened to [Baby K], and what you know about what happened to other children and Facebook searches of their parents, we say it has significance.

No first name, of course, because [Baby K] didn't have a first name when she was at Chester, and Lucy Letby never met [Baby K]'s parents either because she was in there, [Baby K] that is, for such a short period of time.

So ladies and gentlemen, having laid that out at quite some length and in quite some detail, ultimately this case may come down to a single issue. Do you believe what Dr Jayaram says he saw? Are you sure, will you be sure, that he, when he gives you his account, is telling you the truth about what he saw? And if you do, do you accept what we allege Lucy Letby is trying to do, bearing in mind what else we've proved she's done?

I'm going to sit down in a second. When I do, Mr Myers King's Counsel is going to tell you something about Lucy Letby's case. He's going to introduce Lucy Letby's case to you, so that you know where the battle lines are. No doubt he will tell you whether or not it is her case that she was in nursery 1 when Dr Jayaram walked in. And if she was there, what she was or wasn't doing there. Or whether it's her case that Dr Jayaram is a liar, he's not telling the truth, that she wasn't in the nursery at all and has made it all up to get her. I'm sure he will tell you.

It may be that neither of those possibilities that I'm contemplating is an accurate summary of her case, we will see in a moment. Thank you very much.

MR JUSTICE GOSS: Yes, Mr Myers.

MR MYERS: We have an iPad issue, my Lord.

MR JUSTICE GOSS: Well, mine's gone. The batteries are running out, I think. Will you be referring to iPad documents?

MR MYERS: I don't think I will in my opening comments, my Lord, no.

MR JUSTICE GOSS: All right. We'll just carry on. If you want any documents putting up on the screen, they can be put up on the screen by Mr Murphy.

MR MYERS: Thank you.

Opening by MR MYERS

MR MYERS: My Lord, ladies and gentlemen, I want to start by acknowledging this, if I might, that the sympathy of all of us will be with the family of [Baby K]. That's the first thing I want to say when I speak to you on behalf of the defence.

I start by acknowledging that and by recognising their loss in due course. This case doesn't deal with that immediately, but we acknowledge that. It's really important that I emphasise at the beginning that nothing I do or say in this trial is intended to diminish that.

I hope you understand that.

The way in which we feel sympathy for loss or feel sadness experienced by other people is one of the most natural feelings in the world. When that experience relates to a baby or a child, it can be a very powerful feeling indeed, and feeling dislike or even anger when presented with someone who has been convicted of the offences like those that Lucy Letby has been convicted of previously may also be an entirely natural reaction.

That combination, ladies and gentlemen, of natural sympathy for what others have had to experience with the reaction to convictions for crimes like those Ms Letby has already been convicted of means that it could be very easy for some people to approach this trial as if Lucy Letby must be guilty of this offence or, I think perhaps you'd agree, just as bad, on the basis that they don't really care whether she's guilty or not and that they would convict her anyway, whatever.

Well, if that was the approach then the idea that there could be a fair trial would be over before we even begin. You are not those people, ladies and gentlemen.

You have gone through a careful process to be on this jury and you have each taken an oath or affirmation to try Ms Letby and give a true verdict according to the evidence.

You'll understand, not a verdict on the basis of emotional reaction or sympathy or what you've heard or read outside this courtroom, but on the basis of evidence in this trial; and his Lordship has already set that out and, it won't surprise you, you may hear that a number of times during the case, it's so important.

Because a fair trial on the basis of the evidence is what this is all about. The ability to look at the evidence relating to this particular allegation, ladies and gentlemen, to scrutinise it and to assess whether it is capable, that evidence, of proving what is alleged. And that's what we're here to do and to do that without fair vision being obscured by raw emotion or unfair bias against Lucy Letby.

We know, we all know, you understand that, and it will be for you, ladies and gentlemen, ultimately, to decide this on the evidence and, as you already know, not on the basis of what I

say or Mr Johnson, or how anybody behaves or reacts during this trial outside the evidence. It's for you on the basis of the evidence.

And that's all we ask.

Ms Clancy and I defend Lucy Letby and we are grateful to the court for this opportunity to introduce the defence case to you. It's a very early stage of the trial, but at this early stage my task is to identify some key issues for you so far as the defence are concerned and to outline the defence response to this prosecution case.

Can I emphasise, please, ladies and gentlemen, this is only an outline. It is brief. It's going to be much shorter than the prosecution speech. Its purpose is to assist you in following the evidence when we come to it with key issues in mind. So it's not the same as the prosecution's opening speech where they have introduced their case in some detail, as they have to do because they bring this allegation, so they need to set out detail because they have to prove it. Although rather generously, they've begun to talk about what the defence case might be at the end. You'll understand, that's my job, not theirs.

This isn't a defence speech, ladies and gentlemen.

It might look or sound like one but it's really not.

This isn't a defence speech or the defence speech where I explain to you in detail why we say that Lucy Letby is not guilty of this offence; that will come later in the trial after we've actually heard the evidence. So please don't think that at this point I am saying or outlining all that there is to be said. I most certainly am not.

For example, you heard about Facebook searches.

Well, in due course, in the evidence, we'll take a look at that and see what kind of pattern there is or there isn't that applies to this case because that's what that refers to. So we'll look at it.

Likewise a lot has been said to you to acquaint you with the paperwork and the records and to look at them from the prosecution perspective using different items as a jigsaw. The defence will say, and we will deal with this in the evidence, there is a lot of filling in missing pieces in this by the prosecution according to what they'd like it to be, like who was where. You'll get used to this as we go through these documents and you'll get used to what they can show you and actually what

they don't, who was where, who was doing what, what was happening.

For example, no record will show you exactly where Dr Ravi Jayaram was or what he was doing at the time that [Baby K] desaturated for that first time on 17 February, nothing will, apart from what Dr Jayaram will say to you. If just think back an hour or so ago that didn't stop, for example, the prosecution from presenting a very graphic account of who was where, what was going on, Dr Jayaram's on the phone and it happened. I want you to see the evidence for that.

I am not going to analyse that now but we'll see the questions and where it takes you when we come to it.

My task at this point is to look at key areas to assist you in introducing them to you and I'll be talking to you about the evidence in detail and about why we say Ms Letby is not guilty when we get to the end of the case.

So you'll see this is a lot shorter than what the prosecution have dealt with. That's the way this is and I anticipate I'll be about 10 or 15 minutes right now.

There's plenty to say, please don't judge the defence case by that; judge it by what we say at the end.

So what do we say are the key issues as matters stand at the start of this trial? I'm going to identify, ladies and gentlemen, three areas. I'm going to outline them to you, so it can assist you, if it does, in focusing on aspects of the case that will take you through the evidence and you can keep them in mind and come back to them to see how the case is progressing.

The first key area we say is how fragile [Baby K] was clinically. That's the starting point, isn't it? Normal gestation for a baby, you may well know, is around 40 weeks. Any baby born under 37 weeks is considered a premature delivery. [Baby K] was born at 25 weeks, which made her what's called extremely preterm. Ideally, she wouldn't have been born at the Countess of Chester Hospital at all because, as you have heard, there's different levels of units for babies like this and the Countess of Chester was a level 2 in February 2016. That means it could take care of babies of 27 weeks and up.

So as [Mother of Baby K] went into labour when [Baby K] was at 25 weeks' gestation, they should have gone to what's called a level 3 unit, which provides the most intensive level of care and the level of specialised intensive care that is required for a 25-week-old gestation baby like [Baby K]. That couldn't be done because, as [Mother of Baby K]'s labour intensified, the

doctors caring for her concluded that the risk of transferring her from the Countess of Chester to a suitable level 3 unit was too great, and so [Baby K] was born at the Countess of Chester, which is not where the professionals would have chosen for her to be born, all things being equal.

It's not the level of unit designed to deal with the ongoing care of a baby of her extreme prematurity. So we have an extremely preterm baby, a clinically fragile baby, in a unit that was not the ideal clinical setting for her level of prematurity. We say that is the starting point. In fact, that's the starting point when we look at what happens. That's the first key area to keep in mind.

The second is this: the area of problems with intubation experienced by [Baby K]. I say problems, but you will appreciate we're getting close to where what was described as the battle lines lie. I am using "problems" as a neutral word at the moment. This is the second area, the problems with intubation.

It's clear, isn't it, just from what we've heard, and we'll hear it in the evidence, that [Baby K] did encounter problems with breathing and with the correct positioning of the tubes that were used to ventilate her that morning? Why? It's a key question: why?

A little bit more information. [Baby K] was struggling to breathe from the start of her life and she was unable to breathe unaided at any point. And sadly, as you may appreciate, that isn't surprising because, ladies and gentlemen, there are a variety of problems associated with extreme prematurity. One of them is that the lungs haven't developed and that means a baby in [Baby K]'s position has to be given an artificial surfactant. If you want, when you get there, you can use the glossary to look these terms up. You've got it in the jury bundle but we don't need to go there now. Surfactant is a protein that helps in the process of gas exchange in the lungs so the baby can absorb oxygen. And such a premature baby will require the assistance of a ventilator to breathe, which means that she has to be intubated.

We know that some time around 3.45 to 3.50, some time around there, having been intubated, [Baby K] experienced a desaturation, a drop in her oxygen, and the notes of the nurse allocated to [Baby K], who you know is Nurse Joanne Williams, include the suggestion that the tubing from the ventilator to [Baby K] had moved.

That would be a reason why she wasn't getting the oxygen she needed and that would be why she desaturated, and the question you know is why the tubing came to be dislodged in that way.

The prosecution allegation is that Ms Letby deliberately moved the tubing. That's what they say.

And the defence case is that she didn't do that and that she is and has been blamed for that wrongly. So the dispute between the prosecution and the defence is clear and that's easy enough to state, isn't it? So you will want to look for evidence that helps guide you one way or another in deciding this. And when you come to consider this, there may be a number of factors to keep in mind. I am just going to give you examples now, but having identified that key area, you will want to look at what assists you with it.

Some of the factors to keep in mind are as follows.

First of all, whether [Baby K] was sedated at the time of the 3.45, or thereabouts, desaturation. In other words, had she been given morphine by that time or not?

Because babies can dislodge tubes on their own, even tiny babies. But obviously, that is much less likely if the baby's been sedated with morphine at that time. So when we focus on that, keep that in mind.

Next, the prosecution have pointed to, towards the end of their speech, whether the desaturations at 6.15 and 7.25 were also the result of Lucy Letby deliberately interfering with [Baby K]'s breathing tube. In other words, having done that once, she then decided to go on and do it twice, according to the prosecution, having been caught red-handed.

We'll look at how realistic these theories are when you have had the evidence, ladies and gentlemen. The prosecution say that's what she did. The defence say the prosecution are just trying to use two later events that are not the fault of Ms Letby to support their allegation that she was responsible for that first event around 03.45. That's all they're doing, trying to work it into that allegation to give it some support.

That is why it's so important to focus on the evidence: you need to look at the evidence and consider whether it shows, so you are satisfied, that Ms Letby was responsible for those two other incidents. Putting suspicion or bias to one side, if the evidence doesn't actually show she did it on those occasions, if it doesn't show that, we are getting into the territory, the defence would say, of guesswork. You are here to assess that. That's an area to look at.

Another factor, which is going to take me to the third area, is crucially you will have to look at what people said and did at

the time and, in particular, what Dr Ravi Jayaram said and did and decide whether that is consistent with what he and the prosecution now allege.

So let's turn to that. We say this is a third key area.

You're free to focus on whatever you find assists you, obviously, these are just suggestions from the defence and the prosecution. There appears to be a degree of agreement over this one so let's go to this third area, the evidence of Dr Jayaram.

Dr Jayaram was the senior consultant on duty the night that [Baby K] was born. Indeed, ladies and gentlemen, he was the lead clinician at this neonatal unit. There were other doctors on duty that night, but Dr Jayaram was the senior doctor with overall responsibility.

He says -- he says -- that he saw Lucy Letby in circumstances where [Baby K] was desaturating, the alarm that that should have been sounding for a desaturation like this was not sounding, and Ms Letby was standing by the cot and doing nothing to assist, and that he suspected the tubing may have been deliberately dislodged. And therefore the allegation that Lucy Letby deliberately interfered with the tubing relies upon the account given by Dr Jayaram.

Ms Letby does not remember specifically the events of that night. Some people may raise eyebrows and go, well, why ever not. Well, ladies and gentlemen, given the hundreds of babies she cared for in any given year, whatever else is in the background of this case, that is hardly surprising if she did nothing wrong.

She doesn't agree that she interfered with the tubing at any point or that she did anything to harm [Baby K]. So ultimately, this case comes down to a pretty stark issue: whether we can be sure, or rather whether you can be sure, that [Baby K] desaturated at around 03.45 because Lucy Letby interfered with her breathing tube and did nothing to help or not. And that allegation depends fundamentally upon the evidence of Dr Ravi Jayaram. If his account is not truthful or accurate then there is no safe basis for convicting Lucy Letby on this charge. And in fact, on that point, given what the prosecution have said about the central position of Ravi Jayaram to their allegation, and you have just heard it, on that point the prosecution and the defence are in agreement: ultimately, this comes down to the evidence of Dr Jayaram.

So we've identified three key areas, ladies and gentlemen. First of all, how fragile [Baby K] was clinically and that must be the

starting point when we consider what happened and the possible causes.

Secondly, the problems, looking at the evidence about the problems of intubation. And, thirdly, and fundamentally, the evidence of Dr Jayaram.

There is a fourth area that I need to deal with before we move to the evidence. That's the role of convictions already returned against Ms Letby in the earlier trial. In the circumstances you'd be astonished if I didn't turn to that before we turn to the evidence.

Ms Letby says she is not guilty of this allegation.

The prosecution rely upon convictions from the first trial to support what they allege now. Ms Letby has maintained always she is not guilty of any of those matters, that she's guilty of nothing. Well, you have those convictions and you'll consider them as part of the overall evidence. And they are potentially powerful and emotive aspects of this case, so it is important I deal with them briefly before concluding this introduction.

It's important to emphasise the convictions do not prove this allegation. Hopefully you would understand that, but they do not prove the allegation. But convictions like that in a trial like this may make it easier to convict someone of something they haven't done, which is why it is important to be careful about how you approach them.

After you have heard all the evidence in the case and towards the end of the trial, his Lordship will give you legal directions on how you approach the case generally, and that will include directions on how you approach the convictions in evidence, and therefore anything we or the prosecution say about the law or about them in that way is subject to his Lordship's direction.

Of course they are evidence in the case, but they are only part of the evidence. At this stage we say that however much dramatic impact they have and whatever their evidential status, it is crucial -- crucial -- that you look closely at the evidence relating directly to what happened on 17 February 2016. We say that the evidence of what happened on 17 February 2016 does not support what being alleged, it simply doesn't.

If that evidence does not support the allegation, and whatever else there is in this case, if the evidence can't support it then that's an end to that allegation, leaving aside emotion, sympathy, and looking at this fairly and in accordance with the evidence and his Lordship's directions when you receive them.

You need to hear the evidence really to weigh up any of this.

My Lord, we're grateful for the opportunity to make that short introduction and, at the right point, turn to the evidence.

MR JUSTICE GOSS: Thank you very much, Mr Myers.

So that completes the opening addresses in relation to this and the next stage of the trial is the commencement of the evidence.

I'm going to ask the 12 of you who form the jury, so I'm ignoring the reserve jurors for the moment -- I am just confirming with you that each of you is able to continue to serve as jurors in this case, that nothing has arisen since we broke off yesterday afternoon when you confirmed that you were available to continue and nothing has been said thus far that changes that position.

No? You all confirm you can continue to serve as jurors? Right. In those circumstances, having reached the stage at which we are, we can only move ahead with 12 jurors now, as I indicated to you yesterday. I want to thank jurors 13 and 14 very much for participating in this process thus far and the time that you have spent listening to this case. I appreciate it will be, to an extent, frustrating for you, now that you have started, that you are not going to finish in relation to your involvement in the case right through to the end.

You're going to finish now.

It has, I assure you, been helpful and sometimes the situation does arise when a reserve juror is called upon to be substituted for one of the original 12 jurors. So you will go with the usher in a moment back to the jury assembly area, where you will go back into the general pool of available jurors for your jury service, and you may well be required to serve on another jury.

But now that you are no longer serving on this jury, it is very important for the fairness of the trial and to ensure the integrity of this trial -- and you have heard me use that phrase before, maintaining the integrity of a trial -- that you do not speak about this case to any of the other 12 jurors, should you encounter them during the course of your jury service here, until the case is all over.

The same applies to you, members of the jury, the 12 jurors who are remaining. You must not speak to the two reserve jurors about anything to do with this case, and indeed I repeat that you are not to speak about anything to do with this case or anyone to do with this case unless it is in the presence and

hearing of all other jurors. So you'd have to be together as a group, and all of you able to hear what anyone says if they say anything about this case. In other words, you don't have little private conversations with a group of you.

If three of you have arrived in the morning together in the jury assembly area and you're sitting talking, you must not talk about anything to do with this case.

Do you understand that? Because at the end of the day, as I have flagged up several times, you're all going to sit together when you have heard all the evidence, you have received all the directions of law and make the decisions in this case as a group of 12. All right? So that is the integrity of the jury system.

Thirteen and 14 have heard -- forgive me for using numbers and not names, I'm not depersonalising you, it's just the way that we do it. So that's what must happen from now on. I'm sure it will happen and you'll understand the importance of it.

So can I ask jurors 13 and 14 please to go with the usher back to the jury assembly area? Again, my sincere thanks to you both. Just leave everything there apart from your personal possessions.

(Pause)

So members of the jury, that is going to be it for today, I'm not going to ask Mr Johnson to adduce any evidence on behalf of the prosecution because I think that's a convenient moment. You've heard the opening stages and it would only be a short period of time and there is a matter of law I have to deal with in any event, which doesn't concern you, as I said it wouldn't concern you. So that's it for today. Can you please be ready to come back into court at 10.30 tomorrow morning?

I did say to you that I'm going to give you a list of non-sitting days. That's something I want to discuss with counsel because there may be another day that you're not going to be required in about two weeks' time. I'll give you the list tomorrow because tomorrow is the last working day for you in this case because we're not sitting on this case on Friday, you'll remember. So you can take it you are not required Friday, but you will be back again on Monday but not before 12 midday on Monday. I will put this on the sheet of paper that I'll give you tomorrow because we can't sit before 12 midday on Monday.

So thank you very much. That's it for today. It is of vital importance that you, of course, adhere to your responsibilities as jurors. I've already said it to you more than once: no research about anyone or anything to do with this case

whatsoever and no communication with anyone, by any means, about anyone or anything to do with this case. Those are the two core obligations, but the other ones are there as well.

All right? Thank you very much. 10.30 tomorrow morning.

(In the absence of the jury)

MR JUSTICE GOSS: Mr Myers.

Application by MR MYERS

MR MYERS: My Lord, we return to a matter that was raised yesterday in the course of argument and therefore we anticipate your Lordship will be familiar with the issue. That arises from the reports over the weekend about Dr Jayaram and reported contact between him, so it would appear, and those arranging a TV documentary and his part in that.

Your Lordship was provided with extracts from the relevant material and also with a small bundle that set out the disclosure request, the details as to that material, the refusal to that request, and then some correspondence which likewise ended in refusal to provide the information that was then sought. That information was set out on page 2 of that bundle and at disclosure request 10, and the circumstances of that request are set out there.

We submit, putting out of our heads entirely now questions of abuse that have been dealt with, we're moving away from that, that in the context of the evidence in this case and the position of Dr Jayaram, that is the -- enquiry for that information is a reasonable and indeed obvious request.

In submissions the prosecution's position was to be largely dismissive, it would appear, of the veracity of that information anyway. It seemed to be given that it was reported in the Daily Mirror, although we notice also that The Sun and the Daily Mail carried the same story.

As to the work involved in following-up the enquiry, it was asked rhetorically why the might of Cheshire Constabulary should be brought down on Dr Jayaram. We weren't really asking for the might of Cheshire Constabulary. We simply ask for someone to go and speak to him. And it was said that the whole thing was nonsense from the gossip pages.

We obviously cannot proceed by a section 8 application because this isn't material currently in the possession of the prosecution, so we're not asking for disclosure in that way. But

we submit that this isn't a nonsense point, if that is what was intended by that.

We submit it is an obvious enquiry to make if the key prosecution witness is involved in any capacity with arrangements with a commercial company, whether that's for money or for his own satisfaction or whatever the reason, to portray himself in a particular way in a story that is being prepared.

It doesn't take a lot of officers to deal with this and there's been no problem so far. There are a huge body of officers at the disposal of the prosecution, many -- and this isn't said critically, there's a lot to do, but there are many at court on a daily basis, as one would expect on a case like this, and a body of officers that the court doesn't see and there has been no difficulty in serving further evidence on the defence up until Friday of last week. So the suggestion that there's anything unduly onerous in this is one that does not withstand scrutiny.

In the absence of being able to make an application of section 8 of the Criminal Procedure and Investigation Act and given the flat refusal of the prosecution to take a statement or make any enquiry of the key witness to whom this relates, we turn to the court, my Lord, to ask that the court direct, if it comes to that, the prosecution to make the enquiries set out in that disclosure request, or such of them as are appropriate, and the court has case management powers, we respectfully observe, in accordance with the Criminal Procedure Rules under Part 1 and Part 3.5. A direction can be made if the court regards that as appropriate and in the interests of justice.

Given that there is no other recourse for us to deal with this, and I'm going to come to cross-examination in a moment, but given there is no other recourse to us, then we have to turn to your Lordship for what we observe is something the prosecution should really be doing automatically given those stories.

As for cross-examination, it is unfair and an unknown to expect the defence in the course of evidence here to embark upon an enquiry into what lies behind those stories. And it may well be that after a careful enquiry, the matter ends. It may be that it does and there is no distraction, for example, for a jury with something that's of no moment, or it may be that it is significant. But it really isn't a matter for cross-examination when it's the prosecution's own witness with whom they're in contact and from whom they've had no difficulty taking other material in the period leading up to this trial.

So we ask, if we are able to do so, and we respectfully believe we are, the court to make such a direction, subject to your

Lordship's views, and of course subject to what the prosecution have to say.

MR JUSTICE GOSS: Thank you, Mr Myers.

Mr Johnson.

Submissions by MR JOHNSON

MR JOHNSON: Well, whether or not Mr Myers or his solicitor wants to speak to Dr Jayaram and ask him themselves, they could do --

MR JUSTICE GOSS: Well, I'm going to cut you short there.

There is no property in a witness --

MR JOHNSON: Exactly.

MR JUSTICE GOSS: -- and he could be approached by a representative from the defence solicitors and asked for this material rather than asking me to do it.

MR JOHNSON: Precisely. They could ask Jed Mercurio.

MR JUSTICE GOSS: They can make all their own enquiries.

The point is, quite rightly, Mr Myers says this isn't a section 8 application, this is not material held by the prosecution. The defence are asking the prosecution to do something to help the defence case.

MR JOHNSON: Yes, they're asking us to defuse a potential grenade for them and we're not prepared to do it.

MR JUSTICE GOSS: All right. Well, I think that's the answer, Mr Myers: there's nothing to stop the defence asking Mr Mercurio or Dr Jayaram.

MR MYERS: If that's the line to take, my Lord, of course we shall --

MR JUSTICE GOSS: I think in fact in a way -- sorry to speak over you. That's my fault and I apologise.

In fact, that's really a more satisfactory way because you can ask the questions you specifically want to ask rather than having a police officer just asking a general question.

MR MYERS: I suspect, had we considered that was an appropriate course, that is something we would have dealt with in any event before your Lordship and the prosecution -- before we were to

make contact with a key prosecution witness. We wouldn't have done that out of the blue in any event.

MR JUSTICE GOSS: As a matter of courtesy, yes, but what I'm saying is rather than me ordering the prosecution to do something -- and it's not uncommon, I'm sure -- I say it's not common but it's done because there is that well-established principle there is no property in a witness. They are a witness in the case called by one side or the other and sometimes someone who is due to be a prosecution witness end up being a defence witness.

MR MYERS: It may be the course we have to take, my Lord.

I suppose the reason we approached it in the way we did is because we have confidence in the nature of the relationship between the prosecution and their witness.

It goes beyond perhaps any confidence we might be expected to have in our line of communication with that witness and the efficacy of that. But that may be regarded a highly subjective view from defence counsel, I know not. But we naturally turned to the prosecution in the first instance.

MR JUSTICE GOSS: You have heard from the prosecution has to say --

MR MYERS: New have.

MR JUSTICE GOSS: -- and I am not -- well, I suppose you could ask for the assistance of the prosecution in relation to making an appointment or something like that, I'm sure they would agree to do that with the witness in question, but you can't expect the prosecution to seek out Mr Mercurio and ask him. We all know that -- and with no disrespect to the members of the media who are here -- they're very reluctant to disclose sources in relation to -- sometimes the matters come out. I'm not being critical, but one has to tread very carefully in relation to the reliability, sometimes, of information that gets put into the public domain --

MR MYERS: My Lord --

MR JUSTICE GOSS: -- on a hearsay, sometimes a double hearsay, basis and the like.

MR MYERS: Which is in fact why it would be -- this isn't critical of the screenwriter, but it would be Dr Jayaram who would be the point of contact because ultimately it's what he says about it that would matter.

MR JUSTICE GOSS: Exactly.

MR MYERS: And of course we wouldn't go directly to the media, given the position we know they occupy in this situation and the position with sources, so it would be Dr Jayaram if we choose to pursue that at all.

MR JUSTICE GOSS: All right. Let's leave it at that at this stage, Mr Myers.

MR MYERS: Very well, my Lord.

Housekeeping

MR JUSTICE GOSS: Dr Jayaram is not now scheduled I think to be a witness until next week, is he?

MR JOHNSON: It'll certainly be next week. I think originally it was Monday, it's looking more like Tuesday.

MR JUSTICE GOSS: So although I'm not physically here on Friday, I'm still available electronically. So I can stay involved. I'm working elsewhere. We'll see where you get to tomorrow and, if necessary, on Monday morning we can always revisit this.

MR MYERS: Very well, my Lord. Thank you.

MR JUSTICE GOSS: Thank you.

Mr Murphy, it'll just need a charger, won't it?

Thank you very much.

MR JOHNSON: Oh yes. I'm very helpfully reminded that your Lordship raised the issue of a potential non-sitting day.

MR JUSTICE GOSS: Oh yes. I've already indicated that we will not be sitting on Wednesday the 26th and Thursday the 27th. I don't know at what stage we're going to be in the trial, but it occurs to me that -- and for personal reasons -- it would help me if we didn't sit on the Friday either.

I gather it's already been circulated to you so everyone doesn't think we're sitting on the Friday anyway.

MR JOHNSON: All right. Someone did write the song "Always the last to know".

MR JUSTICE GOSS: It's a question of who's the monkey and who's the organ grinder here, I think.

I hope that doesn't cause undue inconvenience to anyone.

MR JOHNSON: I'm sure it won't.

MR JUSTICE GOSS: Mr Driver?

MR DRIVER: No, we'll be able to work around that quite happily.

MR JUSTICE GOSS: No one knows exactly where we're going to be. I think we might be at...

MR JOHNSON: Our best estimate is it's highly unlikely to fall at a critically difficult moment.

MR JUSTICE GOSS: Indeed, it may actually be quite a felicitous moment.

MR JOHNSON: It may well be.

MR JUSTICE GOSS: All right. I'm sorry about that. There's nothing else then? Thank you very much. 10.30 tomorrow morning.

(4.20 pm)

(The court adjourned until 10.30 am on Thursday, 13 June 2024)