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## Babysitter's defense may be that baby had seizures



TORREY

**A defense expert for a Candia babysitter charged with causing a traumatic brain injury to an 8-month-old boy may testify that the baby actually suffered from seizures or other medical issues — but was not hurt by the hand of Elizabeth Torrey.**

By JAMES A. KIMBLE

Union Leader Correspondent

**BRENTWOOD** — A defense expert for a Candia babysitter charged with causing a traumatic brain injury to an 8-month-old boy may testify that the baby actually suffered from seizures or other medical issues — but was not hurt by the hand of Elizabeth Torrey.

Torrey, 27, is facing first- and second-degree assault charges for allegedly hurting the baby while he was in her care last June.

Judge Kenneth McHugh allowed Torrey's trial to be moved to Sept. 19,

after the defense argued it needed more time to prepare for trial and revealed some of what its expert — a Minnesota-based forensic pathologist — may testify to in the case.

Dr. Janice Ophoven, the defense's expert, has made a preliminary opinion that, “any number of factors, including untreated seizures, could have caused (the baby's) injuries.”

That opinion relies heavily on the medical records that prosecutors handed over to the defense in late April and early May, according to defense lawyer Andrew Christie.

Ophoven suggested in her opinion that because the baby's mother fell twice during her pregnancy, it could have later caused the baby to have seizures, according to Christie's summary of the opinion.

Christie said that the disclosure about the expert's opinion was not a formal notice of what could be testified to at trial.

It was only to demonstrate that the defense is weighing complicated arguments that required a time extension.

Torrey was arrested by Candia police last June 18.

Investigators concluded that the baby's health was fine and showed no symptoms of injuries when he was left in Torrey's care on June 9, according to an affidavit by police Chief Michael McGillen.

Dr. Alice Newton, head of the child protective team at Boston Children's Hospital, diagnosed the baby with a severe brain injury.

She concluded the injuries were due to "very severe abusive head trauma such as is seen with violent shaking," according to her report.

The defense said previously it expects that statements Torrey made to Candia police will also be used at trial.

Candia police Officer Kevin Cashman wrote in a report Torrey spontaneously said to him, "I didn't throw him. I wasn't mad."

A worker from and the Division of Children Youth and Families also heard Torrey make the statement, according to Cashman's report.

"At no point during the interview did someone suggest that she did," Cashman wrote. "She also stated to Sergeant (Scott) Gallagher in an earlier interview that she was mad when (the baby) vomited on her since he does it quite often on her floor and furniture."

Torrey remains free on bail.

## **Medical testimony to be key in Troy trial**

### **Prosecutors say father killed baby; defense cites health conditions**

By BOB GARDINIER Staff writer

Updated 10:09 p.m., Thursday, September 15, 2011

TROY -- The trial in the murder of a baby girl will be a battle of the medical experts as prosecutors allege Ina Jane McElheny was killed by her father and the defense argues existing medical conditions led to the baby's death.

Joseph McElheny, 32, of 3 River St., Hoosick Falls is on trial for the murder of his four-month-old infant who died from complications from a ruptured bowel and had numerous broken bones in various stages of healing. Prosecutors allege it is a classic case of child abuse.

"He was Mr. Mom," defense attorney Gregory Cholakis told jurors in opening arguments Thursday. "He was always showing off his daughter and actually enjoyed changing her diapers."

Cholakis said the child died May 12, 2010, from complications from a bowel obstruction that led to a rupture of the small intestine and an infection.

He also said the child had a vitamin D deficiency which led to easily broken bones. The autopsy showed the child had at least nine broken bones.

"With a vitamin D deficiency her bones could break just from normal handling," Cholakis said.

Assistant District Attorney Elizabeth Kennedy said the death was a textbook case of child abuse and the ruptured bowel was caused by a punch or kick.

"This baby knew pain," Kennedy told jurors. "The sad part is what killed this little baby was preventable if she got medical care in time. Medical experts will tell you she was likely crying and in pain for hours, her stomach was distended, and she was vomiting, sweating and would have a hard time breathing. The one person who was in a position to get her help watched all this happen and chose to do nothing."

Prosecutors have said the child may have been abused since shortly after birth by McElheny who worked from home and provided daily care for the child. His wife, Melinda Anders, worked in Bennington, Vt.

McElheny told State Police investigators that he would often throw the infant up in the air and catch her and that may have injured her.

"It would make her laugh," McElheny, allegedly told investigators, according to documents on file in Rensselaer County Court.

He faces charges of second-degree murder and manslaughter, assault, and endangering the welfare of a child. The trial resumes Friday before Judge Andrew Ceresia.

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Read more: <http://www.timesunion.com/local/article/Medical-testimony-to-be-key-in-Troy-trial-2172743.php#ixzz1arI301Vx>

## **Father cries relating daughter's last night**

"We can't just let her die," accused Hoosick Falls man says on stand

By BOB GARDINIER Staff writer

Updated 08:50 a.m., Thursday, September 29, 2011

TROY -- The Hoosick Falls father accused of murdering his 4-month-old daughter broke down crying on the witness stand Wednesday when he was asked about being bedside the night his daughter died in an emergency room.

"Sometimes I was on my knees on the floor crying and others I was leaning over her talking to her and trying to get a response," Joseph McElheny, 32, said as bouts of sobbing caused long pauses in his responses to questions from his attorney Gregory Cholakis.

"Then the doctor told us she was not going to make it and I refused to believe that and asked for another doctor and I said 'We can't just let her die,'" McElheny said. "It was so horrible and I felt lost and I did not know what to do."

McElheny of 3 River St., a stay-at-home father, is on trial before Rensselaer County Judge Andrew Ceresia for murder, manslaughter and assault in the death of Ina Jane McElheny.

McElheny and his wife, Melinda Anders, had their baby removed from life support shortly after she arrived at Albany Medical Center Hospital unresponsive and with a belly severely bloated from infection on May 12, 2010.

The father said he was stunned when investigators later that day told him at the State Police Brunswick Barracks that an autopsy showed that Ina Jane had 18 broken bones.

"I thought he was lying but then thought, 'why would he do something like that?'" McElheny said.

"Did you hurt your baby?" Cholakis asked.

"I would never intentionally hurt anyone," McElheny shot back.

He then answered "no" to each of a series of quick questions asking if he twisted his daughter's legs, struck her in the stomach, squeezed her torso or kicked the child.

On cross-examination from Assistant District Attorney Christa Book, McElheny often got testy and went into protracted explanations and corrections of police statements attributed to him and Book's questions.

Book's cross-examination will continue Thursday.

During questioning by Cholakis, the defendant said he was concerned during Ina Jane's birth, which was difficult because of the baby's position and her weight of more than 10 pounds. He said the doctor seemed angry a Caesarean had not been scheduled.

"It was very hard for Melinda because she took nothing for the pain," McElheny said. "The birth was like surgery during the Civil War."

McElheny said the child was happy and strong but began to show signs of illness the day before her death.

"She vomited, emptied her stomach in my lap and that concerned me," McElheny said. "She never did that before."

The jury began Monday to hear expert testimony that McElheny did not inflict the injuries that caused the death of his daughter but that she died of inherited congenital bowel abnormalities. The experts also contended that the 17 skeletal fractures found during the autopsy were not caused by abuse but by low vitamin D levels and a condition called rickets that weakened the baby's bones to the point that normal handling would have broken them.

Prosecution experts testified the baby's skeletal fractures were inflicted at various times by abuse from an adult. They said a sharp blow or kick to the infant's abdomen ruptured her bowel, which caused an infection that led to the infant's death.

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Read more: <http://www.timesunion.com/local/article/Father-cries-relating-daughter-s-last-night-2192610.php#ixzz1arFE61CD>

## **Doctor: Infant had life of pain**

Witness says baby's injuries would have caused her to cry out in agony when picked up

By BOB GARDINIER Staff writer

Updated 10:37 p.m., Wednesday, September 21, 2011

TROY -- Four-month-old Ina Jane McElheny would have screamed in pain every time someone picked her up on and off for at least a month before her May 2010 death, an expert said Wednesday.

Dr. Carole Jenny, director of the Child Protection Program at Hasbro Children's Hospital in Providence, R.I., an internationally known expert in child abuse, testified for the prosecution and told jurors the girl was abused.

The baby's father, Joseph McElheny, 32, of 3 River St., Hoosick Falls, is on trial on murder charges in his child's death.

Jenny said an autopsy showed the child had at least 17 broken bones all in different stages of healing. The baby had several broken ribs that occurred in at least three different episodes of abuse likely caused by an adult's hands squeezing her torso.

"There would have been distinctive popping sounds you could hear when this happened," Jenny told jurors. A specialist in pediatric radiology testified Monday that the infant was abused over a period of at least a month by an adult. The specialist said the abuse included twisting or yanking the infant's legs, breaking them, squeezing her torso, breaking several ribs and inflicting a blow to the abdominal area, which caused a ruptured bowel that led to her death.

The parents called EMS at 1:30 a.m. May 12, 2010.

The baby was removed from life support at Albany Medical Center about four hours later.

Defense attorney Gregory Cholakis claims the child was not abused by the father, but rather had a vitamin D deficiency and rickets, which caused her bones to break easily.

Cholakis also claims the baby had received a rotavirus vaccine just before she died that led to a bowel obstruction, which caused a perforation leading to her death.

He cited studies to prove this Wednesday, but Jenny discredited them, at one point saying peer analysis "suggests" the conclusions are only theoretical.

"But you are saying only suggests?" Cholakis asked.

"I was just being kind," Jenny said.

Jenny got testy when Cholakis stressed that speculation was an important part of studying a matter. "Sure, we could speculate that little alien flying saucers came through an open window and broke the bones," Jenny said.

On Tuesday, McElheny cried at the defense table as prosecutors played the 911 tape of the mother's call to emergency responders.

The recording was played for the jury to show how he and his wife, Melinda Anders, dealt with an unresponsive Ina Jane McElheny.

"My baby's not breathing," Anders is heard saying with a quivering voice. "She's been tired and lethargic all night. She's not responding."

In the background, McElheny can be heard yelling "Ina, wake up! Ina, wake up!" over and over, and then his wife yells at him: "Don't shake her like that."

Anders is not on the list of potential witnesses for the prosecution, but may be called by the defense, Cholakis told Judge Andrew Ceresia on Wednesday.

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## **Blockage killed girl, pathologist says**

**Well-known pathologist, testifying in murder trial, says abuse wasn't cause**

By BOB GARDINIER Staff writer

Updated 08:13 a.m., Tuesday, September 27, 2011

TROY -- A pathologist well known for his criticism of the Kennedy assassination's Warren Report told jurors Monday that a 4-month-old girl died from a bowel blockage and not from abuse by her father.

Dr. Cyril H. Wecht of Pittsburgh said Ina Jane McElheny died from intussusception, which led to a perforated bowel and peritonitis, a severe abdominal infection that killed the infant.

Joseph McElheny, 32, of 3 River St., Troy, a stay-at-home father, is on trial before Rensselaer County Judge Andrew Ceresia for murder, manslaughter and assault in the death of his daughter from what prosecutors have said was a sharp blow to the abdomen.

"That conclusion is just not very logical because there was no bruising to the area and no damage to neighboring organs, which you would expect," Wecht said.

McElheny and his wife, Melinda Anders, had to remove their baby from life support shortly after she arrived at Albany Medical Center Hospital unresponsive and with a belly severely bloated from infection on May 12, 2010.

On cross-examination by Assistant District Attorney Elizabeth Kennedy, Wecht admitted that he has only seen two infant deaths from intussusception and they were in the 1960s.

Wecht wowed jurors with a review of his pathological consulting work, which included both Kennedy assassinations, the O.J. Simpson case and examination of the deaths of Tammy Wynette, Elvis Presley, the Branch Davidians, Vincent Foster, Ron Brown, Chandra Levi, JonBenet Ramsey and several others.

Defense attorney Gregory Cholakis, during the outset of the trial last week, established his defense through cross-examination of three expert prosecution witnesses, including Dr. Barbara Dangman, a pediatric radiologist at Albany Medical Center; Dr. Carole Jenny, director of the Child Protection Program at Hasbro Children's Hospital in Providence, R.I., and an internationally known expert in child abuse; and forensic pathologist Dr. Jeffery Hubbard, who did the autopsy on the infant.

All three testified that the child was abused by an adult. She had 17 skeletal fractures inflicted at various times and a ruptured bowel that they all said was from a sharp blow that caused her death.

But Cholakis has been challenging prosecution witnesses to consider that their science is a speculative field and that they should consider the possibility that Ina Jane suffered from rickets, caused by a vitamin D deficiency. It could cause bones to break from casual handling. He also cited a family history of bowel obstruction, which led to a perforated bowel and peritonitis, an abdominal infection that experts said killed the infant.

Cholakis also suggested the father was rough, throwing the baby in the air and catching her because it "made her laugh" and that maybe the injuries were accidental.

All the prosecution experts disagreed.

"I can't imagine an accidental scenario that would cause that many broken bones," Hubbard said during cross-examination Friday.

Cholakis said the defense would probably take the better part of the week to put on its case.

Last week, the jury heard testimony that Ina Jane was allegedly abused over a period of at least a month by an adult twisting or yanking her legs, breaking them, squeezing her torso, breaking several ribs, and inflicting a blow to the abdominal area, causing a ruptured bowel that led to her death.

Anders, the child's mother, is expected to testify for the defense in the case.

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Read more: <http://www.timesunion.com/local/article/Blockage-killed-girl-pathologist-says-2189034.php#ixzz1ar2C>



## **Infant taken from couple in baby death case Defendant's wife says authorities took child after she was born in April**

By BOB GARDINIER Staff writer

Updated 10:19 p.m., Monday, October 3, 2011

TROY -- The wife of a man accused of killing their infant testified Monday that authorities took custody of a second child from the couple after she was born in April.

The investigation of the 2010 death of 4-month-old Ina Jane McElheny prompted Vermont authorities to take custody of the child born this year. Melinda Anders McElheny said authorities told her she would get the child back if her husband, Joseph McElheny, was convicted.

The father testified last week that he has never seen his younger daughter.

The May 2010 death of Ina Jane in the family's Hoosick Falls home drew media coverage, but the existence of the second child was not made public until Monday's testimony.

Anders McElheny was called to the witness stand by her husband's public defender, Gregory Cholakis. She began testifying on Friday and returned to the stand on Monday.

Cholakis asked her if she and her husband had a second child.

"Yes, a daughter named Murphy," Anders McElheny said. "She was born in Bennington in April and two days later the Vermont Department of Children and Families came to the hospital with an order to take custody of her while this case is going on."

Anders McElheny said the department acted on the orders of New York State Child Protective Services and the Rensselaer County district attorney's office.

The mother said she was informed that a grand jury investigated her possible involvement in the criminal case. "I was then told that I had not been indicted," Anders McElheny said.

A grand jury indicted Joseph McElheny, 32, on second-degree murder charges about three months after Ina Jane died.

Anders McElheny testified that she refused to cooperate with the prosecution because she does not believe her husband killed the child.

The day's court action started with Cholakis asking Judge Andrew Ceresia to allow him to show the jury 1,400 photographs and 234 videos that McElheny and his wife took of the infant.

Ceresia denied the request to enter all the photos and videos, limiting the defense to one photo per day of the child's life.

The sides spent the better part of Monday arguing admissibility of the photos and videos, and the prosecution has yet to get the chance to cross examine the mother.

Cholakis wants to use the photos to show the jury that the child looked healthy and that the parents had nothing to hide.

The judge ruled Monday that a defense expert, pediatric radiologist Dr. Patrick Barnes, can testify by video teleconference. Barnes, a member of the child-abuse-protection team at Stanford Medical Center in Palo Alto, Calif., is often asked by defense attorneys to review medical scans in child abuse cases.

Prosecutors contend the baby had 18 broken bones inflicted over several weeks and a perforated bowel caused by a sharp blow.

Defense experts testified the child had a vitamin D deficiency, which caused weak bones, and a congenital bowel condition that caused a blockage, which led to the perforation.

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[Photo] Melinda Anders McElheny leaves Rensselaer County Court in Troy, N.Y. September 30, 2011, after testifying for the defense of her husband Joseph McElheny who it is alleged that he took the life of their baby. (Skip Dickstein / Times Union)

[Photo]Melinda Anders McElheny leaves Rensselaer County Court in Troy,...

[Photo] Joseph McElheny of Hoosick Falls (Cindy Schultz / Times Union archive)

[Photo] Joseph McElheny of Hoosick Falls is arraigned in the death of his baby on Friday, Aug. 13, 2010, at Rensselaer County Courthouse in Troy, N.Y. Cindy Schultz / Times Union) (Cindy Schultz)

Read more: <http://www.timesunion.com/local/article/Infant-taken-from-couple-in-baby-death-case-2200043.php#ixzz1arDbWt7n>