



STATE OF DELAWARE
Child Death, Near Death and Stillbirth Commission
900 King Street
Wilmington, DE 19801-3341

CAPTA¹ REPORT

In the Matter of
Justin Miller
Minor Child²

9-03-2011-00002

May 17, 2013

¹ The federal Child Abuse Prevention and Treatment Act requires the disclosure of facts and circumstances related to a child's near death or death. 42 U.S.C § 5106 a(b)(2)(A)(x). See also, 31 Del.C. § 323 (a).

² To protect the confidentiality of the family, case workers, and other child protection professionals, pseudonyms have been assigned.

Background and Acknowledgements

The Child Death, Near Death and Stillbirth Commission (CDNDSC) was statutorily created in 1995 after a pilot project showed the effectiveness of such a review process for preventing future child deaths. The mission of CDNDSC is to safeguard the health and safety of all Delaware children as set forth in 31 Del.C., Ch., 3.

Multi-disciplinary Review Panels meet monthly and conduct a retrospective review of the history and circumstances surrounding each child's death or near death and determine whether system recommendations are necessary to prevent future deaths or near deaths. The process brings professionals and experts from a variety of disciplines together to conduct in-depth case reviews, create multi-faceted recommendations to improve systems and encourage interagency collaboration to end the mortality of children in Delaware.

Case Summary

The male child who is the subject of this review, Justin Miller, was born in November 2009 to mother, Jennifer Miller, and father, Drew Miller. The child was born via spontaneous vaginal delivery at forty weeks gestation, weighing eight pounds four ounces. Justin Miller died that same day as a result of perinatal asphyxiation. Justin's manner of death was ruled a homicide and the alleged perpetrators were noted to be Justin's mother and father.

Family History:

According to the Division of Family Services' (DFS) Family and Child Tracking System (FACTS), mother, Jennifer Miller, was involved in two DFS investigations. These investigations occurred in 2001 and 2003 and stemmed from an allegation of sexual abuse and neglect. Jennifer was linked to these investigations as she was the adopted adult child of the parents in question. Both of these investigations were unfounded.

There is no DFS history for father, Drew Miller, and family.

In addition, Jennifer and Drew Miller were both convicted domestic offenders. Father, Drew, also had numerous motor vehicle violations which resulted in misdemeanor convictions.

Justin's Death Event:

In November 2009, mother arrived at the Emergency Department (ED) with the chief complaint of vaginal bleeding from a recent child birth. Mother had explained to medical staff that she delivered a stillborn and that the child's body had been disposed of in a hotel dumpster. Immediately following this disclosure law enforcement was contacted as well as DFS and a joint investigation began.

The day after Justin's remains were discovered, the Office of the Chief Medical Examiner performed a postmortem examination. Photographs were taken by law enforcement and the Medical Examiner in addition to two full body x-rays. The towels, clothing and plastic bag in which Justin was placed in were entered into evidence, along with the DNA cards of

blood from Justin's umbilical cord and heart. The anatomic findings were as follows: Justin was a full term newborn with the umbilical cord and placenta still attached. The early changes of decomposition were characterized by skin slip and thoracic and abdominal organ autolysis. No anatomic abnormalities were noted, nor was blunt or sharp force trauma determined to be the result of death. Therefore, the cause of death was determined to be perinatal asphyxia and the manner of death was ruled a homicide.

Immediately following the autopsy findings, mother was interviewed by law enforcement. Mother advised law enforcement that she, father and their three other children reside in the home of the children's paternal grandparents. Mother admitted that the paternal grandparents were unaware of her pregnancy. Mother had hidden her pregnancy for fear that paternal grandparents would ask mother and family to leave as the current living environment was crowded and there was also a financial strain. Mother advised that at the beginning stages of her pregnancy father had suggested an abortion; however, mother was opposed to this idea. Mother reported that she delivered Justin in the toilet of the second floor bathroom of the paternal grandparent's residence. Mother admitted that Justin was born alive as she observed his mouth and hands move and also admitted to hearing some noise. Mother stated that after delivery Justin had remained submerged in the toilet water for approximately ten to fifteen minutes while mother and father engaged in a verbal dispute over her pregnancy and delivery. When mother went back to remove Justin from the toilet, she noticed that Justin was no longer moving.

Two days after Justin's death, father was also interviewed by law enforcement. Father informed police that mother had a stillbirth in the upstairs bathroom. Father continued to advise that mother had called the hospital and the hospital had informed mother to get rid of the baby. Father explained that he was apprehensive about bringing Justin to the hospital as he was concerned as to how hospital staff would perceive him. Therefore, father advised that mother wrapped Justin in a towel and they placed the baby in a trash bag where father then proceeded to dump Justin's remains in a dumpster located behind a hotel. Father further corroborated the fact that the pregnancy was kept hidden from the paternal grandparents due to the possible ramifications of bringing a fourth child into the home. Father informed law enforcement that he never heard Justin cry or make any noise and mother never informed him that Justin was alive. Father admitted that he never actually checked on or touched the baby. When father entered the bathroom, he observed Justin's head to be positioned at the back of the toilet, in the toilet water. Father advised that they then began to clean the bathroom and according to father's statements, Justin was not picked up until father left the bathroom to find a trash bag. At that point in time, mother then picked the baby up from the toilet and placed him on a towel on the bathroom floor. Father admitted that neither mother nor father wanted the child due to the financial strain that it would place on the family. However, father admitted that if he had called an ambulance immediately following Justin's birth or during mother's delivery, then Justin might still be alive today.

Mother was interviewed a second time, where the only new information provided that was of relevance to the case was the fact that the mother had called the hospital and spoken to a triage nurse. Upon speaking with the triage nurse, mother was advised to call 911, which she did not. The next day, mother appeared at the Emergency Department (ED) with the chief complaint of vaginal bleeding due to recent child birth. However, the child was unaccounted for.

During the criminal investigation additional DNA evidence was collected from mother and father. Cell phone records were also reviewed which demonstrated that a call was placed to the hospital the morning of Justin's birth. A search warrant of the residence was executed two days after Justin's birth.

In February 2010, mother and father were indicted by a grand jury on the charges of murder by abuse and neglect in the first degree, endangering the welfare of a child, and abuse of a corpse. A Rule 9 warrant was issued for the arrest of mother and father. Shortly thereafter, mother and father were apprehended and taken into custody. In May 2010, mother pled to Murder by Abuse and was sentenced to 25 years, suspended after 6 years with intense supervision for 2 years. In November 2010, father pled to reckless endangering and criminally negligent homicide. For reckless endangering, father was sentenced to 5 years, suspended after 2 years with intense supervision for 2 years. In regard to criminally negligent homicide, father received an additional 5 years, suspended after 4 years.

DFS closed the civil investigation as unsubstantiated with concern due to the abuse of Justin's corpse. As a result of the DFS investigation, the case was transferred to treatment where Justin's paternal grandparents petitioned for and were granted guardianship of Justin's three older siblings. Therefore, DFS never entered into a case plan with Justin's parents. The case was identified for closure as the paternal grandparents were providing care for the children. DFS recommended that the paternal grandparents seek counseling services for themselves in order to cope with death of their grandchild and criminal conviction of their only child, Drew Miller.

Primary System Recommendations

After review of the facts and findings of this case, the Child Abuse and Neglect Panel determined that all systems did not meet the current standards of practice and therefore the following system recommendation was put forth:

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

1. CDNDSC recommends that the Division of Family Services (DFS) evaluate the facts and circumstances of a case, to include not only the Medical Examiner's findings, but the findings of the criminal investigation in order to determine whether or not a case should be substantiated for physical abuse and/or neglect.
 - a. Rationale: During the criminal and civil investigation of this case, mother self reported that the child was born alive as she observed small movements and faint noises from the child. However, after the child was submerged under water for approximately 10 to 15 minutes the child was observed by mother to be lifeless. The events following the child's birth then led to the child being discarded in a dumpster by father. The child's cause of death was determined to be perinatal asphyxiation, which is a condition resulting from deprivation of oxygen to a newborn infant that lasts long enough during the birth process to cause physical harm, usually to the brain. As a result of the cause of death, it was unable to be

clearly established whether the child was born alive or not. Therefore, DFS was unable to substantiate mother or father for physical abuse. Testimony provided by mother and father both indicate that mother's pregnancy was unwanted and that child was disposed of following birth. It is reasonable to conclude that mother and father both exhibited a level of negligence as it pertained to Justin's welfare. Therefore, although abuse could not be concluded by DFS as a result of its investigation, it is clear that Justin's death was a direct result of neglect and therefore the case should have been substantiated.

- b. Anticipated Result: To ensure the safety and well being of the child.
- c. Responsible Agency: Department of Services for Children, Youth and Their Families