

IN THE CROWN COURT AT CHESTER

The Castle,
Chester.

Tuesday, 19th April, 2011

Before

HIS HONOUR JUDGE DUTTON DL
[and Justices of the Peace]

APPEAL

of

TOM DOBBIE

PROCEEDINGS

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MR. J.P. HEDGE COE appeared on behalf of the Respondent

MR. A. GREEN appeared on behalf of the Appellant

Tuesday, 19th April, 2011

MR. GREEN: Mr. Dobbie is in court and sits behind me. May I ask does your Honour has a preference as to where he sits in this room?

HIS HONOUR JUDGE DUTTON: No. He can sit behind you as far as I - - have you got a solicitor here or not?

MR. GREEN: Not at the moment. My solicitor unfortunately is between courts. He's in the Magistrates and he's here as well.

HIS HONOUR JUDGE DUTTON: Yes. No it's all right. I don't know what happened to Mr. Dobbie as a result of this but he's not in custody so he can sit there.

MR. GREEN: Thank you very much.

THE CLERK OF THE COURT: Will you please stand? Are you Tom Dobbie?

THE APPELLANT: Yes.

THE CLERK OF THE COURT: Thank you. The court will hear your appeal. Will you sit down.

MR. HEDGECOE: My learned friend has an application to make before the appeal against conviction is heard. It is an appeal against conviction and sentence but as you appreciate, there's no custodial sentence so we can deal with that if necessary when the time comes, any question of sentence. Mr. Dobbie was convicted by Chester Magistrates on the 3rd February of battery on Avril Dobbie. If I open the facts then perhaps my learned friend deals with bad character application.

HIS HONOUR JUDGE DUTTON: Yes. That's what it is, is it? I see.

MR. HEDGECOE: That's what the application is.

HIS HONOUR JUDGE DUTTON: I see, right.

MR. HEDGECOE: It may help - - can you indicate to me, your Honour please, what papers if any you have in this -----

HIS HONOUR JUDGE DUTTON: Nothing. I've got an appeal notice

MR. HEDGECOE: No statements, just the -----

HIS HONOUR JUDGE DUTTON: and a memorandum of conviction with blacked out what the consequences were, so we know absolutely nothing about it, save that we've detected it had a domestic background to it because of the name of the complainant. That's all.

MR. HEDGECOE: They are, as I understand it, husband and wife. On the 23rd July last year at about 4, just after 4 o'clock in the morning, the complainant at that time was sharing a double bed with her son, Orion, who I believe was 4 years of age at the time and the defendant was sleeping in the same house but alone in a single bed in another

room, presumably because things had broken down between them to some extent at that time in any event. So, shortly after 4 o'clock, Orion woke up, he wanted a drink, he was noisy, he woke up both the complainant and the defendant in each room, the complainant tried to quieten Orion down but he was making a lot of noise, the defendant walked into the bedroom, he threatened to spank Orion if he was not quiet, an argument followed between the complainant and the defendant, the defendant approached the complainant and Orion and the defendant lent over them, the complainant then put her left leg up towards the defendant's chest and made contact with him and I have to say she doesn't know whether it was his chest that she actually made contact with, the defendant shouted at her "Don't you kick me" and then punched her first in the ribs on the left, I think on the left side of the rib cage, then the left side of the forehead and then several punches to her left ear and the defendant then walked out of the room. The assault or the tail end of it was also witnessed by their daughter Aurora who was 9 years of age and the assault was reported the following morning after the children had been taken to their respective locations in the morning. The complainant was seen by PC Christopher Owen who saw a swelling and bruising, he said about the size of a golf ball to her left forehead and at the time when he saw her she was still complaining of being sore around the left ear.

The defendant was arrested on the same day. He said when he was interviewed that he'd acted in self defence. He said Avril was hysterical, she was screaming abuse at Orion, that he the defendant went to pull the bed clothes from Orion and pull him away but Avril kicked him in the face so he pushed her head towards the pillow and he said he wasn't aware whether he had hurt her in that incident. So briefly those are the facts. There's an application by my learned friend in respect of bad character of one defendant.

HIS HONOUR JUDGE DUTTON: Yes. Where is the application?

MR. GREEN: Your Honour, I'll just hand a copy in now please. I've got three copies. [Handed] Your Honour, before I begin perhaps I should say at the outset that part of it in fact is agreed and what is agreed is already in a formal admission which I'll hand in in a moment.

HIS HONOUR JUDGE DUTTON: Right. Shall we read this first?

MR. GREEN: Yes. Would your Honour like me to read it or -----

HIS HONOUR JUDGE DUTTON: No, it's all right, we'll read it to ourselves. What is the defence?

MR. GREEN: The defence is firstly that the mechanics of the alleged assault are disputed. What is - - Mr. Dobbie's case is that he pushed his wife with the palm of his hand.

HIS HONOUR JUDGE DUTTON: Right.

MR. GREEN: In order to separate her from his son.

HIS HONOUR JUDGE DUTTON: So she was in the act of attacking the boy. Is that the case?

MR. GREEN: The manner of the way she was physically restraining her son by wrapping her arms around his head or around his neck, he was struggling, she was using force, also wrapping her legs around the lower part of his body in what we say was a very violent struggle, the boy was struggling hard and she was using significant force. At that point, given the history in this case, we say that Mr. Dobbie formed the view that he needed to defend his son. Immediately prior -----

HIS HONOUR JUDGE DUTTON: So this is an act in defence of the son?

MR. GREEN: Yes, but I was going to continue and say that additionally we say that she assaults Mr. Dobbie by kicking him, we say that that's an unlawful assault, again which is another reason why he responds in the way he does. So we say there are two elements to it, defence of himself -----

HIS HONOUR JUDGE DUTTON: Sorry, is it contested that he punched her in the face?

MR. GREEN: Yes.

HIS HONOUR JUDGE DUTTON: That's not accepted at all.

MR. GREEN: That's not accepted

HIS HONOUR JUDGE DUTTON: Right. How did the injury arise?

MR. GREEN: So far as the injury is concerned -----

HIS HONOUR JUDGE DUTTON: A golf ball swelling to the face.

MR. GREEN: Well, that is the officer's evidence which will be read to the court.

HIS HONOUR JUDGE DUTTON: So that's accepted then?

MR. GREEN: Well, I was explaining. We don't contest it for this reason. The officer saw the complainant some time later that morning, the following morning actually because the events happened in the early hours, much later that morning after she'd gone to work the officer saw that injury. Now the defendant wasn't present at that time and so he can't say one way or the other what the officer saw. What the defendant says is that when his wife left the house that morning she didn't have a golf ball size swelling on her head and the matter was dealt with in evidence in the Magistrates Court and I'll be putting to Mrs. Dobbie what she herself said about that injury. We say that in evidence in the Magistrates she herself accepted that it wasn't a golf ball size injury. So that's the way that that will be dealt with.

HIS HONOUR JUDGE DUTTON: All right. So your application is to adduce this evidence of social service records?

MR. GREEN: That's not disputed.

HIS HONOUR JUDGE DUTTON: That's not in dispute.

MR. GREEN: No. The formal admission deals with the email that was sent by Mrs. Dobbie in September 2009, so that's not in issue. The second part is in issue, namely the evidence that I want to elicit from Mr. Dobbie about past events and obviously put -----

HIS HONOUR JUDGE DUTTON: Well, you're going to start by cross-examining her about it.

MR. GREEN: Precisely, put to the complainant. I want to put them to her and I want to elicit them from Mr. Dobbie

HIS HONOUR JUDGE DUTTON: Is this going to be met by a counter application.

MR. HEDGE COE: Well, initially there was a counter application but the application has changed so much that, I mean, what we're boiling down to now this morning is some notes that my learned friend has taken today which I'm quite happy to deal with on the hoof provided that the court is, because these are matters which I say are not admissible. My learned friend was about to read through those to say that those matters are covered by his application but there's intended to be greater detail although there's very little here that I can actually go away and take instructions on from this lady which I would need to do before the defendant is cross-examined, but there are no dates here, but in any event it seems to me that there's a great deal of, if I can politely call it, extraneous material which is inadmissible in any event and if we can narrow that down, if not do away with it altogether, it might save a lot of time at this juncture.

MR. GREEN: Well, your Honour, my response to that is I am respectfully conscious of the need to avoid exploring extraneous and irrelevant matters and I've framed my application with regard to that and I have noted down with the assistance of my learned friend the questions which I would hope to ask.

HIS HONOUR JUDGE DUTTON: Well, what are they?

MR. GREEN: They're not great in number.

HIS HONOUR JUDGE DUTTON: Can you let me see them?

MR. GREEN: Well, can I read them to your Honour?

HIS HONOUR JUDGE DUTTON: Yes.

MR. GREEN: Before I do that, can I just explain the point of these questions. Our case is that at the moment this incident took place there were good reasons why Mr. Dobbie would genuinely fear that his son could come to some harm and the basis for his coming to that view was his experience over the years seeing the way his wife cared or we would say showed a lack of care towards the children and it's that which I wish to explore, not in great detail but I do wish to ask questions about. It's that point which the email itself goes to because we say that that is, that's not something that was just happening in September 2009, we say that that state of affairs, namely that she was struggling in the extreme to care for her children, was something that had developed over the years. The email to social services, for someone to come to that point where they email themselves, they send an email to social services asking for help we say was

not something that came about just at that moment, it was something that HAD developed over time and -----

HIS HONOUR JUDGE DUTTON: So that comes within section 100(1)(c) because you both agree to that evidence being admissible.

MR. GREEN: That's agreed.

HIS HONOUR JUDGE DUTTON: Now what else do you want to adduce?

MR. GREEN: So, in order to establish as I say what we say is evidence that Mrs. Dobbie would put her children at risk, I would like to ask the following questions and elicit the following evidence. It's said in her own statement, prosecution evidence, that it was the defendant who was the blame for how things had come to this point. Our response is, no. In fact -----

HIS HONOUR JUDGE DUTTON: Well, yes, but hold on a second. This isn't an inquest into the breakdown of a marriage.

MR. GREEN: No. The questions I would like to ask are these: Over the years leading up to this, the complainant would show a lack of care towards both children. We say that from the very beginning after they were born she didn't take to motherhood and effectively suffered from post natal depression. That would show itself in very little empathy towards both children. That would show itself for example when she would do other activities in preference to caring for them and leave them to their own devices while she would watch television or use the computer, not now and again but on a regular, frequent basis.

HIS HONOUR JUDGE DUTTON: So she's a bad mother. That's your point, is it? How does that help us to determine the issue in this case?

MR. GREEN: That's the start. If I can just go on a little further. What we say is that she had disclosed to us over the years that her upbringing was such that physical behaviour, physical force and violence were something that we say she said she thrived on. We say that with Aurora this exhibited itself when the complainant would indulge in games of slapping with her daughter, encourage that sort of behaviour, those sort of games would escalate with both her daughter and the complainant slapping each other harder and harder. We say that the complainant would regularly spank both children.

HIS HONOUR JUDGE DUTTON: Well, hold on. This slapping, this is by way of a game and so entertainment, is it? You're not suggesting are you that this was an out and out fight between mother and daughter?

MR. GREEN: What we're saying is that it started as an activity that both mother and daughter - - well, that mother was happy to encourage but would often then escalate into becoming more and more forceful between them.

HIS HONOUR JUDGE DUTTON: Criminal?

MR. GREEN: Well, I don't go that far, but what we say is that within the household and towards the children there was this atmosphere of physical force and the use of,

violence is too strong a word, but it is forceful, physical contact with the children to include regular physical chastisement. We say that that behaviour deteriorated when Orion, the youngest child, arrived. He was born in 2006 and we say that the complainant's behaviour deteriorated further at that point. In particular in relation to Orion we say that right from the outset when he was still in nappies, her approach to his care was very poor. She would regularly physically chastise him as a small baby, slapping him if he soiled his nappy. We say that he would be regularly marked and bruised and this is important we say because it is specific in relation to Orion but we say it's a development from her previous behaviour. In the months before this allegation we say that a new pattern of chastising Orion had developed whereby she would forcefully and I used the word yank him to a room, close the door, barricade the door and then repeatedly slap him.

HIS HONOUR JUDGE DUTTON: Assaulting him?

MR. GREEN: Yes.

HIS HONOUR JUDGE DUTTON: Regular assaults.

MR. GREEN: And that as I say was in the months before this allegation. So, your Honour, I don't propose to go into any greater detail than that, but what I do hope to do is build on that email and show that that email was not a one off, it was part of a pattern that had developed over the years and had come to a head at the time when this allegation was supposed to have occurred and that's why we say it's relevant.

HIS HONOUR JUDGE DUTTON: Mr. Hedgecoe?

MR. HEDGECOE: Well, once the question of self defence or defence of another is raised, then I think it's right that evidence is admissible in respect of violence, previous violence used towards the child. That's why I have agreed that the email should go in that's in the formal admissions. The lack of care for the children however, that doesn't in my respectful submission approach any suggestion of requirement of defence of a child, self defence of a child. The question of something which is referred to as possible post natal depression is something that we should have had notice of at least six weeks ago in order to get proper reports if that's necessary. Really, this is not the time to be springing post natal depression on the court.

HIS HONOUR JUDGE DUTTON: I'm not proposing to allow concepts like that to be banded about without medical expert evidence of it.

MR. HEDGECOE: Next question, no empathy for the children. Again, that isn't relevant in a case of self defence of an individual. The relevance so far as self defence of the individual has to be, it seems to me with respect, has got to be to do with the incident itself.

HIS HONOUR JUDGE DUTTON: Physical chastisement.

MR. HEDGECOE: Yes and at that time.

HIS HONOUR JUDGE DUTTON: And so called regular assaults on her son.

MR. HEDGECOE: And at that time.

HIS HONOUR JUDGE DUTTON: Yes.

MR. HEDGECOE: So in order to think it's appropriate to defend Orion the defendant would have to think first of all that she is assaulting him or is about to assault him. He accepts in his interview, I should say that he accepts that when he went he had said himself to Orion, "If you don't be quiet I'm going to spank you" which doesn't seem to sit very well with self defence of the same child. That's a matter that I'm sure my learned friend will deal with in some method later on in the hearing, so whether she has said previously that she had thrived on physical force and violence, quite what the relevance of that is I don't know. I suppose if he's thought, if the defendant has really thought that over the nine years that she's been mother to Aurora she has just been like a coiled spring about to do something because she thrived on physical force and violence, I don't know. It's difficult to see from an evidential point of view how those things are going to be relevant save that the next thing, slapping Aurora or Aurora said that slapping had escalated, is it - - is the case being put that he thought on this occasion when he went into that room, this is it, all those things have now escalated, they've come to such a point that I'm driven to move in because everything has escalated. If so perhaps such a question is relevant and admissible but you have to ask yourself, don't you, if that was the case why did he walk out of the room leaving her with Orion in the room.

HIS HONOUR JUDGE DUTTON: Well, that's a matter for evidence, isn't it? Well, we'll consider the matter.

- Bench retired -

HIS HONOUR JUDGE DUTTON: Well, it's agreed we understand that you can make reference to that social service record.

MR. GREEN: Yes.

HIS HONOUR JUDGE DUTTON: Important explanatory evidence. Well, what her ability to look after her children is or was, whether she had post natal depression, whether she empathised with them, whether she did other things instead of care for them has nothing to do with any issue in this case. How she was brought up has nothing to do with any issue in this case. If she regularly physically chastised them beyond what is regarded as reasonable by a parent within the family and whether as you say there were in effect regular assaults by her on her son may have a bearing on the defendant's mind and so limited to those matters we're disposed to allow the application. Now, who are we going to hear from in the case?

MR. HEDGECOE: Avril Dobbie.

MR. GREEN: Your Honour -----

HIS HONOUR JUDGE DUTTON: Right. Neither of - - well the young lad is four, isn't he? Is that right?

MR. GREEN: He's -----

HIS HONOUR JUDGE DUTTON: Five now? Not hearing from him?

MR. GREEN: I think he's four, he's four now.

HIS HONOUR JUDGE DUTTON: What about the sister?

MR. GREEN: We're not hearing from her.

HIS HONOUR JUDGE DUTTON: No, right. Very good.

CATHERINE AVRIL DOBBIE Sworn

HIS HONOUR JUDGE DUTTON:

Q. Now do sit down. Yes, Mr. Hedgecoe?

Examined by MR. HEDGECOE

Q. Is your full name Avril Dobbie?

A. Catherine Avril Dobbie.

Q. Catherine Avril Dobbie, but you're known as Avril, are you?

A. Yes.

Q. You made a statement on the 23rd July last year at which time you said that you lived at a particular address. Where is your, you don't have to give us your exact address, but where was your address at that time?

A. St. Asaph Road in Ellesmere Port.

Q. In Ellesmere Port. And at the time that you made that statement you were living there with two children Aurora and Orion. Is that right?

A. That's correct, yes.

Q. And you were also living with your husband Tom Dobbie?

A. Yes.

Q. You'd been married to Tom for about nineteen years at that time and by the time we come to July of last year the relationship between yourselves had broken down to a considerable extent. Is that fair?

A. Yes, fair.

Q. I want to ask you in particular about something that happened in the early hours of the 23rd July. I think at that time it's not in dispute that although you were all living in the same house you and Tom were not sharing a bedroom at that time but you were sharing a bedroom with Orion. Is that right?

A. That's correct.

Q. And he would be four years of age at that time. Is that right?

A. Erm, he was still three at the time.

Q. Right. Sharing a bed with you?

A. Yes.

Q. Where did Aurora sleep?

A. In her own bedroom.

Q. She had her own bedroom?

A. Yes.

Q. Was that upstairs in the house?

A. Yes, it was, yes.

Q. And was your bedroom upstairs?

A. Yes.

Q. And then there was another bedroom in the house and Tom was in there, was he?

A. Yes.

HIS HONOUR JUDGE DUTTON:

Q. How old is Aurora?

A. Aurora is nine.

MR. HEDGE COE:

Q. Now I think shortly after 4 o'clock in the morning Orion woke up, did he?

A. Yes.

Q. And was asking for a drink?

A. Yes.

Q. Once he'd woken up and was asking for a drink, tell the court if you will how he was behaving?

A. He woke up, it was at 10 past 4, and I had a drink of water ready for him in the bedroom which he drank. However he wanted a drink of juice not just water so then he was, then he started to complain that he wanted a drink of juice and I said no, you've had water, go back to sleep again and he started crying saying he wanted juice and demanding juice and the more I was saying no, the more hysterical he was becoming and he -----

Q. What was he actually doing? When he became hysterical how was he behaving?

A. Well what he did, he did get out of bed and tried to go downstairs so I stopped him in the landing and he actually kicked, as I was trying - - I was holding him by his waist to get him back into bed and he's then wriggling on the ground and shouting "I want juice, I want juice", so I actually picked him up at that point to come back to bed and lay down in the bed with him and sort of cradled him into me.

Q. Well it may be important, will you just tell the court how you were holding. When you said you were cradling him, how were you holding him?

A. I was lying on, well, I lay down in the bed with him and one arm underneath him at the top so coming round here holding his arms like that, and my other hand was on top of his waist like that because he was kicking and flailing his arms so I was holding him like that and just cradling him into me saying "Go back to sleep, it's time to go to sleep".

Q. And while you were doing that, what happened then?

A. Okay. It must have been on for maybe five minutes something like that that Orion was crying and demanding juice and then Tom came from downstairs because from where we were lying, the bedroom door was open, you can see the stairs, so he came upstairs and he was shouting as he's coming upstairs "If you don't stop crying Orion I'm going to smack you" and he came and walked around the bed and stood at the side of us and he just -----

HIS HONOUR JUDGE DUTTON:

Q. Just give me a second, I'll just make a note of what you're telling me. "If you don't stop crying I'm going to slap you"?

A. Smack you.

Q. Smack you?

A. Smack, yes.

Q. Right. So that's what he said. What happened then?

A. Okay. So I was still on the bed with Orion and he was still crying and then Mr. Dobbie then said "Orion, if you don't stop shouting Daddy's going to smack you".

MR. HEDGE COE:

Q. So how many times did he actually say that?

A. Erm, he said that twice at that point, he said it twice and then -----

Q. Was there any reaction to that from Orion?

A. No.

Q. Then what happened?

A. Then at that point I said to Mr. Dobbie, he'd been in Edinburgh on business that week and he'd only just come back on Thursday evening, I'd been alone with the children for the week and I said to him, "I've been alone with the children and have been looking after them quite capably for the last few nights, I think I can look after Orion by myself now. Don't you smack him, I'll calm him down" and he said at that point, "Well, you're not doing a very good job of it, you effing stupid women" and at that point he leaned forward on the bed.

Q. Just pause. If you watch His Honour's pen and their worships' pens because they have to take a note of what you're saying.

HIS HONOUR JUDGE DUTTON:

Q. So then what happened, he did what?

A. So he'd been standing at the side of the bed at that point.

Q. So he'd been standing at the side of the bed?

A. Yes.

Q. Yes?

A. And then when he shouted "You're not doing a very good job of it" what he done at that point was he put his hands on the bed like that and was coming forwards.

Q. He put -----

MR. HEDGE COE:

Q. He put his hands palm down then on the bed -----

HIS HONOUR JUDGE DUTTON:

Q. Put his hands palm down then on the bed.

HIS HONOUR JUDGE DUTTON:

Q. Both palms on the side of the bed?

A. Yes.

Q. As if he was coming forwards. Yes?

A. And then at that point what I said I thought he was erm, you know, going, I feared for myself and Orion at that point because I didn't know what his reaction was going to be because he was shouting and he was shouting at me, I felt quite threatened by the way he was shouting at me and so I put my foot, my left leg up to stop him coming forward.

MR. HEDGE COE:

Q. Did you make contact with him?

A. Erm, I put my - - at that point he then came forward and I did feel contact.

Q. Where did you make contact with him?

A. Well, I thought it was his chest but he said "You've just kicked me in the face".

Q. He said to you, "You've just kicked me in the face"?

A. Yes.

Q. What happened next then?

A. What he then did, he went and jumped on the bed.

HIS HONOUR JUDGE DUTTON:

Q. He jumped on the bed?

A. Yes. It was almost like one motion, so he jumped on the bed, he's kneeling on the bed and as he's come, came forward his fist was already raised and -----

Q. Kneeling and coming forward?

A. Yes.

Q. Fist raised?

A. And came forward and he punched me in the face.

MR. HEDGE COE:

Q. Whereabouts did he make contact with you when you say -----

A. The first contact would have been on my left side, just by the side of my ribs.

Q. So that's the first contact he made. What happened then? So that's the first blow, hits you on the side?

A. Yes. So he -----

Q. Did you do anything else or say anything to him?

A. No, no. So he made the fist blow on the side and then immediately he punched me *here* on the side of my forehead.

Q. So left side of your forehead you're showing just on or above your eyebrow?
A. Just at the erm, in between my temple and my eyebrows, just about *here*.

Q. Right. And while he was doing that, where was Orion?
A. I was still hold, I was still holding Orion.

HIS HONOUR JUDGE DUTTON:

Q. And is Orion between you and he or the other side of you?
A. In between.

Q. Between us?
A. Yes.

MR. HEDGE COE:

Q. So you've had a blow to your sort of lower rib cage you're indicating, a blow to your forehead to the left side. What happened then?
A. Then he put his fist on the side of my ear and was just pummelling the side of my ear, just pummelling.

Q. And do you know how many times he hit you on your left ear?
A. Maybe five or six, quick jabs.

Q. Once again, what were you doing or saying anything while he was doing that?
A. When he made the first blow on my face I started screaming immediately.

Q. Did you continue to scream or did you stop?
A. Yes. I screamed.

Q. Were you actually screaming anything, were you screaming words

Q. or just screaming?
A. Just screaming.

Q. Were you aware at the time that that was happening of where Aurora was?
A. The only time when I became aware of Aurora was when he was punching me in the face, the ear, I was screaming and then at that point I heard Aurora screaming.

Q. You heard her screaming?
A. I heard her screaming and then he stopped and I turned round and Aurora was at the side of the bed.

Q. And you say that he'd stopped?
A. Yes.

Q. Tom had stopped punching your ear. Did he say anything at that point?
A. No.

Q. What did he do?

A. He - - I was on the side holding Orion.

Q. Yes?

A. Aurora was at the side of the bed and moved down the bed and moved out of the room.

Q. Did he say anything before he left?

A. No.

Q. Did he make any attempt to take Orion with him

A. No.

Q. when he left? Did he make any attempt to speak to Aurora?

A. No.

Q. Or to take her out of the room?

A. No.

Q. Did you stay in the house?

A. Yes.

Q. And did the children stay with you that night?

A. Yes.

Q. The rest of the night?

A. Yes.

Q. Did you stay in the same room or did Aurora go back to her room?

A. Do you want me to explain what happened after, or?

Q. Well, you

A. She actually -----

Q. say what happened?

A. She, erm, Mr. Dobbie left the room and Aurora was crying at that point and sobbing, Orion had gone silent. Almost, from the moment I started screaming Orion went silent, so he'd gone from being hysterical to just being really quiet and I started sobbing and then Aurora started sobbing and I sat up in the bed and lifted Orion up and cradled him and Aurora sat down next to me so I was sitting on the bed with the two children and Aurora was saying at that point, "Mummy let's phone the police, I'll get your phone for you" and I said "No, everything will be fine, we'll just go back to bed now".

Q. You didn't actually contact the police that night, did you?

A. No.

Q. When did you contact the police?

A. Erm, got up in the morning about quarter past 7 and I got the children up, we all got dressed upstairs, came downstairs and Mr. Dobbie was asleep on the living room floor and the living room and dining room and kitchen is all one so I was carrying Orion and I walked into the kitchen, I was there for maybe a minute, when I

came back Mr. Dobbie had gone upstairs, so I then made the children's breakfast which ----

MR. GREEN: Sorry, your Honour, I'm struggling a little, it's because of the noise overhead. If we can just pause a moment.

HIS HONOUR JUDGE DUTTON:

Q. Right. Just pause for a moment. So you declined to phone the police when Aurora suggested that you ought to that night. Next day you get up about quarter past 7 and got dressed and what happened then?

A. Came downstairs, I was carrying Orion, walked through into the kitchen and was there for maybe a minute, came back to the living room, sat Orion down to watch TV while I made his breakfast and Mr. Dobbie had gone upstairs.

Q. Sorry. Mr. Dobbie?

A. He'd been sleeping on the living room floor.

Q. Right?

A. And so when we came downstairs he was lying on the floor asleep. We walked past him, I didn't say anything to him, he didn't say anything to me, went into the kitchen for about a minute, when I came back out of the kitchen he'd gone upstairs.

Q. He went upstairs?

A. He had gone upstairs, yes, and so I made the children's breakfast and left the house at about half past 8. I didn't see Mr. Dobbie at all.

Q. Was that just you?

A. Just myself and the two children.

Q. Oh! And left with the two children?

A. I took, - - yes.

Q. At 8:30?

A. Yes, 8:30. I didn't see Mr. Dobbie again during that - - the only time I saw him that morning as we walked past him and he was lying on the living room floor, didn't have any conversation or any contact other than ----

MR. HEDGECOE:

Q. So you took Aurora to, she was with a child minder was she?

A. Yes. She was staying with - - during the school holidays I dropped her off at the child minder, Katie Murphy and then I took Orion to pre-school

Q. And then you were working somewhere in Cheshire Oaks?

A. Yes.

Q. HMV?

A. HMV.

Q. And I think when you went to your place of work that's when you contacted the police?

A. Yes. I sat outside work and I phoned the police at that point.

Q. And you saw - - I think you waited at work until you were seen by a police officer, Christopher Owen?

A. Yes.

Q. And he saw you some time after 9:15 in the morning?

A. Yes.

Q. And so you told him what had happened, did you?

A. Yes.

Q. And he had a look at your face?

A. Yes.

Q. What injuries did you have as a result of what had happened that night?

A. I had bruising and swelling front *here* and then -----

HIS HONOUR JUDGE DUTTON:

Q. Bruising and swelling to the forehead?

A. Yes.

Q. Yes?

A. I felt pain down the side of my face *here*.

Q. Felt pain down the side of my face?

A. And up in my hairline *here* I could feel, it felt as if it was bruised and swollen as well but because it's under my hair it wasn't visible.

Q. Felt bruised under the hairline, side of face. Yes. He kicked you in the side as well or punched you in the side I think?

A. Punched me in the side.

Q. Was there any injury as a result of that?

A. At the time, at least that day I didn't notice anything but a couple of days later I noticed a bruise on my arm so there were two marks where his knuckles had [inaudible] because when I holding Orion on the bed my arm was over the duvet so I think the duvet protected my side but there were two bruises on my arm but they weren't seen by the police officer.

MR. HEDGECOE:

Q. I've no more questions for you but I'm sure Mr. Green will have some. Will you wait there and answer his questions please.

Cross-examined by MR. GREEN

Q. You were married I think in 1991?

A. Yes.

Q. Aurora born in 2001.

A. Yes.

Q. And Orion born in 2006?

A. Yes.

Q. The home that we're concerned with was in Great Sutton in Ellesmere Port?

A. Yes.

Q. A three bedroom semi-detached house?

A. Yes.

Q. Downstairs a kitchen, a lounge and a dining area?

A. Yes.

Q. Upstairs three bedrooms and a bathroom?

A. Yes.

Q. Mr. Dobbie has always worked, hasn't he, throughout your marriage?

A. Yes.

Q. He's a physicist?

A. Yes.

Q. And he's been involved in various companies throughout your marriage?

A. Yes.

Q. Before Aurora was born in 2001 it was a very regular occurrence that he would be away from home working abroad. That's right, isn't it?

A. Yes.

Q. After Aurora was born his work pattern shifted, didn't it, and he was able to spend far more time at home?

A. The first few years he was still travelling abroad quite a lot but it did settle down again.

Q. Well, it settled to only being away one or two days a week? That's right, isn't it?

A. Yes. That was the theory but he still had trips, he still was travelling abroad every now and again.

Q. So I think we're in agreement aren't we that within a couple of years of Aurora being born he was actually only away from the house only one or two days a week?

A. Yes. He was going away one or two days a week.

Q. So at home for most of the time?

A. Working at home most of the time.

Q. Yes. And then I think in 2006 he started working for Wrexham University. Is that right?

A. Well, actually it was called NEWI at the time, it's now called Glyndwr.

Q. Well, let's not argue about that but it's the same place?

A. Yes.

Q. That was about the time that Orion was born?

A. Yes.

Q. From then on he was very rarely away from home, wasn't he?

A. That's correct.

Q. Now, Mrs. Dobbie, would you agree with me that throughout your marriage your husband's priority has always been the family and in particular the children?

A. No.

Q. You wouldn't agree with that?

A. No.

HIS HONOUR JUDGE DUTTON: Not really sure how she can answer that question actually. He can tell us what his priority in life is but I'm not sure that his wife can. Unless you want to open a whole area which seems to me to be irrelevant.

MR. GREEN:

Q. In September 2009 you sent an email to social services didn't you?

A. I did.

Q. Now we know what the contents of that email are because we have a copy of it.

A. Mm mm.

Q. You say that you were married with two children, you say that you were at a point where you felt - - I'll read it to you: "I cannot cope with them any longer. I shout at them every day, scream at them. Up until this week I haven't hit them. However, yesterday I smacked Aurora on the bottom two times, each time I smacked her I hit her a few times and left a mark on each buttock. Tonight I grabbed Orion by his arms and threw him on to his bed. The children are constantly bickering and fighting and I'm now also at the point where I do not even bother to intervene, I just let them fight it out and tonight they scratched each other and left marks. I've got loads of parenting books and know all the techniques to try but I'm just at the point now where I can't be bothered. I feel I'm on the verge of a breakdown sometimes. Please can you help me". Do you remember -----

A. Do I remember that? Yes, I did write that.

Q. Mrs. Dobbie, that was an email sent by you to social services, wasn't it?

A. Yes, it was.

Q. You had come to a point at that stage in your life in September 2009 where you were at your wits end, weren't you?

A. That year I lost my mother, erm, I visited my family in Scotland.

HIS HONOUR JUDGE DUTTON:

Q. Sorry?

A. I visited my family. I had been very close to my sister. Prior to marrying Mr. Dobbie my sister and I had a very close relationship, she was almost a second mother to me because of the 10 year age gap and gradually over the years I felt that Mr. Dobbie eroded that relationship by refusing to attend family events and having anything to do with my sister.

MR. GREEN:

Q. Mrs. Dobbie, forgive me but ----

A. Now, what happened that year, at my mother's funeral my sisters completely ignored me so that was bothering me, on my mind as well. Mr. Dobbie was working lots of long hours, he was even working, he was working from home, he wasn't being involved with the family, so I'd no support, absolutely no support at all and at that point in September 2009 it was almost, it was the last, because Mr. Dobbie wasn't giving me any support, it was the last resort.

Q. You see, Mrs. Dobbie, I suggest you've not told the truth about that. You've accepted a few moments ago that Mr. Dobbie at this stage in 2009 was at home far more than he was away?

A. Mr. Dobbie worked from home and the situation in the house was not a normal family routine I would say. The dining room was filled with computers and office equipment and Mr. Dobbie sat at his computer from 6 in the morning till 8, 9, 10 in the evening working, this was his claim, he was working. The involvement as you say in family life I felt a single parent at that point because I suppose I did all the school runs, I did, I involved myself with the children's activities, any, anything to do with the school, the parents evening it was me that went to all those events as well, they very - - he was never - - during, in a typical year, Mr. Dobbie may be had four outings with us during the year.

MR. GREEN: Your Honour, forgive my interruption but I'm obviously keen myself not to put things about the past relationship, not to get into the past details. My question at this point was simply to suggest to Mrs. Dobbie that in fact her husband was around.

HIS HONOUR JUDGE DUTTON: Well, you suggested to her - - you put it to her that she was telling lies because by this time he was working at home. She's now explained to us exactly what the circumstances were of him working at home.

MR. GREEN:

Q. Well, Mrs. Dobbie, you say that your husband didn't attend any school events or parents evenings. I suggest that that's not true. You say that your husband did not play an active role in the children's lives, I suggest that's not true. You say that your husband didn't give them the attention that they needed and I suggest that's not true. Mrs. Dobbie, I suggest to you that in fact you were the party in this relationship who was unable to properly care for your children and that you were the party who in September 2009 was completely at your wits end. What do you say to that?

A. I would say that, yes, I was at my wits end but I wouldn't agree with the other statements.

Q. Sorry?

A. I'd agree that I was at my wits end but I wouldn't agree with the other statements.

Q. You'd got to the point where you were telling social services that you were hitting the children, smacking them? Correct?

A. Yes, that's true. I can't disagree with that because that happened.

Q. That you were causing marks on their body?

A. I did it one time and the night that I did it I emailed social services immediately.

Q. That you couldn't be bothered intervening, that you just left them to it? That's what you were saying wasn't it?

A. Yes. I can't argue the facts, that what I was saying.

Q. You see, I suggest that that was something that didn't just come out of the blue, that was something that had developed over a long time to that point? Is that true or not?

A. Well, that's what you - - can you explain, tell us what you mean by that?

Q. That in fact, Mrs. Dobbie, you had been unable to properly cope with the children for years?

A. Totally disagree with that. The children were well looked after, well cared for, they were my main priority. Everything I did in my life was revolving around the children.

Q. I suggest to you that from a very early age you would regularly spank your daughter Aurora?

A. I disagree with that.

Q. That you would smack her sometimes once a day?

A. No.

Q. That sometimes the smacking would develop and escalate into both of you smacking each other?

A. No.

Q. That that sort of smacking was something that you actively encouraged?

A. No.

Q. And so far as Orion, when he arrived in 2006 was concerned, I suggest that from the very beginning when he was a baby you would slap him and you would spank him when you lost your temper with him?

A. No.

Q. That when you changed his nappy or when he soiled his nappy that was something that you found particularly frustrating and it angered you?

A. No.

Q. And that when he did get upset rather than try to calm him down or cuddle him you would spank him?

A. No.

Q. And that on a daily basis with both children from your email onwards, I choose that simply as a point in time that we can fix in our minds, that from that time onwards you were already involved in a pattern of regularly spanking the children?

A. No.

Q. You had completely lost any ability to properly control them?

A. No.

Q. No?

A. No.

Q. Do you accept that from September onwards you ever spanked the children?

A. No.

Q. No? So save for those occasions that you admit to in your email are you saying to this court that you never once spanked either of the children? Is that your evidence?

A. I never spanked the children from then onwards.

Q. I suggest that's not true. In the months leading up to the incident that we're talking about -----

HIS HONOUR JUDGE DUTTON:

Q. Well, just before you do. What was the consequence of this email?

A. Social services - - well, first of all, the health visitor Jean Davies came out to visit, I think it was two days later, and she had a little chat with us and then -----

Q. You say with us. With who?

A. With both of us.

Q. Right?

A. Us - - I can't remember now whether it was -----

Q. So Tom was aware that you'd sent this, was he?

A. He was, I told him I'd sent it.

Q. Where was he when you sent it?

A. He was away on business.

Q. He was away?

A. Yes, and when he came home the next day I said to him, "I've sent an email to social services last night" and I believe during some point that day he contacted social services himself as well.

Q. So health visitor came to speak to both of you?

A. Yes and then a lady called Caroline Harley came out to visit us. That email, I can't remember which night of the week I sent it, I can't remember, but it was either that Saturday after it happened or the following Saturday, I remember it was a Saturday anyway she tried to visit us and it was tea time and she sat and was chatting to us and her recommendation, of which there's a copy of her recommendation, I don't know if the defence has it or not, her recommendations were that Tom was more involved in the family and looking after the children but at that point she felt that the children weren't a high risk.

Q. Were?

A. Were not at high risk.

Q. Not at high risk?

A. And the recommendation - - then we were recommended to CALMS, the Children and Adolescents Mental Health Services who put us on a parenting course back in April 2010.

Q. Both of you?

A. For both of us.

Q. Did you go?

A. I attended five sessions, Mr. Dobbie attended one session, which he slept through most of it which was noted by the ----

Q. All right. But the children stayed with you, did they, at home? The children stayed with you at home?

A. Yes.

MR. GREEN:

Q. Mrs. Dobbie, as we stand here today you don't have a good word to say about Mr. Dobbie, do you?

A. I think Mr. - - I have said in a statement that he's a very good father of the children, they love him very much and when he gives them the attention he's very loving towards them.

Q. The approach of social services when they decided that the family was not high risk, they also suggested that Mr. Dobbie become the primary carer, didn't they?

A. They did at that point.

Q. Yes, they did, and that's recorded by social services isn't it?

A. Yes, it is, because it's in the report by Caroline Harley.

Q. Now why was it suggested that he become the primary carer?

HIS HONOUR JUDGE DUTTON: Well, how can she answer that question? Are you going to call a social worker?

MR. GREEN:

Q. Well, is it the case, Mrs. Dobbie, that in fact at that time you were saying as per your email you really weren't in a position to properly care for these children?

A. At that time. The incident that happened that Mr. Dobbie hit me happened almost a year later.

Q. It's not true that he would fall asleep in parenting classes, is it?

A. Pardon?

Q. It's not true?

A. Yes it is, it's been noted. It's been written in one of the reports.

Q. The truth is, Mrs. Dobbie, I suggest that you'd come to a point and you continued to struggle to cope properly with these children?

A. Disagree with that completely.

Q. That September 2009 was a point in time where you lost control but that continued thereafter?

A. No, it didn't.

HIS HONOUR JUDGE DUTTON:

Q. You were working as well, were you?

A. I started working two years ago in May 2009. I had - - prior to having Aurora I worked full time for a company which is now HBOS. It was a really good job, good salary and then when I had Aurora we decided that I would give up work to look after her full time. After having Orion I wanted to go back to work, Mr. Dobbie was dead against it and then I got a job at HMV in Cheshire Oaks, just part time, make a little bit of extra money just to get out of the house and he did nothing but criticise me having that job and when we had, I had to work Saturday mornings for four hours and when I worked on a Saturday morning, he was working from home but he had a baby sitter to look after the children while I was out at work, so for four hours every Saturday he couldn't look after the children. What then happened is, as a result of social services getting involved from September 2009 I also applied to do a counselling course, as in training to become a counsellor. I actually had to do that course in secret because Mr. Dobbie was dead against me doing anything outside the home that didn't involve the children and when Mr. -----

MR. GREEN: Your Honour, I wonder if I might pause her just to take instructions on these points because they're clearly in my submission not related to the question.

HIS HONOUR JUDGE DUTTON: Yes.

THE WITNESS: I think the point I'm trying to get to is that after that really low point that I was at in September 2009 I started to turn my life around because social services were involved and I had somebody to talk to who I was getting support from and I've had to turn my life round so I was doing my work, I was going to college and doing the counselling course and I've applied to go to university this year as well so I've completely -----

HIS HONOUR JUDGE DUTTON:

Q. All right. Just pause there for a moment.

MR. GREEN:

Q. Mrs. Dobbie, what you're talking about there is a time when Orion was still about three years old, so before school?

A. Yes.

Q. Could it be that in fact you were anxious to spend more time away from the children, that was the reason why you took a part time job, that was the reason why you started a college course, in order to avoid time with the children because you were struggling so much?

A. One of the reasons I was doing these things was because I had concentrated on the children and Mr. Dobbie had forced, almost forced me to concentrate on the children, I had no interests outside the home. When I started at HMV the lady whose job I took over left after two weeks and she didn't, she was obviously experienced, she'd been there for five years and we went for a drink that night after work. I was home by quarter past 9 on Saturday evening. The next morning Aurora

said to me, "Mummy, don't you love us" and I said "Why, Aurora" and she said "Because Daddy said you prefer the people at work and prefer to spend time with them than you would spend time with us". That night I had, I was out for two hours

MR. GREEN: Well, your Honour, forgive me but it has perhaps become a point I respectfully submit where -----

HIS HONOUR JUDGE DUTTON: Yes, I agree. Let's try and get nearer to what this case is actually all about.

MR. GREEN: Well, I'm very grateful. I'll move on then if I may.

HIS HONOUR JUDGE DUTTON: You wanted to adduce evidence about the background and there we are.

MR. GREEN: Your Honour, forgive me, I don't want to raise the temperature, but I was proposing to move on to the months leading up to the events which I was going to deal with very quickly but I think what prompted the further explanation was the request about what social services involvement was thereafter.

HIS HONOUR JUDGE DUTTON: Well, I simply asked, I think we were all curious to know, what the outcome was of this email.

MR. GREEN: Yes.

HIS HONOUR JUDGE DUTTON: Without some explanation of it, it just sits there with nothing being said about it, that's all.

MR. GREEN: I'll move on.

Q. Mrs. Dobbie, in the months leading up to this incident I would suggest to you that you were regularly smacking Orion?

A. No, I wasn't.

Q. And that a pattern had developed whereby you would effectively barricade yourself and Orion into a room and repeatedly and forcefully smack him?

A. No.

Q. Leaving marks? Do you deny that there was ever an occasion when you effectively barricaded you and Orion into a room and repeatedly smacked him?

A. I deny that.

Q. You deny that?

A. Absolutely.

Q. Because I suggest to you it happened more than once? [No audible reply] It's the case isn't it that Mr. Dobbie had at various times throughout Orion's life mentioned the fact that he was covered in marks and bruises?

A. No.

Q. And he would ask you if you'd been hitting him or slapping him?

A. No, not true.

Q. On the night that we're concerned with Mr. Dobbie had been working away hadn't he, he'd been in Edinburgh?

A. He had. He would arrive 20 past 7 when the children and I were just finishing tea and he had some tea with us.

Q. All right. I wonder if I can just ask you a question. It's right isn't it that he came home in fact at about 9 o'clock and you and the children were in bed?

A. No. He came home at 20 past 7, we had chicken, coleslaw and crusty bread that night for tea which he sat and had some of in the living room with the children before I took them to bed.

Q. All right. Well, perhaps we can move on. At about 1 o'clock in the morning you came downstairs. Do you remember that?

A. It was actually about 12 o'clock when I came downstairs for a drink of water - drink of juice, Mr. Dobbie was sitting in the living room.

Q. Mr. Dobbie made you a hot drink at that point, didn't he?

A. He didn't. Mr. Dobbie had been sitting, he had drunk almost three quarters of a bottle of wine, he was sitting at the table and I got myself -----

Q. I suggest that's not true?

A. It is true and I got myself a drink of Ribena and at that point as well Aurora then came downstairs

Q. Well -----

A. and she asked for a drink which I gave her and we went back to bed and we were back in bed by half past 12.

Q. All right. I don't want to get bogged down on the detail but I'm going to move a little bit further forward. I suggest that there came a point that night where yourself and Orion were both asleep on the bed in your room? Agreed? Aurora was in her own room?

A. Yes.

Q. And Mr. Dobbie was in the other bedroom?

A. I think Mr. Dobbie had been downstairs all night, I don't think he'd come upstairs at all.

Q. But you're not able to make that assessment because you were asleep, weren't you?

A. Yes.

Q. All right.

A. All that I can say is when Orion was crying for his juice Mr. Dobbie came from downstairs.

Q. Well, I suggest that isn't right but anyway let me put this to you. Orion leaves your room and is on the landing and he's crying and complaining that he wants juice?

A. That happened, yes.

- Q. My word is crying, I shouldn't have suggested that to you, I should simply have said he was just complaining, he wanted juice?
A. Yes.
- Q. Agreed? At that point you began to lose your temper?
A. No.
- Q. Because this was a situation that had been repeated many times and it was a situation where you would become very stressed very quickly and that's what happened?
A. No, it isn't.
- Q. You were starting to shout at Orion?
A. No.
- Q. Mr. Dobbie said to you to leave him alone and he said "I'll get him a drink". Right or wrong?
A. Wrong.
- Q. Mr. Dobbie was trying to defuse the situation. Right or wrong?
A. Wrong.
- Q. There came a point where you physically told hold of Orion, grabbed him, yanked him and dragged him back into your room forcefully. True or not?
A. Not true.
- Q. You were shouting, you'd lost your temper by this point, you were repeatedly shouting at him "Stop it, you're not getting a drink". True or not?
A. Not true.
- Q. All of it? You hadn't lost your temper?
A. I hadn't lost my temper, I was quite calm.
- Q. You weren't shouting "Stop it"?
A. No.
- Q. "You're not getting a drink"?
A. I would say, I did say "You're not having another drink".
- Q. You were shouting "Be quiet" repeatedly?
A. No.
- Q. You roughly picked Orion up and threw him on the bed?
A. No.
- Q. Something that could be heard from another room?
A. No.
- Q. The defendant shouted through "Can you leave him alone"?
A. No.
- Q. And you shouted "Fuck off, Tommy"?

A. No.

Q. Because that's the sort of language you would use when you lost your temper, isn't it?

A. No.

Q. The defendant shouted through, "Calm down", this was to Orion "or I'll spank you"? This was before he entered the room?

A. No. As he was coming upstairs he shouted "Orion, be quiet or I'll spank you".

Q. But Orion wasn't calming down, was he?

A. No.

Q. At this point I suggest Mr. Dobbie walked into the room. You were on the bed with Orion. That much we agree?

A. Yes.

Q. Orion was upset, he was screaming, crying and struggling, wasn't he?

A. Yes.

Q. He was trying to get away from you, wasn't he?

A. I suspect so, yes.

Q. You wouldn't let him get away, would you?

A. I was holding him to calm him down because I didn't want him to wake up Mr. Dobbie, who's, well, who's already awake.

Q. I'm sorry? You didn't want what?

A. To wake up Aurora or to upset Me. Dobbie more.

HIS HONOUR JUDGE DUTTON:

Q. Does he often have tantrums like this?

A. Erm, he does in earlier days. People call it the terrible twos or whatever but he's calmed down quite a lot now.

MR. GREEN:

Q. Mr. Dobbie though has said many times in the past or tried to suggest ways of dealing with it other than physically restraining him, hadn't he?

A. Such as?

Q. By talking to him, by calming him down?

A. Erm, not to my knowledge.

Q. By distracting him?

A. No.

Q. These things have been suggested to you but

A. No.

Q. that wasn't your approach, was it? You were gripping him like an octopus, weren't you, one arm round his head, one arm round his neck?

A. No. One arm was round his body to hold his arms in, and one was round his legs. It was absolutely not round his head.

Q. Your legs were wrapped round his?

A. No.

Q. And he was getting more and more worked up and you were restraining him harder and harder, weren't you?

A. No.

Q. Mr. Dobbie remained calm, didn't he?

A. No.

HIS HONOUR JUDGE DUTTON: Now, just a moment. It's 1 o'clock.

MR. GREEN: I'm not far from the end, your Honour.

HIS HONOUR JUDGE DUTTON: All right.

MR. GREEN:

Q. Mr. Dobbie was asking you to let him go?

A. No.

Q. You again told him to fuck off, you said "Fuck off, Tommy"?

A. No.

Q. Mr. Dobbie approached the bed and he put one knee on the bed, just one knee, not both?

A. No.

Q. And at that point you were very worked up, weren't you?

A. No.

Q. You'd lost control of yourself?

A. No.

Q. And you lashed out and you kicked him, you kicked your husband in the head?

A. No.

Q. You did that forcefully?

A. No.

Q. He hadn't threatened you? He hadn't threatened you and he hadn't hit you, had he? Hadn't done either of those things, had he?

A. I didn't kick out at him.

Q. I'm sorry?

A. I didn't kick out at him. It was only when he came on the bed and he was crawling forward and he shouted "You're not doing a very good job, you effing stupid woman" and at that point I put my foot up to stop him coming any further forwards.

Q. You didn't feel threatened at that point at all, did you?

A. I did.

Q. You've never said that Mr. Dobbie has ever assaulted you, have you?

A. No.

Q. This was a situation where you lost your temper?

A. No.

Q. And you kicked out at him?

A. No.

Q. Mr. Dobbie in that situation had every reason to believe that you were going to harm Orion, hadn't he?

A. I can't answer for him.

Q. He leaned over and he pushed you to the head with his open palm

A. No.

Q.didn't he?

A. No.

Q. There was no punching as you describe, there was no clenched fist, was there?

A. Yes, there was.

Q. He took hold of Orion by his pyjamas and he took Orion away from you, didn't he?

A. No.

Q. When he pushed your head with his open palm did you knock it against the wall or against the bedside cabinet. Is that what happened?

A. No.

Q. I suggest to you that there was no repeated punching to your ear or anything of that sort? It's not true?

A. It is true.

Q. Mr. Dobbie did take Orion away from you though, didn't he?

A. No.

Q. And he had him in his arms?

A. No, absolutely not.

Q. You were shrieking and screaming at this point, weren't you?

A. You're suggesting that Mr. Dobbie took Orion away and I'm shrieking and screaming, that's not true, because I was still holding Orion in the bed and I was - - the only time I screamed was when Mr. Dobbie was punching me.

Q. Aurora came into the room but initially she was puzzled because she couldn't understand what was going on? That's true isn't it?

HIS HONOUR JUDGE DUTTON: Well, hold on a second. Are you calling Aurora?

MR. GREEN: No. I think there's already been -----

HIS HONOUR JUDGE DUTTON: Well, how can she say what Aurora felt?

MR. GREEN: Well, your Honour, I'll move on but I think there has been reference to her coming in the room.

Q. Aurora came in the room, didn't she?

A. The point I noticed her in the room was when Mr. Dobbie - - I was still screaming and then Mr. Dobbie started punching in the side of the head and I at that point heard Aurora screaming and when he stopped and moved away Aurora was right next to the bed so I had no idea how much Aurora heard or saw of that incident.

Q. All right?

A. I don't know whether she saw the whole thing or whether it was just right at the end.

Q. Well, I suggest it came to an end by Mr. Dobbie leaving the room, he went downstairs. Do you agree with that?

A. That's correct, yes.

Q. Do you remember Aurora going downstairs?

A. We sat on the bed first and we had a hug and then she was suggesting that she got my mobile phone to phone the police and I said "No, we'll just calm down, go back to bed". We were all - - we were crying, Orion was completely silent at this point and Aurora said "I want to go and see my dad" she went downstairs to see him, I don't know what was said or anything at that point and then she came back upstairs and she said "Let's phone the police now" and again I just said "No, we'll go back to bed" and I took Aurora back to her bed and she quite surprisingly went back to sleep quite quickly and I then lay down with Orion and we went back to sleep as well.

Q. Do you remember Mr. Dobbie coming back up to bed?

A. No.

Q. Can you say that that didn't happen?

A. I can't really. Orion and I went back to sleep so I can't -----

Q. And I suggest there came a point when Orion got up a bit later, a bit later on. Do you remember him getting up?

A. No, he didn't.

Q. You were asleep though weren't you?

A. Well, he was with me when I went to sleep and he was with me when I woke up.

Q. Well, I suggest he wasn't with you when you woke up, he was downstairs with Mr. Dobbie?

A. He wasn't.

Q. Because he'd got up in the middle of the night, he'd gone downstairs and the two of them had fallen asleep watching Wall-E on the video?

A. No.

Q. In the morning you passed on the stairs I think, you and Mr. Dobbie, didn't you?
A. No, we didn't.

Q. Do you accept that you saw each other that morning in the house?
A. I don't know if - - well, he must have been aware of me because we walked into the living room and he was lying in front of the sofa and I just walked past him, was holding Orion, so he must have been aware of us. As I said we went into the kitchen and we were there literally a minute, when we came back out Mr. Dobbie had gone, he'd left the living room.

Q. I suggest you had no visible marks on your face at that stage?
A. There was.

Q. And in particular you didn't have a golf ball sized lump on your head, did you?
A. At no point have I said I had a golf ball sized lump.

Q. No, and in fact, you were asked in the Magistrates in terms about that, weren't you?
A. Yes, I was.

Q. And you say you had bruising to your temple?
A. Yes.

Q. Agreed? You said you didn't have a golf ball sized lump on your head. That's correct, isn't it?
A. There was a lump on my head, I can't remember what I said.

Q. Well, let's be clear about this -----
A. The only - - okay, the judge may have asked what size it was, I can't quite remember.

Q. Well, let's be clear about it. Do you say - - did you have a golf ball size head[sic] on your head, on your forehead at any point?
A. It was quite raised just *here*.

Q. Was it golf ball sized or not?
A. Yes.

Q. Yes? Your Honour, may I just turn round? Well, Mrs. Dobbie, I suggest to you simply you've been asked questions about this in the Magistrates Court and you said in that court firstly that you didn't have a golf ball sized head[sic]?
A. I remember when I was first questioned and then making a note in the statement again and the note in the statement said I did have the mark. I couldn't remember at the time.

Q. Mrs. Dobbie, I suggest you were asked in clear terms in the Magistrates Court whether you had a golf ball sized lump?
A. I can't remember, I'm sorry. I can't answer your question, I can't remember.

Q. You can't remember? And I suggest that in that court you said "No, I didn't"?
A. Well, I can't remember.

Q. And I also suggest Mrs. Dobbie that when you were asked about this injury you never mentioned a lump either?

A. I can't remember, your Honour, I'm sorry. I can't remember what I answered to the questions.

Q. Your Honour, may I just turn my back? Your Honour, thank you, I've no further questions.

HIS HONOUR JUDGE DUTTON: Thank you. Any questions?

MR. HEDGECOE: No re-examination, thank you.

HIS HONOUR JUDGE DUTTON: Thank you very much.

Q. Thank you very much. You're free to go. We'll adjourn now till 20 past 2.

- Mid-day adjournment -

MR. HEDGECOE: I'll read a statement or relevant parts of a statement of PC Christopher Owen. "On Friday, 23rd July at approximately 9:15 a.m. I received a call via my personal radio requesting me to attend HMV at Cheshire Oaks to meet a female reporting a domestic assault which had happened earlier in the morning. Made my way to the store, arrived a short time later. I was shown to a female who identified herself as Avril Dobbie, 8th April 1969 her date of birth. I looked at the side of Avril Dobbie's head and could see swelling and bruising about the size of a golf ball to the left side of her forehead. She was also complaining of soreness to the area around her left ear. Following this I made my way to the home address of Dobbie to make arrest attempts for Thomas Dobbie. There was no answer at the address so I contacted Thomas Dobbie on his mobile phone and he agreed to meet me at Ellesmere Port police station. At approximately 10 past 1 in the afternoon I was at Ellesmere Port police station, I was shown to a male who identified himself as being Thomas William Dobbie, his date of birth 13th of the fourth, '58 and at 1:15 I said to him, 'I'm now arresting you on suspicion of a domestic assault on your wife Avril', cautioned him, he made no reply and he was then transported to West Cheshire custody facility at Blacon".

The next statement is that of Christopher John Smith, custody investigation officer, who says that he interviewed Mr. Dobbie on the same date starting at 6:44 in the evening and produces the record of interview which is relatively brief albeit that it's of duration of 1 hour 20 minutes. There's the usual introduction and caution, there was nobody else present at the interview, so it's just one police officer and the defendant. "The defendant confirmed he understood the caution, he'd been arrested on suspicion of assaulting wife Avril in the early hours at their matrimonial home, 38 St. Asaph Road, Ellesmere Port. He stated he'd been at Edinburgh University a couple of days before and when he got home the atmosphere was reasonable. He maintained Avril had mood swings making her aggressive and violent. He stated Avril and the children were in bed by 9 p.m. but he stayed up working on the computer and fell asleep. He said his colleague rang about 10 p.m. and afterwards he had a coffee, worked more on the computer, then at about 11 p.m. he had a glass of wine with food and watched TV. About 1 a.m. Avril came down. He stated he made a hot drink but their daughter was disturbed and needed comfort so they all watched TV then went to bed.

“Shortly after he heard Avril shouting at three year old Ryan who was asking for a drink. He tried to pacify Ryan in his room and got him a drink and sent him back to Avril. He heard Ryan screaming and shouting and Avril shouting at him. He said it was tense so he went in and shouted at Avril to stop it but then warned Ryan he would spank him if he didn’t stop crying. He stated Avril was restraining Ryan, then screamed hysterical abuse at him, he stated he went to move the bedding off Ryan and pull him away but Avril kicked him in the face so he pushed her head towards the pillow. He said she started wailing and crying and by then his daughter had appeared, also distressed. He stated Avril calmed down afterwards so he took Ryan downstairs settled him off to sleep on the couch and slept by him on the floor. The next morning he went to work but described feeling in despair.

“He stated he was not surprised when the police called and asked him to attend the police station which he said he did promptly. He stated on the way there he’d phoned social services to report his concerns to Jean Davies. He was told she was out but would return the call but he stated the police told him to switch his phone off. He stated it was an hour before he was seen and arrested. He expressed his anger at the delay and felt the police had placed his children at risk from Avril. He stated Avril had been violent to him and the children in the past and described numerous incidents but he stated he’d reported them to social services not to the police. The officer referred to the DP pushing Avril away during the incident in question. The DP stated his only intention was to get Ryan out of the way and not to hurt Avril but he stated he wasn’t aware he’d hurt Avril”. That’s the interview and that’s the case for the Crown.

HIS HONOUR JUDGE DUTTON: Thank you. Mr. Green?

MR. GREEN: May I call Mr. Dobbie please.

THOMAS WILLIAM DOBBIE Sworn

HIS HONOUR JUDGE DUTTON:

Q. Thank you, Mr. Dobbie. Do sit down if you’d like to.

Examined by MR. GREEN

Q. Mr. Dobbie, we know that you were married to your wife Avril in 1991?

A. Yes.

Q. And you have two children, Aurora born in 2001?

A. I have two children by Avril and a son by a previous wife.

Q. I’ll just finish. Orion, three, and I think Graham from a previous relationship?

A. That’s right.

Q. Graham is how old now?

A. He’s 24.

Q. The family home that we’re concerned with was at Great Sutton in Ellesmere Port?

A. Yes.

Q. We know that that's a three bedroom semi-detached house?

A. Yes.

Q. I want to ask you first of all about your work and if you could just explain to the court in brief terms what your work has been really over the last ten years?

A. I'm a physicist, my background and speciality is electro-magnetism being heavily involved in mechanical properties of solids and fluids. I actually have my own company to actually act as a consultant to groups both industrial and academic in various matters.

Q. Now before the children were born I think it's right that your work would involve you travelling abroad quite extensively. Is that right?

A. Very extensively.

Q. Roughly how often were you going abroad before the children were born?

A. We calculated that the average response was about 200 flights a year global so I was basically living off jumbo jets and what else.

Q. In 2001 Aurora was born? How did your work pattern change then?

A. What had happened, before we had Aurora I had discussed at length with Avril that there would be changes to the family and we needed to actually have some security financially and some help locally and therefore before arranging to have the child I'd arranged that I would actually change my lifestyle and actually have a much more local role rather than global role.

Q. Now before you describe that to us how would you describe the state of your marriage before the children arrived?

A. It got a bit like being invited to a candy shop really, you know, candy is poison. There'd be times -----

Q. Explain what you mean by that?

A. A lot of the time we were very happy, both - - it's a mental relationship, loving relationship, physical relationship but there would be times when she had a very short fuse and could be quite uncontrollable and she liked to indulge in sort of physical tomboyishness which I didn't like. There was also a problem that she didn't like the fact that I had Graham, the child from my first marriage. Before the marriage she was very happy with Graham but once we were married 90% of the time with Graham she'd be okay and 10% of the time she really was like a bully to him.

Q. All right. Now just pausing there. In 2001 Aurora came along. You've explained to us that your work then changed and it became more local. Where did you work then in 2001 onwards?

A. Most of the time I found another company who I could do a lot of work with based in Skelmersdale, it was a start up company, much more primitive in its development than the company I was used to. The role there was CEO Designate, developing the company and actually developing the people and its market. There was a little bit of travel but not so much so, mostly travelling, working from home but travelling back and forward to Skelmersdale with the odd -----

Q. Pause there a minute. I think it's right that in 2006 you started working for Wrexham University. Is that right?

A. I did that on the basis of forming my own company. I formed my own company and I had a joint venture with NEWI and basically the idea was that I, to do the sort of stuff I needed I needed application labs to then actually build on the back of it the expertise and the consultancy.

HIS HONOUR JUDGE DUTTON: When was that?

MR. GREEN: That was 2006.

HIS HONOUR JUDGE DUTTON: 2006.

MR. GREEN:

Q. So between 2001 and 2006 then how many days a week would you say you were at home during that period? Just an average?

A. Oh, probably, only - - I'd say I was staying away, away at Packhams[?] for just a short visit. In the early life these were big visits, you know, three weeks at a time.

Q. That's before children?

A. That's before children. After children I would be very reluctant to engage in journeys of much more than one or two days away.

Q. So if I were to ask you what an average was for those five years between 2001 and 2006 in terms of the number of days you were away from home, just roughly what would you say?

A. One-and-a-half, two.

Q. Now whilst you were at home clearly some days you would be working. Would you be working at home or away from home?

A. Erm, a lot of time it was actually working at home. Part of the problem there was, it was always accepted within our relationship that I was kind of like the Galloping Gourmet, the chef, so I did most of the cooking. I also got involved in washing and cleaning, ironed all my own shirts and things, that was never on the agenda for Avril, so it was convenient for me to work from home, do the cooking and spend some time with the children. I also like children a lot, I've been involved with children all my life.

Q. In 2006 when Orion was born and onwards up to the date that we're concerned with, again what was your pattern of work? How many days a week would you be away?

A. We actually managed to reduce it again. I was probably only away one overnight per week on average, almost no international. A couple of trips to Luxembourg or Holland but that was it.

Q. Now we know that your wife, there came a point when your wife sent an email to social services and that was September 2009 and we know the contents of that email and what she said was happening at the time. In the years before that email, I'm asking you now about the two to three years before that email, what would you say was the pattern of her behaviour towards the children?

A. It's primarily when they're struggling. She had a big problem with empathy with the children. She could be very forceful against a child. We followed very very different philosophies that I would actually a follower of Leibov, the anthropologist

and actually a natural way to bring up children where you did things and the child copied you and I would actually have very little conflict with Aurora or Orion. Her style of management of the children was terribly much one of conflict so when things got wrong she would quickly revert to bullying them or restraining them really quite severely.

Q. So dealing with Aurora first of all, how would she discipline Aurora?

A. Usually started off first with the scolding but the problem was Aurora had her boundaries blurred by Avril. Because Avril had tomboyish fights with her, Aurora would respond and give, you know, serious chit chat and then actually slapping and fighting back with ----

Q. Just pause there a minute because people are taking a note?

A. Sorry.

Q. And how would things progress?

A. One of the peak repetitive incidents was actually when Aurora had developed longish hair because what would happen is, for some strange reason Avril when bathing her would always manage to get soap in her eyes and Aurora would get very upset and this would lead to a lot of screaming and shouting and Avril sort of slapping her and doing things.

Q. Just pause there. Now, in terms of Avril raising her hand and slapping Aurora, how frequently did that occur?

A. By the time that we're at into 2009 it was daily.

Q. Had it always been daily or did it change?

A. It probably doubled in frequency. In the earlier days it seemed to take a little longer to lose her temper, in the latter days she lost it easier and faster.

Q. In her email she talks about smacking Aurora twice and leaving a mark and up until that week she hadn't hit them.

A. No, that's not true.

Q. Is that true?

A. Not true at all.

Q. And how did it, in relation to Aurora now, how did it progress after September 2009? What was the pattern after the email had been sent?

A. Well, you have to understand it's a slight curious one. The email I didn't know anything about. What happened was about a month after that email I actually went to social - - I went first to the health service to see Jean Davies and reported it was a huge problem now with Avril and it went through the kind of incident. What triggered that from my point of view was the day before I had been in London with a medical company and I was getting the 7 o'clock train back from Euston. The phone rang. Aurora was screaming and sobbing down the phone to me and basically it took me about ten, twelve minutes to get her to actually be intelligible, there was just lots of screaming and sobbing, and then after that I managed to talk to her and she was going on about mummy hitting her and I said can you - - she wanted me to phone the police. I never wanted the police involved because this was all to do with health and social services, so I persuaded Aurora to

go to her room and act as if she was asleep under the quilt so eventually she went off to the room and got herself under the quilt.

Q. Now just pause there. You're describing an incident here. I was asking you about what was happening after September 2009. This incident you described, what did it prompt you to do and when did it occur?

A. Okay. That was the one which I said "I've had enough now, I can't even travel away for a day", so the following day, morning, I went to Jean Davies.

Q. When roughly did that occur in relation to the email that was sent in September two thousand -----

A. It's approximately a month after it. One month later.

Q. Just to be clear, did you know about the email being sent?

A. No.

Q. In that email -----

HIS HONOUR JUDGE DUTTON:

Q. Why do you think that she didn't tell you that she'd sent an email to social services?

A. She used to get -----

Q. Was she not able to talk to you about that sort of thing?

A. No. There was a repetitive problem where we would discuss things, if you imagine there was a problem and you discuss it and you come to some conclusion and an hour or two later she would come back to you and be very angry, she'd come to a different conclusion and she would accuse you of actually not agreeing with her in the first place.

Q. Yes, but she'd summed up the courage to send an email to social services bringing in outsiders to deal with her children and her own behaviour and she hadn't

A. She -----

Q. said a word – just a minute – she hadn't said a word to you about it?

A. Well, she also had negative -----

Q. Do you find that somewhat curious? Why couldn't she speak to you about the problems?

A. She spoke to me about a lot of problems but she -----

Q. But why not this one?

A. I've no idea. She didn't tell me that she'd actually gone to the doctors originally for a mental health problem. She didn't tell me till later that she'd actually been prescribed antidepressants by the doctor. These were never discussed. There were a number of things that she didn't discuss and -----

Q. Do you happen to know why that is?

A. Why she didn't discuss them?

Q. Mm?

A. There were lots of discussions, there were a huge number of discussions but those particular incidents never came up.

Q. There can be all sorts of reasons for not telling something

A. Yes.

Q. to people. One reason could be that there's no point in discussing it because you don't get much empathy from the other side?

A. She would discuss -----

Q. That wouldn't be the position in your case?

A. I don't think so for the simple reason she came and talked to me about lots of things, about her job, about the problems that she was having and she would tell me about things to do with the children, certain things to do with the children but in particular we did have a problem discussing, shall we say how to care for the children. As I say she had, I'll give you an example. She used to watch the Supernanny programmes and one of the things that she would do, she would actually let Orion and Aurora sit with her watching Supernanny and what would happen is Orion would then copy the bad children, he would actually copy what he saw the bad children do on the television and then she would get angry and chastise Orion and I would say to her "Do you think it's advisable to let him see it" and she would see that as a criticism of her, her parenting techniques. Right from the start we had a lot of discussions, before we had children because Avril was never terribly motherly and it was quite a major area that she was, and sometimes she's not very empathetic to any children and part of this problem had arisen and been noticeable because of her behaviour with Graham, that's the older boy.

MR. GREEN:

Q. So discussions about the children and their care. Were they off limits those discussions or not?

A. Sorry, could you repeat that please?

Q. Discussions about how the children were to be cared for and looked after, were those discussions off limits or not?

A. No, they were not because one of the things she used to do was buy all these books and she would show me the book and try to give me some part from the book and I would ask her about it but one of her problems was she rarely adhered to one system. She would pick up something from a book and start to follow it and then she would change her mind and follow something else. Over Avril's life, I mean there were lots of things that she'd asked historically, like she wanted to go to university so I paid money and did a lot of things and helped her to register with the Open University. Three months later she dropped it. That's a very common event. That's the kind of thing that she did frequently. She wanted to be a member of Lloyds gym so you'd pay money, she goes for three months and then she stops.

Q. Well, on that point, that's quite a common thing.

HIS HONOUR JUDGE DUTTON: That's why gyms make money, isn't it, because they don't want the customers to go. They want them to pay but not to go.

MR. GREEN:

Q. But what you're saying there is that sometimes she would start something and then it would stop?

A. Yes. It was a very very big lack of consistency.

Q. But the email that was written, was that something that had just come to a head at that point or was it something

A. No.

Q. that had been coming on for -----

A. That was going on for a long time.

Q. Now let me ask you specifically about Orion now because Orion when this incident happened was I think three years old. Is that right? From when Orion was born in 2006 I think that was October 2006 isn't it?

A. That's correct.

Q. When he was a baby and still wearing nappies, how would you describe her approach to his care and the way she would respond if he was crying or upset?

A. Again it was a mixed bag. Sometimes she'd be very happy, sometimes she would really get quite upset. The biggest single trigger was poo – excuse me using the term but I think I must be polite. When he had a soiled nappy, she used to get about ten baby wipes out around the baby and she would forcefully hold the baby down so the poo wouldn't get anywhere and usually during that Orion started to develop, he'd struggle and things and she would fight with him which would usually result in the slapping. That was actually discussed with Jean Davies, the health visitor, and what happened, we had an agreement for changing soiled nappies. I would do it if I was there predominantly and she would actually do the wet nappies.

Q. You mentioned that would result in slapping?

A. Yes.

Q. What exactly do you mean by that?

A. Ah, imagine you've got the baby here and the baby's sort of, first of all it's struggling a little bit so you've got all the baby wipes and stuff, she'd be holding the baby's legs up and he'd actually start to struggle and flail around, she'd be trying to wipe him, things would happen and then she would smack him to make him sit still.

Q. As Orion got a little bit older, what was her approach to the way he would behave and her response to him in her eyes misbehaving?

A. Well, by that point they had formed a positive feedback loop where in actual fact he expected to have trouble with it so he would react quite badly when she would chastise him or, you know, restrain him and things. He actually expected a fight.

Q. What was your response to that situation? Were you able to say anything or do anything?

A. Yes. It would be part of these discussions talking about the way to look after the children and again, I was trained as a senior manager, not just a physicist, I was actually trained at Henley in places to look after people, to manage managers, help them with decision making, with problem solving and Avril would be quite open to

discuss things, she'd be quite open and we would have a genuine discussion but as I say, the longevity of retaining anything from the discussion was very short winded.

Q. Now again, focussing on Orion. You've explained how she would slap him. How frequently would she use physical chastisement?

A. Well by 2009 it was daily. Another big trigger was the two of them used to love chasing each other and with the downstairs situation they could chase each other round and round. What would happen is she would get triggered by that, get really angry, start shouting but Aurora, Aurora wasn't going to stop for people shouting at her.

Q. So by 2009 you say it's daily?

A. Yes.

Q. Orion is about three at that stage. Whereabouts on his body was he being slapped?

A. Primarily his buttocks.

Q. What did you witness as the evidence of that smacking?

A. Oh, you could see red marks and things.

Q. How often would you see red marks on him?

A. It was, the intensity of it, most of them would be light red marks but the occasionally ones you could actually see a hand print. That was more occasional, maybe one in ten, twenty days.

Q. How did you respond to what was going on, how did you deal with that?

A. Well, you try to intervene. Sometimes to intervene you had to be, you know physically actually intervene, other times it was just trying to talk but talking at that point wasn't very good. In a lot of cases you would also get certain a defusion of the situation because Aurora would storm off to her room and lock herself in.

Q. Now let me ask you about the weeks and months leading up to the incident that we're concerned with and again in relation to Orion. Had your wife managed to find a way of dealing with Orion or were things continuing? What was the position?

A. Erm, through the Caroline Harley situation, I mean they'd suggested the parenting course but in my opinion the parenting course wasn't terribly good. They had mainly old video recorders and they'd put videos in of the wrong part and they'd spend a lot of time shuffling back and forward trying to find what they were going to talk about but not only that, Avril didn't actually adhere to what she'd been told so what was happening she was being told things in these groups and then taking it on and trying to practise it a little bit but again not carrying it out.

Q. Was she successful in changing Orion's behaviour?

A. No.

Q. When social services became involved who did they suggest be the primary carer for the children?

A. Myself.

Q. And why was that?

A. Erm, I had a lot -----

HIS HONOUR JUDGE DUTTON: Just a minute. Are you calling the social worker?

MR. GREEN: No, your Honour, I'm not.

HIS HONOUR JUDGE DUTTON: Oh!

THE WITNESS: Caroline Harley, your Honour, is the social worker from -----

HIS HONOUR JUDGE DUTTON:

Q. No, no. You wouldn't understand. He's asked you a question which you can't properly answer.

A. Right.

MR. GREEN:

Q. Was that at their suggestion or yours?

A. Their suggestion. Can I add, I was disappointed by social services because when I asked for their help the first big meeting I had with them they basically explained that we had to self help ourselves. They said if nobody was sticking needles or knives in the children then they wouldn't get heavily involved and they would actually primarily ask us to sort ourselves out and I was terribly disappointed with that response.

Q. Orion's behaviour in the months before this incident, how was Avril's - - how did Avril's approach to him develop? What sort of things was she using or doing in order to discipline him?

A. She would try the famous naughty corner, she would try the one, two, three method but normally again she'd put him in the naughty corner and he would just find his way out, she'd put him back again, he would find his way out, she'd put him back again he'd find his way out and that could last a long time, we're talking an hour or so, a lot of crying and screaming so I wasn't very happy with what she was trying at all because it meant protracted periods of the child being distressed. I'm sorry, I can't subscribe to that.

Q. You said to us that the slapping continued?

A. Yes.

Q. Were there any incidents that stood out in your mind of her disciplining Orion?

A. No, they were all of a modest to the odd severe one. The one in actual fact that stood out while under social services supervision was actually a huge slap that she left on Aurora, a massive slap which was actually photographed and shown to social services.

Q. Staying with Orion though for the moment, he was as you describe clearly a little boy who would misbehave and you've described to us that Avril would slap him. Now, in the months leading up to this incident what was your assessment of the risk of harm from his mother?

A. I was quite concerned from the idea that there was a positive feedback mechanism. You know, one would trigger the other off and it would go until it was settled. The slapping incidents with Aurora, they could start off with just literally somebody doing *this* to the other one and then it would escalate, so with him it was the same sort of thing. He entered into engagements with her where at the slightest trigger and it could get quite nasty. Now that meant that most of the evenings I prepared water bottle for them, I was actually the one who got up most nights to get to, to take them the water. The sleeping arrangements in the room, counter to the comments made earlier, was that people actually moved around the house in an almost random pattern. What happened was the reason for people sleeping with Orion, Orion had a very bad chest, he actually almost died a couple of times of chest infection, so what happened was, we always had a rule that he had to sleep with somebody to keep him warm. We were also very scared of cot death in the early days so what happened was different people would go to bed with Orion. If it was Aurora, she slept in the big bed, we slept in separate beds. Sometimes he would sleep in his own bed, unusual but it happened, we'd sleep in the big bed. Aurora would sometimes sleep with myself or her mother. It was a complete magic merry-go-round of people sleeping in different beds.

Q. Did that pattern last for a short time or did it continue throughout -----

A. No, it mainly happened after Orion had his first infection.

Q. How old was he then?

A. About one.

Q. So from the age of one through to the incident that we're concerned with, did that remain the pattern of sleeping arrangements?

A. Yes. Even now, I mean, he still sleeps in his mum's bed at home and predominantly in my bed in my house.

Q. Now, so far as Orion is concerned, in the weeks before this incident what were your memories of how Avril was disciplining him?

A. It was mainly management by confrontation.

Q. Did it always happen in the same place in the house or was it at various different points?

A. Different triggers. There was a pattern to it in the sense that normally in the morning I would get up and I literally actually looked after Orion and Aurora, I would get them dressed, give them breakfast, she would get herself ready to go out. Then she had an obsession with combing Aurora's hair and this was witnessed both by Graham and the baby sitter where almost every single morning Avril would comb Aurora's hair and it would result in a fall out, crying, sometimes Avril would actually end up driving off without the children and I would have to take them to the nursery and to the school.

Q. Whenever Avril slapped Orion would it just be once or could it be more?

A. The average would be one but on the odd occasion a lot more.

Q. The odd occasion when it was a lot more, what were the circumstances of how that happened?

A. The classical one there is the chase, the two children chasing each other, they get really excited and they won't stop so she would start to intervene, you know, with

her voice and then intervene physically and the two of them would still be at it, then she would start to slap them. It was quite a, quite a Tom and Jerry act.

Q. But that was when - - what you've described there is when both children were present?

A. Yes.

Q. Were there any occasions when there was just Orion present?

A. Yes, because what he developed a habit of doing, he picked up that he could actually get attention by doing things like squirting juice bottles, so he'd pick up stuff and he'd squirt it on the floor and the walls, so if she had shampoo or her make up, he would smear it and do things, that would trigger it.

Q. And how did she respond to that?

A. Usually by shaking and shouting, on some occasions slapping.

Q. Before the incident that we're concerned with, do you remember any specific incidents of her disciplining Orion in a way that you disagreed with?

A. Sorry. There were that many, I find it difficult to remember any one. But as I say, let me go back to that one. There was a nasty pattern developed towards the middle of the summer that year which was she was angry at me intervening, stopping her hitting them or chastising them so what she decided, she'd drag them into a room and held them there with the room doors locked and she was smacking them and hitting them and I couldn't do anything about it. That was very distressing.

Q. How many times do you remember that happening?

A. That happened at least twice.

Q. And how long before the incident we're talking about would you say that those two incidents happened?

A. Oh, they're quite close. As I say the hair is quite memorable because Aurora was absolutely crying and sobbing and shouting and screaming to let go and she wouldn't, she just shouted at Aurora, you know, from the room.

Q. Just taking one of those incidents, describe to us what happened in relation to Orion?

A. Okay. So they have me carry on. She intervenes, a bit of shouting, a little bit of pushing and so forth, Orion then had a sort of tantrum, she would just grab his arms.

Q. Where in the house?

A. Downstairs usually. Sometimes upstairs, sometimes downstairs but this particular occasion it was downstairs and she actually dragged him upstairs, up, this is what she was doing, just dragged him upstairs, you could hear her door slamming so I walked up to follow and he was doing a lot of screaming and things and I'm expecting just to physically intervene and part them but the door was closed and he's screaming and shouting, you could hear her shouting at him and slapping him and it was kind of distressing, you can't get through the door, the door's blocked, then you've got Aurora next to you screaming and shouting. It's not very good.

Q. On the occasion you've described to us, roughly how many times do you think she hit him?

A. Probably about ten, fifteen.

Q. Could you hear those?

A. Yes.

Q. Were you able to get into the room?

A. No.

Q. Which room was it?

A. It was the front bedroom, Orion's room.

Q. Were you able to get any impression as to why you couldn't get in the room?

A. Oh, she had her back against the door, up against the bookcase.

Q. And how did you know that?

A. Because I tried to push the door open and you could see through a little bit and you could feel it's a big object and you can see a foot of the bookcase.

Q. What was the effect on Orion physically of that incident?

A. What happened, it took about thirty-five, forty minutes and he was absolutely exhausted, crying, tired. The door eventually opened, she just stormed out so I picked him up and Aurora would enter the bedroom and just sat, you know, you just sit and cuddle them and eventually they come round.

Q. The incident that you've told us about there, how long before this allegation did that take place?

A. May be two or three weeks.

Q. Now, on the day that we're concerned with, roughly what time do you think you arrived home?

A. Sun was setting, I don't normally watch the clock too much, I'm simply happy that there had been no phone calls, the project in Edinburgh was going well, arrived home, there was [inaudible] lying all over the place like sometimes there is, Aurora had come up and told -----

HIS HONOUR JUDGE DUTTON:

Q. Sorry. What time did you get home? That was the question?

A. Approximately sunset which would be about 8, 9 o'clock.

MR. GREEN:

Q. When you got back where was everyone in the house?

A. Erm, Aurora came to give me a big cuddle and she was awful proud because she hadn't incited Orion, that's her code word for stopping chasing each other round the house. She was quite happy with that. Orion was playing around the living room with cars and toys and also his sandpit at the back and Avril just going about, doing things.

Q. What time did they go to bed?

A. It wasn't that long after I arrived, probably three quarters of an hour, an hour.

Q. Did you sit and have dinner with them or not?

A. No, I had left overs.

Q. When they went to bed, first of all who went to bed?

A. Avril went to bed with them.

Q. With both children?

A. Yes.

Q. Did you go to bed?

A. No.

Q. What did you do?

A. Well, as normal practice in the house was, I would hang back and let her take them to bed. If it didn't work out then I would go upstairs and take over and not have them downstairs so it was normal pattern for me to wait until she'd tried.

Q. And what did happen on that occasion?

A. On that occasion I was quite pleased because there wasn't much kerfuffle, they all went to sleep, so I did the dishes and did some work on the computer, then watched some television and I drank a glass of wine and just sat around.

Q. Just explain to us then what happened later on?

A. Well a bit later on Avril come downstairs, I actually made her a hot chocolate, she sat on the couch, I sat on the couch next to her, watched a bit of television, Aurora started to be disturbed. That lasted about half an hour, then Aurora was disturbed, she came downstairs, Avril used to get very upset if Aurora came downstairs late at night so just a little bit of caution as she came downstairs, but she was, Avril was calm so Aurora was coming to sit with me but Avril asked her to sit with her so she sat with Avril who was calm. There was nothing inappropriate on the television so we watched television for a short period and then basically people were getting tired again so they went upstairs, I'd like to have gone upstairs then because I was tired but again hang about, make sure it's all okay.

Q. Roughly what time was this?

A. This was early hours in the morning.

Q. Just pause there a minute. Did you stay downstairs or did you go upstairs?

A. Not immediately. I'm also used to, like when Orion or Aurora get a temperature I'm usually the one that sits downstairs with them, you know, wafting them, taking their temperature, keeping them below forty, so I'm used, I'm used to that kind of thing anyway.

Q. All right. So they'd gone upstairs and how long did you stay downstairs?

A. It was probably only about ten, fifteen minutes because it all went quiet quickly.

Q. And then where did you go?

A. I went up to Orion's bed.

Q. Did you fall asleep?

A. No. What I do firstly, I go round the rooms checking everybody's okay.

- Q. And were they were they okay?
A. Everything was okay so I lay down and I did fall asleep.
- Q. So Aurora in her own room?
A. Yes.
- Q. You in one room?
A. Yes.
- Q. And Avril and Orion in the -----
A. In the main bedroom.
- Q. Explain to us what was the first thing then that you noticed later on?
A. I was disturbed by Orion making quite a bit of fuss about wanting juice and as I say, normally I'm triggered by things like that because I'm the guy who gets them juice, even water and so forth so I was disturbed with that initially and was just basically just ready to get up out of bed to go and do something about it, shouted to Orion - - sorry, I shouted at Avril, she was making a bit of a commotion, I shouted to her. "Leave him alone, I'll get him his juice".
- Q. By saying that, what were you attempting to do?
A. Just get her to stay in bed, fall asleep and get Orion and give him some juice.
- Q. What did happen?
A. Before I got out of bed she'd gone to the landing, she started sort of fighting with him and -----
- Q. Just pausing there. When you say fighting with him, what do you mean exactly?
A. Oh, you can hear them. He started to scream and shouting high and there's a bit of some flailing of the hands and stuff, you can hear bits of - - you know, you could hear physical commotions and that.
- Q. Were you able to see anything at this -----
A. I could see part of it because Orion's bedroom door, you can see out through it on to the landing itself, so basically she'd grab him and she was starting to drag him into the bedroom. Now again -----
- Q. At that point, how would you describe their demeanour?
A. Orion's was very humpy.
- Q. Right, okay. What did that mean? Was she
A. She was angry.
- Q. talking or shouting?
A. No, shouting. She didn't like getting wakened up from her sleep.
- Q. What sort of things was she saying?
A. Erm, she was definitely shouting "Stop it, Orion, stop it, you're not getting juice, be quiet", things of that nature.
- Q. What could you see at this point?

A. Well, he had actually gotten on to the floor and she had dragged him off the floor and he was trying to wriggle, flail and threw himself on to the floor so she was restraining him quite -----

Q. And what happened next?

A. She dragged him into the bedroom and at that point you lose it but you can hear the thing continuing. At that point your main concern is I would like these two to simply part company but you don't jump out of bed and rush in there. Basically when you confront her and she's got one of the children like that, if you confront her she'll get much more angry so you shout through, "Avril, can you let him go please" and -----

Q. At this point is that what you shouted?

A. Yes.

Q. And what was her response?

A. It's quite a funny event, it's well known within the family because even the baby replies "Fuck off Tommy".

HIS HONOUR JUDGE DUTTON:

Q. Sorry?

A. "Fuck off Tommy", that's the words she uses and in actual fact there was quite a point where Orion used to run around the house shouting "Fuck off Tommy".

MR. GREEN:

Q. So she responded by saying "Fuck off Tommy"?

A. Yes.

Q. What did you, how did you respond to that?

A. Well, I then, you then sort of think -----

Q. Just pausing there. Where are you at this point?

A. I'm still at the bed.

Q. How did you respond?

A. Well, the first part is just disappointed that you're going to have to get up out your bed, get involved in all this kerfuffle, sort it out, get everybody settled and go back to bed again. It's kind of like a disappointment, there's this big waste of human resource.

Q. What did you do?

A. I then thought to myself like, shout to Orion, "Orion stop crying, stop what you're doing", I can't remember the exact words, but "Stop doing it or I'll spank you" because if he played possum he would also get free.

Q. Is spanking Orion, is that something that you would normally do?

A. No.

Q. Is it something that you would ever do?

A. I've done it once or twice but extremely rare occasions.

Q. So you said that to him. Where were you at this point?

A. I'm still in the bedroom lying flat.

Q. You're still in the bedroom. What happened next?

A. Well, at this point, there's a lot of screaming and shouting going on from next door so basically I'm going to have to intervene somehow some way so I got up and I stood in the main bedroom door just to have a better view of what's happening.

Q. Yes?

A. At that point I then actually shouted again to Avril, "Avril, can you let him go", again another "Fuck off, Tommy". I then said to Orion again, "Orion, can you lie still or I'll spank you" but it's a waste of time saying that for it's not going to happen. You're just hoping that he would play possum and again if he does she'll leave him alone because she's tired, she's angry.

Q. At this point you're at the bedroom door?

A. I'm at the bedroom door.

Q. You were able to see into the room. Is that right?

A. Yes.

Q. And what could you see? Where was Orion?

A. Basically she's got him, she's lying on the side the bed and she's got him, she's fairly restraining him, he's screaming and shouting, the arms are flailing, the legs are flailing and head's all over the place and as much as restraining him she's trying to also protect herself because he's clearly giving it ten to the dozen, sorry, that's an expression, he's fairly throwing himself about the place and she's shouting at him and also trying to restrain him.

Q. Describe, just show us with your arms how she was restraining him?

A. Erm, basically she's on the bed, she has got one hand around him holding his head and his face.

Q. So you're indicating your right arm holding his face?

A. Yes, like this, and his head is *here* and basically the other arm is doing a mixture of trying to restrain his arm and his body and her legs over his like trying to restrain him there.

Q. At this point when you see that how did you feel towards your son?

A. Not very happy. He's going to get mad first thing.

HIS HONOUR JUDGE DUTTON:

Q. Sorry, what did you say?

A. Sorry, sir?

Q. What did you say then?

A. I was very concerned he's going to get mad. He's going to get -----

Q. The question was how did you feel about your son, about his behaviour?

A. His behaviour? I didn't think he was behaving unreasonably. The problem is Avril -----

Q. He wasn't behaving unreasonably? This is 1 o'clock in the morning and he's shouting and screaming?

A. Well, when I do it, your Honour, normally he's very quiet.

Q. Is that reasonable behaviour?

A. When he's with me and he wants a drink I give him a little drink and he lies down and he goes to sleep and that's the end of it. It's a pattern of behaviour he's got with his mother.

Q. So, I mean, is the way to deal with this to let him wake up at 1 o'clock in the morning and always go and get him juice or is it something that should be perhaps resisted? These are issues that all parents have to work out, aren't they?

A. Yes, this is a matter -----

Q. People have different approaches to these problems?

A. And one of the things that we did was we actually gave him less and less water - - juice, and we also put it down into water so we made it less attractive for him.

Q. All right. Let's get on and deal with the issue. What happened.

MR. GREEN:

Q. So in terms of what was happening to your son, what did you think was going to happen to him?

A. I thought he was going to get marked, he was going to get hurt.

Q. When you say marked, what do you mean by that?

A. Well, she'd left marks on him before, a hand print on his buttocks.

Q. So what did you do?

A. At that point I wanted to see exactly if it was possible to actually move him away from her so I pulled the, I kneeled on to the bed and pulled the quilt back and as I pulled the quilt back her leg came up and hit me really hard in the face. At that point -----

Q. Now pausing there.

HIS HONOUR JUDGE DUTTON: Just a minute.

Q. As I pulled the quilt back, and presumably uncovering her?

A. Yes.

Q. She pulled her leg up. Caught you where?

A. On the face, on the jaw.

MR. GREEN:

Q. How much of her was being covered by the duvet?

A. Erm, most of her.

Q. Most of her?

A. Yes.

Q. What was she wearing?

A. Oh, dear. I've no idea, sorry. No idea what -----

Q. Would she normally wear bed clothing or would she be naked?

A. No, no, no, she'd be in pyjamas.

Q. So you moved the duvet and were you on the bed at this point or -----

A. No. I was kneeling on the bed.

Q. Both knees or one knee?

A. No, one knee on the bed, I pulled it forward so at that point -----

Q. At that point how far away from her were you?

A. Can I demonstrate?

Q. Can you give us an estimate?

A. Well, the lady's *there* lying flat, I'm roughly, my knee is roughly where her foot is and I'm back *here* with the foot just the same distance from my face.

Q. Right. Did you expect to be kicked?

A. Yes and no.

Q. Did you do anything to prompt that?

A. No.

Q. Did you threaten her?

A. No.

Q. Did you move rapidly towards her as if you were going to do something?

A. No.

Q. What happened then?

A. Erm, basically at that point there were a number of things happened. Number one, I was aware that Orion was actually retrievable so I grabbed his pyjamas and as I grabbed his pyjamas [inaudible] going backwards I also took my hand, pushed her away quite hard to prevent her kicking me and kicking Orion.

Q. Were you able to take hold of Orion?

A. Yes. Well, it was a big handful of pyjamas, I pulled him towards me.

Q. The kick that you've described, where did it land?

A. On my face *here*.

Q. On the right hand side of the face?

A. Yes.

Q. You took hold of Orion. What did you do then?

A. I was moving backwards off the bed and she started to shriek. I'd intended just getting out the room, just keep going backwards out the room but because she started to shriek I stopped. Because of her tomboyish behaviour before, one of her habits is to come and start to have a tomboyish fight with you and what she would do, she would

actually fight with you and then feign being injured and then when you went to investigate she'd actually lampoon you, punch you or hit you or something. It was classical tomboy stuff so I was scared to go near her in case she was actually, you know, take me on but we stopped and stared, just stopped dead and stared and watched.

Q. You've described the process there of kneeling on the bed?

A. Yes.

Q. And you were kicked to the face?

A. Yes.

Q. You took hold of Orion's pyjamas. Where was she at that point when you took hold of him?

A. Erm, basically partially sitting up in the bed, partially.

Q. Did you take hold of him with one hand or two?

A. One hand.

Q. What were you doing with the other one?

A. Getting rid of her.

Q. Getting rid of her. What do you mean by that?

A. Basically just pushing her away.

Q. You're indicating a push with the palm, the outward palm of your hand?

A. Yes.

Q. Where did it connect on her?

A. Her head.

Q. She says that you punched her to the side of the head. Did you do that?

A. No.

Q. She says that you went on to repeatedly punch her ear?

A. No, I definitely didn't.

Q. Did you do that?

A. No. It's impossible, no.

Q. When you pushed her away with the palm of your hand what were you concerned about in those moments?

A. Getting away from her with the child.

Q. And why were you concerned to get Orion away at that point?

A. Well, see, if you get away from her, you have to remember this is not a one off incident, this is at the time a common event, yes, if you get distance between the two of you she'll calm down, she'll just go to sleep, whereas if you actually hang about you're just going to exacerbate the situation and start making it worse, so the best thing to do is just get clear of the area.

Q. All right. At any stage, Mr. Dobbie, did you assault her?

A. No.

Q. Did you intend to harm her

A. No.

Q. or anything of that sort? After you'd taken Orion away just briefly tell us what happened next?

A. There was a little bit of confusion because she was making all the noise and you're trying to decide is she hurt, is she, you know, setting up another panic, what she does.

HIS HONOUR JUDGE DUTTON:

Q. Is she hurt, did you say?

A. I was trying to decide if she was hurt your Honour because I couldn't

Q. Why would you think she might be hurt?

A. Because she was making a lot of noise, she was kind of wailing.

Q. But she'd been making a lot of noise all the time?

A. No, no.

Q. What was it about what happened

A. A different kind

Q. that made you wonder whether she was hurt?

A. Different kind of noise. Previous to that she's actually in an attack mode, she's shouting and bawling primarily at the child.

Q. Sorry. But you were in the room. What was it about what happened, not just her change of voice, that made you ask the question I wonder whether she's hurt?

A. Because the way she was, she was

Q. Well nothing had happened to make her hurt, had it?

A. Well, she'd been pushed away fast.

Q. You pushed her away with your hand?

A. Yes.

Q. Would that have caused her to shriek

A. But that's why there was

Q. and complain that she'd been hurt?

A. But that's why there was also the possibility that she was actually feigning. Avril had a habit of wanting to wrestle with people like myself and Graham on the grass at the back of our house.

Q. Sorry. It was you who said that you wondered whether she was hurt?

A. Yes, because I can't tell whether she's hurt or I can't tell whether she's actually genuinely hurt or whether she's actually feigning, waiting to attack again because when she played these games, these rough games, yes, what she would do is she would feign being hurt and when you would intervene to actually go and look at her,

be with her, she'd quite happily lampoon you. This was a common event on the back garden and in the living room.

MR. GREEN:

Q. Now did you leave the room with Orion or not?

A. No. What happened -----

Q. Did he stay in the room with -----

A. Orion was with me and he's also kind of puzzled, he's gone from being attacked to somebody shrieking and he doesn't know what's gone on either. Then Aurora appears at the side of us and she looks on and she's staring and after a little while she actually moves up and cuddles Avril. Yes? Irrespective of what's happened she's cuddling her and we watched this for about another ten, fifteen seconds, again waiting to see what's going to happen. Nothing happened so then Orion gave her a cuddle. I then stayed for about another thirty, forty seconds watching to see what was going to happen, nothing happened so I went downstairs.

Q. You went downstairs and into the lounge, is that right?

A. Yes.

Q. Did you stay there on your own?

A. I was initially on my own. I switched the computer on and I looked for help, social services help etc. Again, very disappointed. If you're a woman being attacked by a man there are tons and tons of help facilities, if you're a man and his children being attacked by a woman there's almost no help services so I spent about ten minutes trawling Internet websites through Google looking for help.

Q. Did Orion come down at any point?

A. What happened next was Aurora came down, she came over to me, cuddled in, had a little cry, she said to me "Shall we phone the police Daddy", I said "No, darling, we'll get help, we'll get it fixed" and I showed her the screen, I said "I'm looking for things to get help". After a little while I asked her to go back upstairs to bed, she went upstairs to bed. I had a cup of tea, went back to bed. I was just getting into the other bed when Orion started again wanting juice so this time I went and got him, got a quilt and a pillow, put him on the settee, put on a film, gave him a biscuit and a bit of juice. Fifteen minutes later he's sleeping. I lay down beside him and went to sleep.

Q. So you'd watched the film, you both went down to sleep?

A. A little bit of film.

Q. And in the morning where was Orion?

A. He's on the couch.

Q. Did he stay there? What happened next?

A. He stayed there until he heard people upstairs because I'd put the television on again for him and then he went upstairs and came back down again with Avril.

Q. Did you see your wife that morning?

A. Yes.

Q. Where did you see her?

A. On the staircase.

Q. In terms of her head and the injuries that she describes, what did you see?

A. No, there was nothing. This was just similar to previous occasions when similar incidents have happened and my expectation is that she would wander off and actually sort of come back all apologetic or try and actually dress up somehow or do something.

Q. Did you see any lump to her head or anything like that?

A. No. No.

Q. She then took both children to school. Is that right?

A. That's correct. Well, she left with them.

Q. And you went to work. Is that correct?

A. To the university, yes.

Q. Mr. Dobbie, thank you very much. If you'll just wait there, there'll be some more questions.

Cross-examined by MR. HEDGE COE

Q. When she went to bed that night, she didn't have any injuries?

A. No.

Q. When she was seen by a police officer the next day she did have injuries?

A. Yes.

Q. You accept that, don't you?

A. Mm mm.

Q. And those injuries, how did she get those then, do you think?

A. I have no idea.

Q. Because she's not just lying about having injuries, they were seen by somebody else, weren't they?

A. They were seen by the police officer but they weren't seen by my daughter, they weren't seen by me, they weren't seen by any friends.

HIS HONOUR JUDGE DUTTON:

Q. Yes, but the police officer's evidence has been agreed, you see. It's been read to us as agreed evidence?

A. [inaudible]

MR. HEDGE COE:

Q. And they saw her we know at around about 9:15 the following morning and if you've been telling us the truth since you've been giving evidence, that's about an hour now, if you've been telling us the truth all that time you couldn't have caused those injuries because all you did was push her away and you wouldn't have made contact with more than one part of her with that one push, would you?

A. No.

Q. And you wouldn't have caused an injury that caused swelling and bruising over her left eye with that one push?

A. Well, can I have -----

Q. What part of you came into contact with her when you pushed her?

A. My hand.

Q. Your hand and what part of her?

A. Her head.

Q. What part of her head?

A. Somewhere about the face.

Q. And you were obviously concerned to see whether she was injured?

A. Because she made a noise of an injured person.

Q. And you say well that was a different noise from the screaming and hysterical noise that she'd been making for the rest of the time?

A. Also similar to noises she'd made before while wrestling on the back green with my son and with my daughter.

Q. When she was presumably injured?

A. No, she feigned injury.

Q. On those occasions she feigned injury?

A. Yes.

Q. On this occasion you accept that by 9:15 the following morning she was injured?

A. Yes.

Q. Right. You've told us a great deal about Orion's background and about what a difficult child he can be and all the different things you thought about and read about and so on as to how to try and help him, and one of the things that was put to your wife was that she should have talked to Orion rather than being violent with him. Is that one of the things that you think was the right approach?

A. Yes.

Q. Why is it then that on this occasion when you talked to him, you're talking was by saying "If you don't be quiet I'm going to smack you"?

A. Well -----

Q. It's a clearly violent thing to say to a three year old child, isn't it?

A. I have my child every week-end, every second week-end and currently for the week with me and during that time he does not behave the way he does with his mother.

Q. Right. So why on this occasion - - what I'm going to do is ask you to answer my questions. Okay? The question was, why on that occasion did you say "If you don't be quiet I'll spank you" or "I'll smack you"?

A. Because he's physically under attack by his mother.

Q. Why would you say to him "I'm going to smack you"? What's that telling him about - - I mean, why didn't you say to her "Stop doing that, just hand him over to me, I'll try and calm him down"?

A. I asked her -----

Q. Say something rather than introducing an element of violence by saying you're going to smack the child?

A. Well I first of all asked her to release him which she didn't do.

Q. So you thought it was a good idea to tell him that you'd smack him?

A. Because if he played possum she would leave him alone.

Q. You did say to her, didn't you, when she'd been saying "Look, I've been looking after these children perfectly well while you've been away", you did say didn't you, "Well, you're not doing a very good job, you fucking stupid woman"?

A. No, not at all.

Q. Was that designed to lower the temperature?

A. I'm terribly sorry but I was trained at Henley to manage managers, I've travelled the world over a hundred countries, I've interfaced with people from factory floor to CEO's to Vice Presidents of countries, I actually normally

Q. The difficulty appears to be

A. [inaudible] pretty well.

Q. with your wife. Whatever you've been taught to do with Vice Presidents, you're dealing with a wife and child here weren't you, Mr. Dobbie?

A. I was a very particular person, sir.

Q. You considered that you'd been kicked in the face, didn't you?

A. Yes.

Q. Whatever the rights and wrongs of that, you did say to her, didn't you, "Don't you kick me"?

A. No.

Q. Didn't you, and that was just before you hit her and the first punch, not a terribly dangerous punch, hit her in the rib cage, didn't it?

A. No.

Q. Probably bounced off her arm, probably not terribly painful because the duvet was in the way?

A. No.

Q. But you carried on, didn't you?

A. No.

Q. And you punched her hard?

A. No.

Q. In the forehead?

A. Have you ever fought with Avril, sir?

Q. I'll ask you the questions, you just answer my questions. Okay? You punched her in the forehead, didn't you?

A. No.

Q. And then you punched her several times in her left ear?

A. No.

Q. And while you were doing that she was holding on to that child

A. No.

Q. that three year old child, wasn't she?

A. No, she wasn't.

Q. And then you left?

A. I did leave.

Q. And you'd punched her after swearing at her?

A. No.

Q. After saying you were going to smack the child and after you say being kicked in the face. You weren't happy, were you, you were angry?

A. No, I was unhappy.

Q. And you took it out on her?

A. No.

Q. And you weren't defending that child, were you?

A. Yes, I was defending the child.

Q. What about these previous occasions you've talked about when you - - you say there were apparently two occasions when this little lad was taken into a room by your wife and you were outside while she delivered you thought something between ten and fifteen blows to this child?

A. Yes.

Q. What did you do about that?

A. I waited until she'd finished and then we got the child and protected him, kept him away from her.

Q. Well, what action did you take? I mean the way you describe it you've got a woman here who's totally out of control with a three year old child, very dangerous situation and you're a man who's not even there a lot of the time, you're quite often away with your work, aren't you?

A. No. I reduced my away time considerably to be there -----

Q. You may well have done but I mean if you're out of the house for twenty-four hours, forty-eight hours it's a dangerous situation. If the picture that you've painted over the last hour is correct, this woman is totally out of control, she shouldn't be left alone with any small child at all, should she?

A. No.

Q. No. What have you done about it? After that first occasion when she prevented you from getting into the room while she assaulted this three year old child, what did you do about it?

A. I spent more time at home. I also talked to the GP, we have a common GP. My GP talked about her having antidepressants and working and not working, the GP gave us the impression that things would improve.

Q. Why do you think it was that on this occasion she called the police the morning after this incident?

A. I think she had other motivations.

Q. She had what, sorry?

A. I think she had other motivations.

Q. Other motivations?

A. Yes.

HIS HONOUR JUDGE DUTTON:

Q. Such as?

A. In 2006 she tried to abduct our daughter and this went to court, we took it to the civil court and in the civil court she raised lots and lots of allegations against me, these allegations were dismissed. In the 2006 incident she also, having had a prohibited steps order placed on her, she actually went and told the police that I was stopping her taking the child away so she had the police come to my house, she had the police restrain me while she actually took things from the house. I then informed the police that there was a court order against her taking the child away, the police then went and got her, brought the child back to the house and asked her to leave.

Q. So this is a malicious plan on her part, is it, to blame you for something that you've never done?

A. I think that she's upset because she'd been identified to social services as unambiguously having lots of trouble with the children and this was an attempt in some way to get back at me because she saw me as being responsible for it.

MR. HEDGE COE:

Q. Why haven't you taken steps to protect these children?

A. Sir, that's the question which the young man who was sitting over there -----

HIS HONOUR JUDGE DUTTON:

Q. Well, never mind what the young man sitting over there may or may not have said or asked you. Why didn't you do anything about the children?

A. I was continually working with her, I was continually talking to the GP who was common to both of us of helping the situation to actually improve her attitude and her mental health. The GP, Doctor Kingston, hoped that would -----

MR. HEDGE COE:

Q. So the position is this, isn't it? That night after that incident you were prepared to leave Orion in the same room with her weren't you?

A. Because she had calmed down.

Q. You were prepared to leave Aurora in the same room with her?

A. Because she had calmed down.

Q. This is a situation where according to you moments ago you'd had to defend Orion from her?

A. A common event which after which she would calm down. She did not premeditate hitting the children. She didn't plan at 3 o'clock to hit the children at 5 o'clock.

Q. So, this is a plan by Avril to get at you in some way, what's this, to get the children away from you or something like that?

A. Yes.

Q. And in the course of that plan she's made up an allegation of assault?

A. Yes.

Q. And presumably it would appear inflicted some injuries on herself that she can then show to a police officer the following morning?

A. Unfortunately it sounds like it.

Q. That's what you're saying has happened, is it?

A. It sounds like it.

Q. It's either that or you're not telling the truth, isn't it?

A. Either that.

Q. Well, I suggest that not only are you not telling the truth but you've told a great many lies standing in that witness box today, haven't you?

A. No. The track record in the civil court is that my wife has done everything to prevent me getting access to the children and several courts have given access.

Q. No other questions.

MR. GREEN: Your Honour, I have no re-examination. Does your Honour or do your Honour's colleagues have any questions?

HIS HONOUR JUDGE DUTTON: No, thank you very much.

MR. GREEN: Can Mr. Dobbie return please?

HIS HONOUR JUDGE DUTTON: Go back again, please.

MR. GREEN: Thank you. Your Honour, just to complete the evidence I'd just like to read some character references please. I've shown them to my learned friend so if I may just do that now. The first is dated August 17th 2010: "To whom it may concern. Re Mr. Tom Dobbie. I've been asked to provide a character reference for Mr. Tom Dobbie. I've known Tom in excess of nineteen years and over that period he's come to be a working colleague and a close family friend. Tom has a very caring nature and is always willing to help whatever the situation. He has a compassionate side and I recall on more than one occasion where he has been instrumental in solving friends and colleagues personal problems. He is a family man and holds his children in very high regard. I've never witnessed Tom show any

threatening behaviour towards any of his children or anybody else in either a personal or business capacity. Tom is always composed and diplomatic and has a natural ability to defuse awkward situations. I would have no hesitation in placing my children in Tom's care and have done so on many occasions whilst they've been growing up. Both of my children regard Tom as a member of the family and have a great love and respect for him. I know Tom wants the best for his own children and works very hard to maintain a stable environment in which they can develop and flourish. Tom's work requires him to travel and sometimes spends periods of time away from his marital home and children. Tom has an easy-going friendly outlook, gaining him the respect he rightly deserves" and that's signed "Yours faithfully, Richard Zebenuski" – I'm sorry for the pronunciation.

The next reference is from Doctor Rob English, Senior Lecturer in Material Science at Glyndwr University and it's dated August 23rd, 2010 and it says: "To whom it may concern. Re Mr. Tom Dobbie. I've been asked to provide a character reference for Mr. Tom Dobbie. I've known Tom since 2003 and have an ongoing professional association with him at Glyndwr University and through my spin out company Aquaheel Limited. We also became personal friends early on during this professional work. I've spent a lot of time with Tom giving lectures, working on projects, working with students, visiting other universities and companies. I've also visited Tom's house on numerous occasions for business meetings and socialising with his family. Professional Association. Tom runs a number of small hi-tech businesses, he has a laboratory at the university in Wrexham where he also lectures and supports students on various projects. He's well thought of by staff and students. He has a good international reputation and clientele list. He is professional and knowledgeable in his subject area of rheology and processing of complex materials. Academic and technical staff, students and visitors find him very approachable. He has adopted a working style to enable him to devote maximum time looking after his family. He frequently arrives after the children have gone to school and nursery, he frequently leaves early to be home for the family. He frequently works from home to help out. He almost never goes out to invites preferring to give the time to his family. He only makes away visits that are essential. Personal Life. Tom talks about everything. He has an enthusiasm for life. We share many stories about what and why things have happened that cover technical and human endeavours. He openly encourages people around him to share and socialise with their life experiences in a positive way. Tom is simply not an aggressive person. His life revolves around his family".

Finally your Honour and your Honour's colleagues, this is from Deborah Ann Dean Chadwick, a local services co-ordinator for Barnado's and it reads as follows: "Re Mr. Tom Dobbie. I've been asked to provide a character reference for Mr. Tom Dobbie. I'm the ex-wife of Tom Dobbie and we have a son Graham who's 23 years old. He lives independently of both of us and keeps in regular contact. Parental responsibility. Tom is an exemplary example of a father. He's spent time effort and money to ensure Graham's well being and development. I first met Tom while he was preaching at a Salvation Army meeting. His enthusiasm and message were very appealing. He was located at a rectory near the Salvation Army at Ancoats in Manchester. He spent his working day as a hi-tech development scientist at ICL. He spent every other minute helping other people, in particular the inner city children in the Ancoats area. He was loved by all of the old people he visited on Sundays at the old people's home. He also had an ability to defuse angry or difficult people. This was prominent with the hospital for difficult old people and with some of the

elderly boisterous older inner city children. Tom is a loving parent and a supportive ex-husband. Tom and I have constantly kept in touch not only for our son's sake but also as friends. He also have a great enthusiasm for life, long history of friends and old friends. He's never been violent to me or known to be with any of our own network of friends". Your Honour, those are the character references. Could I just briefly confer with my learned friend before I close my case.

HIS HONOUR JUDGE DUTTON: Certainly.

MR. GREEN: Finally, your Honour, it's an admission on behalf of the Crown and the defence that the defendant has no previous convictions.

HIS HONOUR JUDGE DUTTON: Yes.

MR. GREEN: And that's the case for the defence. Your Honour, if I could just briefly address the court on Mr. Dobbie's behalf. This case is very important to Mr. Dobbie. He is an ordinary man, he has no previous convictions and he has no experience of the criminal process, the criminal courts are an alien environment to him. In short, he is a man I submit of positively good character. It is always difficult trying to shine the spotlight on a marriage, on a home life, a marriage that's lasted nineteen years, children who are now I think nine and three. Trying to analyse that in the space of one day, an extremely difficult process indeed, but in short he is a man of positively good character and those character references in my submission speak of a man who is even tempered, who is compassionate, honest and very well regarded, a man who in the opinion of his friends and those who know him best always puts his family first. So when considering his credibility, in my submission it is fair to say that this court's assessment can start from the very highest point. If the court is with me in relation to that then in my submission his good character also means that he is highly unlikely to have behaved in an unlawful manner and unlikely to have been less than truthful about these events. I know that your Honour and your Honour's colleagues are familiar with the good character direction and I know that you will take it into account on his behalf and in his favour.

So what of Mrs. Dobbie credibility? Has she been frank about all of these matters? In my submission the first clue that there is perhaps something more to her evidence than first meets the eye was the way she dealt with what she had said in the Magistrates Court about her injuries. One looks for small clues but in my submission there was one there. When pressed on what we say she did in fact say in the Magistrates Court, which was in terms that she did not have a golf ball sized lump on her head and that in terms she made no mention of any lump on her head, at that point she deferred to "I can't remember". Well, I'd ask your Honour and your Honour's colleagues to take that into account.

Secondly, the email that was sent to the social services. Now of course with any of these points they can be interpreted in any number of ways and I of course have to accept that one interpretation is that here is a woman taking action, approaching the local authority and seeking help in a situation where she recognises she has a problem. Of course I accept that's an interpretation. On the other hand, it is in my respectful submission quite an unusual step to take. I'm not a family practitioner but I rather suspect that it is very unusual that a person would of their own volition ask

for assistance from the social services, but in any event the substance of that email in my submission reveals a woman who at that point in her life in saying in terms that she is utterly incapable of controlling her children, she has run out of options and she is afraid because her physical chastisement is going beyond what she regards as proper limits. We say that that is a snapshot in a process. That is not simply the way the state of affairs at that moment in time when she sent the email. but rather a snapshot in a process that was still present when this incident occurred.

Third point, your Honour and your Honour's colleagues, again perhaps a small point but we say a further clue, that Mrs. Dobbie was quite reluctant I would submit to acknowledge the fact that social services had advised that Mr. Dobbie in fact be the primary carer for those two children. She did acknowledge it in the end but she took a little coaxing from her.

In short we say there is more to how this family was functioning than what Mrs. Dobbie says. The true picture we say is as Mr. Dobbie describes. Not a simplistic summary of the way that family was functioning. He doesn't say that she was entirely a bad mother all of the time but what he does say is that her approach to the children was such that her reaction to misbehaviour encouraged and aggravated the situation more than it defused it, not occasionally but it had got to the point where it was happening on a daily basis, that a vicious cycle was already entrenched by July last year whereby she was regularly slapping and smacking both children but in particular Orion and so, your Honour, when it comes to the events of that evening specifically we say that the history of these matters lend themselves to this court accepting that Mr. Dobbie in those few moments in that highly stressful situation could well have believed that his son was at risk of being harmed. If your Honour and your Honour's colleagues believe that that is true or may be true then we suggest that the action he took, if it's accepted that he is telling the truth about it, namely that he pushed her away with the palm of his hand, was nothing more than self defence.

Finally, your Honour, the point that I would also make is that whichever way one comes at the kick, we would respectfully submit that it would be a proper inference for this court to draw that that was an unlawful assault on the part of Mrs. Dobbie. I don't make that submission lightly because this is a situation where Mr. Dobbie has never before used violence against his wife, no suggestion he's ever assaulted her before, no suggestion from Mrs. Dobbie that he had ever made her feel threatened in any way before, but that kick was delivered to his face and we submit there was no good reason for it. If your Honour and your Honour's colleagues take the view that that is or may be the case we'd ask you to factor that into your consideration about what precisely was happening in those moments in that bedroom. Your Honour, on Mr. Dobbie's behalf those are my submissions.

HIS HONOUR JUDGE DUTTON: Thank you very much. We'll retire and consider.

- Bench retired -

HIS HONOUR JUDGE DUTTON: This is an appeal against conviction by the appellant Thomas Dobbie against a conviction before the Magistrates of a section 39 assault. It's an incident that has a domestic connotation to it. We've heard a lot of detail about a very unhappy and unsatisfactory relationship between these two, husband and wife,

and that there was terrific amount of conflict in how to bring up, how to care for and how to deal with the two children of the family. I find it hard to believe that they were quite so difficult children as they're painted. I've no doubt and we've no doubt that problems lie or did lie in many directions and no-one is completely blameless. There's always two sides to an issue.

Now this all blew up on an occasion when in the middle of the night the little boy started being difficult wanting a drink. There was for want of a better phrase a bit of a row about this, it ended up with the appellant going into the bedroom, confronting this situation, his wife was on the bed with the child either trying to restrain the child or holding the child forcibly as he suggests, he threw the bed covers back and she kicked him and her foot made contact with his chin. He then pushed her to the face and it would appear that within a short time the situation had calmed down, there was no further violence of any kind that night.

The explanation given by the wife was that he'd come into the room, pushed the bedclothes back, she had kicked out and then he punched her several times full in the face, first of all punching her in the side and then above the left eye causing bruising and swelling and then down the left side of her face by the ear causing some swelling. The next morning she reported this to the police at 9:15 from work and agreed evidence of the police constable is that she had bruising and swelling about the size of a golf ball and bruising to the side of the head.

It's plain that this was an extraordinarily unhappy and turbulent matrimonial relationship between these two people. Frankly, whether either were in a real position to contribute properly to the upbringing of these children I don't know, I'm just glad that we're not dealing with any family aspect of this unfortunate dispute because it's plain that locked in the middle of this are two blameless children with parents who simply don't get on and never will by the look of it.

The defendant, the appellant, is a man of good character and we are conscious that that means that we might be more likely to believe him on his evidence than somebody who is not and that we may ask ourselves why should he do something like this, i.e. attack his wife criminally at his stage in life, with a good job and many people who speak very highly of him. His explanation is that what he did by pushing her away was doing no more than what he considered was reasonable in all the circumstances in order to release his child who he considered was being unlawfully and incorrectly chastised by her in the circumstances.

The pushing may not fully explain why it is that the agreed evidence is that the next day she had a swelling about the size of a golf ball and bruising to the side of the head, agreed evidence given by the police officer, but the court takes the view that in a complex, dynamic situation like this there may be some doubt as to how actually this was caused and the court gives the benefit of that doubt to the appellant. The appeal therefore is allowed.

MR. GREEN: Your Honour, thank you, thank you very much. Your Honour, before we finish, forgive me, I'm just thinking aloud in relation to the costs position. It may be no orders are appropriate. Of course the order in the Magistrates are effectively overturned I understand.

HIS HONOUR JUDGE DUTTON: Yes.

MR. GREEN: In terms of any reasonable expenses, does your Honour feel that a costs order would be appropriate in favour of the appellant if such a power exists.

HIS HONOUR JUDGE DUTTON: Yes, if the power exists, reasonable expenses.

MR. GREEN: Thank you very much.

HIS HONOUR JUDGE DUTTON: Getting here, yes, transport.

MR. GREEN: Thank you very much.
