

Babysitter Cheryl Larsen cleared in toddler's death

By Sue Yanagisawa
Whig-Standard Staff Writer

A KINGSTON WOMAN WAS FOUND not guilty yesterday of manslaughter in the death of a two-year-old boy she was babysitting.

Cheryl Ann Larsen, 34, a mother of three, was charged two years ago in the death of two-year-old Brody Albert.

Brody was the son of a military colleague of Larsen's husband, Maj. Mark Larsen. She was babysitting him on the morning of Dec. 6, 2002, when he suffered a fatal brain injury.

"Many aspects of all the evidence and the lack of evidence cause me to have a reasonable doubt about the guilt of Cheryl Ann Larsen in this case," Justice Helen MacLeod said when delivering the judgment.

The judge rejected the Crown's position that Brody was a victim of shaken baby syndrome.

Based on the observation of a small bruised area at the back of the boy's scalp, the judge said she's satisfied that he fell down the stairs, as Larsen maintained.

"The Crown's position is not the only

rational inference that can be drawn from the evidence in this case," she said.

Neither the Larsens nor Brody's parents, Julie and Petty Officer Second Class Steven Albert, wanted to comment after the judge delivered her finding.

One of Larsen's lawyers, Clyde Smith, said his client is "relieved and looking forward to putting this behind her."

"But you have to understand," he added, "a little child, who was like her fourth son, died in her care two years ago and she's very unhappy about that and I think she always will be."

Smith observed that the judge, in her decision, "spoke at length about the fact that there's a tendency to jump to the conclusion of shaken baby syndrome ... and I think she was saying the police and everybody should be a little more careful about this."

In finding Larsen not guilty, MacLeod said: "It is clear that the medical profession operates on a reverse onus of proof."

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"Their professional role is to determine a proper diagnosis, not how the injury happened."

But in a criminal court, she said "causation becomes a serious consideration."

"It is the court's professional role to test all of the evidence to determine if a case has been proven beyond a reasonable doubt."

The judge said Larsen's account of Brody being injured after falling down stairs "was not believed or considered worthy of belief from the beginning of the investigation by the treating physicians, the pathologists or the police."

Yet MacLeod found there's serious controversy in the medical and research communities over shaken baby syndrome unaccompanied by impact, which she said was "fully played out in this trial."

The morning Brody was injured, Larsen called 911 and an ambulance was dispatched at 9 a.m. to her Pembroke Crescent home in the city's west end.

Paramedics testified at her trial that they arrived to find the toddler already comatose and in respiratory distress. Two ambulance crews were ultimately involved trying to stabilize Brody so that he could be transported to Kingston General Hospital.

The boy suffered a seizure in the ambulance and his condition continued to deteriorate after his arrival in the emergency department at 9:50 a.m.

Emergency surgery was performed and a piece of his skull was removed to reduce pressure on his swollen brain, but he was unable to breathe on his own and never regained consciousness. He died in hospital two days later, on Dec. 8, 2002.

By then, Cheryl Larsen was already under arrest, charged with aggravated assault after doctors rejected her account of his injuries resulting from a fall down her carpeted basement stairs.

Dr. Richard van Wylick, head of this region's child protection team, diagnosed Brody's injuries as consistent with shaken baby syndrome. That diagnosis was supported by the pathologist who performed Brody's autopsy at the Children's Hospital of Eastern Ontario, the neuropathologist who microscopically examined his brain, an ocular pathologist with the University of Ottawa Eye Institute who examined his eyes, and a pediatric ophthalmologist, with the Suspected Child Abuse and Neglect program at the Hospital for Sick Children in Toronto, who reviewed the other doctors' findings.

Larsen spent the night of Dec. 7 and morning of Dec. 8 in the Kingston Police station. The following day, Det. Sgt. Carolyn Rice broke the news of Brody's death to her and told her that the charge she was facing was being upgraded to second-degree murder.

She spent nine days in jail and her own children had to be sent to stay with friends while she was being scrutinized.

After a preliminary hearing in November 2003, she was committed to trial on manslaughter after a judge found there was no evidence of recklessness or intent to cause the toddler's death.

MacLeod spent considerable time reviewing the medical evidence.

Crown attorney Bruce Griffith and assistant Crown Laurie Lacelle called five medical experts in support of the position that Brody was the victim of shaking, based on a triad of diagnostic features: bleeding into the spaces between the membranes lining the interior of his skull; a distinctive pattern of hemorrhaging and folding inside his eyes; and a pattern of damage to the nerve fibres in his brain.

Larsen's team of Peter Kemp and Smith called only one expert, Dr. J.J. Plunkett, a forensic pathologist from Minnesota, self-taught in the field of biomechanics.

The judge was told by the Crown's medical experts that shaken baby syndrome has become widely accepted by pediatricians over the past 30 years. But they also agreed there's skepticism among researchers in the field of biomechanics about significant brain damage being attributed to shaking alone without an impact to the child's head.

The judge noted that Plunkett believes the American Academy of Pediatrics has "tunnel vision" or a failure of curiosity and common sense in this regard. She also observed that he's "a crusader against the over-diagnosis of shaken baby syndrome" and that "his biomechanical expertise is questionable."

Later in her judgment, MacLeod said "while I am not fully satisfied as to the biomechanical portion of his evidence ... his evidence is important in one critical aspect. I am satisfied these injuries can occur from a short-distance fall, and can cause death even if it is a rare or unusual occurrence."

MacLeod said Plunkett's testimony convinced her "that the court should be very cautious in making a finding of baby shaking or inflicted injury, absent any other findings or negative factors, such as other injuries."

Doctors who examined Brody testified they found no broken bones or healed fractures, bruising on his torso or extremities indicative of having been gripped tightly and shaken, or any injury to his neck. But they were unanimous in their conclusion that a relatively short fall couldn't have caused his injuries.

Plunkett believed otherwise and MacLeod was impressed by the case study he published in the *American Journal of Forensic Medicine and Pathology* in 2001, documenting a 23-month-old girl's fatal fall from a height of 3½ feet. The toddler dropped from a

plastic play gym onto a carpeted cement garage floor and, even though she extended her hands to break her impact, she struck the right side of her forehead on the ground.

She cried, but was able to get up and was in her family's kitchen five minutes later when she had a seizure, lost consciousness and went into respiratory distress.

MacLeod noted that because of the magnitude and nature of that child's injuries - which included a large collection of blood in the space between the membranes lining her skull and significant brain swelling - child abuse experts didn't believe the parents' account and initially accused them of shaking her.

They only backed off when the child's grandmother directed them to the videotape she'd been making when her granddaughter had her accident.

The judge also observed that, in Plunkett's example, a pattern of hemorrhage that shaken-baby proponents consider diagnostic for the syndrome was found in the girl's eyes, in the face of positive proof that she hadn't been shaken.

"What the medical profession is saying to the court in this case," MacLeod told the lawyers, is "One, this is an unusual case; two, the triad of factors for shaken baby syndrome is present; three, children do not usually die from a short fall down the stairs; four, we find the history [given by Larsen] inaccurate, inconsistent or not true; and five, this is a case that should be tested in the courts."

The judge commented on the police evidence at the trial.

The investigating officer "did not feel that Cheryl Larsen's emotions fit" and had testified that while Larsen appeared upset, she never shed a tear until Dec. 8 when she was told of Brody's death.

The judge observed that the person who transcribed the tape of that initial Dec. 7 interview indicated at 95 points in the transcript that Larsen was crying.

The judge also found that the audiotape of Larsen's 911 call demonstrated she "was very caring and concerned about Brody."

"She referred to him in affectionate terms such as 'honey' and 'sweetie,'" MacLeod said, and "these are the first words she likely spoke after the event."

"The videotaped statements [to police], I find are more problematic ... I find she was very amenable and overly vulnerable to suggestions made to her during those interviews and I cannot give her videotaped statements any significant weight."

The judge found that Larsen's admission to shaking Brody was a case of her naively adopting Det. Sgt. Rice's language while describing her initial attempts to revive the child in a manner consistent with her first aid training.

A tale of two trials



NOREEN RASBACH

BESIDES THE FACT THAT CHERYL Larsen and Lucas Landry were charged with crimes relating to shaken baby syndrome, there's only one other similarity in their cases: The tragic outcomes for the children and their families.

Brody Albert is dead, his life cut short at two years old. Landry's son survived, but the injuries inflicted on him at three months old will stay with him for the rest of his life – serious vision problems, poor motor functions on his left side of his body, autistic spectrum disorder. We offer both families our condolences as the court cases conclude just before this holiday season.

The similarities end there. In fact, the Larsen and Landry cases couldn't be more different. Landry, who was found guilty of aggravated assault on Thursday, had told police, friends and confessed in letters that he'd harmed his son, by shaking him and placing him on a change table "with aggressive force." At his trial, he recanted that testimony and offered no other explanation for the injuries. His trial was all about his original confession and his character, and in the end the jury chose to convict.

The Larsen case is much more complex, with an astonishingly provocative judgment by Justice Helen MacLeod, who found Larsen not guilty of manslaughter in the death of Brody Albert.

Larsen was a trusted babysitter for the Alberts. The Crown contended that Brody's injuries were consistent with shaken baby syndrome; Larsen maintained the little boy fell down the stairs.

This wasn't a case about character. The decision was based on medical evidence, and whether doctors are too quick to make findings of baby shaking. And, MacLeod says, after the finding is made, "it is clear that the medical profession operates on a reverse onus of proof." In other words, guilty until proven innocent.

In this case, the judge ruled that there was "a reasonable doubt about the guilt of Cheryl Ann Larsen."

You have to wonder, however, what the police and Crown attorney were expected to do. Consider this: The head of this region's child protection team diagnosed Brody's injuries as consistent with shaken baby syndrome. That diagnosis was supported by the pathologist who conducted the autopsy, the neuropathologist who microscopically examined Brody's brain, an ocular pathologist who examined his eyes and a pediatric ophthalmologist who specializes in child abuse, who reviewed all of the other doctors' findings.

Five specialists, from Kingston, Ottawa and Toronto, reached the same conclusion. Even if you believe in the infallibility of doctors – and indeed of science – that kind of agreement is tough to challenge.

What police officer and Crown attorney wouldn't proceed with charges?

Larsen's lawyer Clyde Smith said he believed the judge was saying that "there's a tendency to jump to the conclusion of shaken baby syndrome ... and I think she was saying the police and everybody should be a little more careful about this."

That's an interpretation that's a little disconcerting. Let's face it, Brody Albert was dead and his injuries were consistent with shaken baby syndrome. A slew of medical experts agreed. Shouldn't police be "a little more careful" in favour of the victim than the suspect? After all, Larsen faced a horrible legal ordeal, but she was found not guilty in the end.

If one good thing came out of these tragedies, it's the fact that we're all more aware of shaken baby syndrome. Apparently, every new mother in this city receives information on the syndrome from the area's health unit, and is given advice how to handle the frustration of a continuously crying baby. It's important work that could prevent similar deaths – and trials – in the future.