

## **Jury selection starts in baby death**

### **Hoosick Falls man charged with murder of his 4-month-old daughter**

By BOB GARDINIER Staff writer

Updated 10:33 p.m., Wednesday, September 14, 2011

TROY -- Jury selection began Wednesday morning in the case of a Hoosick Falls man charged with murder after his 4-month-old daughter died of a ruptured bowel in May 2010.

In statements to police, Joseph McElheny, 32, of 3 River St., has denied killing Ina Jane McElheny, but admitted he may have been rough with the child.

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

McElheny told investigators he often threw the infant up in the air and caught her, and that she may have been injured that way.

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

"I would grab her by one hand and lift her out of her music chair and she never complains," McElheny allegedly told investigators. "I'm not rough with my daughter. I may be a little rougher than others. I don't coddle."

The trial was to begin earlier in the week, but defense attorney Gregory Cholakis requested and was granted a motion to drop one of three assault charges against his client because new evidence surfaced last month from an expert witness that showed the grand jury was not presented the right evidence to support that charge. District Attorney Richard McNally then asked trial Judge Andrew Ceresia for a postponement to re-present the case to a second grand jury with the updated evidence. His request was denied. McNally then sought a stay on Ceresia's decision from the Appellate Division of State Supreme Court, but it was denied Tuesday by Associate Justice Edward O. Spain of Rensselaer County.

Expert witness Dr. Barbara Dangman, a pediatric radiologist retained by prosecutors, looked over evidence and recently reported that the child had rib fractures that had begun to heal at different times. The evidence suggests the child may have been subjected to repeated abuse over time. The autopsy showed 18 fractures. During questioning, McElheny repeatedly told investigators he once had a drinking problem but he stopped drinking just before the child was born. When confronted with a statement police took from his wife, McElheny admitted she had recently threatened to kick him out of the house if he didn't stop drinking. Investigators also discovered that McElheny told his wife he drank because he was a sniper and killed people during an Army stint from 1998 to 2002, before they met. In fact, he was a communications specialist, investigators said.

McElheny faces one count each of second-degree murder and manslaughter and two counts of second-degree assault, all felonies, and a misdemeanor count of endangering the welfare of a child.

Read more: <http://www.timesunion.com/local/article/Jury-selection-starts-in-baby-death-2170347.php#ixzz1arJ8BLv4>

## **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.

Reach Bob Gardinier at 454-5696 or [bgardinier@timesunion.com](mailto:bgardinier@timesunion.com).

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.

Reach Bob Gardinier at 454-5696 or [bgardinier@timesunion.com](mailto:bgardinier@timesunion.com).

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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<http://www.timesunion.com/local/article/Physician-maintains-that-abuse-killed-baby-2178038.php#ixzz1YV2Itb7G>

## **Physician maintains that abuse killed baby**

She testifies that child could not have died through accident

By BOB GARDINIER Staff writer

Updated 07:25 a.m., Tuesday, September 20, 2011

TROY -- During lengthy cross-examination by a defense attorney Monday, a medical witness for the prosecution did not waver from her conclusion that 4-month-old Ina Jane McElheny died of abuse.

Dr. Barbara Dangman, a pediatric radiologist at Albany Medical Center, testified that the infant was abused by an adult who twisted and yanked her legs, squeezed her torso and fractured ribs, and inflicted a powerful blow that ruptured a bowel, causing her death.

Dangman said the infant had at least nine skeletal fractures that were inflicted at various times going back at least a month before her father, Joseph McElheny, 32, called emergency workers at 1:30 a.m. May 12, 2010, to report that the child was unresponsive.

"Her injuries are highly suspect for inflicted injury or abuse," Dangman said after showing X-ray photos to jurors. "Babies' bones are soft and bend, so it would have taken quite a lot of force to cause these injuries. The child could not have caused them by accident because she was not even able to crawl yet."

McElheny, of 3 River St., Hoosick Falls, is on trial for the alleged murder of his daughter in what prosecutors describe as a classic case of child abuse.

Defense attorney Gregory Cholakis claims the child was not abused, but rather suffered from rickets, an affliction in which low levels of vitamin D cause soft or brittle bones that are easily broken.

Dangman showed jurors X-rays of the infant's legs and her fractures, comparing the images to X-rays fractures in another child that were caused by a vitamin D deficiency. She said they did not match.

Cholakis also suggested that the rib fractures may have been caused by aggressive CPR.

"Those fractures were already in stages of healing, so that would be impossible," Dangman said.

McElheny told police he would throw the child up in the air and catch her because it made her laugh. Cholakis suggested that could cause the fractures, but Dangman said that was unlikely.

"Many parents do that and we don't see these types of injuries," Dangman said.

The defense contends the infant had a rotavirus vaccination that could have caused the bowel obstruction. Cholakis argued that such an obstruction could lead to a hole in the small intestine, causing infection and death.

"There was a big commotion a couple of years ago about a vaccine that caused bowel obstructions, but that particular formula was removed from the market," Dangman said.

Prosecutors have said the child may have been abused since shortly after birth. McElheny worked from home and provided daily care for the child while his wife, Melinda Anders, worked in Bennington, Vt., according to documents on file in Rensselaer County Court.

McElheny faces charges of second-degree murder, manslaughter, assault and endangering the welfare of a child.

The trial before Judge Andrew Ceresia continues Tuesday.

Read more: <http://www.timesunion.com/local/article/Physician-maintains-that-abuse-killed-baby-2178038.php#ixzz1arH3rhaX>

## **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.

Reach Bob Gardinier at 454-5696 or [bgardinier@timesunion.com](mailto:bgardinier@timesunion.com).

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.

Reach Bob Gardinier at 454-5696 or [bgardinier@timesunion.com](mailto:bgardinier@timesunion.com).

[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>

## **Baby trial focuses on trust**

### **Wife of man accused of killing their baby testifies trust issues fueled spat**

By BOB GARDINIER Staff writer

Updated 11:07 p.m., Tuesday, October 4, 2011

TROY -- The mother of a baby prosecutors allege was killed by her husband, the infant's father, testified Tuesday that for a time she did not trust the man after they had an argument over another woman. Melinda Anders McElheny, a defense witness who earlier testified Joseph McElheny did not kill their 4-month-old daughter, was asked about email exchanges on Jan. 17, 2010, the two had over a woman named Megan.

"We had a discussion about that," Anders McElheny said under cross-examination by Assistant District Attorney Christa Book.

"Did you have trust issues with him on January 17, 2010?" Book asked.

"Yes," Anders McElheny said.

McElheny, 32, of Hoosick Falls, faces murder, manslaughter, assault and endangering charges in the May 12, 2010, death of his baby.

The mother also verified that she made a statement to State Police investigators and in it said her husband told her he did not believe in marriage, that she told him his home-based business was not earning them enough money, that they disagreed over how the father fed the baby and that she did not trust him with her car.

Her cross-examination will continue Wednesday.

Earlier Tuesday, an expert witness testified via teleconference that infant Ina Jane McElheny's numerous broken bones were caused by congenital rickets and not by abuse from her father.

Dr. Patrick D. Barnes, a pediatric radiologist from Palo Alto, Calif., said that the 18 fractures found on the baby postmortem happened because the child was vitamin D deficient in the womb and shortly after birth, causing brittle bones.

"Such a baby can get broken bones during diaper-changing and broken ribs just from someone picking her up with their hands on both sides of her torso," Barnes said.

Testimony has been heard that the baby's birth was very difficult, and Barnes said the fractures may also have been caused during the birth process.

Rensselaer County Assistant District Attorney Elizabeth Kennedy got Barnes to admit that congenital rickets is not accepted by the medical community and that babies who suffer broken bones during birth are a very small percentage of all births.

"Well, I can tell you that it is under-reported because doctors don't want to get sued," Barnes said.

Kennedy also asked him about a paper on congenital rickets that he and coauthors wrote for the publication *Pediatric Radiology* that was criticized by several experts.

"Yeah, they were tough on me," Barnes said. "They tried to destroy us and are still trying."

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

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

Barnes was a key prosecution witness in the highly publicized 1997 Louise Woodward murder trial in Newton, Mass. Woodward, an English au pair, was convicted of killing a baby in her care.

The defense got a scare Tuesday morning just after Barnes began testifying and said he could not continue after 1:30 p.m. EST because he was subpoenaed to testify in another case. County Judge Andrew Ceresia had jurors leave the room and then confronted Public Defender Jerome Frost.

"You told me yesterday that this witness would be available for as long as it takes," Ceresia said. "If he has to stop before we are finished, I will strike his whole testimony from the record, instruct the county not to pay him and I will sanction your office," Ceresia said, stunning the defense and the defendant's family sitting in the court.

Barnes resolved the issue by offering to make arrangements to postpone his other appointment.

Reach Bob Gardinier at 454-5696 or [bgardinier@timesunion.com](mailto:bgardinier@timesunion.com).

[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] 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 is arraigned in the death of his baby on Friday, Aug. 13, 2010, at Rensselaer County Courthouse in Troy, N.Y. He stands with public defender Jerome Frost. (Cindy Schultz / Times Union)

[Photo] Joseph McElheny of Hoosick Falls is arraigned in the death of his...

## Defense rests in infant death case

Jurors are shown footage of father playing with daughter

By ROBERT GAVIN Staff writer

Updated 09:54 p.m., Wednesday, October 5, 2011

TROY --- The defense rested its case Wednesday on behalf of a Hoosick Falls man accused of killing his 4-month-old daughter last year, but first showed jurors video footage in which Joseph McElheny playfully told his baby, "I'm gonna get ya!"

Family members of the deceased baby, Ina McElheny, alternated between smiles and tears as the video clips were played by attorney Gregory Cholakis before Judge Andrew Ceresia in Rensselaer County Court.

"Say hi, Ina! Say hi!" Joseph McElheny, 32, told his daughter on one clip. He's now facing charges of second-degree murder, manslaughter, assault and child endangerment,

On another video, the father made smooching noises as he repeatedly kissed his daughter, telling her, "I'm gonna get ya! I'm gonna get ya! Here I come!"

The videos were the last evidence played at the trial. The jury will start deliberating following summations Thursday.

The defense was said to have played the videos to try to show Ina McElheny showed no signs of abuse in the months before her death on May 12, 2010. It also showed a father displaying affection toward a child he stands accused of murdering.

The prosecution earlier played video clips of McElheny and the baby while cross-examining Melinda Anders McElheny, the defendant's wife and Ina's mother.

Assistant District Attorney Christa Book quizzed the wife about two red marks on her late daughter's thigh.

The wife said she had been at work when her husband informed her Ina fell off a changing table. She said she spotted the marks when she came home.

That was one of several past incidents Book asked about. Another time, the wife testified, she heard a thud and her baby crying as her husband was on the stairs. She said she asked her husband if the baby hit the floor; he said no. Another time, she understood her daughter had marks after being stepped on by the family dog. The wife testified that she never contacted police or doctors at those times.

Book also asked Anders McElheny if her husband ever held their daughter by one of her arms.

"I don't know. I don't recall," the wife replied. She said her husband would "balance the infant with one of her arms." Later, during questioning from Cholakis, she said Joseph McElheny never held the baby by an arm.

Book also questioned Anders McElheny about alleged inconsistencies between her testimony and prior statements to police.

Book noted the wife testified, "I remember holding (Ina) one last time" the night of her death, but told police she did not hold the baby.

According to Book, Anders McElheny told police, "I kept wanting to take my baby and hold her and Joe said it would make her uncomfortable -- let her sleep." The wife responded, "I don't recall those being my exact words."

Book asked the wife if she also told police "I don't know if Joe hurt her on purpose or by accident, but that is something we should let science figure out."

Anders McElheny had previously testified her husband did not kill their daughter. Prosecutors wanted to play a tape to raise the possibility her testimony contradicted what she told police on tape.

But Anders McElheny said her words on the tape were being misquoted. The confusion prompted the judge to twice ask the jury to exit the courtroom. It was so he could listen to the tape and decide if the recording would be admissible.

On the recording, the wife appeared to say: "I don't think he hurt her on purpose. I don't think he hurt her by accident, but that is something we should let science figure out."

Ceresia ruled the audio is "not clear enough" to allow Book to impeach the wife's earlier testimony.

Among other questions, Book asked Anders McElheny why she did not agree to speak to prosecutors during the investigation.

The wife, who had an attorney present, later testified, "My general impression is they are not interested in the truth. They are interested in things that will bolster their case."

She also said she believed any involvement between her husband and another woman, highlighted earlier in the case, would have been "highly unlikely" but she would have preferred he "spend no time with her."

Reach Robert Gavin at 434-2403 or [rgavin@timesunion.com](mailto:rgavin@timesunion.com).

Read more: <http://www.timesunion.com/local/article/Defense-rests-in-infant-death-case-2203948.php#ixzz1arCGO9HW>

<http://www.timesunion.com/local/article/Jurors-to-try-again-in-Troy-baby-death-2213085.php#ixzz1aZUH8ZXw>

# Jurors to try again in Troy baby death

Panel tells judge they are deadlocked on 3 of 9 counts in McElheny case

By Bob Gardinier Staff writer

Updated 11:53 p.m., Tuesday, October 11, 2011

Read more: <http://www.timesunion.com/local/article/Jurors-to-try-again-in-Troy-baby-death-2213085.php#ixzz1anK5Lhtv>

TROY -- Jurors in the trial of [Joseph McElheny](#), accused of killing his infant daughter, were sent home at about 8 p.m. Tuesday after nine hours of deliberations failed to bring a verdict. They'll return at 10:30 a.m. Wednesday for a fourth day of trying to reach a decision on whether they believe McElheny killed his infant daughter or the defense's argument that congenital health issues caused [Ina Jane McElheny's](#) death.

Around 4 p.m., jurors told Rensselaer County Judge [Andrew Ceresia](#) that they were deadlocked on three of the nine charges they must consider and thought they might not reach a unanimous verdict. Ceresia then read them an [Allen Charge](#), a prepared legal statement that urges them to try to continue to come to an agreement. Such charges are usually only given once to a deliberating jury. During the reading of the charge, one juror openly shook her head "no" to some of the statements, indicating that she and possibly others felt the panel was at an impasse.

They then returned to the jury room and continued to deliberate into the evening, and at times loud arguments could be heard in the court hallway coming from the room. They also asked for a read-back about reckless endangerment.

Over the past three weeks, jurors have heard testimony from three medical experts for the prosecution and three for the defense. There was no physical or forensic evidence offered connecting McElheny to the death of his 4-month-old daughter, and both he and his wife, [Melinda Anders McElheny](#), gave statements to police and testified during trial that the baby was not abused at home. Many of their friends and co-workers also testified for the defense and all said the couple were good parents and the child was always happy and looked well.

McElheny, a stay-at-home dad who was nearly the sole caretaker of the child, according to testimony, faces charges of second-degree murder, second-degree manslaughter, assault and endangering the welfare of a child. The baby died May 12, 2010, at [Albany Medical Center Hospital](#) after being found unresponsive at the couple's Hoosick Falls home.

An autopsy showed the child had 18 fractures in various stages of healing and a perforated small intestine that led to an infection and death.

Defense attorney [Gregory Cholakis](#), in closing arguments Thursday, pointed out that the parents took 1,500 pictures and more than 200 videos of Ina Jane over her life span.

"There was never even five days that went by that this child was not photographed and seen out visiting Staples, Stewart's or the bank, and on Facebook," Cholakis told jurors. "He even had a webcam in the baby's crib ... and would anyone who is harming their child do that?"

"Sure, they said there are 1,500 pictures, but they only represent 1,500 seconds of the child's life," said Christa Book during her closing statements. "If you do the math, her life was 11,664,000 seconds long."

Prosecutors have said the baby's broken bones in her legs and ribs were caused by an adult squeezing her torso and twisting her legs, and the perforated bowel was caused by a sharp blow to the abdomen.

Defense experts testified the child had a vitamin D deficiency that caused weak bones and a condition called rickets, which could cause bones to break during normal handling. They also contend the child had a congenital bowel condition called intussusception, a problem with the intestine in which one portion of bowel slides into the next, much like sections of a telescope. They said a blockage led to the perforation.

"Their expert witnesses have all used terms like 'probably,' 'most likely,' 'I would suspect,' 'usually,' and 'I would think so,' " Cholakis said. "My client is kind of a nerdy, tech guy who would rather have an intelligent debate with you than become violent. [Joe McElheny](#) is not a monster."

But Book countered that the father, whom she called a control freak, inflicted the injuries and covered it up.

"She never lived long enough to talk, but if she did, her first word would have been 'help,' " Book said. "He sat there all day long and watched his child die and did nothing about it."

Book also criticized the defense team's expert witnesses, saying that, when pressed, the witnesses could not provide case studies proving their theories. She also noted that all the experts admitted they have not seen a child die of intussusception in at least 26 years.

Reach [Bob Gardinier](#) at [bgardinier@timesunion.com](mailto:bgardinier@timesunion.com).

Read more: <http://www.timesunion.com/local/article/Jurors-to-try-again-in-Troy-baby-death-2213085.php#ixzz1anKCh5sx>



<http://blog.timesunion.com/crime/mcelheny-jury-to-resume-deliberations/9800/>

## **McElheny jury to resume deliberations**

October 12, 2011 at 8:58 am by [Bryan Fitzgerald](#)

[Photo] Joseph McElheny, center, during a break in his murder trial at the Rensselaer County Courthouse in Troy.

Jurors in the trial of Joseph McElheny, the Hoosick Falls man accused of killing his infant daughter, will resume deliberations at 10:30 a.m. Wednesday. They were sent home at about 8 p.m. Tuesday after nine hours of deliberations failed to bring a verdict. Staff Writer Bob Gardinier reports:

Around 4 p.m., jurors told Rensselaer County Judge Andrew Ceresia that they were deadlocked on three of the nine charges they must consider and thought they might not reach a unanimous verdict.

Ceresia then read them an Allen Charge, a prepared legal statement that urges them to try to continue to come to an agreement. Such charges are usually only given once to a deliberating jury.

During the reading of the charge, one juror openly shook her head “no” to some of the statements, indicating that she and possibly others felt the panel was at an impasse.

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[http://www.benningtonbanner.com/ci\\_19100496](http://www.benningtonbanner.com/ci_19100496)

## H.F. man found not guilty in baby's death

Posted: 10/12/2011 10:36:06 PM EDT Wednesday October 12, 2011

**ZEKE WRIGHT** *Staff Writer*

TROY, N.Y. -- Joseph McElheny was acquitted Wednesday on eight of the nine charges he faced relating to the 2010 death of his 4-month-old child.

The Rensselaer County Superior Court jury remained hung on one charge Wednesday, that of endangering the welfare of a child.

The 32-year-old Hoosick Falls resident had faced murder charges that could have resulted in 25 years to life imprisonment. However, after a total of 37 hours of jury deliberation since Friday at the Troy courthouse, Judge Andrew Ceresia allowed a partial verdict on eight charges shortly before 5:30 p.m. -- effectively ending the four-and-a-half-week trial.

The family of McElheny hugged as the not-guilty verdict was read, and his wife, Melinda Anders McElheny, made a statement outside the courtroom that there was "an epidemic in this country" of parents falsely accused of harming their children, and of police, prosecutors, and doctors jumping to "life-changing conclusions."

McElheny was released on his own recognizance after spending 14 months in the Rensselaer County Jail.

The jury of seven men and five women traded dozens of notes with Ceresia throughout deliberations, requesting read-back of witness testimony, charge and legal definitions, as they moved closer to a verdict.

Prosecutors alleged McElheny had physically abused his child and caused her death with a hard blow to her abdomen

in May 2010. Public Defender Greg Cholakis told the jury in closing arguments to distinguish between "scientific fact and medical opinion," and he contrasted the conflicting testimony of expert witnesses called by the defense and prosecution during the trial.

The McElhenys maintained that their child, Ina Jane McElheny, was not abused by her father, and numerous friends and co-workers attested to that on the stand. Entered into evidence were some 1,400 photographs and 200 videos of the baby girl, many originally posted to YouTube.

Anders McElheny testified on the stand that the couple had a second child, born in April of this year, who was taken into protective custody days after birth at Southwestern Vermont Medical Center, in Bennington, Vt., because of the charges and the trial, and that McElheny had never met the child.

Cholakis said that Ina Jane's death was caused by a hereditary intestinal condition, one which Ina Jane's aunt testified to having as a child, and reiterated defense witness testimony to congenital rickets and a vitamin D deficiency as the cause for the infant's multiple bone fractures.

The jury had appeared headed toward agreement on most charges as early as Friday evening.

<http://www.cbs6albany.com/news/-1288397--.html>

## **McElheny juror: Defendant's testimony key**

[CBS6 Staff](#)

2011-10-13 01:13:26

TROY -- Following the acquittal of Joseph McElheny on charges of murder, assault, criminally negligent homicide and endangering, juror Nathaniel Eckstrom spent a few minutes with reporters outside the courtroom. After four weeks of testimony and about 32 hours of deliberations over a fifth week, the jury returned its verdict late Wednesday afternoon.

"Each juror gave his or her view on each of the charges," says the juror. "We didn't rush anybody, we didn't force anybody to come to a decision they weren't comfortable in doing. We didn't try to muscle anybody into coming to a decision they didn't really believe."

"We discussed each of the criteria for each of the charges and made sure everyone had a very clear understanding. When we didn't necessarily have a clear understanding to begin with, we asked the judge to read us back the instructions for that charge and clear up any terminology issues we might have had."

"At one point we were unanimous on six of the nine, but were hung up on criminal negligence, reckless endangerment and reckless endangerment of a child." (He was referring to the last charge against McElheny, which was Endangering the Welfare of a Child). "It was never just one person. There was, I believe, three or four for each of the charges that were not with the consensus." McElheny testified in his own defense and his wife also testified for the defense. "Hearing both Joe and Melinda McElheny speak was highly influential on myself," the juror told reporters. "I believe it had an impact on a lot of the other jurors as well."

Asked whether he believed the McElheny's, Eckstrom said, "On some things." He said watching home videos of the baby influenced his vote on the last charge because "she never seemed to be in any discomfort. There was never any evidence of - at least to me - any clear evidence that she was in pain or being mistreated."

Evidence showed that the girl had eighteen bone fractures, something the prosecution attributed to blunt force trauma and the defense contended was the result of a vitamin deficiency.

<http://www.cbs6albany.com/news/count-1288396-mcelheny-melinda.html>

Melinda McElheny: Parents are targeted

Craig Smith

2011-10-13 00:28:33

TROY -- "I got a whole bunch of comments," Melinda McElheny told reporters Wednesday before reading a prepared statement.

Her husband, Joseph, had just been acquitted on eight of nine charges in a case where he was accused of killing his infant daughter in May of 2010. The jury was deadlocked on one count of Endangering the Welfare of a Child, so the judge declared a mistrial for that one count. District Attorney Rich McNally said that count is not expected to be prosecuted again.

The following is a transcript of what Ms. McElheny said to a group of reporters:

"Our entire family wants to extend the deepest thanks to the Rensselaer County Public Defender, Jerome Frost and his entire team of attorneys and office staff who have treated us with dignity and respect throughout this ordeal.

Most especially, we thank Greg Cholakis. You are our hero and our friend, along with Jessica Zwicklbauer, whose name I just butchered. Thanks also to John Turi, intern Justin, who volunteered his time for zero credit, to Dave, Bill, Art - everyone in the office who pitched in.

I will say there is an epidemic in this country. It is that parents are being accused with alarming frequency of harming their children. Police and district attorneys are jumping to the easy conclusions and are influencing underqualified medical examiners while doing so. Those doctors are relying on old science and pre-conceived ideas, choosing not to seek the input of other, more qualified professionals. They come to life-changing conclusions in the shortest of time frames.

Parents are being targeted, often at the worst moments in their lives by overzealous police and child protective investigators. These investigators use the parents' grief and the memories of their children to coerce them into making statements of self-implication. Most often, the parents want answers even more than authorities do. Instead, what they get are accusations and blame. None of this would be possible without the medical establishment standing by and doing nothing. This is a discussion we all should be having as a society.

Parents are often left unaware of medical complications that may cause damage to their children. In protecting themselves from liability, doctors are acting as conspirators in a crime against families. For example, every parent of macrosomal - or, a large-for-gestational age baby - should be informed that these LGA babies can suffer from health complications such as an inability to properly metabolize food and nutrients. We should have known this. People like Jerome Frost, like Patrick Barnes, like Harold Buttram dedicate their lives to truth, to protecting families against the destruction of false allegations, and people like Carole Jenny use other people's pain to further their own agendas.

Paid or unpaid, qualified or not, people who speak in absolutes and who assume the worst in others before knowing anything about a child's medical or social history should not be given the designation "expert". People who refuse to examine alternatives when confronted with the truth, who hold their positions in direct contradiction to the application of common sense should not only be disregarded but removed from any position of authority.

And a special message to you, our friends in the press:

Even though some of you have sat here for days and weeks on end, taking notes religiously, almost none of you have gotten the facts completely straight. While I understand this as a human being, I'm not entirely certain that you understand the potential impact of reporting inaccurately. So, let me tell you the impact. It is entirely possible for a state worker to walk into a court room with a false statement from a police officer, a report of gossip from a neighbor and or a poorly-written newspaper article and to seize custody of a child. Yes, it really happens. Never underestimate the power of your misspeech. Things you say today, whether it is to sell more ads, earn more exposure or simply due to carelessness, can have a lasting impact on the life of a small child and her extended family.

Finally, we wish to thank all those people, family friends and strangers who have extended their prayers and kindness over the last seventeen months. This is far from over. We still need your prayers and concern, but we would ask that you turn your attention to helping us to inform and to educate the next family who may fall prey to this epidemic. We need to shine a light on child abuse but not at the expense of tearing apart innocent families and not with a blind eye toward the injustice that results from jumping to conclusions. We can only find the truth by pursuing it together with our minds open and a spirit of teamwork. There is no more room for absolutes."

Asked what she thought of her husband's acquittal, Ms. McElheny laughed and said, "I think it's great. I need to go pick him up."

[http://saratogian.com/articles/2011/10/12/news/doc4e960ccb03860086457231.tx](http://saratogian.com/articles/2011/10/12/news/doc4e960ccb03860086457231.txt)

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## Jury acquits Joseph McElheny of murder, manslaughter

The Record - Thursday, October 13, 2011 - By Katie Nowak Roberts

TROY — After close to 35 hours of deliberation, jurors acquitted Joseph McElheny on eight of nine charges Wednesday in the May 2010 death of his 4-month-old daughter, Ina.

Jurors found McElheny, 32, of Hoosick Falls, not guilty of murder, manslaughter, criminal negligence, reckless endangerment and four counts of assault. After six hours of deliberation Wednesday and a request to hear the definition of the charge, jurors remained deadlocked on the final count, endangering the welfare of a child, leading Judge Andrew Ceresia to declare a mistrial on that charge.

The prosecution and defense will meet next week to discuss how to proceed on that count, a misdemeanor. District Attorney Richard McNally said that it would most likely be dropped, as McElheny has already served more than a year in prison, the maximum sentence for a conviction on that charge.

As the jury foreman read each “Not guilty” verdict, McElheny’s family, who were present every day of the nearly month-long trial, wept with joy. One family member whispered to another, “It’s over,” wiping away tears. After Ceresia declared McElheny be released, McElheny bear-hugged his attorney, Gregory Cholakis, and embraced his wife, Melinda.

Outside the courtroom, Melinda McElheny sang the defense’s praises and said in a written statement that its medical witnesses helped discredit what she called an “epidemic” of parents being wrongly accused of child abuse.

“Parents are being targeted, often at the worst moments in their lives, by overzealous police and child protective investigators,” McElheny said. “These investigators use the parents’ grief and the memories of their children to coerce them into making statements of self-implication. Most often, the parents want answers even more than authorities do. Instead, what they get are accusations and blame. None of this would be possible without the medical establishment standing by and doing nothing. This is a discussion we all should be having as a society. ... We need to shine a light on child abuse, but not at the expense of tearing apart innocent families, and not with a blind eye toward the injustice that results from jumping to conclusions.”

The couple has another daughter, Murphy, born in April, who was seized the day after she was born by the Vermont Department of Children and Families pending the outcome of this trial.

Asked for her immediate reaction to her husband’s acquittal, McElheny said it was “great.”

“I need to go pick him up,” she said with a smile.

Prosecutors claimed that McElheny repeatedly abused Ina throughout her short life, breaking 18 of her bones and administering a blow that led to a fatal abdominal infection. The defense argued that Ina suffered from a host of medical conditions, including rickets and an intestinal disorder known as intussusception, that caused her injuries and ultimately the torn bowel which initiated her infection.

Dueling medical witnesses attempted to bolster each of those theories, but juror Nathaniel Ekstrom

said it was the testimony of both Joseph and Melinda McElheny that had the biggest impact.

Seeing how Ina's parents conducted themselves on the stand played a large part in his decision to find Joseph McElheny not guilty, Ekstrom said, as well as the video evidence of Ina herself.

"She never seemed to be in any discomfort," he said. "There was never ... any clear evidence that she was in pain or being mistreated."

Cholakis also cited the videos as one of the strongest points in his case, adding that that visual evidence coupled with numerous character witnesses who extolled on the virtues of McElheny's parenting helped his client walk free. He said that Joseph and Melinda McElheny have "maintained an incredible dignity" throughout the last 17 months.

"Can you imagine, you haven't even buried your child, and you can't stop for five minutes to even grieve about it because you have the threat of indictment hanging over your head from day one?" Cholakis said.

As for that indictment, McNally said he stood by his office's actions. Commenting on the length of the jury's deliberation — the longest he'd seen in his 22 years as an attorney — McNally said in cases where medical evidence is the biggest form of proof, juries often struggle to process it all.

"We did the right thing, and we believe we did the right thing. We understand what our burden is and what our obligations are, and we felt that we had met those," he said. "... The jury saw the proof not sufficient to convict, and we respect that. And that's our system, and I make no excuses for that."

The prosecution and defense will meet again Tuesday morning to determine the course of action on McElheny's remaining charge.

## **Juror #10 in McElheny trial blasts District Attorney**

Posted at: 10/14/2011 5:54 PM

Updated at: 10/14/2011 6:35 PM

By: Beth Wurtmann

TROY - Also known as juror number 10, Tina Price said Friday that she wasn't treated well after the jury delivered a slew of acquittals in the Joseph McElheny murder trial. "This was unacceptable behavior for a District Attorney and we needed a new DA," she told reporters outside the courthouse.

Price said when she spoke to District Attorney Rich McNally after the verdicts Wednesday, he testily inferred that the jury had wasted its time deadlocking on one charge.

"He said, 'Well, why did you bother, you shouldn't have even bothered.' I told him, 'I'm sorry you felt that way,' and I went downstairs and talked to the defense the attorney, like I was just planning to talk to him. I just wanted to get answers why they were using our taxpayers money," Price said.

The District Attorney responded that the brief exchange was completely the opposite.

"What was surprising, she came in and complimented us, complimented our office words to that effect," Richard McNally said.

It's a case of 'he said, she said.' But it turns out, the juror delivered her comments standing next to McNally's opponent in the next election, Joel Abelove, who said this is not about politics.

"There's gonna be segments of the population that believes that politics is behind it, but I think she was pretty convincing," Abelove said.

Someone else who's convinced, is the juror's boyfriend, Carol Gottstein, Jr., a GOP supporter who endorsed Abelove last August on the candidate's Facebook page.

Gottstein: "I'm not active in politics this year not active in any campaign and I just met Mr Abelove."

Beth: "You're not motivated here by politics?"

Gottstein: "No."

That's not what the District Attorney said is happening. McNally said it's inappropriate for his opponent to appear with a juror who has been through a long and difficult trial. "I'm concerned that she's being exploited and if that's the case; I don't know if that's the case, that's my concern," he said.

The juror said she is not being exploited here, that she just found out that the D.A. was up for re-election, and because of her experience at the trial, now endorses his opponent.



