

25 June 2024

Lucy Letby Cross-examination(continued) and Re-examination
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Tuesday, 25 June 2024
(10.30 am)

(In the presence of the jury)

MS LUCY LETBY (continued)

MR JUSTICE GOSS: Mr Johnson.

Cross-examination by MR JOHNSON (continued)

MR JOHNSON: Thank you, my Lord.

Having had overnight to think about it, was there anything you said yesterday that you think you might have got wrong and you now wish to correct?

LETBY: No.

JOHNSON: Was there anything that you said yesterday that you'd like to give a bit of a further explanation about or clarification?

LETBY: No.

JOHNSON: One of the things that we dealt with yesterday was your police interviews. And I'd just like to go to what you actually had, what you were given by the police in terms of the nursing notes. Okay?

LETBY: Okay.

JOHNSON: So if Mr Murphy could help us, please, with tile 148.

Now, this happens to be, when we get to the original document behind the tile, the --

MR JUSTICE GOSS: Pause.

(Pause)

MR JOHNSON: Ah, right, sorry.

(Pause)

Is it the whole row?

(Pause)

MR JUSTICE GOSS: All right. Are all your screens working?

Good, thank you.

MR JOHNSON: If you could zoom in a little bit, please.

Now, this is convenient, because in terms of where this is in the chronology, it's behind the tiles that deal with you booking in [Baby K] to the NNU. All right?

LETBY: Yes.

JOHNSON: But what we have behind this particular tile is all the nursing notes, so the original nursing notes made by Joanne Williams, then your booking in [Baby K] shortly after 6 am, and then Melanie Taylor's notes following the shift handover. Okay?

LETBY: Okay.

JOHNSON: So if anybody wants to find all the nursing notes in one place, this may be the best place to look. The reason I want to go through this is to test what you say about why you gave certain answers in your interview. Do you understand?

LETBY: Yes.

JOHNSON: Did I understand correctly yesterday when you were saying that really you were relying on the note that had been made by Melanie Taylor to influence what you said in the police interviews?

LETBY: Yes.

JOHNSON: Yes, all right. But you had all this material, didn't you, in the interviews?

LETBY: No, I'm not sure exactly what material I did and didn't have at the time.

JOHNSON: You were given all the nursing notes, weren't you?

LETBY: I don't know that. I'd have to check if that was true.

I don't know what I was given exactly.

JOHNSON: Well, if we look at what we have here, it's Joanne Williams' notes from 17 February, where she starts the note at 0448 and concludes at 0507. Is that right?

LETBY: Yes.

JOHNSON: And that's after the first incident to which Dr Jayaram gave evidence?

LETBY: Yes.

JOHNSON: And about which I asked you yesterday?

LETBY: Yes.

JOHNSON: And this gives, in effect, the history of [Baby K]'s residence in the NNU, from her arriving at about 2.45 until the making of this note about two hours later?

LETBY: Yes.

JOHNSON: So that's the first note.

So, just up a little bit, please, sorry. So we can see that it says, just below where the cursor is at the moment:

"Later began to desat to 80s.

"Dr Jayaram in attendance and on examination colour loss visible.

"No colour change on CO2 detector [query] ETT dislodged."

And that was the view at the time, wasn't it?

LETBY: Yes.

JOHNSON: Not a blocked ETT, a dislodged ETT?

LETBY: Potentially a query, yes.

JOHNSON: There's no mention of a blockage, is there?

LETBY: No.

JOHNSON: No:

"Removed and reintubated on second attempt by Registrar Smith [more detail].

"Large amount of bloodstained oral secretions."

Did you see that?

LETBY: No, I don't have any memory of the event.

JOHNSON: "Temperature on admission", and more nursing detail.

Cannula inserted by Registrar Smith, the dextrose infusion and morphine infusion, the septic screen, the antibiotics, the bruising to hands and feet because [Baby K] was a footling breech.

More detail about [Baby K]:

"Initially active on handling but now more settled."

Then at time of writing:

"Registrar trying to insert umbilical lines and plan is to transfer to Arrowe Park."

We then have Jo Williams' note underneath that, at between 5 -- sorry, there's 8.14, it says, so these are coming slightly out of order, the way they've been produced by the database.

Two further episodes of apnea, so those are episodes 2 and 3, would you agree?

LETBY: Yes.

JOHNSON: And desaturation with loss of colour, has been reintubated twice, the size of the tube, the plan to commence dopamine, the fact that the UVC had been put in but a UAC couldn't be put in.

That's the end of Jo Williams' shift, isn't it?

LETBY: Yes.

JOHNSON: And your shift.

A family communication at 0507 starting then and ending at 0512, that parents had been and aunt had been updated after the delivery by Dr Jayaram, photographs taken, the treasure box, parents had been down to the unit.

So that's a reference, isn't it, to the 4.31 visit?

LETBY: Yes.

JOHNSON: Up again to the top right-hand corner next, please. We then have you booking in [Baby K] between 0604 and 0610.

LETBY: Yes.

JOHNSON: Is that right?

LETBY: Yes.

JOHNSON: We'll come to the details of that in a moment. I want to deal with this for a different point at the moment.

Scrolling down, then, to the next page, please, Mr O'Leary. This is more of the booking --

MR JUSTICE GOSS: Mr Murphy.

MR JOHNSON: Sorry, Mr Murphy, I beg your pardon. It was Mr O'Donnell yesterday and I'm --

MR JUSTICE GOSS: It's all right.

MR JOHNSON: Sorry.

6 -- so this is the booking in details; is that right?

LETBY: Yes.

JOHNSON: Completed by you?

LETBY: Yes.

JOHNSON: Down again, we'll come back to this, a continuation of the booking in material for which you were responsible?

LETBY: Yes.

JOHNSON: Down again, please. Further continuation of the booking in material?

LETBY: Yes.

JOHNSON: Then on the same page, we see Mel Taylor's notes; is that right?

LETBY: Yes.

JOHNSON: In the bottom right-hand corner. Completed between 1606 and 1639 on the 17th.

LETBY: Yes.

JOHNSON: "Written for care handed over from 7.30, emergency equipment and fluid requirements checked at start of shift.

"As commencing shift, ETT [query] slipped, loss of colour, heart rate and saturations dropped.

"Dr Jayaram re-secured ETT 6 centimetres at lips.

"ETT clamped and secured, heart rate and saturations returned, repeat chest x-ray taken and position reviewed by Dr Jayaram and satisfactory."

Then details of the ventilation and [Baby K]'s declining saturations.

Is that right?

LETBY: Yes.

JOHNSON: And that is all material that you were given before the interviews, isn't it?

LETBY: No, I -- I can't say for definite what I had at my interview, no.

JOHNSON: Are you suggesting, for example, that the police didn't give you the notes that you had made, the booking in?

LETBY: I can't recall now. I had many, many interviews and I've got no way now of saying exactly what documents I had for each baby, no.

JOHNSON: So are you suggesting, just so that we understand, that although you were being questioned primarily about an incident that had happened at 3.50, you were not given the nursing notes for 3.50?

LETBY: I have no memory of what notes I was given. And in my interview, I only refer to those of Melanie Taylor.

JOHNSON: Oh yes, we've seen that. But you knew very well what you were being asked about, didn't you?

LETBY: No.

JOHNSON: And you had the notes for what you were being asked about?

LETBY: I can't say that, I can't say that I had the notes for definite.

JOHNSON: Can we go to page 7 of interview 2, please, and it's in the jury bundle behind divider 8. I'm going to start at the bottom of page 7 to put the part I want to ask you about into context. Okay?

LETBY: Okay.

JOHNSON: What I'm going to ask you about is actually at the bottom of page 8, so that you and the jury have that response contextualised. I'm going to start at the bottom of page 7, about five lines up, where it says:

"Did you intend to cause [Baby K] harm?"

Okay?

LETBY: Yes.

(Video played)

JOHNSON: You're not there saying, "I don't remember anything", are you?

LETBY: Not at that moment in time, no.

JOHNSON: No. You were agreeing you were there at about 3.50, as they were suggesting to you, weren't you?

LETBY: No, I wasn't agreeing, I was looking at possible options and assuming if Mr Jayaram had been right, what the scenario may have been.

JOHNSON: "... looking at possible options and assuming that if Mr Jayaram had been right ..."

What do you mean by that?

LETBY: Like I've said throughout this interview, I do not remember that event. I was relying on what Dr Jayaram was saying, I'm trying to fill in the gaps.

JOHNSON: Fill in the gaps for a child whose family name you had been searching about ten weeks before this interview?

LETBY: Yes.

JOHNSON: Sorry, this is the second interview, actually.

I'm wrong about that. So this is the second interview, but ten weeks before the first interview. Yes?

LETBY: Yes.

JOHNSON: A child who, I will suggest, you remembered very well.

LETBY: I disagree.

JOHNSON: The answer that you give midway down page 8 is that you were possibly waiting to see if she self-corrected:

"We don't normally intervene straightaway if they weren't dangerously low."

And that's a reference to the sats, isn't it?

LETBY: Yes.

JOHNSON: That is not true, is it?

LETBY: No, I stand by that. The normal practice would be that we wouldn't immediately intervene if they were in the 80s and weren't dangerously low.

JOHNSON: Do you remember the evidence, the agreed evidence of Elizabeth Morgan --

LETBY: Yes.

JOHNSON: -- the nurse?

LETBY: Yes.

JOHNSON: Who said:

"I do not believe that it would be normal nursing practice to wait and see if the baby self-corrected at this gestational age, given the lungs are so immature and the risks associated with unplanned extubation."

LETBY: Yes.

JOHNSON: Agreed evidence.

LETBY: Yes.

JOHNSON: Do you agree that evidence?

LETBY: No, because I know what the standard practice was in Chester.

JOHNSON: All right.

So you don't agree, you don't agree the agreed evidence?

LETBY: Well, that's her opinion, I can't -- I can't say whether that's right or wrong. I just know what our policy was in Chester.

JOHNSON: Your policy for 25-week gestation babies, what was that policy?

LETBY: No, for any baby.

JOHNSON: Sorry?

LETBY: For any baby.

JOHNSON: No, no, but we're not talking about any baby here, are we? We're talking about a baby of 25 weeks' gestation.

What was the policy? You tell the jury.

LETBY: There isn't a full policy, but with my experience of working at Liverpool Women's and on the unit, the common practice that was done by the nurses is that you would not automatically put your hands in the incubator and start doing something because babies often self-correct.

JOHNSON: For a 25-week gestation baby?

LETBY: Yes.

JOHNSON: You are lying, aren't you?

LETBY: No.

JOHNSON: And you are lying because you know you were caught cold by Dr Jayaram?

LETBY: No.

JOHNSON: Just back to the defence statement. Have you still got it there? Paragraph 30. What does it say, please?

LETBY: "In general, I reply -- I rely upon those matters I raised and explanations given in my police interviews."

JOHNSON: Yes. You weren't seeking to qualify your police interview, were you, when you made your defence statement in February 2022?

LETBY: Can you rephrase that, please?

JOHNSON: Well, I'll say it again. I'm not sure whether I can do any better. You were not seeking to contradict or qualify your interviews when you made your defence statement?

LETBY: No, this is generic to all of my interviews across the whole of that trial, yes.

JOHNSON: Absolutely, but these are your words.

LETBY: Yes.

JOHNSON: You had had months to read the interviews.

LETBY: Yes.

JOHNSON: You did not say, for example, "In the case of [Baby K], when I said this, that when I agreed or when I accepted I was there, what I really meant to say was 'I don't remember'."

LETBY: I've made it clear throughout that I don't remember, and I was not accepting that that event happened.

JOHNSON: That's a fundamental part of your defence, isn't it, that you are not accepting the event at 3.45 actually happened?

LETBY: Yes.

JOHNSON: Yes. Where does that appear in your defence statement?

LETBY: I've said that I did nothing to harm [Baby K].

JOHNSON: Where does it -- where do you say, "I do not accept what Dr Jayaram says"?

LETBY: It's not written in those exact words, no.

JOHNSON: You see, "I did nothing to harm [Baby K]" could mean there's an innocent explanation for what Dr Jayaram saw.

Couldn't it?

LETBY: Potentially, yes.

JOHNSON: Yes, potentially. Were you hedging your bets?

LETBY: No.

JOHNSON: To see what emerged in due course?

LETBY: No, I think we're going round in circles. I don't recall the event, I don't recall what happened that night, but I know that I did nothing to interfere with [Baby K].

JOHNSON: You dislodged [Baby K]'s tube --

LETBY: No, I did not.

JOHNSON: -- deliberately, didn't you?

LETBY: No.

JOHNSON: You silenced the alarm before you did it?

LETBY: No.

JOHNSON: And you intended to kill her?

LETBY: No, I did not.

JOHNSON: Thereafter you tried to create the impression that [Baby K] was habitually desaturating?

LETBY: No.

JOHNSON: And dislodging her own tube?

LETBY: No.

JOHNSON: Do you accept that [Baby K] was, on any version, sedated after 4 am?

LETBY: Yes, she had a morphine infusion after 4 am, yes.

JOHNSON: And do you accept that because of her gestation and because of the fact that she was sedated with morphine, she would not have been active?

LETBY: So on 20 micrograms of morphine, she would have been relaxed, but she could still have moved if she wanted to, yes.

JOHNSON: Did you see her moving?

LETBY: I don't recall any of the shift(?) to say when she was moving or not.

JOHNSON: Is there any note in the nursing notes of her moving after 4 o'clock?

LETBY: I don't recall. I know Joanne said she was initially active and then settled after that.

JOHNSON: Yes, we saw that in the nursing note that we went through right at the beginning, didn't we?

LETBY: Yes.

JOHNSON: Where it's active on what, do you remember?

LETBY: On handling.

JOHNSON: On handling, yes.

LETBY: Yes.

JOHNSON: There's a difference, isn't there, between active on handling and generally active when being left alone?

LETBY: Yes.

JOHNSON: Yes. And it's an important difference, isn't it?

LETBY: But we tend to comment on how babies are when they're being handled. We wouldn't write how a baby was behaving throughout that hour lying in the incubator.

JOHNSON: If a baby was desaturating, the fact that the baby was active when it was not being handled might be highly relevant, mightn't it?

LETBY: Can you say that again, please?

JOHNSON: Yes.

If a baby was active when not being handled, and that same baby was apparently self-extubating, the fact that the baby was active would be highly relevant, wouldn't it?

LETBY: Yes.

JOHNSON: Yes, but it's not in the notes, though, is it?

LETBY: Not for after 4 o'clock, no.

JOHNSON: No. Well, not before 4 o'clock either actually. It's just "active on handling".

LETBY: She was being handled a lot at that point.

JOHNSON: Not at 3.30, was she? Was she?

LETBY: No.

JOHNSON: Not at 3.45, was she?

LETBY: No.

JOHNSON: Or were you handling her and you moving the tube?

LETBY: No.

JOHNSON: Now, I want to go back to the tile we were at before.

I think it was 148. Thank you. Just scroll up, please, Mr Murphy. So if we have that on the screen, and if the jury, please, would go to the neonatal review at line 215. It's page 7 of 10. I'm sure everybody remembers, but child AR was in nursery 2. And child AR, together with child GT, also in nursery 2, was one of your designated babies?

LETBY: Yes.

JOHNSON: Do we see there at lines 215 through to 217 that there are three entries, each relating to data that you recorded on various charts concerning child AR?

LETBY: Yes.

JOHNSON: So is it reasonable, and do you accept, that you were in nursery 2 at that point?

LETBY: Around that time, yes.

JOHNSON: What did you do next?

LETBY: Start the admission record for [Baby K].

JOHNSON: Right. What does that involve?

LETBY: It involves getting the paper notes from the cot side and taking them to a computer and inputting the data on to the computer.

JOHNSON: Where was the cot side?

LETBY: Nursery 1.

JOHNSON: And so did you go from nursery 2 to nursery 1?

LETBY: I would assume so, yes. I will never know exactly where the notes were, but usually the notes are kept in or around the cot side of the baby.

JOHNSON: It's the first place you'd look even if they weren't there, isn't it?

LETBY: Yes.

JOHNSON: Yes, and the timings don't tend to suggest that you had problems locating them, do they?

LETBY: I don't know what you mean.

JOHNSON: Well, you opened the record at 0604 and you had been doing things, apparently, with child AR at 0600.

LETBY: Yes.

JOHNSON: Did you know that [Baby K] was due to have an x-ray?

LETBY: No. I can't recall.

JOHNSON: Which is it, "No" or "I can't recall"?

LETBY: I don't recall any events of that night.

JOHNSON: Which computer would you use?

LETBY: Again, there are computers, several around the nurses' station. There's also a computer in nursery 1, I can't be specific, it would be whichever computer was free.

JOHNSON: And this data that we see on the screen in front of us was inputted by you?

LETBY: Yes.

JOHNSON: You obtained the data from the handwritten admission sheet; is that right?

LETBY: Yes.

JOHNSON: Which was in the notes?

LETBY: Yes.

JOHNSON: And the record itself tells us that you closed the computer or the admission record at 0610?

LETBY: Yes.

JOHNSON: If we go to tile 151, please, and click on it, please, Mr Murphy. This is the digital record itself.

Anne Kember came into the unit at 0609, it's at the bottom of the page, I think.

Carry on, sorry. Thank you. So there it is, thank you very much.

So through an outer door at 0608, that's a door by the lift, which is just outside the NNU, isn't it?

LETBY: Yeah, it's just by the labour ward, yes.

JOHNSON: Yes. Then with her portable x-ray machine at 0609 through the doors of the neonatal unit?

LETBY: Yes.

JOHNSON: And we know, don't we, that that tube was in the correct position when Anne Kember took her x-ray?

LETBY: Yes.

JOHNSON: We know that by 6.24, line 225 of the neonatal review, [Baby K] had desaturated again, don't we?

LETBY: Yes.

JOHNSON: Between those times, you would have had to have taken the notes back to the cot side, wouldn't you?

LETBY: Yes, that was best practice, yes.

JOHNSON: Yes. We know [Baby K] had desaturated by 6.24 because that's the blood gas, isn't it?

LETBY: Yes.

JOHNSON: You tell the jury the circumstances in which blood gases are taken, please.

LETBY: Blood gases are taken regularly for any baby that is receiving any respiratory support or if there's been a change in the condition of a baby.

JOHNSON: Yes. So that would make perfect sense if [Baby K] had just collapsed?

LETBY: It would, yes.

JOHNSON: Yes.

LETBY: Yeah.

JOHNSON: At a time when you had to go back into nursery 1?

LETBY: Yes.

JOHNSON: Yes. And those two events are connected, aren't they?

LETBY: No.

JOHNSON: Just as later on, [Baby K] collapsed for a third time when you were there, didn't she?

LETBY: From other staff accounts, yes.

JOHNSON: Well, do you accept other staff accounts or not?

LETBY: I have no recollection of it myself.

JOHNSON: Do you accept what they say?

LETBY: I think that sounds like actions that I would be taking in that situation, yes, if it was happening.

JOHNSON: So you do accept it?

LETBY: I -- I don't think I can comment on whether somebody is telling the truth or not. I only know what I know.

JOHNSON: Well, let's look at what you were doing just after the collapse of -- the second collapse of [Baby K], first of all. Okay?

LETBY: Yes.

JOHNSON: Line 226, at 0625, it happens to coincide with tile 157 of the sequence of events. This was you and the designated nurse, Caroline Oakley, setting up a further infusion for [Baby K], wasn't it?

LETBY: Caroline wasn't the designated nurse, no.

JOHNSON: Sorry. Caroline was the other nurse who was in nursery 1.

LETBY: Yes.

JOHNSON: Joanne Williams was the designated nurse.

I think you said yesterday in answer to questions from Mr Myers that this time would be "as exact as we could be"?

LETBY: Yes.

JOHNSON: Is that fair?

LETBY: Yes.

JOHNSON: Now, if we go to line 233 of the neonatal review. And if Mr Murphy, please, we could go to the feeding chart at 6.30 in the -- it's tile 159, please. Thank you.

So 6.30, we see that you fed GT 55 mls of expressed breast milk down the nasogastric tube?

LETBY: Yes.

JOHNSON: Just remind us of how long you say that would take.

LETBY: I can't be specific, but ten, 15 minutes.

JOHNSON: So that's 6.30. You were also taking observations, if we look at line 234 of the neonatal review. Do you see that?

LETBY: Yes.

JOHNSON: Which is also at the sequence of events at tile 163.

This is again for child KC, is that right?

LETBY: Yes.

JOHNSON: And yesterday you said you would have to be in nursery 1 to do that.

LETBY: Yes, KC was in nursery 1, yes.

JOHNSON: Yes, at the time of that, 6.37?

LETBY: Yes.

JOHNSON: Seven minutes after you started to feed for GT in nursery 2. How did you manage that?

LETBY: Well, the times for the feed and the observations are all approximations.

JOHNSON: Can you keep your voice up a bit, please?

LETBY: There are approximation times, so the time on the chart of 0630 is an approximate time.

JOHNSON: Yes, but you see, we've established that you put up the infusion for [Baby K] at 6.25, which is as precise as it could be, you said yesterday.

LETBY: Yes.

JOHNSON: 6.37, you're back in nursery 1.

LETBY: Yes.

JOHNSON: In between times, you fed a child an amount of milk that you say takes how long?

LETBY: I can't be specific, ten to 15 minutes, possibly.

JOHNSON: What do you have to do with the milk before you feed it to the child?

LETBY: You have to warm the milk.

JOHNSON: Yes. How did you do all that in ten minutes?

LETBY: The milk would have been, could have been warmed at any point prior to the feed, it wouldn't have been warmed exactly just before the feed.

JOHNSON: Were you keeping accurate records?

LETBY: Yes.

JOHNSON: 6.41, you were still in nursery 1, weren't you?

Line 236 of the neonatal review.

LETBY: Yes.

JOHNSON: Tile 164 of the sequence of events.

6.42, you were back in nursery 2 with GT.

LETBY: Yes.

JOHNSON: Giving medication again with Caroline Oakley.

LETBY: Yes.

JOHNSON: So can we take it, then, that GT was a child who you could easily feed within ten minutes?

LETBY: Yeah, I think that's dependent on the baby itself.

JOHNSON: Well, that's why I'm talking about GT, because that's the baby I'm interested in.

LETBY: Well, I don't have direct recollection of GT at this moment in time.

JOHNSON: No. But, you see, GT was the child that you were feeding at 3.30.

LETBY: Yes.

JOHNSON: About ten minutes before or 15 minutes before [Baby K] collapsed in that first desaturation that Dr Jayaram's told us about.

LETBY: Yes.

JOHNSON: So that, if the timings at 6.30 are correct, wouldn't have prevented you being in nursery 1 at the time Dr Jayaram says you were there, would it?

LETBY: No, I disagree, those times are approximations. I've no way of knowing now exactly what time I started that feed and what time it finished.

JOHNSON: Well, we know you didn't start it before 6.25 because that's when you started the infusion for [Baby K], and we know you had finished it, as we've just seen.

LETBY: We don't know what time I started that feed.

JOHNSON: No, but we know when you -- it was after 6.25.

LETBY: I disagree, we don't know that.

JOHNSON: We do, because you've told us that the 6.25 time is as accurate as it can be.

LETBY: Yes, and I may have got the milk out before that and started the feed and left it for a bit and came back.

JOHNSON: You may have done a lot of things.

LETBY: Yeah.

JOHNSON: You see, one of the issues that the jury may consider is what you were doing immediately before the first desaturation. Do you understand?

LETBY: Yes.

JOHNSON: And the longer it takes [Baby K] to -- sorry, the longer it takes to feed GT, it might be suggested, reduces the chances of you having been in nursery 1. You know what the point is, don't you?

LETBY: Yes.

JOHNSON: And that's why I'm looking at what you did three hours later. Do you understand?

LETBY: Yes.

JOHNSON: Yes, and the records suggest that you managed to feed GT very quickly three hours later.

LETBY: Yes.

JOHNSON: Do you agree? That's probably all I need to ask you, then, about that.

Can we move to desaturation 3, please, and tile 159.

Sorry, I've already dealt with -- actually, can I just ask you one question about that, just before we leave it. Did you write "bottle offered" in the 3.30 line after the event?

LETBY: Yes, all of these entries would be made after the event, yes.

JOHNSON: Yes. That wasn't quite what I meant. After you had written "EBM", at a later stage, did you write "bottle offered" into the 3.30 entry?

LETBY: I can't say what time I put that in.

JOHNSON: But you didn't put it in at the same time as your "EBM", did you?

LETBY: I don't know.

JOHNSON: Well, you would have written "bottle offered" first, wouldn't you?

LETBY: "Bottle offered" does come before "EBM".

JOHNSON: Oh, it does, but it's not quite in the box, is it?

LETBY: No.

JOHNSON: It's been squeezed into the gap above "EBM".

LETBY: Yes.

JOHNSON: Yes. Did you do that to try and extend the time for this feed to cover yourself for what happened to [Baby K]?

LETBY: No, I would not write something that didn't happen.

I obviously offered this baby a bottle.

JOHNSON: You wouldn't write something that didn't happen?

LETBY: No.

JOHNSON: Like you wouldn't kill babies?

LETBY: No.

JOHNSON: All right.

Let's go back to desaturation number 3, please.

Let's just have a look at what was going on. This all happened at about 7.30, do you agree?

LETBY: Yes.

JOHNSON: And do you agree with the evidence of [Nurse B] that people would have been assembling for the day shift at about 7.30?

LETBY: Yes, around the nurses' station, yes.

JOHNSON: Yes?

How did you come at that point to be in nursery 1?

LETBY: I can't answer that, I don't know.

JOHNSON: Well, let's -- you tell the jury what you should have been doing at handover.

LETBY: Handover has not started yet, so handover starts at 7.30 with a huddle with the new day's shift nurses and the shift leader. And then after that, you would then go to the cot side of your baby that you were handing over.

JOHNSON: But you would be checking, wouldn't you, before handover that the baby you were about to hand over, or the

babies in your case that you were about to hand over, were in good shape?

LETBY: No, I disagree. That would have been done, but we could be anywhere at handover time.

JOHNSON: Well, you're about to hand over the responsibility for two sick babies to somebody else.

LETBY: Yes.

JOHNSON: Is it not a matter of professional pride for you to make sure that they're in as good shape as you can make them at the point you hand them over?

LETBY: Yes.

JOHNSON: And so wouldn't you have been checking that immediately before you were about to hand them over?

LETBY: Not necessarily, no.

JOHNSON: No?

LETBY: No.

JOHNSON: All the nurses, both from the night shift and the day shift, were about to huddle round the nurses' station; yes?

LETBY: Not all of the nurses, it would be the shift leader of the night shift and the day team coming on.

JOHNSON: Right. Right. But you weren't in with your babies in nursery 2?

LETBY: No.

JOHNSON: Explain what happens after the huddle, please.

LETBY: After the huddle, the designated nurse that was taking over from you would then come to you and you would go to the cot side of those children.

JOHNSON: Where would they approach you?

LETBY: Wherever you were on the unit.

JOHNSON: Where's the logical place to be if you're about to hand over two babies in nursery 2?

LETBY: In the nursery with them.

JOHNSON: Exactly. So why were you in nursery 1?

LETBY: I can't -- I can't tell you that, but obviously Jo was not in the room at that time, somebody would have to be in the room.

JOHNSON: Because Jo wasn't in the room at that time, did you then take your opportunity to destabilise [Baby K] for a third and final time?

LETBY: No.

JOHNSON: That is what you did, isn't it?

LETBY: No, it's not, no.

JOHNSON: What was it that alerted you to [Baby K]'s predicament?

LETBY: I don't recall this event.

JOHNSON: Well, it wasn't the alarms, was it?

LETBY: I don't recall this event.

JOHNSON: Well, you don't, but [Nurse B] does, doesn't she?

LETBY: Yes.

JOHNSON: And you haven't disputed her evidence, have you?

LETBY: No.

JOHNSON: Do you accept what she says?

LETBY: Yes.

JOHNSON: Yes, it wasn't an alarm that caused [Nurse B] to go into nursery 1, was it?

LETBY: No.

JOHNSON: What was it?

LETBY: She says I was calling for help.

JOHNSON: Yes, and you accept that, don't you?

LETBY: Again, I don't know how I can accept, I don't recall it, it could have happened, but I don't have any direct memory.

JOHNSON: [Baby K] was well sedated by this stage, wasn't she?

LETBY: She was on morphine, yes.

JOHNSON: Yes, and her ET tube had managed to go in one and a half centimetres?

LETBY: Yes.

JOHNSON: And that's a tube that was only supposed to be in six and a half centimetres?

LETBY: Yes.

JOHNSON: So that's a further way in of about 20%?

LETBY: Yes.

JOHNSON: That's relatively speaking a long way, isn't it?

LETBY: Yes.

JOHNSON: And that's because you pushed it in, didn't you?

LETBY: No.

JOHNSON: Do you remember the very last sentence of Elizabeth Morgan's agreed statement?

LETBY: No.

JOHNSON: "The incident should also be reported verbally to the designated nurse on her return and recorded in the nursing records and charts by ..."

What's the final two words? By who?

LETBY: I can't recall.

JOHNSON: "Lucy Letby".

LETBY: Right.

JOHNSON: Agreed evidence. Is it agreed?

LETBY: Yes, that's her expert opinion, yes.

JOHNSON: Yes. So why didn't you record this event?

LETBY: I can't answer that.

JOHNSON: Well, I will offer an answer to you to see whether you accept it, because you didn't want there to be a written record of your involvement in this third extubation of this extremely premature child.

LETBY: No, I disagree, and if I'd been involved any of the nurses would have written that I had been involved as well potentially.

JOHNSON: Potentially?

LETBY: Yeah.

JOHNSON: Yes. You tried to kill [Baby K], didn't you?

LETBY: No, I did not.

JOHNSON: Just like you tried to kill six other babies and you succeeded in murdering seven --

LETBY: No.

JOHNSON: -- further children?

LETBY: No.

MR JOHNSON: Right.

No further questions.

MR JUSTICE GOSS: Thank you, Mr Johnson.

Re-examination by MR MYERS

MR MYERS: Just one area I would like to go back to. It covers a number of topics, Ms Letby, just coming out of the questions that you were asked. So I don't go back over everything you've already said in re-examination, I deal with anything that's come up that we have looked at in more detail. Do you understand?

LETBY: Yes.

MYERS: All right.

It's questions mostly about your defence statement and the interview, there's been a lot of questions of you about that. Have you got a copy of the defence statement in front of you? Because I'd like you to look at that, please.

Members of the jury, you don't have it, but I'll read out the bits we're looking at.

Can you see it?

LETBY: Yes.

MYERS: Now, by way of explanation, and this was touched on, this document was prepared by you with the assistance of your legal representatives, wasn't it?

LETBY: That's right.

MYERS: It's accepted -- it isn't -- a defence statement doesn't include everything that can be said.

To remind us all, it identifies the nature of your defence to each allegation, where you take issue with the prosecution, and any particular fact you rely upon.

I'm just saying that so we understand what we're dealing with.

Now, that statement was directed to what became 22 different allegations in the first trial, wasn't it?

LETBY: That's right, yes.

MYERS: [Baby K] was one of those 22; is that right?

LETBY: Yes.

MYERS: You have been asked questions about eight of the paragraphs in this defence statement across three of the pages.

Just to give a sense of scale, can you tell the jury how many paragraphs there actually are in total in this defence statement? Look to the end of it to see how many.

LETBY: Oh, 135.

MR JUSTICE GOSS: Is that right?

MR MYERS: Of course, you only have part of it, don't you?

MR JUSTICE GOSS: You lead it, Mr Myers, it won't be controversial.

MR MYERS: There are 213 paragraphs in this.

LETBY: Right.

MYERS: And it runs, so the jury know, to 28 pages. You did ask questions about some entries on three of the pages.

LETBY: Yes.

MYERS: Now, the first part of the statement deals with general matters, doesn't it?

LETBY: Yes.

MYERS: Do those general matters run to 30 paragraphs?

You should get up to paragraph 30 on page 5.

LETBY: Yes, that's all general matters, yeah.

MYERS: Right.

I'm not going to go through all of those, but I would like just to put in paragraphs 2, 3 and 4.

Could you tell us what paragraphs 3 and 4 -- can you tell us what paragraph 3 says, please?

LETBY: It says:

"In providing this statement, it's important that I state the defence continue to receive relevant evidence and material from the prosecution and that my legal representatives continue to consider this and take my instructions upon it where necessary. The defence case continues to be prepared and there remains a lot of work to do and a lot of information to receive."

MYERS: Right, and what does paragraph 4 say?

LETBY: "This defence statement does not include every point I may make in my defence or every point that will be raised on my behalf. This would be unworkable and could not be completed at this moment because the defence case continues to be prepared. I have endeavoured to provide the detail necessary to set out the general nature of my defence overall and with regard to specific allegations."

MYERS: Right.

Now, as to the question of whether the credibility of Dr Jayaram was identified as an issue, his truthfulness, we looked at paragraphs 19 and 20, and you were asked some questions about it.

First of all, could you read to us what you said at paragraphs 19 and 20?

LETBY: "Once allegations began to be raised against me, I participated in a grievance procedure with the support of the Royal College of Nursing. There was a full investigation into this."

MYERS: That's paragraph 19.

LETBY: Yes.

MYERS: Take your time, don't rush it, paragraph 20, please.

LETBY: "I do not accept the good faith of Ravi Jayaram or Stephen Brearey during this process or generally. The grievance was determined in my favour but it is apparent that they have been set against me for some time. That is obvious from their witness statements as well as some aspects of their conduct towards me over the period 2015 to 2016 and after."

MYERS: Right.

Now, when you were asked questions, we got to the point of it being that you were questioning their credibility with regard to, as it was put, this process.

Yes?

LETBY: Yes.

MYERS: Now, in paragraph 20, when you say, "I do not accept the good faith of Ravi Jayaram during this process or generally", what does this process, what does that bit refer to? What are you talking about when you say "this process"? Look at paragraph 19, if it helps.

LETBY: The process up until that point of me having a grievance procedure.

MYERS: Right.

When you say "this process or generally", what are you talking about when you say generally you do not accept the good faith of Ravi Jayaram? Just the grievance process?

LETBY: No, and generally.

MYERS: "Generally" meaning what, Ms Letby? Tell us, explain.

LETBY: In all ways.

MYERS: Yes.

LETBY: Yes.

MYERS: When you talk about that they'd been set against you for some time, this is obvious from their witness statements as well as some aspects of their conduct over the period 2015 to 2016, what witness statements are you talking about? Witness statements with regard to what?

LETBY: The grievance procedure.

MYERS: Just the grievance procedure?

LETBY: And their police witness statements.

MYERS: Yes.

So when it's suggested that you weren't making it clear you challenged Ravi Jayaram's credibility with regard to this, these proceedings, is that right?

LETBY: No.

MYERS: Look at paragraph 30, please. This morning you were asked about this. In paragraph 30, you say:

"In general, I rely upon those matters I raised and explanations given in my police interviews."

Do you remember being asked about that?

LETBY: Yes.

MYERS: And then it was being put to you: well, you weren't saying there, there was a problem, and you didn't remember it. Yes? Do you remember those questions?

LETBY: Yes.

MYERS: Well, that's what you say there generally.

Can you tell us what you say in paragraph 133, which is one of the five paragraphs out of the 213 that deal with -- these are the ones that deal with [Baby K].

What do you say --

LETBY: It says --

MYERS: -- at the beginning of 133?

LETBY: "I do not recall the events of 17 February 2016. I have no recollection of Ravi Jayaram coming into nursery 1 when I was there by myself. I do not recall saying that [Baby K] had just started to desaturate."

MYERS: Right.

Now, you've also been criticised for saying that you don't remember because it's being said that you're hiding behind that to avoid giving detail.

Do you recall those questions --

LETBY: Yes.

MYERS: -- criticising you? And your answer is that, if you remembered, you would say?

LETBY: Yes.

MYERS: Is that your evidence, is it?

LETBY: Yes.

MYERS: Now, we know that you were convicted of a number of offences in that first trial, Ms Letby. Yes?

LETBY: Yes.

MYERS: In the 28 pages and 213 paragraphs of this defence statement, do you give details of what did happen on various of the allegations you faced?

LETBY: Yes.

MYERS: Does that include, as it happens, some that you were convicted of?

LETBY: Yes.

MYERS: Are you hiding behind saying, "I don't remember" on those occasions?

LETBY: No.

MYERS: When you say you don't remember the detail of what's described in this allegation, why do you say that?

LETBY: Because that's the truth, I don't have any recollection.

MYERS: The final thing I'd want to deal with, again, arising out of what you were asked, was this: you had played to you various clips of interview, we've just -- we've seen that. You recall them?

LETBY: Yes.

MYERS: And the first one was a clip from the first interview.

And could you just go to the jury bundle, please, ladies and gentlemen, behind divider 7. We also had, whilst we go there, played a clip of the second interview.

LETBY: Yes.

MYERS: Do you recall that? And the question that was put to you in different ways was that, in effect, you were accepting you were there. Do you recall those questions?

LETBY: Yes.

MYERS: You weren't making it plain in your interview what you're saying now; yes?

LETBY: Yes.

MYERS: You've explained you're not accepting, you're saying you don't remember what happened?

LETBY: That's right.

MYERS: That's your case?

LETBY: Yes.

MYERS: I'm not going to go through all of the interviews, but looking at what wasn't put to you when those were played, can I just ask you to look at this: if we go to interview 1 in the written copy -- can you open it up?

LETBY: Yeah, I've got that.

MYERS: Thank you. Go to page 2, please. I want to make this point because of what's been played to you and what was said about it. At the top of page 2, there's that long paragraph. Can you see that?

LETBY: Yes.

MYERS: At the end of it, you say:

"Okay, so I don't recall why I was in the nursery with [Baby K]. I would have to look back to see if I had other babies that I was caring for in the room and that's why I was there."

Do you see that?

LETBY: Yes.

MYERS: Is that you accepting that you are there?

LETBY: No.

MYERS: If you go down to just below the second holepunch, you say:

"Yes, this is for morphine, I've co-signed it on 17 February 2016."

Do you see that?

LETBY: Yes.

MYERS: "Question: Okay, does that help you with remembering this event?"

What do you say?

LETBY: "Not really, no".

MYERS: Were you accepting what was being said to you?

LETBY: No.

MYERS: Were you accepting being there?

LETBY: No.

MYERS: If you just go over the page, please, to page 3. Again down below the second holepunch, about 10 lines up, the officer says:

"Okay, do you remember anything about the deterioration of [Baby K]?"

What do you say?

LETBY: "No".

MYERS: Down at the bottom, last question before we go over to page 4:

"Okay, so do they remind you at all of the event?"

Over the page, what do you say?

LETBY: "No, not in any clarity, no."

MYERS: Again, I'll ask: is that you accepting you were there?

LETBY: No.

MYERS: Down at the bottom of page 4, last four lines, the officer says:

"Okay, so do you remember her ET tube slipping?"

What do you say?

LETBY: "No".

MYERS: "Question: Okay, were you present when that happened?"

What do you say?

LETBY: "I don't remember".

MYERS: Then over to page 5, please, just the last example.

I'm not going through all the interviews in this, but we'll just finish with this. Down below where the tape counter says 8.21:

"Question: Okay. Are you aware -- again, I don't know how many times I can ask you this, but are you aware of how [Baby K] was handling at the time of the event?"

What do you say?

LETBY: "No".

MYERS: Then:

"Do you remember anything about the treatment she was receiving and her care going forwards?"

LETBY: "No".

MYERS: And you say, "No" to all that goes on there about what you are being asked, don't you?

LETBY: Yes.

MYERS: In answer to, "Do you recall that", what do you say each time?

LETBY: "No".

MYERS: Or in the words from the officer about "I don't know how many times I can ask", did you make it plain in your interview that you did not remember this?

LETBY: Yes.

MYERS: And were you in any way accepting that it had happened?

LETBY: No.

MR MYERS: My Lord, those are my questions for Ms Letby.

Does your Lordship have any questions?

Questions from MR JUSTICE GOSS

MR JUSTICE GOSS: Only one, it's about what document you recall having had when you were being interviewed and you've just been invited to look at the second page of the first interview in section 7 of the jury bundle.

If you see just below the -- just above the lower holepunch at 0255:

"Question: Okay, so if we just asked to have a look at a couple of pages, 9 and 10 specifically for this time, for this event?

"Answer: Yes, this is for morphine, and I've co-signed it on 17 February 2016 at 0350."

All right?

LETBY: Yes.

MR JUSTICE GOSS: Now, the implication is that there were eight pages before that, and pages 9 and 10 were that document in the bundle that you had.

LETBY: Yes.

MR JUSTICE GOSS: Can you remember how many documents roughly were in this bundle you were being shown?

LETBY: No, I couldn't comment, I was receiving multiple bundles throughout the process.

MR JUSTICE GOSS: Well, I know, but were they generally chronological, the bundles, or were they just random documents?

LETBY: I really don't know, I can't remember.

MR JUSTICE GOSS: Right. All right. That's it.

Actually, there is just one other question. Did you learn what happened to [Baby K] after she had gone to Arrowe Park Hospital?

LETBY: Yes.

MR JUSTICE GOSS: When did you learn that?

LETBY: I don't know when we were informed, but the Countess of Chester was informed that [Baby K] had died, yes.

MR JUSTICE GOSS: Was that relatively shortly after she left the Countess of Chester to go to Arrowe Park?

LETBY: I can't remember the exact time, but --

MR JUSTICE GOSS: I'm not asking the exact time, but are you talking about days, weeks, months?

LETBY: Yes, days.

MR JUSTICE GOSS: Days.

Right, that's all. Thank you very much.

(The witness withdrew)

Housekeeping

MR MYERS: Thank you, my Lord. Perhaps Ms Letby can return to the dock.

MR JUSTICE GOSS: Yes, certainly.

Well, we'll have a break now, members of the jury, and I'm going to discuss with counsel timetabling hereafter.

Can I just inquire, is there to be more --

MR MYERS: No, that will be the case for Ms Letby.

MR JUSTICE GOSS: That will be the case, but we'll have our break now in any event. It will be at least ten minutes, it may be slightly longer. All right? And then you'll be brought back into court when we're ready to proceed. Thank you very much.

(In the absence of the jury)

MR JUSTICE GOSS: Yes, could the people in the public gallery area please leave the courtroom. This will be for a relatively short time, a minute, a few minutes.

(Pause)

Right. Yes.

(Discussion off the record)

Yes, into the dock, not out of the court altogether, just into the dock area. Thank you.

(Pause)

Thank you very much.

Mr Johnson, Mr Myers, I'm now proposing to address, in the absence of the jury, the timetable, timetabling issues, so the public can come back into court for that.

We'll be sitting in open court for that purpose. Thank you very much.

(Pause)

MR JUSTICE GOSS: Is that everyone?

Right, Mr Johnson, Mr Myers, as I have indicated earlier, when Mr Myers formally closes his case in front of the jury when they come back into court, that will complete the business as far as they are concerned for today, and I intend then to send them home with the clear directions, reinforcement of the directions and indicate that they will be required again at 10.30 on Monday morning, and explain briefly what's going to happen. I will then ask the jury to leave the courtroom and I will then have a short break to address some matters.

When the court then resumes, we -- that is counsel and myself -- will discuss matters of law in relation to the directions that have to be given. I propose then, following on from that discussion, to provide with you in written form, proposed directions of law, you will receive those, depending on how long this discussion takes, some time today, certainly well before the end of the day.

MR MYERS: Thank you.

MR JOHNSON: Thank you, my Lord.

MR JUSTICE GOSS: Then we will see where we are, where we get to. That will be it. All right? Is there anything else either of you wish to raise at this stage?

MR JOHNSON: No, thank you.

MR MYERS: No, thank you.

MR JUSTICE GOSS: Obviously, you will be able to play your parts when the jury have been sent home. Thank you.

All right, thank you very much. So jury back in, please.

(In the presence of the jury)

MR JUSTICE GOSS: Mr Myers.

MR MYERS: My Lord, as indicated just before the break, that concludes the case for Ms Letby.

MR JUSTICE GOSS: Thank you very much.

That then, members of the jury, completes the evidence in this case and, as you know, the remaining stages are for me to give you legal directions in relation to the law that you need to know and apply in performing your task, which is to return a verdict applying those directions on your assessment of all the evidence that you have heard.

The matters of law, and this is conventionally done in all cases, however serious the alleged offence is, discussions with counsel take place, so that I can give you the written directions of law, that counsel know what those directions are going to be, and they can then address you in the light of those directions of law.

When they have then delivered their addresses to you, Mr Johnson first on behalf of the prosecution, then Mr Myers on behalf of the defendant, I will then continue my summing-up by reminding you of not all but what seem to me to be the salient parts of the evidence, but as I shall be directing you, it's not for me to say what is relevant and what is not relevant.

That is for you, as the judges of the facts, and a lot of it is in documentary form, obviously, that you have, and with which you are now familiar and to which you will have access when you come to deliberate on your verdict in this case. All right?

As you know, unfortunately, there is going to have to be this three-day break now, so it's obviously not appropriate to keep you hanging on and then give you directions of law today and then have this interval till Monday morning and then hear the speeches.

We will do it all -- because the directions of law won't take very long, it will be 15, 20 minutes, something like that, and you'll have them in writing, and then you'll hear counsels' addresses.

And then when they've finished, I will continue and complete my summing-up, which I anticipate, barring some unforeseen event taking place, will undoubtedly be Tuesday of next week, possibly Monday, likely to be Tuesday. All right? So that's giving you the timetable. But the exigencies of life are unknown, sometimes unexpected events take place that mean the court can't sit for a particular reason. If that happens, so be it. As I told you at the outset, all you 12 have to be here, we can't continue without you, you can't continue without me either. All right?

So that's it, as far as you're concerned now, so a long break coming up til Monday of next week.

Please remember your responsibilities, set out in the document I gave you at the very start of this trial, abide by those responsibilities, as I'm sure you have been and you should continue to do so. You'll appreciate the importance of it, maintaining the integrity of the jury system and not committing any offence by doing something that you should not be doing.

All right? Thank you very much indeed.

No research, therefore, and no communication by any means with anyone about this case. When you come back next week, you will be all together again and then shortly after we resume on Monday, either Monday afternoon or Tuesday morning, you will be retiring to discuss collectively, together, your verdict in relation to this case. All right?

Thank you very much indeed. 10.30, Monday morning.

(In the absence of the jury)

MR JUSTICE GOSS: We're going to have now at least a 10 or 15-minute break, not least because the defendant hasn't had a break yet at all, and I will ... I'll say 15 minutes, then people know where they are. I'll aim to be sitting again at 12.05 pm.

MR MYERS: I was just wondering, my Lord, whether it was possible to extend it a little bit?

MR JUSTICE GOSS: Yes, certainly.

MR MYERS: Then we can speak to the defendant because obviously we haven't spoken with her since she commenced her evidence.

MR JUSTICE GOSS: Certainly, Mr Myers.

MR MYERS: It will be helpful to speak and maybe if we could have 20 or 25 minutes, that would give us the time.

MR JUSTICE GOSS: Should we say quarter past, then?

MR MYERS: That would assist us, thank you. Then we can see her downstairs.

MR JUSTICE GOSS: Will that be all right? Will you able to accommodate Mr Myers and Ms Clancy?

DOCK OFFICER: Yes, of course.

(11.50 am)

(A short break)

(12.15 pm)

(Proceedings delayed)

(12.19 pm)

MR JUSTICE GOSS: Mr Johnson, before we address issues of law, you will be obviously well aware of the request that was made in relation to the release of some documentation --

MR JOHNSON: Yes.

MR JUSTICE GOSS: -- to members of the press.

MR JOHNSON: Yes.

MR JUSTICE GOSS: That was discussed yesterday afternoon, and I anticipate if it hasn't already been done, it will be done very shortly.

MR JOHNSON: Yes. It will, as far as I know.

MR JUSTICE GOSS: Right.

MR JOHNSON: It's not been my number one priority today.

MR JUSTICE GOSS: Exactly, no. So I just say to them, or certainly those who are interested from the accredited press, that they will, on giving an appropriate undertaking, be provided with the material that's been requested.

MR JOHNSON: Yes.

Thank you.

Discussion re directions

MR JUSTICE GOSS: Now, I expect you, between you, will have discussed matters of law upon which the jury need to be directed. I propose that there be one set of legal directions, which I shall give at the very beginning, which will incorporate any evidential directions.

Perhaps I can just run through my checklist, just to see whether any of you have anything that you wish to say specifically, or contradict.

The conventional, if I may so describe them, directions relating to the role of myself, the jury's role, the evidence, trying the case only on the evidence and not speculation, and to consider the case against and for the defendant without emotion or sympathy, one way or the other.

The role of counsel. Now, this touches upon what happened yesterday afternoon. What I'm proposing to say is this, and then I'll hear what Mr Myers says in relation to whether he wants more than this, by way of highlighting the particular matter that caused him concern:

"What counsel say to you is not evidence, they are advocates, not witnesses. Their role is to present their respective cases, to question witnesses and to advance arguments on the evidence for you to consider. A suggestion or proposition in a question by counsel is not of itself evidence, it only becomes evidence if the witness agrees with it."

Now, obviously -- yes?

MR MYERS: My Lord, you invite a response from me, I'm grateful for that.

We understand, of course, very often the better course is, to put it in the vernacular, least said soonest mended. However, it seems to us that in the context of this case and such a short trial, the question was asked which in effect was: was that done by you, in relation to an incident involving a different baby, is capable of having some lasting impact. And it seems to us,

with respect, that because there was, we submit, now, as we did then, no proper basis for that, and its impact is potentially unfair, it's something we are critical, the jury should be told in terms they should disregard that, because that may well have stuck in their memory. It would be surprising if it hadn't, it carried some impact going to that. And the suggestion in the flow of evidence that the defendant may have attempted or attacked another child, whilst we're dealing with this trial, beyond those convictions, is potentially a very powerful one.

It doesn't need to be elaborated upon, but we respectfully submit, they should be directed to disregard that, those matters having been dealt with, as your Lordship says.

MR JUSTICE GOSS: Well, that was in my generic, general introduction, and when we came to that particular piece of evidence, that's what I was wondering, whether you want me in relation to that to say something specific in due course.

MR MYERS: Yes, my Lord.

MR JUSTICE GOSS: Rather than highlighting it at the beginning.

MR MYERS: Howsoever your Lordship considers appropriate.

MR JUSTICE GOSS: Right.

MR MYERS: But we certainly agree with the generic direction, which is one that we would anticipate, that in the circumstances of that question, respectfully, we would be grateful, and we submit it is necessary for something rather more direct to be given when your Lordship comes to it in the evidence.

MR JUSTICE GOSS: I thought you might say that and that's why I said up to you whether you want it specifically highlighting or not, and you do.

MR MYERS: We do, yes.

MR JUSTICE GOSS: All right.

Well, Mr Johnson, I don't want to get bogged down in this.

MR JOHNSON: It's a matter for the court.

MR JUSTICE GOSS: I will say that that was raised as a matter. The prosecution are not alleging or cannot allege on the evidence that that is what was done in relation to that baby, and they should, for the purpose of considering their verdict on the matters upon which they are focusing -- in other words, [Baby K] -- they should disregard that.

MR JOHNSON: Yes.

MR JUSTICE GOSS: All right?

MR MYERS: I'm grateful. I'm grateful to my learned friend.

MR JUSTICE GOSS: You'll just have to listen to what I say in the main part of the summing-up later on, but I will give that specific point. But I won't put it there in writing in that, because it just may overemphasise the matter.

MR MYERS: Yes.

MR JUSTICE GOSS: Which would, I don't think, be helpful to anyone.

MR MYERS: We see that.

MR JUSTICE GOSS: Good. Right.

Then you'll be familiar with the generic directions that I gave in the last trial, which would not be -- well, we don't know precisely what was said about them.

MR JOHNSON: I don't think any of them are relevant to this trial.

MR JUSTICE GOSS: No, exactly.

MR JOHNSON: The issues that were raised.

MR JUSTICE GOSS: Delay. Can I read out what I've provisionally drafted:

"The events about which all witnesses give their evidence occurred eight years ago. Understandably, heavy reliance is placed on the contemporaneous hospital records and notes by the clinicians and nursing staff involved. Some witnesses have recollections of some of the events independent of what is recorded in the documents. Bear in mind that the passage of time is likely to have affected the memory of each of the witnesses about exactly what happened and hampered their ability to recall all the detail of the events."

That's across the board, all witnesses, including the defendant.

MR JOHNSON: Yes.

MR MYERS: My Lord, yes.

MR JUSTICE GOSS: I don't think it's appropriate to say anything else, but if you want to, you'll have this in writing, you could --

MR MYERS: Could we consider it? I would be grateful for your Lordship's --

MR JUSTICE GOSS: Yes, exactly.

I think here should be something said, because some witnesses said, "Yes, I can't recall it, but looking at the notes, that is what must have happened", but that's relying on the notes. Others have said, "I have some recollection of parts of the events, independent of looking at the notes."

MR MYERS: The reason I ask to, as your Lordship will allow us to, to consider it once we have seen it in writing and we can reflect upon it, is sometimes it is appropriate for there to be an additional, a corollary of that, which is any disadvantage experienced by the defendant in particular as a result of, for instance, the effluxion of time or any delay is something the jury should keep in mind.

It may or may not be a case where a direction like that is appropriate. So there's no mystery. That is what is in my mind as I ask: may we consider it further?

MR JUSTICE GOSS: Of course you may, and that went through my mind, but I did think that that is a rather different situation because that really relates to the fact that records no longer exist --

MR MYERS: Yes.

MR JUSTICE GOSS: -- in relation to the event, and people are having to rely very largely on their memory, and there may have been records available that would have assisted a defendant. And here, the records are voluminous and she was asked or first asked to bring to mind these events a lot longer than eight -- two years after the event. So that's why I didn't think it was appropriate. But by all means consider it, Mr Myers.

MR MYERS: It may be that we don't issue it. I'm aware of the fact that normally that will accompany a case where there may have been some complaint about, for instance, the disadvantage caused by delay and it's a way of dealing with abuse when it's alleged to arise in those circumstances.

MR JUSTICE GOSS: Exactly, yes.

MR MYERS: I appreciate it's not the exact position here.

MR JUSTICE GOSS: And people say there would have been school records or something or records that just don't exist anymore.

MR MYERS: I appreciate that may not apply.

MR JUSTICE GOSS: Anyway, think about it, and I'll hear obviously anything that you say in due course about it.

Then on to, obviously, the burden and standard of proof.
Attempted murder:

"The defendant is guilty of attempted murder if (a) with the intention of unlawfully killing [Baby K], (b) she unlawfully did an act or acts which was/were more than merely preparatory to killing her. Acting unlawfully in the circumstances of this case is deliberately doing something that was harmful and she knew was clinically inappropriate. The prosecution case is that, that about 3.45 on the morning of 17 February 2016, the defendant was in the intensive care nursery, nursery 1, when she deliberately interfered with the endotracheal tube, ET, through which [Baby K] was being mechanically ventilated, intending to kill her. The defendant says she has no recollection of being in that nursery at that time and she did nothing at all to [Baby K] and had no intention of harming her let alone killing her. If you are sure she did interfere with [Baby K]'s ETT tube intending to kill her, and her act or acts were more than merely preparatory to killing her, then your verdict should be guilty. If you are not sure, your verdict should be not guilty."

MR MYERS: Yes.

MR JOHNSON: Yes.

MR JUSTICE GOSS: You will have that in writing, if you want to make any suggestions, well and good, but I'm trying to keep it clear and simple in the written directions.

Then the previous convictions. Well, the conventional direction in relation to propensity.

MR JOHNSON: Yes. We're in a slightly unusual position here in the sense that most cases where there are previous convictions, the defendant doesn't say, "I don't accept the convictions, I don't accept they're correct". And we would submit that that should be dealt with, and it should be made clear to the jury what the law is, namely that they are to proceed on the basis that she is guilty unless she has established on the balance of probabilities that she isn't. And given that they haven't heard any evidence about the other cases, that burden is not discharged.

MR MYERS: I agree with the direction in the way that my learned friend says, that's a matter for Ms Letby, that's not said at all critically. Her position as to then was set out, and sometimes a defendant may call evidence and actually pursue that line and then, of course, it has to be dealt with in that way. But they have those convictions that are there, while she carries that persuasive burden. It may well be the court feels that certainly doesn't discharge it, it simply sets out her attitude towards those convictions.

MR JUSTICE GOSS: All right. You'll receive it in writing and if either of you want to make any suggested amendments, feel free to do so in writing.

MR MYERS: I agree with my learned friend, it needs to be dealt with, because, of course, looking at it from every position, one doesn't know how the jury will react to somebody saying that.

MR JUSTICE GOSS: Exactly. I think that they don't understand the law and the fact that essentially it is res judicata. Not that we're meant to use Latin anymore.

MR MYERS: I make it plain, I say that not in any disadvantage to Ms Letby, because I recognise at this point in assisting the court with regard to the law, your Lordship has to deal with it as the law --

MR JUSTICE GOSS: No, well, it's entirely right and proper that you do that, and I understand it, and I'm sure that Ms Letby will understand it, that your obligation is to the court as well as to represent her --

MR MYERS: Yes.

MR JUSTICE GOSS: -- in any way that is appropriate.

Now, I'm not quite sure, and this is the area on which I really do want your assistance, are the prosecution going to seek an adverse or do they seek an adverse inference direction in relation to what the defendant did or did not say in interview and/or in her defence statement?

MR JOHNSON: Well, the defence statement in a sense is parasitic of the interview, and the issue -- the actual issue is what she said in the interview, isn't it?

We know what the words were. The question for the jury is what she meant by saying those words in those circumstances. And it seems to us, with respect, that that's really the issue here, not whether there has been a change, because if there has been a

change, then our position is correct. But if, in effect, she is conceding that she's there, that's what we -- that's the position as we would suggest it actually is.

So introducing section 34 to that logical progress does not illuminate the issues, it obscures them. So we don't respectfully seek a section 34 direction.

MR MYERS: Would your Lordship give me one moment?

MR JUSTICE GOSS: Of course, Mr Myers.

(Pause)

MR MYERS: No, we certainly agree that whilst there is an issue as to perhaps how what she said in interview is interpreted, putting it that way, we don't positively seek a section 34 direction as we're dealing with that.

There is an issue, which is: what did she mean by the things she said and what can the jury infer from that if they need to? But --

MR JUSTICE GOSS: It's not a failure to mention something that she really relies on.

MR MYERS: No.

MR JUSTICE GOSS: First of all, it's got to be: what did she mention and what did she mean by what she mentioned?

MR MYERS: Yes, and that's --

MR JUSTICE GOSS: That's, I think, breaking it down. So it's not a section 34 situation, that was my view --

MR MYERS: Yes.

MR JUSTICE GOSS: -- but I put it in a very open, neutral way to you to see what --

MR MYERS: My Lord, we agree, it's a matter of interpretation and, as everyone sees, it's contested, the interpretation that's put on that, about what she said.

MR JUSTICE GOSS: Yes.

MR MYERS: But it doesn't seem to be something that easily sits within a section 34 direction without becoming incredibly complicated and potentially unhelpful.

MR JUSTICE GOSS: Well, I respectfully agree, and because it's -- the section 34 direction, with respect to the legislators, is really designed for the situation where someone pulls a rabbit out of a hat and says something completely new that they could have said at an earlier stage and are now saying something different and seeking to rely on something different.

That's not this situation.

MR MYERS: My Lord, no, we agree.

MR JUSTICE GOSS: Right.

Is there anything else that either of you ...?

MR JOHNSON: There's the circumstantial evidence direction.

There's no direct evidence, no one is saying "I saw the defendant move the tube", so we are frankly inviting the jury to draw the inference.

MR JUSTICE GOSS: Right.

Well, and then you say, what, a general circumstantial direction or just in relation to the circumstances of this particular incident?

MR JOHNSON: My Lord, all three incidents.

MR JUSTICE GOSS: All three incidents?

MR JOHNSON: Yes.

The extubation -- well, incidents 1 and 3 in a much more clear-cut way, if the jury accept what Dr Jayaram says, so we would say the chance of it being a naturally occurring misplacement of the tube can be discounted by the fact that two out of the three -- the evidence -- one interpretation of the evidence is that two out of the three only happened when she was in the room and was the only person in the room other than [Baby K] and the other children.

And the second one is more nebulous, but equally relies on inferences to be drawn from the circumstances, namely that just before the x-ray, and at the time of the x-ray, the tube was in the correct position, as evidenced by the x-ray, and therefore her, we would say, being in a position to have reason to be in the room -- in other words to return the notes -- gave her the opportunity; and so we then have a combination of three issues with the tube, all of which occur at a time when the jury could infer -- don't necessarily have to infer, but could infer --

that she was in the room, and it's just too coincidental to be an innocent coincidence.

MR JUSTICE GOSS: Yes, sorry, I was misunderstanding what you were wanting to say.

MR JOHNSON: Right.

MR JUSTICE GOSS: But I do understand now.

MR JOHNSON: Yes.

MR JUSTICE GOSS: I thought you were just generally in relation -
-

MR JOHNSON: Oh no. No, no. No. It's to deal with the possibility of coincidence.

MR JUSTICE GOSS: In relation to the events of that night.

MR JOHNSON: Correct.

MR JUSTICE GOSS: In their totality.

MR JOHNSON: Correct.

MR JUSTICE GOSS: Right.

MR MYERS: Well, I'm not sure that isn't is really a submission rather than a matter for a legal direction.

MR JUSTICE GOSS: Well, I'm going to consider it, yes, and I'll -
- I will consider it. I wasn't planning on giving the standard circumstantial direction, but -- and that's ...

MR MYERS: The evidence for event 1 really in fact is barely circumstantial, in fact one of the hallmarks of this case, as it was presented in opening, was it's almost direct --

MR JUSTICE GOSS: Well, it's direct evidence of the presence of the defendant --

MR MYERS: Yes.

MR JUSTICE GOSS: -- at the incubator side of [Baby K] at the material time, other events going on relevant to what was --

MR MYERS: Yes.

MR JUSTICE GOSS: -- going on at that time.

But what Mr Johnson, as I understand it, is seeking is direction that when considering that event, the jury can have regard to subsequent events, and I think it needs careful thought.

MR MYERS: Yes, that seems to us, with respect, to be dressing up -- or seeking to, if the word isn't dress up, maybe the word is to dignify or enlarge a submission with a legal direction behind it.

It's an argument, which is "This happened on this occasion, this happened on this occasion, that supports what we say on occasion number 1", but to seek to cloak that in the language of a judicial direction on circumstantial evidence goes beyond that, and so --

MR JUSTICE GOSS: Well, yes, exactly.

MR MYERS: -- we question that.

MR JUSTICE GOSS: It's the unlikelihood of coincidence, is the traditional circumstantial -- putting together the --

MR MYERS: Yes, but that's normally a number of items of evidence around the central point that none of which directly go to show that point but, put together, one may be able to construct that point out of it. Well, that doesn't apply to event 1, because that comes out of the direct evidence of Dr Jayaram.

Events 2 and 3 are matters as to which there is particular evidence pertinent to them, and the prosecution are then arguing "That supports what we say on event number 1", but to then treat event 2, for instance, as itself a piece of circumstantial evidence that goes to support event 1 seems to go beyond what the circumstantial evidence direction is really designed to do. Or, we hasten to add, the evidence around event 2 going to support whatever the prosecution say event 2 is.

They really are matters of argument rather than matters requiring legal direction. That's how it seems to us as we first heard it set out.

MR JUSTICE GOSS: All right.

MR JOHNSON: Well, if my learned friend doesn't want the direction, I'm not going to push it, but -- and just so that this is understood -- there is or there has been in cross-examination a very real issue on event 1, namely: was the tube moved or was it blocked?

MR JUSTICE GOSS: Ah, yes.

MR JOHNSON: And did the other two incidents go to that issue?

MR JUSTICE GOSS: Yes.

MR JOHNSON: We would say, but if my learned friend doesn't want the direction, then that's fine as far as we're concerned.

MR JUSTICE GOSS: Yes.

All right, well, both of you think about it. I will consider the matter, and I will inform you whether I think, when you've -- I'm going to put the onus back to you, to discuss it with Mr Myers and then, if there is consensus -- or even if there is not consensus but one of you or both of you think it's appropriate for there to be some sort of direction --

MR JOHNSON: I can make our position clear: if my learned friend doesn't want the direction, then we're not going to seek to argue that it should be given.

MR MYERS: It's not one we'd considered. I don't mean that in any way to be rude, it just seemed to be a matter of argument as to how the cases are put. And your Lordship will have directed the jury not to speculate already, and that sets the boundary as to how far a jury can go, and then they can hear the submissions as to who says what is supportive of what.

MR JUSTICE GOSS: Exactly, it's whether it's supporting evidence or --

MR MYERS: Yes.

MR JUSTICE GOSS: Right.

I will forbear from sending out anything in relation to that, but obviously you have plenty of time in which to review that.

Yes.

MR MYERS: One other matter to assist my Lord -- and I raise it just so it's been raised, and it's not something we positively seek, but it might have occurred before now -- it's a question of any direction on inconsistent statements and anything that should follow from that.

MR JUSTICE GOSS: Oh, yes. No, sorry, I omitted to say that. I was going to give a direction on inconsistent statements.

MR MYERS: I anticipated your Lordship was, but --

MR JUSTICE GOSS: Sorry, I didn't spell that out.

I've actually done it in a way which I hope is helpful, as you will see, but if it's not and you want ...

"What a witness says in the witness box and any witness statement he or she has made about events is all evidence in the case for your consideration. Where there are or appear to be differences in accounts, it is for you to decide how different they are and whether or not the difference, or any of them, are important. If you decide that any differences ..."

I shall make that a little bit clearer, "differences in accounts by a witness".

"If you decide that any differences are not important, then you should ignore them. If you think that any differences are important, you should consider the reason given for the difference or inconsistency. If you are sure that the explanation is valid, you may accept what the witness said in their evidence to you in the witness box. If you reject the explanation or you're not sure that they're telling the truth, then you should treat both what the witness said in their statement and what they said in the witness box with caution. If, having done so, you are sure that what the witness said in their evidence to you is accurate and reliable, then you may rely on it and take it into account. If you're not sure whether any version is accurate, then you should not take any of it into account. You do not have a copy of the witnesses' statement when they're questioned, just as you do not have the statement of any witness."

So it's the usual one.

MR MYERS: Yes, my Lord, thank you.

MR JUSTICE GOSS: And it will give you the opportunity to make your submissions.

MR MYERS: Thank you.

MR JOHNSON: We would query whether there should be separate directions for prosecution witnesses and the defendant, because we would say that there are inconsistent statements from the defendant, and the burden of proof is different. So that we would respectfully invite your Lordship to consider whether separate directions should be given.

MR JUSTICE GOSS: What, because of the --

MR JOHNSON: Because of the interview.

MR JUSTICE GOSS: Because it was under an interview. Yes, well, I'll deal with that.

MR JOHNSON: Yes, but it's a previous inconsistent statement, and the burden and standard of proof are different for the prosecution and the defence, and that needs to be recognised.

MR JUSTICE GOSS: Yes.

Well, I'll give this generic direction, "other than the defendant, other than in the case of the defendant".

MR JOHNSON: Yes.

MR JUSTICE GOSS: And then I will, when I review her evidence, I will --

MR JOHNSON: Yes.

MR JUSTICE GOSS: -- give a different direction in relation to her.

MR JOHNSON: Yes. Yes. But it may be worth, if your Lordship's putting the more general direction in writing --

MR JUSTICE GOSS: Have it in writing as well. It will be.

MR JOHNSON: Either have it in writing as well or make it very clear in the written version and when it's being delivered that this does not apply to the defendant, different considerations apply.

MR JUSTICE GOSS: All right.

Mr Myers, is there anything you want to say on that?

MR MYERS: Nothing on that, my Lord.

MR JUSTICE GOSS: Right.

Any other matters? Right.

Well, I will go and consider the matters that have been discussed between us and draw up a proposed direction covering all the directions, and have it sent to you in the usual way. I mean, is it -- yes, the usual way I'll say. I could upload to the DCS, but the DCS is so cluttered --

MR JOHNSON: Yes.

MR JUSTICE GOSS: -- I think it's easier just to have direct communication --

MR JOHNSON: Thank you.

MR JUSTICE GOSS: -- through my clerk.

MR JOHNSON: Is your Lordship proposing that we should return this afternoon?

MR JUSTICE GOSS: Not unless you wanted to.

MR JOHNSON: No, I wasn't inviting that.

MR JUSTICE GOSS: No, I think it can be done in writing, and discussions between both of you --

MR JOHNSON: Yes.

MR JUSTICE GOSS: -- and then submission, if there is agreement -
-

MR JOHNSON: Yes.

MR JUSTICE GOSS: -- between you and, if there is not, your respective positions for me to consider.

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

MR JUSTICE GOSS: Do you need or want to go and see Ms Letby again?

MR MYERS: We would wish to, it's a matter perhaps for us in consultation with the staff as to whether that happened before or after lunchtime, but we would like to see her at some point before she leaves the building, unless there's a problem with that.

DOCK OFFICER: No, our legal (inaudible).

MR JUSTICE GOSS: Now, I think. Is that now?

DOCK OFFICER: We can do now or after lunch.

MR MYERS: Perhaps we could do that now, my Lord.

MR JUSTICE GOSS: I think now will probably be --

DOCK OFFICER: Yeah.

MR JUSTICE GOSS: Very good. Thank you very much.

(12.50 pm)

(The court adjourned until 10.30 am on Monday, 1 July 2024)