NOTE: PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF COMPLAINANT PROHIBITED BY S 204 OF THE CRIMINAL PROCEDURE ACT 2011.

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA318/2021
[2022] NZCA 415

BETWEEN	RITIKA Appellant
AND	THE QUEEN Respondent

Hearing:	15 June 2022
Court:	Courtney, Mander, Fitzgerald JJ
Counsel:	L B Cordwell for Appellant FMT Culliney and J K Bola for Crown
Judgment:	5 September 2022 at 11.30 am

JUDGMENT OF THE COURT

The appeal against conviction is dismissed.

REASONS OF THE COURT

(Given by Fitzgerald J)

[1] Following a jury trial in the District Court, Ms Ritika was found guilty of three charges, being injuring with intent to injure or with reckless disregard, wounding with intent to injure or with reckless disregard and ill-treatment or neglect of a child. The charges arose out of injuries sustained by Ms Ritika's eight-week-old baby daughter (who we will refer to in this judgment as M). Ms Ritika's husband, Mr Kumar, also

faced a charge of ill-treatment or neglect of a child but was acquitted on that charge. Ms Ritika was sentenced by Judge Aitken to two years and seven months' imprisonment.[1]

[2] The injuring charge against Ms Ritika related to multiple rib fractures sustained by M, and the wounding charge related to subdural (brain) haemorrhages. We will refer to these two sets of injuries as "the charged injuries". Following M's admission to Starship Children's Hospital (Starship) on 8 November 2018, tests revealed a number of other injuries to M, namely a skull fracture, retinal haemorrhaging in her right eye, five leg fractures, two arm fractures and five toe fractures. We will refer to these injuries as "the other injuries". While evidence about the other injuries was led at trial, they did not form the basis of any additional charges against Ms Ritika.

[3] The Crown's case at trial was that all the injuries sustained by M were non-accidental and that Ms Ritika had caused them. Ms Ritika did not suggest that it was a reasonable possibility that someone else had caused some or all of the injuries. Rather, the sole focus of the defence case was that the Crown could not exclude the reasonable possibility that the injuries were the result of rickets or some other inherent bone deficiency suffered by M. The jury's verdicts plainly rejected that possibility.

[4] Ms Ritika now appeals against her convictions on the basis that there has been a miscarriage of justice. There are two grounds of appeal: [2]

(a) The trial Judge erred by failing to consider the basis upon which the evidence of the other injuries was admissible, and as a consequence, failed to properly direct the jury on how it ought to approach that evidence.[3] This failure is said to have resulted in a real risk that the

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1 *R v Ritika* [2021] NZDC 11053.

2 In his written submissions, counsel for Ms Ritika on the appeal, Mr Cordwell, confirmed that the original grounds of appeal were abandoned. He sought leave to amend the notice of appeal. There was no objection by the Crown and the hearing proceeded on the basis of the two new grounds of appeal.

3 Ms Ritika's appeal was originally advanced on the basis that the evidence of the other injuries was inadmissible. In his oral submissions, however, Mr Cordwell advised that Ms Ritika no longer challenged the admissibility of the evidence of the other injuries provided that appropriate directions were given to the jury, both to explain the relevance of the evidence and to ameliorate its undoubted prejudicial effect.

jury engaged in impermissible reasoning and caused substantial prejudice to Ms Ritika as a result.

(b) Despite a key strand of the Crown's case being that Ms Ritika had lied about a range of matters (in both pre-trial statements she made to the police and her evidence at trial), and that those lies were relied on as circumstantial evidence of Ms Ritika's guilt, the Judge failed to give a lies direction. That failure is said to have been exacerbated by the fact that the Judge gave a lies direction about aspects of Mr Kumar's evidence (in which he accepted that he had lied) and that the terms of that lies direction (namely that Mr Kumar might have lied to protect someone else) was unfairly prejudicial to Ms Ritika.

[5] We must allow the appeal if we are satisfied that a miscarriage of justice has occurred.[4] Relevantly for present purposes, a miscarriage of justice means any error, irregularity, or occurrence in or in relation to or affecting the trial that has created a real risk that the outcome of the trial was affected.[5] A real risk in this context is "a reasonable possibility that a not guilty (or a more favourable) verdict might have been delivered if nothing had gone wrong".[6]

Factual background

Key evidence at trial

[6] M was born on 8 September 2018. She is Ms Ritika and Mr Kumar's first child. As part of their traditional custom, Ms Ritika was required to remain at home with M for about the first 40 days of her life.

[7] On 31 October 2018, Ms Ritika took M to the family's GP, as M was in an unsettled state. The GP suspected M had colic and prescribed a course of Gaviscon.

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4 Criminal Procedure Act 2011, s 232.
5 Section 232(4)(a).
6 *R v Sungsuwan* [2005] NZSC 57, [2006] 1 NZLR 730 at [110].

[8] The events of 7 November 2018 were of some importance to the Crown case. It was the first day of the traditional Diwali festival. Mr Kumar, who had recently started a new job working nightshifts at a local supermarket, had the day off. Following a disagreement with Ms Ritika that morning about doing household chores, he left the family home and was away for most of the day. The Crown's case was that this infuriated Ms Ritika and the evidence confirmed that she sent Mr Kumar a total of 296 communications (phone calls or text messages) that day. The Crown relied in particular on a series of text messages Ms Ritika sent to Mr Kumar over the course of the afternoon, including a threat to drink bleach, taking an oath on M's life[7] and a message (sent at 5.27 pm and again at 5.36 pm) reading "Baby is crying a lot, I don't know what happened."

[9] Mr Kumar arrived home shortly thereafter, and a neighbour gave evidence that she heard a baby crying, a man yelling and a woman screaming at Ms Ritika and Mr Kumar's address. Another neighbour visited Ms Ritika at home later that evening at around 9 pm, and Ms Ritika was holding M. The neighbour said she did not notice anything unusual about the baby, though described M as "[a]sleep. Sleepy".

[10] At around 11 am on the morning of 8 November 2018, Ms Ritika and Mr Kumar took M to their GP as they were worried about her condition. Ms Ritika described M as crying and "opening her eyes and shutting her eyes". The GP described M as being in a "terrible condition". He was concerned that M might have meningitis and called urgently for an ambulance. Following her admission to Starship, M presented with seizures and a CT scan of her brain revealed that she had a fractured skull and subdural haemorrhages. The paediatric radiologist from Starship who gave evidence of the various injuries to M dated the subdural haemorrhages as between three hours to seven to 10 days old.

[11] The following day, a full CT skeletal survey of M revealed a number of rib fractures, the skull fracture and three leg fractures (described as "buckle fractures"). The medical evidence was that the rib fractures could have been one to two weeks old, and the leg fractures no more than a week old.

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7 "I am taking an oath in your daughter's name. If you value that oath then come home immediately." (English translation).

[12] The next day, 10 November 2018, an assessment by a paediatric ophthalmologist revealed retinal haemorrhaging in M's right eye. A follow-up skeletal survey of M on 21 November 2018 showed previously undetected fractures, being two arm fractures, one leg fracture and five toe fractures.

[13] Ms Ritika participated in two evidential video interviews (EVIs) with the police in late November 2018, both of which were played to the jury. The first, which took place on 22 November 2018, was brief. Ms Ritika was concerned that her husband was also in the process of giving an EVI, and persistently raised her concerns as to his ability to participate in the interview and asked to speak with him. The interviewing officer informed Ms Ritika that Mr Kumar's interview had already started and thus could not be interrupted. At that point, Ms Ritika advised the interviewing officer that she was feeling dizzy and the interviewing officer agreed to end the interview. Ms Ritika then passed out and fell onto the floor.[8] The Crown's case was that Ms Ritika had feigned this fainting episode.

[14] Ms Ritika's second interview took place on 23 November 2018. The police had earlier sought and been granted a surveillance device warrant pursuant to which they installed listening devices in the family home, and accordingly obtained covert audio recordings of Mr Kumar and Ms Ritika's discussions on the evening of 22 November. In her judgment on the admissibility of Ms Ritika's 22 November EVI, the Judge summarised Ms Ritika's statements in the intercepted conversations as follows:[9]

> (a) She now knows what to say, her husband having given his statement;
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> (b) If that had not happened – in other words, her husband had not made a statement the day before she was required to make a statement – there was a risk of giving conflicting accounts;
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> (c) That she knew she had the "option" of not making a statement on 22 November and did not want to make a statement; and
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> (d) She describes falling to the ground, how she appeared (to unnamed others) who were called to see her, goes on to say: "I knew everything, the thing was I did not want to make a statement", and again refers to

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8 Judge Aitken ruled this EVI admissible in a judgment delivered on 15 July 2021: *R v Ritika* [2021] NZDC 4599.

9 At [27].

> the "problem" if she said something and another person had said something else.

The respective cases at trial

[15] The Crown's case at trial relied on three key strands of evidence. The first was the medical evidence, which the Crown said was overwhelming that the collection of injuries suffered by M were non-accidental. In terms of the charged injuries, the Crown's case was that the subdural haemorrhages (and other acute injuries) had been inflicted on the afternoon of 7 November 2018, and that the rib fractures (and the other aged injuries) were inflicted shortly before Ms Ritika took M to the doctor on 31 October 2018.

[16] The second strand of the Crown's case was that Ms Ritika was the only person to have sustained contact with M over the eight weeks since her birth, and thus must have been the person who inflicted the injuries, including the charged injuries.

[17] The third strand of the Crown's case was that Ms Ritika had lied about many different things, in both her statements to police and her evidence at trial, and the fact she had lied to that extent was further circumstantial evidence pointing to her guilt.

[18] The defence case also centred around three strands. The first was that it was impossible on the medical evidence to accurately date the various injuries sustained by M, which cast real doubt on the Crown case that they were sustained on two separate occasions.

[19] The second and perhaps most important strand of the defence case was that there was no reason for Ms Ritika to have caused the injuries to M, and given the number and nature of them, they must have resulted from some other unexplained cause such as an underlying bone condition. Trial counsel for Ms Ritika also questioned the confidence the jury could have in the medical experts, given that the skeletal survey of M in late November 2018 picked up some injuries that had not been detected before that point, and which on the defence case *could* have been sustained by M after her admission to Starship.

[20] The third strand of the defence case responded to the Crown case about Ms Ritika's suggested lies. Ms Ritika firmly denied that she had lied and said that her various comments and actions had instead been misconstrued or taken out of context. Ms Ritika also denied that she and Mr Kumar had had a serious argument late in the afternoon/early evening of 7 November 2018. She suggested that the neighbour who heard yelling and screaming was either mistaken as to where she said the noise had come from, or it was simply her and Mr Kumar speaking loudly as they carried out their household chores.

First ground of appeal — the evidence of the other injuries

[21] Given the issues raised on this aspect of the appeal, it is necessary first to summarise the medical evidence, including that of the other injuries, before examining how that evidence was relied on and dealt with at trial.

The evidence

[22] Four experts were called by the Crown to give expert medical evidence. No expert medical evidence was called by the defence. As will be evident from the following summary, evidence of the other injuries formed a substantial part of the experts' evidence.

[23] The first expert witness, Dr Wilson, is a paediatric radiologist. She gave evidence about M's CT scan, MRI scan and two skeletal surveys. Dr Wilson explained that the brain CT scan conducted on 8 November 2018 showed small areas of bleeding around both sides of the brain, which Dr Wilson said presented as "new or fresh". The CT scan also showed a fracture to the skull to the left side of M's head.

[24] Dr Wilson next addressed the full skeletal survey of M on 9 November 2018. That survey confirmed the skull fracture seen in the CT scan, as well as a number of rib fractures. Dr Wilson described these rib fractures as "healing" and said they could have been anywhere between seven days and two weeks old.[10] She also explained that

[10] Dr Wilson said that one of the fractures was probably less than a week old.

the skeletal survey showed a number of buckle (or bend) fractures to M's legs and ankles.

[25] Dr Wilson then discussed the MRI scan taken on 15 November 2018. This scan confirmed the subdural haemorrhages seen in the CT scan, and in addition, an area of brain damage in the right frontal lobe, which was most likely caused by impact. Dr Wilson described that area of brain damage as being acute or recent.

[26] Dr Wilson then addressed the follow-up skeletal survey of 21 November 2018, which confirmed the previously observed fractures and also identified a number of previously unidentified fractures (including in M's toes). Dr Wilson was of the opinion that the toe fractures would have been at least seven to 10 days old by the time of the 21 November 2018 skeletal survey, though were "probably older" based on all the other injuries.[11]

[27] In terms of the injuries overall, Dr Wilson said that the imagery identified a total of 38 rib fractures (involving 18 ribs), five leg fractures, two arm fractures and five toe fractures. Her opinion was that the combination of injuries was likely to have been caused in the context of at least two separate episodes. She also confirmed that in her opinion all of M's bones looked completely normal (apart from the fractures) and that she did not notice any underlying bone development or density issue. She also considered the possibility that the skull fracture had been suffered during M's delivery (through the use of forceps and then a ventouse delivery) to be "very unlikely". Dr Wilson also did not consider it possible that the rib fractures were suffered during M's delivery.

[28] The evidence of a consultant paediatric ophthalmologist who had examined M was read to the jury by consent. His evidence was that M's left eye was normal, while her right eye showed retinal haemorrhaging (bleeding) in different layers and of a type seen typically with non-accidental injury.

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[11] Dr Wilson accepted it was possible that some of the fractures could have occurred within the seven days immediately preceding the skeletal survey on 21 November 2018 (and thus after M's admission to Starship) but considered that to be "unlikely".

[29] The third medical expert called by the Crown was a paediatric endocrinologist from Starship, Dr Albert. Dr Albert explained that at the time M was referred to him for advice, she had a low calcium level and a very low level of vitamin D. He said that vitamin D deficiency could not explain the "many significant traumatic injuries" that M had sustained.

[30] Dr Albert's evidence was that there was nothing to suggest an underlying bone condition or deficiency in M. He was cross-examined about the possibility of M having rickets or a bone disease called osteogenesis imperfecta (a condition where children are born with very brittle bones), but was firm in his view that there was no clinical evidence of such conditions. He also noted that conditions of this nature would not weaken the brain or the eyes in such a way as to make them bleed. Dr Albert's overall opinion was that M had a pattern of injuries consistent with non-accidental injury.

[31] The final medical expert witness was a consultant paediatrician at Starship, Dr Raithatha. Dr Raithatha summarised the injuries observed in the various scans and other tests, stating:

> In addition imaging of her body revealed multiple rib fractures and fractures to her limbs of varying ages. She had low Vitamin D levels, with no evidence of radiological Rickets or bone disease, therefore nothing to suggest her bones were weaker. For the duration of her admission to hospital, there was no sufficient explanation for [M's] medical presentation. *This combination of injuries* cannot be explained by natural medical causes. There was no evidence of a significant underlying medical condition … that would in some way contribute to this presentation. There was no history of serious accidental trauma. Therefore, in the absence of all of the above, these injuries were extremely concerning for inflicted head injury (Abusive Head Trauma) and child abuse (Non-accidental Injury or Physical Abuse).
>
> (Emphasis added.)

[32] Dr Raithatha concluded her evidence-in-chief by stating:

> There was no suitable explanation provided as a cause of [M's] critical medical presentation with *a highly concerning pattern of injury identified*. *The pattern of injury seen in [M]* was, in my medical opinion, diagnostic of Abusive Head Trauma with Impact and Child Abuse. In the absence of any history of significant accidental trauma, non-accidental trauma or Physical Abuse was by far the most likely diagnosis and cause of [M's] significant, acute head injury with seizures and additional signs of injury. *The overall injury pattern* suggested that [M] had been injured on more than one occasion.

(Emphasis added.)

[33] Dr Raithatha was cross-examined at length by trial counsel for Ms Ritika, including on the defence case that the pattern of injuries gave rise to the possibility of an underlying bone disorder, such as rickets. Dr Raithatha maintained her opinion that the pattern of injuries suggested they were non-accidental.

The parties' reference to and reliance on the evidence

[34] The prosecutor, in his opening address, first referred to the evidence to be given of the subdural haemorrhages identified upon M's admission to Starship. He then provided a brief overview of the medical evidence to be called by the Crown, and thus touched on the other injuries, but not in a substantive way.

[35] The prosecutor went on to state that the relevant agencies then needed to "see if they could find an explanation for these sets of injuries", and closed his opening address by stating:

> I've given you an introduction to the evidence. There's some complexity in it but ultimately this case, I suggest, is simple. *This child was hurt seriously, not once but on two separate occasions. And the medical evidence, as detailed as it may be, has worked through the possibilities as to how the child was hurt*. That's the basis on which the Crown has built this case. And that's where I will leave it.
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> (Emphasis added.)

[36] In her brief opening statement to the jury on the issues arising at trial, counsel for Ms Ritika highlighted that a key issue would be how the injuries had occurred, and that the defence case was that the jury could not be sure that they were non-accidental.[12]

[37] The prosecutor made a number of references in his closing address to the full collection of injuries. For example, at the outset of his closing address the prosecutor stated:

> Thank you, your Honour, Mr Foreman, members of the jury, when I stood up and spoke with you just over two weeks ago and I outlined to you what it is

[12] Counsel did not refer to the physical injuries to M in her opening address following the close of the Crown case.

> that the Crown is saying in this case one of the things I suggested was that when it comes down to it the case is reasonably straight forward or simple. If you put the injuries that were observed by the doctors. In one part of your reasoning process and *you bear in mind everything that they told you about how those injuries could have happened* and you line that up with the other most important fact in this case which is that Ms Ritika was the only person who had that extended level of contact with the baby without any opportunity or anyone to simply intervene, cause the injuries and get away unnoticed.
>
> (Emphasis added.)

[38] He also said:

> You may have been thinking: "Look it can't be right. There must be something else going on here that just hasn't been covered by what the doctors were able to see, by what the police have been able to find out about the movements of the various people involved because it's just hard to believe, isn't it? *It's hard to believe that a mother would inflict that level of force on their baby sufficient to cause the injuries that I'm going to have to go through again with you in my address*.
>
> (Emphasis added.)

[39] Having referred to M's admission to Starship, the prosecutor then said:

> [Dr Wilson] saw bleeding in the subdural spaces beneath the skull on both sides of the brain. She saw a broken parietal bone, one of the skull bones, and swelling above it. And as her evidence went on and you heard about the skeletal survey on the 9th, all of those healing rib fractures, the MRI over the next few days, the apparent evidence or the indication from Justin Mora the ophthalmologist who told us about the bleeding in the retinal nerve fibres, *this child's injuries just mounted up and mounted up*.
>
> (Emphasis added.)

[40] Trial counsel for Ms Ritika made extensive reference to the other injuries in her closing address. Focusing first on the rib injuries and the difficulty in accurately dating them, she addressed the jury on how the rib fractures had potentially occurred, submitting that it was possible that they were a result of nutritional rickets or osteogenesis imperfecta. Counsel then went on to address the various abnormal biochemical blood test results taken following M's admission to hospital stating:

> Now the reason I am bringing these matters to your attention now is because when we focus on [M], an eight week old baby with *multiple fractures of various ages and in various locations, fractures thought by the doctors to have occurred on multiple occasions*, we have [M's] parents who don't drink or do drugs. Ms Ritika who you may think was very happy, attentive and loving towards her daughter, how is it possible then with seemingly no red flags per se that [M] could have received *so many injuries over suspected multiple*

> *occasions and some of which are possibly as old as her*. And so whilst Dr Albert was very clear in his opinion that [M] did not have rickets, you may think that perhaps given the circumstances, the family circumstances that I have outlined, perhaps as an alternative explanation the bone mineral density of [M] had been compromised.
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> …
>
> Now at this point I just want to say something about other fragile bone conditions such as osteogenesis imperfecta. Whilst Dr Albert also discounted this condition, it appears that he did not consider the possibility that some of the rib fractures could have been dated to [M's] birth. It may appear to you that that just wasn't a consideration for him as, like he said, a bone condition would not have cause (sic) the brain bleeding and retinal haemorrhages.
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> The other point I wish to make in this respect relates to *the fractures identified on 21 November 2018, so that was 12 days after the skeletal survey on 9 November 2018 was undertaken. So bearing in mind the metatarsals here, or the fractures to the toes on [M's] left foot, those injuries were either missed on 9 November 2018 or they weren't there. And if they were missed, it must really make you wonder how accurate the doctors' opinions are for the strength of the underlying bone mineral density*. However, if they were not there in the first place, then that of course, you may think, is very strong evidence that [M] did suffer a condition which caused her bones to be more fragile than usual.
>
> (Emphasis added.)

[41] Defence counsel went on to conclude:

> And you may think that one explanation may not account for *all of the injuries*. You may also think the possibility of more than one medical condition cannot be discounted here, *because the various injuries that [M] did have* could be explained, it is submitted to you, by more than one medical condition.
>
> (Emphasis added.)

The Judge's summing up

[42] The Judge traversed the standard criminal jury trial directions, took the jury through the structure of the question trail and gave the tripartite direction in relation to the defendants' evidence. The Judge then turned to the Crown's case against Ms Ritika (and the defence response to it). The Judge explained that the Crown's case against Ms Ritika was circumstantial, and then gave the standard directions on inferences and circumstantial evidence, the latter by reference to the "strands of the rope" analogy. The Judge then went on to discuss the three "strands" of the Crown case and the defence position on each of those strands.

[43] The Judge addressed the first strand of circumstantial evidence the Crown relied on, the medical evidence of all M's injuries, and provided a summary of each of the four medical experts' evidence. After discussing the evidence of Dr Wilson, the Judge said:

> [63] An important point, members of the jury, the defendant isn't charged with causing the skull fracture. She is not charged in respect of many of the other fractures which Dr Wilson observed. She is charged with causing the rib fractures and the subdural haemorrhages, the brain bleeding. But you have before you all of the evidence of the medical findings which may be relevant for you to consider when considering the evidence generally.

[44] This is the direction that Mr Cordwell submits was inadequate to direct the jury on how to approach the evidence of the other injuries. However, this was not the only direction the Judge gave on this point. Having summarised the medical expert evidence (including a summary of Dr Raithatha's evidence about the "combination" or "pattern" of injuries, see [31] and [32] above), the Judge concluded her discussion of this first strand of the Crown case by stating:

> [74] As I said, the Crown case is a circumstantial one, a key thread in the rope, of course, is the medical evidence and the Crown say, look at how [M] presented to the doctors on the 8th of November. It's no coincidence, the Crown say, that she had all of these injuries. It's no coincidence that there was no medical explanation for them. These injuries, the pattern of them, the absence of any medical explanation, the absence of any accident that might have caused harm, the Crown say to you members of the jury, the medical evidence is compelling and it points directly to Ms Ritika's guilt. As I have indicated, the defence challenge each of those medical opinions and it will be for you to assess them.

[45] The Judge then went on to address the remaining two strands of the Crown case (and the defence response to each), namely that only Ms Ritika had sustained access to M and thus sufficient opportunity to have caused all of the injuries; and what the Crown said was the extent of Ms Ritika's lies both to the police and in her evidence at Court, also relied on as circumstantial evidence of guilt.

First ground of appeal – the parties' submissions

[46] Mr Cordwell submits that based on the medical evidence, it was impossible to conclude that all the injuries had been caused in a single continuous event, and that there was a "real argument" that the various injuries were unrelated. In this context,

Mr Cordwell submits that the evidence was either background or traditional propensity evidence (in the sense discussed by the minority in *Mahomed v R*),[13] but in either case, and without appropriate directions, there was a real risk of the jury engaging in improper reasoning. Mr Cordwell framed this as the jury reasoning from the proposition that Ms Ritika had a propensity for violence to her guilt, or that Ms Ritika was guilty of the charges "because she must have caused the earlier injuries". Mr Cordwell submits that the Judge's direction at [43] above fell well short of what was required to ameliorate the risk of such illegitimate reasoning. When questioned as to what direction the Judge ought to have given the jury, Mr Cordwell said that a "full" propensity direction as discussed in *Mahomed* was required.[14]

[47] The Crown, on the other hand, submits that the evidence of the other injuries was plainly relevant to determining how the charged injuries came about, noting the medical evidence was that the pattern of injuries pointed strongly to them being non-accidental. The Crown also submits that it was open to the jury to conclude that the acute (fresh) injuries, including some of the fractures and the subdural haemorrhages, had occurred on 7 November 2018, and the aged injuries (including the fractured ribs) had occurred during an earlier incident sometime before 2 November 2018. On this basis, the Crown says it was open to the jury to conclude that the other injuries were likely to have been sustained by M at the same time as the charged injuries.

[48] The Crown further submits that in a case such as this, where there are a number of linked events or injuries, each of which could give rise to a charge, the Crown is not required to charge for each and every assault that occurs; rather the charge list ought to reflect the most serious of the alleged offending. The Crown refers to this Court's decision in *Malaeulu v R*, a case involving sexual offending, in support of this proposition.[15] In *Malaeulu,* the defendant faced nine charges arising from one series of events, the Crown having laid a separate charge for each discrete step said to have been taken by the defendant along the way to sexual penetration. The Court described those events as "plainly interlinked or immediately sequential" and said it would have

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13 *Mahomed v R* [2011] NZSC 52, [2011] 3 NZLR 145. See [62]–[66] below.
14 At [95].
15 *Malaeulu v R* [2013] NZCA 121.

expected the events in question to have generated two or three charges which were representative of the most serious offending.[16]

[49] The Crown also submits that the evidence of the other injuries was not unfairly prejudicial; on the contrary, it was an integral part of the defence case that the injuries were the result of a bone deficiency suffered by M. The Crown also notes that the defence relied on the evidence of injuries detected for the first time in the skeletal survey of 21 November 2018 to cast doubt on the medical evidence overall.

Analysis

[50] We begin by making two preliminary points.

[51] First, it is important to identify the issues arising at trial, to which the evidence of the other injuries must be relevant in order to be admissible. There were two key issues at trial:

(a) *how* the charged injuries had been caused, that is, whether the jury was sure that they were non-accidental; and

(b) assuming the jury was sure that the charged injuries were non-accidental, whether the jury was sure that it was Ms Ritika who had inflicted them.

[52] Second, in his written and oral submissions, Mr Cordwell referred to the other injuries as "the discrete injuries". While we understand why counsel labelled the other injuries in this way, we consider the label inapt. It would be highly artificial, in our view, to characterise the collection of injuries to M as a range of separate injuries that could sensibly be disaggregated from each other. Such an approach ignores the fact that a series of similar injuries had been sustained by the same child over an eight-week period and, in all likelihood, over a period somewhat shorter than that.[17] Rather than being discrete, we see the injuries as inextricably linked, as the earlier summary of the

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16 At [15]–[16].

17 While the medical experts agreed that it was difficult to date the various injuries, some were clearly fresher than others, and the preponderance of the evidence was that the older injuries were more likely to predate M's admission to Starship by around two or so weeks.

medical evidence highlights. We expect that it was because the injuries were inextricably linked that neither party's counsel nor the (experienced) trial Judge raised any issue as to the admissibility of the evidence about them.

[53] The evidence about the other injuries was plainly relevant to how the charged injuries came about, and had a high degree of probative value in relation to that issue. It was the pattern or collection of injuries as a whole that led the medical experts to be so firm in their view that the injuries were non-accidental. To put the point another way, the medical experts could not have given a coherent account of how they considered the charged injuries came about without reference to the evidence of the other injuries. Conversely, the pattern of injuries was also relevant to the defence theory of the case, namely that the extent of the fractures seen was suggestive of M suffering from an underlying bone condition.

[54] The evidence of the other injuries was also relevant to the issue of *who* caused the charged injuries, in terms of the Crown's case that it was only Ms Ritika who had the opportunity to cause such a collection of injuries. The evidence accordingly presented the jury with a full and realistic picture of what had happened to M over the relatively short period from her birth to the point of admission to Starship, which was relevant to the jury's consideration of who was responsible for that state of affairs.

[55] The preceding discussion assumes that the evidence's relevance is to be assessed through the lens of s 7 of the Evidence Act 2006 (the Act). However, we accept Mr Cordwell's submission that the evidence is arguably propensity evidence, on the basis of the assertion inherent in the Crown's case that it was Ms Ritika who caused all the injuries. Put another way, the Crown's case carried with it an implicit assertion that the collection of injuries was a product of Ms Ritika's propensity for violence against M.

[56] A similar issue arose in *R v Broadhurst*, in which the appellant was charged with the murder of his partner's two-year-old daughter.[18] At trial, he was found not guilty of murder but guilty of manslaughter. In his appeal against conviction, the appellant argued that the trial Judge had wrongly admitted evidence of other injuries

[18] *R v Broadhurst* [2008] NZCA 454.

were sustained by the deceased prior to the fatal injuries (those earlier injuries not the subject of separate charges). The defence case at trial was that the deceased was accident-prone and that the fatal injuries were the result of accidents.

[57] The trial Judge in that case had ruled that the evidence of the earlier injuries was admissible, noting that its purpose was to rebut the defence case of accident in relation to the fatal injuries. As in the present case, therefore, the evidence's primary relevance was to how the charged injuries came about. The trial Judge had also observed that a secondary purpose of calling the evidence was to show that the appellant had hit the deceased on previous occasions and had a propensity to do so. For that reason, the trial Judge analysed the admissibility of the evidence under s 43 of the Act. She concluded that the evidence had probative value to both issues, and that it did not have an unfairly prejudicial effect.[19]

[58] On appeal, this Court observed that while it was "possible to regard the evidence as propensity evidence" and thus to analyse its admissibility in accordance with s 43 of the Act, "a more direct route to the admissibility of the evidence was s 7 of the Act."[20] The Court stated that the evidence was:[21]

> [43] … plainly relevant in relation to the defence contention that [the deceased's] fatal injuries were accidental. Evidence of past events in which she had been injured would have a tendency to disprove that assertion by the defence, if the jury were of the view that the appellant had been responsible for earlier injuries to [the deceased].

[59] The Court observed that in the end, it made no difference to the analysis whether the admissibility fell to be determined under ss 7 and 8 of the Act, or s 43.

[60] We consider the same result follows here. Irrespective of whether the admissibility of the evidence of the other injuries falls to be determined on the basis of ss 7 and 8 of the Act or through the lens of s 43, the conclusion would be the same.

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19 *R v Broadhurst* HC Auckland CRI-2006-057-1845, 24 April 2008.

20 *R v Broadhurst*, above n 19, at [43].

21 For completeness, we note that the Court's observation that the evidence was relevant to the contention the fatal injuries were accidental "if the jury were of the view that the appellant had been responsible for earlier injuries to [the deceased]" is not a qualification necessary in this case. The jury's acceptance that Ms Ritika caused the other injuries is not a prerequisite to evidence of those other injuries being relevant to how the charged injuries were caused.

The evidence remains relevant for those reasons stated at [53] to [54] above.[22] And as the minority of the Supreme Court in *Mahomed* observed, there is little or no practical difference between the ss 8 and 43 balancing tests.[23]

[61] We also disagree that the evidence of the other injuries was unfairly prejudicial, in terms of the risk that the jury would engage in illegitimate reasoning such that a propensity direction was required. On the contrary, we consider such a direction would likely have confused the jury and would ultimately have been of no utility to Ms Ritika. Our reason for this conclusion lies in the different types of propensity evidence, and the different risks arising.

[62] As the minority of the Supreme Court in *Mahomed* explained, both orthodox similar fact evidence (which we will refer to as "traditional propensity evidence") and background or contextual evidence (namely evidence of other alleged misconduct by the defendant towards the victim) fall within the definition of propensity evidence, irrespective of why the Crown wishes to lead the evidence.[24] This is despite the two forms of evidence being conceptually different and giving rise to differing degrees of risk.

[63] Traditional propensity evidence relies on concepts of linkage and coincidence, and is typically evidence of other offending (or alleged offending) involving a defendant which has no direct relevance to the events giving rise to the charges in question.[25] For example, this will typically involve conduct (or alleged conduct) in relation to a complainant other than that the subject of the index offending. So, for example, evidence of Ms Ritika behaving in an allegedly violent manner towards another very young family member (such as a young niece or nephew) would properly be characterised as traditional propensity evidence.

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22 As noted by the minority in *Mahomed v R*, above n 13, at [76], the s 43(3) and (4) criteria were drafted with traditional propensity evidence in mind. But even so, all of the s 43(3) factors other than those in s 43(3)(d) and (e) favour admissibility in this case.

23 At [66]–[67].

24 At [61], endorsed in *Taniwha v R* [2016] NZSC 123, [2017] 1 NZLR 116 at [65].

25 At [81].

[64] The chain of reasoning in relation to traditional propensity evidence carries risk, as explained by the minority in *Mahomed*:[26]

> [81] … Commonly, propensity evidence relates to misconduct by the defendant with people other than the victim and in respects which are extraneous to the alleged offending. The jury is thus likely to conclude that the defendant is of bad character but the relevance of this to the case at hand will usually be indirect and perhaps of limited weight. The true relevance of the evidence may not be apparent to jurors. As noted, the cogency of such evidence usually turns on ideas about coincidence and probabilities but the associated principles of probability theory are likely to be unfamiliar to most jurors. There may also be a risk that the jury may seek to reason directly from a conclusion that the defendant is of bad character to a finding of guilt. This risk will be enhanced if the true and legitimate relevance of the evidence is either not obvious or not explained to the jury. There is thus usually the double danger that a jury, if not assisted by the Judge, will miss the true relevance of the evidence and instead reason from it in an unsafe way, perhaps in terms of general propensity.

[65] Given these risks arising from traditional propensity evidence, a propensity direction will usually be required.[27]

[66] So-called "background" or "contextual" propensity evidence does not usually give rise to the same risks. As the minority in *Mahomed* explained, that is because the misconduct is usually not extraneous to the alleged offending and therefore the evidence will not portray the defendant as being generally of bad character, "[t]hat is, in respects quite independent of the alleged offending against the victim."[28] So, for example, the so-called "van incident" in *Mahomed*, which was not the subject of a charge in Mr and Mrs Mahomed's trial,[29] was not considered by the minority to give rise to any unfair prejudice, given "the evidence revealed nothing discreditable about Mr and Mrs Mahomed which was not directly germane to the case against them."[30]

[67] Turning to the circumstances in which a propensity direction will be required, the minority in *Mahomed* said that a direction will be required when the Crown is:[31]

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26 *Mahomed v R*, above n 13. Footnote omitted.

27 In the form suggested in *Mahomed v R* at [95].

28 At [57(d)], fn 26.

29 Mr and Mrs Mahomed were charged with failing to provide their baby daughter with the necessaries of life. Mr Mahomed was also charged with murder and causing grievous bodily harm. The "van incident" referred to an incident eight days before the charged events, in which the couple had apparently left their daughter in a van at a shopping centre for up to three hours on a warm sunny day.

30 At [74].

31 At [91]–[92].

(a) relying on propensity reasoning and in doing so is invoking ideas about coincidence or probability; and/or

(b) the evidence involves aspersions on the character of the appellant in respects not directly associated with the alleged offending.

As well, a propensity evidence direction should be given where, without it, there is a danger that the jury will not realise the relevance of the evidence in question or there is some particular risk of unfair prejudice associated with the evidence.

[92] On the other hand, and as the corollary of what we have just said, where the evidence in question, although still falling within the Act's "propensity evidence" definition, is not led primarily in reliance on coincidence or probability reasoning, a specific direction may well not be required.

[68] Returning to the circumstances of this case, the evidence of the other injuries was not led by the Crown primarily in reliance on concepts of coincidence and probability reasoning based on events extraneous to the index offending. Rather, and as explained earlier, its primary and direct relevance was to the mechanism by which the various injuries to M had been sustained, and to who had caused those injuries. The relevance of the evidence of the other injuries, and particularly to the issue of how the charged injuries were caused, was also obvious and would have been obvious to the jury. After all, the entire focus of the medical experts' evidence was on that very issue. That relevance was also highlighted in the prosecution and defence closing addresses.[32]

[69] Nor do we consider the evidence involved aspersions on Ms Ritika's character in respects not directly associated with the alleged offending. Accepting that the evidence carried with it the assertion that Ms Ritika had caused not only the charged injuries but also all the other injuries, any resulting aspersion on Ms Ritika's character was directly related to the alleged offending for which she was charged, rather than by reference to extraneous, unconnected events.

[70] For similar reasons, we also disagree that there was a risk of the jury engaging in illegitimate reasoning, in terms of reasoning from accepting that Ms Ritika caused some or all of the other injuries to her having also caused the charged injuries. As

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[32] See [34]–[41] above.

noted, the defence was a complete denial that the injuries were the result of violence. There was no counter-narrative that if the jury was satisfied the injuries to M were non-accidental, it was a reasonable possibility that some or all of them had been inflicted by someone other than Ms Ritika. So, if the jury accepted that Ms Ritika had caused, say, the fractures to M's legs, this would have been highly relevant to the jury's assessment of whether she also inflicted the charged injuries.

[71] Accordingly, we do not consider that Ms Ritika was prejudiced by the absence of a propensity direction.[33] To adopt the terminology used by this Court in *R v MacDonald*, acceptance by the jury that Ms Ritika had caused some or all of the other injuries would "necessarily have sunk [her] defence".[34] There would therefore have been no benefit to Ms Ritika from a propensity direction to this effect.

[72] We return then to the Judge's directions and whether, despite a propensity direction not being required, the directions were nevertheless deficient in failing to explain why the evidence of the other injuries was before the jury and what use they could make of it.

[73] Mr Cordwell's submissions focused on the Judge's direction set out at [43] above as not adequately addressing the evidence. However, we do not read that direction as being intended to address the nature and purpose of the evidence of the other injuries. The direction needs to be read in context. It fell within the broader section of the Judge's summing up explaining the circumstantial nature of the Crown's case against Ms Ritika and the three key strands of evidence the Crown relied on.

[74] While we agree that it would have been preferable for a more tailored direction about the nature and purpose of the evidence of the other injuries to have been given, we are satisfied that the Judge's directions overall were sufficiently clear to the jury on how to approach that evidence. The Judge was clear that the Crown's case against Ms Ritika (both as to how the charged injuries came about and who caused them) was circumstantial. She gave the standard directions on how the jury was to approach

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33 To the effect of cautioning the jury that the fact the defendant has or might have offended on other occasions does not establish guilt on the index offending. *Mahomed v R*, above n 13, at [95(c)].

34 *R v MacDonald* CA 166/04, 8 April 2005 at [24].

circumstantial evidence. The Judge then summarised the strands of the Crown's case against Ms Ritika, including that the first strand was the expert medical evidence of *all* of the injuries. For the reasons we have discussed earlier, the relevance of the evidence of the other injuries to the issues arising at trial would have been obvious to the jury. Accordingly, both the relevance of the evidence and how that evidence was to be approached as part of a circumstantial case was clear to the jury.

[75] This is sufficient to conclude that this ground of appeal does not disclose a miscarriage of justice. For completeness, however, we observe that the medical evidence was overwhelming that the collection of injuries sustained by M was non-accidental, a point accepted by Mr Cordwell on the appeal. Once that fact was accepted, and on the evidence before the jury, the inescapable conclusion was that it was Ms Ritika who had caused those injuries.

[76] This ground of appeal must therefore fail.

Second ground of appeal — failure to give a lies direction

Background

[77] As noted earlier, a key strand of the Crown's case against Ms Ritika was the nature and extent of her (alleged) lies, which the Crown relied on as circumstantial evidence of guilt.

[78] The topic of lies was not touched on in any material way in the prosecutor's opening address. But it is fair to characterise the prosecutor's cross-examination of Ms Ritika as a wholesale attack on her credibility, both in relation to her exculpatory statements that she did not cause the injuries to M and what the prosecutor put to her were a series of collateral lies. Ms Ritika was consistent in her evidence that she had not lied on any of the matters put to her, and suggested that, for example, her words or actions had been taken out of context.

[79] Consistent with the nature of Ms Ritika's cross-examination, the prosecutor's closing address focused heavily on what the Crown said were her (and Mr Kumar's) lies. Having addressed a number of the suggested lies, the prosecutor said:

> But Mr Kumar and Ms Ritika, you might have thought, have lied in various ways both in giving evidence and in making their statements to the police. There was a part in the intercepted conversations … Mr Kumar says to Ms Ritika how they have told lots of lies. Now I'm not saying: "Look if you're not generally truthful then therefore that means you commit crimes." It's not as easy as that. Just because it appears both of these defendants have lied about certain things won't tell you anything unless your view is they lied for a particular reason.

[80] In her closing address, trial counsel for Ms Ritika did not accept that Ms Ritika had lied on any of the occasions suggested by the prosecution, though nor did she seek to deal with most of the suggested lies head on.[35] Nevertheless, Ms Ritika's trial counsel did urge the jury to consider matters such as Ms Ritika's text messages to Mr Kumar on 7 November 2018 in their surrounding context, and the nature of communications between the couple more generally, stating that while some of the "things they speak of may sound rather unusual", this was just the way the couple engaged with each other, including in "childish" ways. Further, and emphasising the suggestion that Ms Ritika had been truthful in her evidence generally, trial counsel said to the jury:

> Even after that meeting with Dr Raithatha on the 9th of November 2018, when she was told that [M's] injuries were non-accidental injury caused by child abuse, she gave a statement to police that afternoon. She said: "the only time that [Mr Kumar] is with [M] without me is when I go to the toilet. There is no other time. Sagar and Shubham are never alone with [M]. I am always there."
>
> *Now, you may think that if there was ever a time to tell lies or at least even distance herself, then that would have been the time to do so, being told that her daughter had these numerous injuries, but Ms Ritika didn't.* In fact, she claimed more of the responsibility for being present with [M] than we know is actually the place (sic). …
>
> (Emphasis added.)

[81] In contrast to Ms Ritika, Mr Kumar accepted that he had lied on two occasions, the first being when he told the police on 22 November 2018 that he had been home all day on 7 November, and the second being when he told police that he and Ms Ritika never argued.

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[35] Perhaps realising this would have been counterproductive, in that it would have drawn attention to what were in some instances clear lies.

[82] As noted earlier, the Judge gave a lies direction (in standard terms) in her summing up in relation to Mr Kumar. There is nothing in the materials before us to suggest that the Judge discussed with counsel whether a lies direction should also be given in relation to Ms Ritika. Counsel for Ms Ritika did not request a lies direction.

The parties' submissions

[83] Mr Cordwell submits that in the circumstances summarised above, a lies direction in relation to Ms Ritika ought to have been given. While, unlike Mr Kumar, Ms Ritika did not accept she had told any lies, Mr Cordwell emphasises that giving a lies direction is not restricted to situations where a defendant accepts they have lied. He further submits that a lies direction was required in this case given the Crown's emphasis on what it said were Ms Ritika's lies, that many of Ms Ritika's statements were plainly lies (and that this would have been obvious to the jury), and that the Crown was relying on Ms Ritika's lies as circumstantial evidence of her guilt. In these circumstances, Mr Cordwell says that "independent balance" was required from the Judge in relation to why Ms Ritika might have lied, *if* the jury accepted that she had, other than because she was guilty. Mr Cordwell suggests that this ought to have included that cultural reasons might have been a factor, that English was Ms Ritika's second language, and that she plainly struggled to understand some of the questions put to her.

[84] Mr Cordwell also submits that the failure to give a lies direction was exacerbated by the fact a lies direction was given in relation to Mr Kumar, and that its terms included that a reason for Mr Kumar's (accepted) lies might be to protect another party (said to no doubt be seen by the jury as an implicit reference to Ms Ritika). Mr Cordwell submits that the imbalance in the Judge's directions was further exacerbated by the fact that the Crown's case was that the defendants told a number of "joint lies".

[85] The Crown, on the other hand, emphasises that despite the Crown's closing, no lies direction was sought on behalf of Ms Ritika, and submits that while that may not be determinative, it is nevertheless informative. The Crown highlights that unlike Mr Kumar, Ms Ritika did not accept that she had lied, and indeed she firmly

maintained in cross-examination that she had not lied at any time. The Crown also notes that, while not addressing the suggested lies in great detail in her closing (which was likely to have been a tactical consideration), trial counsel addressed the jury on aspects of Ms Ritika's evidence that might at first blush seem implausible, and endorsed the proposition that she had not lied. The Crown says that in these circumstances, a lies direction could well have had the effect of emphasising that Ms Ritika had likely been untruthful and therefore risked being counterproductive to Ms Ritika's case.[36]

[86] Finally, the Crown submits that the lies direction given in relation to Mr Kumar did not prejudice Ms Ritika. The Crown highlights that Mr Kumar was entitled to whatever directions the Judge considered appropriate and necessary to ensure his fair trial rights, and that a material distinguishing feature was his acceptance that he had lied. The Crown says that Mr Kumar's lies direction was appropriately tailored to the two particular lies he accepted he had told, and that the direction that a person might lie "to protect someone else" forms part of the standard direction and was appropriate in the circumstances. In this context, the Crown says Mr Kumar's lies direction could not realistically have given rise to a material miscarriage in relation to Ms Ritika.

Lies directions – legal principles

[87] Judicial warnings about lies are governed by s 124 of the Act:

> **124 Judicial warnings about lies**
>
> (1) This section applies if evidence offered in a criminal proceeding suggests that a defendant has lied either before or during the proceeding.
>
> (2) If evidence of a defendant's lie is offered in a criminal proceeding tried with a jury, the Judge is not obliged to give a specific direction as to what inference the jury may draw from that evidence.
>
> (3) Despite subsection (2), if, in a criminal proceeding tried with a jury, the Judge is of the opinion that the jury may place undue weight on evidence of a defendant's lie, or if the defendant so requests, the Judge must warn the jury that—
>
> (a) the jury must be satisfied before using the evidence that the defendant did lie; and

[36] Relying on *Lundy v R* [2018] NZCA 410 at [319].

(b) people lie for various reasons; and

(c) the jury should not necessarily conclude that, just because the defendant lied, the defendant is guilty of the offence for which the defendant is being tried.

…

[88] A lies direction is often requested and given when a defendant accepts that he or she has lied (in an out of court statement or in his or her evidence at trial). However, as Mr Cordwell notes, it is clear from the text of s 124(3)(a) that the need to consider and potentially give a lies direction is not confined to such circumstances. A lies direction will generally be inappropriate, however, where a defendant's evidence is no more than a denial of the commission of the offence.[37]

[89] Finally, it is clear that as a result of s 124(2) of the Act, the jury is entitled to take a defendant's lie(s) into account as circumstantial evidence of guilt.[38]

Analysis

[90] There is no doubt that evidence was offered suggesting that Ms Ritika had lied. As Mr Cordwell accepts, despite Ms Ritika's protestations that she had not lied, aspects of her evidence would no doubt have been seen by the jury as untruthful. Nevertheless, there was no obligation on the Judge to give a lies direction unless Ms Ritika requested one, which she did not, or the Judge was of the opinion that the jury might place undue weight on the evidence of Ms Ritika's lies.

[91] It is unfortunate that there was no discussion between the Judge and counsel for Ms Ritika about whether a lies direction ought to be given. But in the particular circumstances of this case, we do not consider that the absence of a lies direction is capable of giving rise to a miscarriage of justice.

[92] A lies direction would have cautioned the jury that if it was satisfied Ms Ritika had lied, it should not jump from that to a conclusion that Ms Ritika was guilty, and

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37 *R v Guo* [2009] NZCA 612 at [68]; *Khairati v R* [2017] NZCA 31 at [25]; and *Henry v R* [2017] NZCA 92 at [32].

38 *Mann v R* [2010] NZCA 68 at [35]; *R v Dewar* [2008] NZCA 344 at [16]–[17]; and *McLaughlin v R* [2015] NZCA 339 at [43].

that the evidence of Ms Ritika's lies simply formed one aspect of the Crown's circumstantial case against her. The latter would have been apparent to the jury from the Judge's directions on the circumstantial nature of the Crown's case and the three key strands of that case.[39] Further, any residual prejudice from the absence of a lies direction must be considered in the whole context of the trial, and what can only be described as a very strong Crown case against Ms Ritika. As noted, the medical evidence was overwhelming that M's injuries were non-accidental. There was no counter-narrative before the jury that it was possible that someone other than Ms Ritika had caused those injuries.

[93] It is also difficult to see how Ms Ritika's position would have been improved had a lies direction been given. Giving a lies direction carried with it the risk that it would be viewed by the jury as an endorsement by the Judge of the Crown's case that Ms Ritika's evidence was not credible. Presumably that is why trial counsel did not request a direction. Further, given the range of suggested lies told by Ms Ritika, any lies direction, to be effective, would have needed to cover a range of reasons why Ms Ritika might have told those lies. We have some doubt whether this would have assisted Ms Ritika rather than prejudiced her. It needs to be borne in mind that the Crown's case was that nearly all of what Ms Ritika had said about the material issues of fact in support of her denial were untrue.

[94] For these reasons, we are satisfied that no miscarriage of justice resulted from the fact that a lies direction was not given in relation to Ms Ritika.

[95] We are also unpersuaded that the lies direction given in relation to Mr Kumar materially prejudiced Ms Ritika. As the Crown notes, Mr Kumar was entitled to any directions the Judge considered necessary to preserve his fair trial rights. He accepted that he had lied on two quite important matters. That a lies direction was given in those circumstances is not surprising. The lies direction was confined to those two specific matters. The content of the direction also reflected the standard direction given under s 124 of the Act. That one reason why Mr Kumar might have lied was to

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[39] See [45] above.

protect another (Ms Ritika) would have been obvious to the jury in any event, irrespective of the Judge's direction.

Decision

[96] For the reasons given, we do not consider that the grounds of appeal, taken together or individually, disclose a miscarriage of justice.

Result

[97] The appeal against conviction is dismissed.

Solicitors:
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