

## BOOK REVIEWS

**Murder, medicine and motherhood**, by Emma Cunliffe, Oxford, Hart Publishing, 2011, 232 pp., hardback

This book explores how we deal with a small subset of supposed child homicides in our criminal justice system: multiple infant (and sometimes child) deaths over a period of time in one family. At its centre is the successful 2003 NSW prosecution of Kathleen Folbigg for the murder of her four children. The issues include how popular (mis)constructions of motherhood helped convict her, and related to this: how the controversial medical science, in the hands of the experts and the lawyers, was used to try to distinguish between natural causes and smothering. The uncertainties in the latter appeared to be patched up with elements of the former – demonstrations of how Kathleen Folbigg was an unfit mother. Psycho-social and quasi-scientific material merged as the main approaches to fact finding in the trial.

The author sets Folbigg's case in its immediate legal context. In NSW in 1999, the Prosecution withdrew in *R v Phillips*, a case of a mother charged with murdering her 8-month-old son after finding him lying on his stomach having difficulty breathing. An autopsy found an apparently healthy well-nourished baby with no apparent cause of death. There had been two previous sibling deaths in the Phillips' family attributed to aspiration pneumonia and Sudden Infant Death Syndrome (SIDS). The judge disallowed the prosecution's reliance on the evidence, or coincidence, of the two previous and uncharged deaths (and some uncharged Acute Life Threatening Events) to increase the likelihood that the charged death was due to induced asphyxia or smothering. Another part of the legal context of Folbigg's case arose from the UK, where in the early 2000s the appeal courts overturned convictions in three multiple child death cases: Clark, Canning and Anthony. In Victoria, subsequent to the Folbigg case, there was the case of Matthey, a mother charged with the murder of four infants over a 6-year period, where, following a comprehensive pre-trial ruling by Coldrey J, the prosecution withdrew. Coldrey focused on the prejudicial nature of the prosecution's medical evidence provided by three witnesses (all of whom appeared in Folbigg), and made similar conclusions about, and found errors in, other aspects of the prosecution's circumstantial evidence.

From 1989 to 1999, Kathleen and Craig Folbigg's four children died. They were aged from 19 days to 19 months at the time of their deaths. In no case did the investigation at the time, including the autopsies, disclose any evidence of physical injury. The formal record as it now stands is that they were killed by their mother.

Name	Age at death	Year of death	Cause of death (as concluded by investigation at the time death occurred)
Caleb	19 days	1989	SIDS
Patrick	8 months	1991	Asphyxia due to airways obstruction; epileptic fits
Sarah	10.5 months	1993	SIDS
Laura	19 months	1999	Undetermined

Kathleen's now ex-husband Craig became convinced she had killed the children. It was he who, when he found them, gave Kathleen's diaries to police. Kathleen was charged in April 2001; she was remanded in custody but released on strict bail conditions in May. She was committed for trial in May 2002 and convicted after one and a half days' consideration by the jury following a 6-week trial in April/May 2003. She was sentenced to 40 years jail, reduced on appeal to 30 years with a 25-year minimum. The defence contested everything. The case overall involved no fewer than 17 written judicial decisions.

The defence regarded the medical and scientific evidence, which occupied more than half the court's time and accounted for most of both counsels' closing addresses and the judge's summing up, as inconclusive. The prosecution called 19 doctors: general practitioners, pathologists, paediatricians, sleep specialists, an epidemiologist, a paediatric cardiologist and a paediatric neurologist. The defence supplemented this with two further medical specialists of its own. There was considerable confusion over SIDS: on the one hand that the diagnosis of SIDS was a diagnosis of death being due to natural causes, and on the other that the diagnosis was one that encompassed unnatural causes such as homicide. Two experts claimed they could diagnose smothering 'based on a pattern of infant deaths in a single family "beyond a reasonable medical doubt" or "until proven otherwise"'. These opinions did not make it to the jury but, according to the book's author, influenced in troubling ways some of the medical and scientific material that was admitted into evidence. A similar dichotomy afflicted the trial as a whole: the defence claimed that the prosecution was relying on a coincidence of four infant deaths to prove the cause of death in each case. The experts were not allowed to refer to the unlikelihood of such a coincidence as meaning that homicide was more likely. However, the prosecution was allowed to ask the experts whether they had ever heard of three or more sudden unexpected infant deaths in one family from natural causes, effectively making the same point. To this reviewer, it seems the pathology evidence fell into the trap of allowing itself to be used to reverse the burden of proof. The pathology evidence put properly, based on what appears in this book, was that there was no evidence that the infants had been killed, and while homicide was a possibility, there was no pathology evidence to support it.

The author is clearly concerned that the experts may have acted as the experts described by Coldrey J in Matthey's case. Coldrey wrote that the expert opinion provided 'must be "wholly or substantially" based on expert knowledge, and the facts which found that opinion must be proved by admissible evidence. Furthermore . . . an attempt to make the basis of the opinion explicit may reveal that it is not based on specialised expert knowledge, but . . . on a combination of speculation, inference, personal and second-hand views as to the credibility of the complainant and a process of reasoning which went well beyond the field of expertise.' This remark was

addressed to the medical evidence in Matthey's case, the weight of which was being worn by three experts also relied upon in Folbigg.

The defence regarded the behavioural and diary evidence as ambiguous. The diaries were, in the words of the prosecution, 'the strongest evidence that you could possibly have for the accused having murdered her four children'. But this discloses the true nature of this case: there is no explicit confession. Rather, Sarah left 'with a bit of help'. Elsewhere: 'because it was me not them'. Words such as 'guilt', 'responsibility' and 'mistake' have multiple meanings and, the defence said, should not be taken as admissions of murder. Kathleen Folbigg herself did not give evidence, but in her interview with police, when asked about these comments in her diary, said: 'After four, what are you supposed to think?'. It is well recognised that self-blame is a common response to infant deaths.

Craig described Kathleen's parenting style as regimented and authoritarian. It became part of a prosecution strategy, according to the book, to demean Kathleen's capacity as a mother. Other evidence from female friends of Kathleen's was uniformly positive of her style. They, and all the doctors involved with the babies in life, saw nothing other than health and thriving in the children: they were well dressed, well cared for and seemed to relate well to their mother.

There has always been dysfunction at the interface between infant deaths and the criminal justice system. It is understandable perhaps: the emotionally combustible mixture of babies, vulnerability and wanting to protect transforming into a desire to convict and punish. Historically, 25% of all deaths in the UK in the nineteenth century were infant deaths (i.e. babies under 1 year) and the dominant subject in the forensic medicine texts of that era was infanticide – used in the older sense of the killing of infants generally. In 1860, Tardieu was the first to write about child abuse in anything like its current conception. In the modern era, Caffey re-described the entity in 1946. Despite this, lawful chastisement as a defence to homicide was still getting a run in Melbourne in the second half of the 1950s. Infant deaths, already reduced to about 1% of all live births by 1990, in the last 20 years have reduced even further, with Dr Spock's admonition to sleep babies on their tummies taking more than 30–40 years to overturn, based on careful epidemiological work, much of it in Australia. It is possible that this latest reduction has made the remaining number of unexplained deaths, now quite few, of greater interest to the criminal justice system.

There are many parts of the world where child abuse is still not recognised by the indigenous community as occurring. Its existence in developed societies is often pointed to as obvious evidence of their degeneration by those other parts of the world. The thought is: 'How could anyone harm an infant – whatever our problems, our people would never stoop to that'. This reviewer has several forensic medical colleagues around the world who have looked him straight in the eye and told him words to that effect. And the horror of that thought affects careful rational management of these cases in our own society. One only has to recall the shrill media reporting of them to get a sense of that in Australia.

The author has written on the basis of her doctoral research into the relationships between medicine, motherhood, criminal justice and the media. In particular, how these have intersected to leave Kathleen Folbigg as the only such case in the UK and Australia where a conviction still stands. It is engagingly written, and unlike many books of the kind (that is, evaluations of possibly flawed convictions), it straddles the various disciplines involved seamlessly, and with

insight based on substantial research. She hoped to divine what it was in Folbigg's case that distinguished it from others where the mother had ultimately been given the benefit of the doubt. I could simply suggest that you buy the book to see if she succeeded, but that would not sufficiently convey the seriousness of its purpose. The author, in my view very even-handedly and after a thorough analysis, does conclude that the uncertainty is such that Kathleen Folbigg has been wrongly convicted.

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**Violent offenders: theory, research, policy and practice, second edition**, edited by Matt DeLisi and Peter J. Conis, Burlington, MA, Jones & Bartlett Learning, 2011, 469 pp., ISBN: 13-978-0-7637-4 (soft cover)

This book provides an insightful overview of violent crime and violent offenders. It presents a range of complex theories of offending behaviour in an easy-to-read manner, which makes this book a pleasurable resource to use; often books of this nature can be dry and heavy and this is not. In the preface, the editors state this book is intended as an applied resource for people working in the criminal justice arena. I think the editors have done a good job in putting together a set of readings by well-known experts in the field, articles that I feel will be useful to people working in law enforcement and forensic science.

This second edition has 25 chapters divided into two parts. Part I has 14 chapters on the theory of violent offending and looks at who are violent offenders, the places where they mainly concentrate, their typical upbringing and the influence of their peers and the people with whom they associate. This section provides a clear overview of why some people engage in anti-social conduct and why they commit acts of often extreme violence. This section also covers some quite specific, and interesting, sections on crime, such as gang violence, women who kill and predatory sex offending. Part II covers criminal justice practice and policy. This section appears more aimed at the social prevention (such as gun policy) and management of violent offenders through the justice system post-conviction.

Would I recommend this book to forensic scientists? The answer is yes, especially for frontline forensic personnel (those who attend crime scenes and those called upon to make hypotheses and inferences about what may have occurred before, during or after any violent incident). Violent offenders often have patterns evident in their behaviour and to understand how and what violent offenders think cannot be anything but beneficial to the people asked to understand the crime scene they leave behind. Part I of this book is perhaps the more useful for forensic scientists.

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