

Crown: 'You never said ... you did not kill Brody'

Babysitter tells court of attempts to help toddler reach milestones

By Sue Yanagisawa
Whig-Standard Staff Writer

ALL OF THE EVIDENCE IS NOW IN AT the trial of Cheryl Ann Larsen, the Kingston mother of three charged with manslaughter in the December 2002 death of 22-month-old Brody Albert, a toddler she was babysitting at the time.

Tuesday, her defence team of Peter Kemp and Clyde Smith, and the lawyers who prosecuted her case, Crown attorney Bruce Griffith and assistant Crown Laurie Lecelle, will wrap up with what are expected to be lengthy final arguments in front of Justice Helen MacLeod.

Larsen completed her own testimony yesterday morning, with Griffith questioning why, in light of her claim she did nothing to harm Brody, she didn't say precisely that to Det. Sgt. Carolyn Rice during two videotaped interviews.

Larsen announced to Brody's mother: 'I can't do this an

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Brody was rushed from Larsen's Pembroke House on home to hospital in the morning of Dec. 18, 2002. Brody was injured by Rice and the question before the court was the next day whether Brody was injured as a result of the accident.

When Brody died following the accident, Brody's father, Rice, had been in the car and was in the hospital, and Brody's mother, Larsen, was in the hospital and was going to be discharged with his mother.

"I never saw [Rice] you die," Brody's fifth child, Brody, testified.

Larsen testified that she wasn't thinking about the accident because she was in the hospital and she was in the hospital.

Larsen maintained that Brody's death was a result of his brain injury and not because of the accident. She has suggested that one of her friends, in fact, had been on the scene at the time.

Brody's mother has been trying to prove Brody was a victim of sickle cell syndrome.

Larsen testified that about five hours Wednesday morning her background, her child rearing philosophy, her first day with Brody and the preceding events of that week - which she'd recounted to Rice during their initial interview when Brody was still alive but failing in hospital.

On Thursday of that week she'd turned 22 years old and she told Brody that her vacuum cleaner

had broken down, she'd had a minor car accident involving a friend's car and her youngest son had been acting up.

Larsen's husband, Maj. Mark Larsen, had also been away from home for eight weeks on a military training course in Winnipeg and Larsen herself was taking an online accounting course.

Her lawyer, Smith, asked her if caring for her three young sons and Brody had become thankful.

"Everybody raises children differently and everyone's tolerance is different," Larsen responded. "What appears to be a handful for some isn't a handful for others."

Larsen was emotional and appeared distraught in the tapes made with Rice and in her trial testimony she pointed out that the police officer had specifically asked her what else had been going on that week.

"Birthdays aren't a stressful thing," she told the court. "I was just making conversation."

She also downplayed her fender-bender, telling the court there was no damage to her friend's car. "It was my pride that was hurt because it was careless of me and dopey not to do my usual check," she said.

As for the broken vacuum cleaner, Larsen told the court she and her husband had discussed replacing it, but said she was in no hurry that week and only found it "irritating."

She did admit to one bad day

when irritation overwhelmed her, however: Wednesday evening of that week, when she told Brody's mother, Julie Albert, that she didn't want to babysit him any more.

At the time, Wednesdays were karate nights for Larsen and her sons and she said that Julie Albert had been late picking up Brody that Wednesday.

Larsen said she was getting Brody ready "doing the boot thing" and getting him into his outdoor clothes for the trip home. She was trying to teach the toddler to put on his own boots and zip his own jacket.

"It's an independence thing," she explained to Smith, and she'd spent considerable time coaxing him through it when his mother arrived and zipped his coat and picked him up.

Larsen said she watched her do it and that's when she announced, "I can't do this anymore," and told Brody's mother she no longer wanted to babysit for her.

"That day it was going through my head we were on two different wavelengths about what he had to learn to do for himself and what was done for him," Larsen testified.

So, "at that particular moment in time I thought my 20 minutes of teaching him just went out the window."

Larsen recalled that Brody's mother burst into tears and she told the court she was immediately sorry and embarrassed.

She said she felt so badly she didn't stay for her own karate class. When she arrived home to find a message on her phone she called Brody's mother right back. She told Albert to disregard her earlier outburst and recalled saying: "Now you know I'm not Wonder Woman."

Larsen told the court that she and her husband discussed how they wanted to raise their children before they were married and agreed that they would never yell or spank them. Friends and neighbours who testified on her behalf attested that the Larsens don't yell or spank.

Larsen testified that she began babysitting Brody before he was a year old and felt like he was one of her own. She said she was involved in most of his developmental milestones.

"Anyone who's looking after children at that age has to help them advance their skills," she told the court.

Before he died, Brody was learning to talk. "Talking was generally an everyday thing that I tried with him," she told the court, recalling that "single words were no problem."

She was trying to get him to use short phrases, she said, such as "up please" and "thank you" and recalled that he had an easier time with the latter, pronouncing it "thank you."

One day she asked him if he wanted to try sitting on the toilet and "he said 'yes' and I put him on the toilet and he went."

Larsen told the court "it was great. He was quite young to be doing that. I think around 18 months."

And when she told Julie Albert "she thought it was great."

Evidence presented at the trial suggests that Larsen didn't remain impressed with Brody's toilet training and dressing skills, however. She said she was frustrated with him in an online

LOCAL NEWS

'No evidence' that shaking caused death

Final arguments begin in babysitter Cheryl Ann Larsen's trial on manslaughter

By Sue Yanagisawa
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THE DEATH OF TODDLER BRODY Albert was the result of an accidental fall down stairs because "there is no evidence that it happened in any other way," defence lawyer Clyde Smith said yesterday.

Smith and Crown prosecutors began giving final arguments yesterday in the manslaughter trial of Cheryl Ann Larsen, who was babysitting 22-month-old Brody the day he was injured in December 2002.

Evidence in Larsen's trial at the Frontenac County Court House concluded last Friday.

The lawyers' submissions conclude three weeks of evidence that included five medical experts called by the Crown, who all testified that Brody's injuries were consistent with shaken baby syndrome, and one medical expert called by the defence who disputes that kind of brain injury can be caused in a small child by shaking alone.

The Crown hadn't completed its submissions when Madam Justice Helen MacLeod closed court for the day.

Assistant Crown attorney Laurie Lavelle resumes her argument this morning.

Larsen, a 33-year-old housewife, for-

mer corporal in the Armed Forces and mother of three boys, had been Brody's babysitter for about a year. On the morning of Dec. 6, 2002, the 22-month-old was taken by ambulance from Larsen's Pembridge Crescent home to Kingston General Hospital. He arrived unconscious with a brain injury and bleeding inside his skull and underwent emergency surgery. Doctors were unable to stem the swelling in his brain, however, and he died two days later.

In outlining the defence's theory of what happened to Brody that day, Smith ran through Larsen's account that morning's events. He noted that it was between 8:10 and 8:15 a.m. when Brody's mother, Julie Albert, dropped him off; 8:45 a.m. when Larsen saw her two oldest sons off on their bus to school; and just after 9 a.m. when she called 911.

Smith reminded the judge that the Crown's own experts had described the physical actions involved in shaken baby syndrome as "severe, repetitive force" and "a terribly violent act."

In the case of pediatric ophthalmologist Dr. Alex Levin, he said, the description was: "A force beyond your wildest imagination. Whatever you are thinking, it is far worse."

But Smith said, "the question is,

when was there any time to repetitively and violently shake him? Why would she want to shake him?" He asked the court where the evidence was that Larsen had ever been violent.

Smith told the court that the key evidence of defence expert Dr. John Plunkett wasn't his rejection of the medical belief that shaking alone can cause the type of injuries Brody suffered, but his discovery of a verifiable U.S. case in which a child did suffer similar fatal injuries in a short distance fall.

In that case, the child's grandmother was videotaping her 23-month-old granddaughter at play in the family garage when the little girl slipped from the rail of a plastic gym set about 39 inches off the ground. She struck the

right side of her forehead on the floor, which was carpet over concrete, after first putting out her hands to break her fall. According to Plunkett, the child cried but didn't initially lose consciousness and only later suffered a seizure after she'd been taken into the family kitchen to get cleaned up.

Following the girl's death, Plunkett told the court, doctors found some of the same damage in her brain and eyes considered diagnostic for shaken baby syndrome, except that the camera had caught what actually happened to her.

Before that, Smith said, the medical community didn't believe such devastating injuries could result from a short fall. But he told the judge that Plunkett's message was, "if you take a

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header, that is not a short fall."

The defence lawyer argued that Larsen "has been as consistent as it's humanly possible to be about her story."

Even during her videotaped interview with Kingston Police Det. Sgt. Carolyn Rice, when she appeared to admit to feeling frustrated with Brody after he fell down the stairs and to shaking him, Smith said there was no real departure. He told MacLeod it's clear in the videotape, at that point, that Larsen was searching aloud for answers to what had happened, unaware of her jeopardy and not understanding that the detective didn't believe her.

"I would direct you back to the video and the development of those themes with Det. Sgt. Rice," he told the judge.



LOCAL NEWS

Larsen 'did a bad thing':

Prosecution makes closing argument in babysi

By Sue Yanagisawa
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CHERYL LARSEN IS NOT AN ABUSIVE person, but she took out her frustrations on young Brody Albert in December 2002, Crown attorney Bruce Griffith said yesterday in his closing argument at Larsen's manslaughter trial.

Larsen - a 33-year-old mother of three - was babysitting 22-month-old Brody when the toddler suffered what would prove to be fatal injuries.

"In this isolated instance," Griffith said, Larsen "took it out on Brody Albert."

Griffith and assistant Crown Laurie Lacelle made their closing argument yesterday, wrapping up Larsen's three-week trial at the Superior Court of Justice. Final submissions in Larsen's defence were presented Tuesday by Clyde Smith, half of the defence team.

Griffith noted that Smith had made it an element of the defence that Larsen was "simply not the kind of person who would shake a baby boy in her care."

But "it does happen," Griffith told the court, "and good people do bad things."

"It is our submission that Mrs. Larsen did a bad thing," Griffith said. "She shook Brody and he died. She ought to have known better."

Justice Helen MacLeod has reserved her decision in the case until Dec. 16.

The Alberts and the Larsens are military families. Cheryl Larsen's husband, Maj. Mark Larsen, and Brody's father, Petty Officer 2nd Class Steven Albert, met while working at CFB Kingston.

Cheryl Larsen was a member of the military for six years and achieved the rank of corporal working in administrative services before her children were born. While pregnant with her first son, she applied for the force reduction plan, however. Since then she's devoted herself to being a housewife and mother, except during a brief period when she returned to work for a law firm in the United States before she was



Ian MacAlpine/The Whig-Standard

Cheryl Larsen has been on trial for the death of 22-month-old Brody Albert

ment stairs to the carpeted basement floor of her home. But the doctors who worked on Brody rejected that scenario and his injuries were flagged, even before his death, as consistent with shaken baby syndrome.

Four of the 12 days it took for the evidence to be heard in Larsen's case were devoted to testimony from medical experts, four of whom were directly involved in Brody's case. A fifth reviewed their findings and concurred with their diagnosis of shaken baby syndrome.

Only Dr. John J. Plunkett, a certified anatomic, clinical and forensic pathologist from Minnesota called by the defence dismissed the possibility of the boy's injuries being caused by shaking. Plunkett testified that the boy's brain injury could have resulted from a relatively short fall and that the scrambling in

She argued that the willingness of the majority of the medical experts to admit under defence questioning that other remote possibilities exist doesn't raise a reasonable doubt about their diagnosis.

"I think the court should be troubled by a witness who won't acknowledge other possibilities," she said, referring to Plunkett's rejection of the existence of shaken baby syndrome.

She also noted that the assistant coroner from Minnesota lacked the pediatrics credentials and the specialist expertise to challenge the other medical witnesses.

Lacelle told Justice MacLeod that "certainly it's possible there was a fall," but it didn't cause Brody's injuries. She argued that on the evidence, "the court ought to be satisfied that shaking was

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Larsen had said as much in the latter half of a 3½-hour videotaped interview with a Kingston Police detective the day after Brody was admitted to hospital.

Larsen's defence, Griffith said, is predicated on her claim that she never shook the boy and that when she made statements to police suggesting that she might have hurt him, "those were basically words put in her mouth" by the interviewer, Det. Sgt. Carolyn Rice.

He scoffed at the defence claim that Larsen didn't understand her legal jeopardy when she agreed to the interview or that she didn't understand she was a suspect.

"She knew the night before," Griffith told the judge, because the boy's paternal grandmother told her that police and the Children's Aid Society would be called. "If you're the only adult and you're the only caregiver when a baby is injured so badly they might not make it, and you're called to go to the police station the next day—nobody is that naïve."

Griffith said that Larsen wasn't manipulated by the detective and that Larsen's account of Brody falling down stairs shows "she's trying to set up the theory of an accident."

He also challenged Larsen's claim that she wasn't under any particular stress in the week before Brody's death or the morning he was injured. He told the court that her "anxiousness, frustration and fear is clearly supported by her own words."

Reading from the transcript of Larsen's interview with Rice, he suggested she demonstrated those emotions when she said "I shook him and I hit his head on the floor." When Rice asked her why, she responded, "Because I was scared, he was being clumsy again."

She went on to tell the detective that she didn't want Brody going home with a fat lip or bruises, and complained that "it's just everything that happens, it happens on a Friday when he has to go visiting."