Yamirka

by Patrick M. Flaherty

She just turned seven-years-old. Her birthday was filled with balloons, laughter and rambunctious children. Normal, in most families. Except with Yamirka, these things only surround her. She is different from other children and always will be. She lies in a bed connected to tubes that feed her and tubes that help her breathe. She can't talk, walk, reason, express emotion, move her arms or legs, or control her bowel or bladder. She is totally dependent. Exquisitely vulnerable. And as precious as anyone you have ever seen.

Yamirka is why many of us became lawyers: to help people who can't help themselves, to fight for justice against powerful adversaries, to stand up for ordinary people who need a voice. It has been my privilege to help Yamirka.[1] This is her story. It is the human story, not the legal one. Advocacy in a different form.

BEFORE THE STORM

Family

Her father crossed the border and migrated to Kane County decades ago. He became a legal resident at a time when America was more accepting. He worked manual labor and supported a growing family in Mexico. Her mother arrived years later with Yamirka's four older brothers and sisters. Her siblings learned English, while her parents struggled and still require help. Both parents were unskilled and uneducated. They came for the same reason our ancestors came. They wanted a better life for their children.

Yamirka and her mother had a healthy and uneventful pregnancy. They received regular prenatal care by a board certified obstetrician. Her siblings had been delivered naturally by mid wife under primitive conditions in rural Mexico. And they were all healthy. When her mother came to the hospital here with Yamirka at full term after membranes ruptured, the family was full of anticipation, full of hope.

Medical

Yamirka's mother settled into the labor and delivery unit at 5:00 p.m. She was in labor at that time and had been for several hours. She was dilated 2 centimeters and was at -3 station. Dilation is the extent to which the cervix has opened. Complete dilation is 10 centimeters, so she had a ways to go. With four previous babies, however, it often goes quickly. Station is the extent to which the baby has descended in the birth canal. Minus station (-3, -2, -1) means the baby is above the narrowest point, zero station means the baby has entered the narrowest point (engagement) and plus station (+3, +2, +1) means the baby is below the narrowest point. At -3 station, Yamirka had just begun her journey.

An electronic fetal monitor (EFM) was applied to the belly of her mother at admission, as is done routinely in most American hospitals. The EFM records the fetal heart rate and maternal contractions. Fetal well being is determined by tracking both, because both help predict fetal oxygenation. Fetal oxygenation is the exchange of oxygen and carbon dioxide in the placenta baby. An imbalance in this exchange creates an acid base in the cells of the baby that can cause injury or death. Inadequate oxygenation can be detected through the EFM by changes in the heart rate pattern of the baby and by changes in the contraction pattern of the uterus. The electronic fetal monitor is how the baby communicates with the outside world; it is baby Morse Code.

Troubling Signs

Labor progressed slowly throughout the evening and early morning hours. Yamirka's mother remained at 2-3 centimeters and -3 station until after midnight. Pitocin, a drug used to stimulate contractions and accelerate dilation and descent, was started at midnight and gradually increased. A spinal epidural to reduce the increasing pain was started at 3:00 a.m. and redosed at 7:34 a.m. By 6:30 a.m., she had progressed to 7 centimeters but remained at -3 station. By 7:44 a.m., she was at 8 centimeters and -1 station; at 7:46 a.m., oxygen was administered by mask; by 9:15 a.m., she was at 9 centimeters and -1 station. Still not fully dilated. Still not fully descended.

The doctor came in for the first time at 10:30 a.m., eighteen hours after admission. Physical examination showed that Yamirka and her mom remained at 9 centimeters and -1 station, despite 19 hours of labor and 9.5 hours of Pitocin in a mother with four previous vaginal deliveries. Examination also revealed caput and molding, a swelling and shaping of the fetal head which can occur from pounding against an incompletely dilated cervix. The EFM showed a rising baseline (heart rate) and a pattern of hyperstimulation (excessive contractions) that had begun just before oxygen was started at 7:46 a.m. Hyperstimulation can be caused by Pitocin or it can be a sign of placental abruption. Pitocin, the gas pedal of labor and delivery, is usually reduced or discontinued in these circumstances because of the risk to oxygenation posed by both hyperstimula-

tion and placental abruption. It was not reduced or discontinued here.

The doctor completed her assessment at 10:35 a.m. What was the plan of care? It had been 19 hours. Neither mother nor baby was progressing. Hyperstimulation was occurring, oxygen was required, a rising baseline was apparent, and caput and molding had developed. The mother was exhausted and in pain. What was the plan?

The Plan

After completing her assessment, the doctor declared a failure to progress and gave a verbal order to the nurses to prep and take the patient for a cesarean section within 20 minutes. Or so she claims she did. The nurses deny that the doctor ordered a cesarean section. They testified that she ordered them to re-examine the mother in 30 minutes and that a decision would be made at that time on a cesarean delivery.

Neither the doctor nor the nurses recorded the order in the chart that day until after Yamirka was born, until after the damage was known. The conflict in these late entries was not a misunderstanding, a misinterpretation or a casualty of memory. The events were clear and fresh. Someone was lying. Someone in a noble profession, sworn to preserve life and to do no harm, someone in the ultimate position of intimacy and trust. But who? Who was lying, and who was telling the truth?

The doctor waited by the nurses' station for 15-16 minutes after giving the cesarean order so that the mother could be prepped for surgery. Or so she claims she did. When the patient was not ready to go, the doctor went upstairs to her office in the adjoining professional building to perform a biopsy on a very ill patient. The nurses deny that the doctor waited at the nurses' station. They claim that after ordering them to re-examine in 30 minutes, she left the room and went upstairs to her office immediately. This was not an innocent difference in recollection. Someone was lying to avoid responsibility for something that happened. Who was it, and what happened?

THE STORM

It was a cold and cloudy Thursday in early March. The labor and delivery unit was quiet that morning. There had been no births so far that day and Yamirka's nurse had no other patients. To the hospital staff, it seemed tranquil. And then came 11:00 o'clock. At almost precisely 11:00 o'clock, everything changed. The quiet was broken by the ominous sound of the EFM alarm. The monitor showed a series of sudden late decelerations (reduced heart rate) with occasional swoops of acceleration (increased heart rate) consistent with an agonal pattern. This signals a failure of oxygenation causing a dangerously low heart rate coupled with surges in the heart rate caused by a release of fetal catecholamine. Catecholamine are hormones produced by the adrenal gland in response to physical or emotional stress - "fight or flight" hormones. Yamirka was dying....and she was trying to save her own life.

The attending nurse in the room called for help. When the charge nurse rushed in and saw the strip, she knew instantly that she had an emergency on her hands. The doctor was paged immediately at 11:00. Or so the nurses claimed they did in a late entry. The doctor testified that she wasn't called until 11:10 and that she arrived in the operating room five minutes later.

Between 11:00 and 11:15, both the attending nurse and charge nurse attempted to validate the tracing and prepare for delivery. Or so they claim they did in another late entry. Because the strip could represent temporary cord compression, they repositioned the mother to see if that increased blood flow. It didn't. They performed fetal scalp stimulation to see if that resuscitated the baby. It didn't. They reapplied oxygen to see if that improved oxygenation. It didn't. They administered Terbutaline to see if that reduced contractions. It didn't. It was now 11:08 and they were still in the room. The heart rate pattern was still agonal, and Yamirka still could not breathe. Her mom was prepared for cesarian delivery. A vaginal exam was performed. An IV bolace was hung. Pre-op medications were given. Consent was obtained. It was now 11:15 and they were still in the room. The heart rate was still agonal. Yamirka still could not breathe.

The EFM belt was removed from the mother, the electrical cords were pulled from the wall and the bed was pushed frantically out of the room and down the hall 118 feet to the operating room. Nursing phoned the doctor again at 11:16 en route to the operating room: "send the doctor stat"! Or so they claimed they did in another late entry. The doctor testified that she was called only once at 11:10, not before and not after.

Upon arrival in the OR, the mother was transferred from her bed to an operating room table. The doctor was not present when they arrived, or so the nurses claimed. The attending nurse yelled in a loud and urgent voice: "where is _____!" The doctor said she was there, that she arrived when they were transferring the mother from bed to table. The tension was raw. It was now 11:16. Yamirka still could not breathe.

A fetal heart monitor was applied as soon as the mother was positioned on the table. This is done to make sure the baby is still alive before cesarean surgery is performed. And suddenly things changed again. The tracing showed a reassuring fetal heart rate in

contrast to the alarming pattern recorded minutes earlier in the patient's room. It was a miracle. There was no longer an emergency. Yamirka was fine. Everyone could relax and slow down. Except for one problem: the strip did not record a fetal heartbeat, it recorded a maternal heartbeat. The strip was misinterpreted. It was not Yamirka who was fine, it was her mother. But no one recognized it. Delivery was no longer urgent, or so they thought. It was 11:20 a.m. Yamirka still could not breathe. But no one recognized it.

Another ten minutes slowly ticked by. The incision was finally made at 11:30 a.m. and Yamirka was born at 11:32. It was obvious in those two minutes that this was an obstetrical catastrophe. The placenta had completely abrupted, severing all blood flow to and from the baby. The uterus had partially ruptured with a section of uterine wall that was membrane thin and virtually transparent, easily pierced by fingers alone.

It was also obvious that Yamirka was not fine. Her lifeless and colorless body was lifted from her mother and handed to the neonatologist and his resuscitation team. There was no cry, no movement and no spontaneous respiration. Full resuscitation efforts began immediately and furiously. An oxygen mask was applied, chest compressions were started, a breathing tube was placed, and umbilical vein and artery catheters were inserted. Normal saline was given to expand volume, sodium bicarbonate was given to correct metabolic acidosis and antibiotics were given to combat infection. She did not gasp for air for 15 minutes and did not have spontaneous respirations for 36 minutes. Seizures developed at one hour of life requiring high doses of phenobarbital for control. Yamirka was full term, 21 inches long, 9 pounds 2 ounces, and she was now profoundly damaged.

The Special Care Nursery at an area teaching hospital was called and transport was ordered at "the earliest possible moment." The preliminary diagnosis was birth asphyxia and seizure disorder. Survival was uncertain. Everything that could be done for Yamirka had been done. When they left the operating room, it was quiet and intensely somber, littered with the debris of tragedy and heroic efforts. Everyone knew what had happened. Only a few knew who was responsible.

AFTER THE STORM

The first two months of life were spent in the intensive care nursery 50 miles away. Multiple tests and procedures identified the scope of the injury. It was complete. Yamirka suffered hypoxic ischemic encephalopathy (HIE), a form of brain injury caused by a decreased supply of oxygen to the brain at or near birth. The brain damage was massive and severe, something called total asphyxia, the worst brain injury a baby can have and still survive. It produced profound mental retardation, spastic quadriplegia cerebral palsy, respiratory problems, neurogenic bowel and bladder, vision and hearing impairments, a seizure disorder and esophageal dysfunction. Yamirka would never speak, reason, see completely, hear completely or purposely move her eyes, arms, legs or hands. She would always have to be carried or pushed and would always require breathing assistance, suctioning, a feeding tube, diapers, 24-hour supervision, doctor and hospital visits and assistance with every aspect of human care.

Before leaving the hospital, Yamirka's parents received hours of training: how to hold her, how to carry her, how to position her, how to suction the buildup of secretions that would obstruct her airway, how to handle seizures, how to administer enteral feeding, how to flush and change the feeding tube, how to sterilize the tube connection and monitor it for infection, how to apply the nasal cannula supplying oxygen, how to monitor and adjust the oxygen flow, how to change the oxygen tanks, how to apply and operate the vibrating vest for lung congestion, how to set and respond to the alarm warning of breathing difficulties, how to protect her fragile immune system, and how to provide for and monitor her overall well being.

Her mom was 36-years-old and her dad was 47. Their experiences raising four other children suddenly seemed useless. She would now stay at home to care for Yamirka in their modest clapboard house on the east side of town, the "poor and dangerous" side of town. He would continue as a security guard with no insurance and earning minimum wage. As they walked out of the hospital carrying Yamirka, about to step into a much different life, the gravity of the moment was clear. The responsibility it imposed - emotionally, physically, spiritually and financially - was paralyzing.

At the same time they were leaving the hospital, the doctor and nurses who delivered Yamirka were winding down their days. They would be heading home soon as well . . . to houses on the other side of town and to lives that had not changed at all. There had been no consequences to the medical professionals since it happened, no reprimands, suspensions or terminations. There also had been no apologies. No one said "I'm sorry". Life would continue on as usual here. It would never be the same again over there.

POSTSCRIPT

It always takes longer to right a wrong than it does to inflict one. Here it took five years to see the light of justice. That light will lessen the burdens negligence has imposed, to be sure. But Yamirka's struggle for sur-

vival continues daily. She will ultimately surrender, quietly and privately, far earlier than most, at about the time others her age mature into adulthood. In the meantime, the little flame she embodies is shielded carefully by parents every bit as special as she is. The lives that Yamirka and her parents live are humbling. The light they radiate together makes our community a warmer place.

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[1] Michael Lenert, Esq. and Maggie Mayer, CP were also privileged to help Yamirka.

Editor's Note: Justice for Yamirka came in the form of the largest reported birth injury settlement or verdict in Kane County history.

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