



# The Expert Witness Institute

## Newsletter

### Expert evidence in Jayden Wray case

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#### EXPERT EVIDENCE IN JAYDEN WRAY CASE

In December 2011, after a six week trial at the Old Bailey, His Honour Judge Kramer directed the jury to acquit Rohan Wray and Chana Al-Alas of murder and causing or allowing the death of their son Jayden Wray. The Judge ruled that it would be unsafe for the case to be left to the jury as ‘the reality is that the outcome of the trial depends exclusively or almost exclusively on the resolution of serious disagreements between distinguished and reputable experts’.

#### The Case

Jayden Wray died at Great Ormond Street Hospital in July 2009. He was 4 months old. The Prosecution alleged that his death was caused by baby shaking, which they said was evidenced by the classic ‘triad’ of head injuries (subdural haematoma, encephalopathy and retinal haemorrhages). They made reference to the existence of multiple fractures of varying ages as being additional evidence of violence to substantiate death through non-accidental injury. The parents strongly denied any wrongdoing and pointed to the fact that Jayden had been diagnosed post mortem as having severe undiagnosed rickets and Vitamin D deficiency.

At trial, the Defence called expert evidence presenting an alternative diagnosis, namely that Jayden’s death was attributable to a combination of benign causes which included severe Vitamin D deficiency which sensitised him to infections and seizures. The seizures led to raised inter-cranial pressure, which caused the retinal haemorrhages and the findings in the brain. The defence also called experts who argued that that all the fractures were a product of rickets and not abuse.

The central issue was whether or not death was caused by an unlawful act by anyone.

#### Disagreement between Experts

The serious disagreement amongst experts was clear from the outset. In almost every prosecution case involving a death, the pathologist who conducted the post mortem is called to give evidence on behalf of the Crown. In accordance with the protocol for sudden infant deaths, the post mortem on Jayden Wray was carried out jointly by a forensic pathologist and a paediatric pathologist. In this case Dr David Rouse and Dr Irene Scheimberg. However, neither was called to give evidence on behalf of



the Crown. Instead the Prosecution called evidence from Dr Nathaniel Cary, who had observed the post mortem on behalf of the Police.

The disagreement between pathologists on the appropriate interpretation of post-mortem findings ‘triad’ cases is well recognised. In December 2009 a meeting was convened by the Royal College of Pathologists to discuss this issue. The meeting was not able to achieve a complete consensus. It was, however, agreed that each of the individual elements of ‘the triad’ has a differential diagnosis even when

all three are seen in combination. Hence a thorough post-mortem examination is invariably needed to exclude, as far as possible, non-traumatic explanations.

Dr Scheimberg performed exhaustive tests and was called to give evidence by the Defence. The Prosecution sought to persuade the jury that her views were not that of ‘mainstream science’. It is possible to argue that this demonstrated a lack of understanding on the part of the Prosecution of the complexity of these cases. It is difficult to seek to define the ‘mainstream view’ when really each case is an individual investigation, turning on its own facts and findings. Dr Scheimberg was certainly not alone in her views. The Defence called many experts from both the UK and overseas, from disciplines including Pathology, Neurology, Radiology, Endocrinology, and Biomechanics, each challenging the opinions given by the Prosecution experts.

Back in 2005, the Court of Appeal endorsed comments made by leading neuroradiologist Dr Philip Anslow :

“The clinical history is perhaps the most important clinical tool available to the clinician and to reject the carer’s version of events in favour of another requires the highest possible level of medical evidence. After all, the Doctor is effectively accusing the carer of lying. “

In this case, however, experts called by the Crown had not been fully briefed as to the clinical history, which simply did not fit the shaking hypothesis.

The Jayden Wray case highlights that lessons in the area have still to be learned and unless Prosecution investigations allow a more substantial margin for expert error, the chance remains that more parents like Chana and Rohan will be forced to endure the same nightmare.