



OFFICE OF THE STATE CORONER FINDINGS OF INQUEST

CITATION: **Inquest into the death of
Luke Anthony Borusiewicz**

TITLE OF COURT: Coroners Court at Cairns

FILE NO: 2009/467

DELIVERED ON: 16 April 2013

DELIVERED AT: Cairns

HEARING DATE(s): 25/7/2012 - 27/7/2012;
27/4/2012; 25/1/2012; 18/10/2011

FINDINGS OF: Kevin Priestly, Coroner

CATCHWORDS: Coroners, inquest, child in foster care, fall from bed while unsupervised, severe head injury, no external signs of injury, child thought to be sleeping, later discovered unconscious.

REPRESENTATION:

Counsel Assisting: Ms S Williams i/b Northern Coroners Office

Mr M Borusiewicz: Ms N Wilson, Counsel i/b BE Law

Ms J Hurlstone:
Lawyers: Mr M Dalton, Counsel i/b Cuthbertson & Co

Department of Communities: Ms K Carmody, Counsel i/b Dept of Communities

Life Line (Uniting Church): Ms S Gallagher, Counsel i/b Minter Ellison Lawyers

Introduction

Role of the Coroner

The role of a coroner as well as the powers and limitations about how an inquiry can be conducted are prescribed in the *Coroners Act 2003*.

A Coroner is required to make findings as to how a person died, when the person died, where the person died and what caused the person to die.

A Coroner is precluded from including in his findings any statement or comment that a person is or may be guilty of an offence or civilly liable for something (s.45(5) and s.46(3)).

A Coroner may, whenever appropriate, comment on anything connected with a death investigated at an inquest that relates to public health or safety and ways to prevent deaths from happening in similar circumstances in the future.

Naming Conventions

The names of children in foster care other than Luke and the name of the foster carers are not for publication. People have been given a pseudonym to protect their identity. A twelve year old girl is given the identity G12 and so forth. The foster carer of Luke at the time of his death is referred to by her first name only.

Brief Circumstances of Death

On 12 January 2009 Luke was 2 years and 2 months of age and in foster care with Joy. She was 74 years of age and had the care of three other children in foster care. Luke had a fall while Joy was having a 'lie down'. Afterwards, when Joy checked on Luke, he appeared to be sleeping. It was not until later in the afternoon when Joy attempted to wake Luke was it discovered that he was unconscious. Luke was taken by Ambulance to Cairns Base Hospital and died on 18 January 2009.

Luke's death was the subject of a coronial investigation that culminated in an inquest.

Although I will formally record the evidence relevant to when, where and what medically caused Luke's death, there are no issues about these matters requiring further detailed investigation. The focus of the inquest was on 'how' Luke sustained the injury that resulted in his death and what might be done to prevent deaths from happening in similar circumstances.

Child Safety Services

Child Safety Services (CSS) is responsible for protecting children who were harmed or at risk of harm. When parents are unwilling or unable to protect them, child protection services may be required. CSS officers will investigate and assess the protection and care needs of children. There are a number of different forms of intervention available to CSS when a child is in need of protection and care. Intervention with Parental Agreement allows CSS officers

to work intensively with children and their families to meet their protection and care needs while they remain in the family home. However, if it has been assessed the child is in need of protection and the parent is not able and willing to protect the child, CSS may apply to the Children's Court for a Court Assessment Order or a Child Protection Order. There are a number of different types of Child Protection Orders. Some involve a grant of custody or guardianship of a child to the Department for the duration of the order.

Luke's Contact with CSS

Luke was born on 22 September 2006 and initially remained in the care of his parents, Michael Borusiewicz and Jacqueline Hurlstone. CSS in Cairns had contact with Luke in late 2007 and early 2008 but the family moved and was unable to be located. Luke came to the attention of CSS again in Townsville on 5 July 2008 when he was taken into care. He had a number of short-term placements. A protection order was obtained for short-term custody to the Chief Executive of CSS for a period of 12 months. Luke was placed in the foster care of AB in Cairns from 22 July to 24 December 2008.

During Luke's period in care with AB, he underwent numerous specialist medical assessments. Initially he presented with a continually runny nose, lack of capacity to feed and apparent developmental delay. The runny nose continued for a few months as he had a viral infection for which his parents had sought medical assistance before he entered care. An Occupational Therapist concluded that had global developmental delays, more severe in the fine motor, cognitive and speech domains. Paediatric assessment of Luke revealed he was tall and skinny with height at the 75th percentile and weight at the 25th percentile. The assessment stated Luke had global developmental delay of unknown origin but likely due to environmental neglect. A hearing test showed significant speech and language delay. An ENT assessment and subsequent surgery was performed to address 'glue ear'. He underwent an adenoidectomy and bilateral grommets were inserted.

Luke also initially entered care with significant behavioral issues that appeared to improve with stability in his care arrangements.

There was a medical assessment on 30 October, after a period of respite care with Joy, where foster carer AB reported to the reviewing doctor that she had noticed a big improvement in Luke while in Joy's care. His speech had improved, he was much more vocal. Fine motor skills had improved. His weight had improved and he'd started toilet training. Luke continued to have speech therapy and he attended the Early Intervention Developmental Playgroup.

On 23 December, the placement with the foster carers broke down due to the foster carer's own personal circumstances. There were no issues peculiar to Luke that precipitated the change.

On 24 December Luke was placed with Joy. The plan was to facilitate contact with his parents and transition Luke back into parental care under the supervision of CSS while Luke was in Joy's care. At separate times, Mr

Borusiewicz and Ms Hurlstone had supervised contact with Luke, facilitated through CSS. Mr Borusiewicz had two hours on each Monday at Muddy's playground on the Esplanade. Ms Hurlstone had two hours on each Wednesday at the same place. Luke was still in nappies and in need of toilet training.

Families Plus

Families Plus Placement and Support Services (Families Plus) provided foster placements for children classified as having moderate to high needs (as assessed by CSS). The role of Families Plus was to recruit, assess, train and support carers. It was funded by grants from Department of Communities. Once a foster carer is approved and has entered a foster care agreement with the Department, Families Plus will allocate a Placement Support Worker (PSW) to support the carer throughout the placement.

Joy's Background as a Foster Carer

Joy was 74 years of age and had the care of four children, including Luke, living with her under foster care arrangements. There was a 9 year old girl (G9) with Joy since October 2008, a 3 ½ year old boy (B3) with her since January 2008. Luke came into her care on 24 December 2008. A 12 year old girl (G12) was an emergency placement on 11 January 2009 for a few days.

The family lived in a 3 bedroom house. Joy slept in a smaller bedroom to herself. The larger bedroom had three single beds. The third bedroom slept one child.

Prior to Joy starting as a foster carer in 2006, she underwent a rigorous review of her personal history and capacity to care for children including those with behavioral issues. Ms Sheehan, previously a Team Leader at Families Plus, performed the initial assessment and recommended Joy to the Department of Communities as a foster carer. The process involved three two-hour interviews with Joy at her house. She recommended Joy based on her passion for children, the skills she learned through teaching, the existence of a support network, the state of her home, her general availability and her ideas for how to manage multiple children and meet their needs (amongst other things). I considered summarizing the information contained in the report of Ms Sheehan and her analysis of Joy's suitability. However, given the importance and comprehensive nature of the information provided, I have attached the report (appropriately redacted). The reasons for recommending Joy as a foster carer are evident from perusing the report. The Department of Communities approved Joy as a foster carer.

Since the initial assessment, Ms Sheehan had contact with Joy over the years and always found her to be a very capable carer who was committed to children and had a very good understanding of how to look after those in her care. She felt that Joy's experience as a teacher equipped her well to be a carer.

Marie Olsen was a Placement Support Worker with Families Plus from June 2006 and responsible for providing support to Joy in the two years prior to

December 2008. She had frequent and regular contact with Joy and offered the following views about her capacity to care for foster children:

‘From my observations of Joy I believe that she was a very good carer who was very willing to help by accepting children into her care. She was also assertive and would not hesitate to let us know if she was having difficulties with any child or needed further assistance. I believe that Joy was aware of the supports available to her, including her PSW, the Agency after hours on call service, the child safety officers ('CSOs') assigned to the children and the children's past carer's. I recall that Joy also had a friend who babysat on occasions. I believe that Joy used these supports and resources as necessary.

Joy cared for children of varying ages and I recall that she generally coped very well. My recollections of visiting Joy's home are of a happy household. When I visited and had discussions with Joy I recall that the children were happily entertained watching children's movies or television in the living room. Joy's home was open plan and I always had the opportunity to observe how the children were going. Had I noticed that Joy or any child were having difficulties I would have offered support and discussed the issue with the appropriate person which would have been Joy's PSW or the child's CSO. ‘

Colleen Lowe was a PSW with Families Plus and in that capacity, had contact with Joy from August 2008 to early 2009. During that period, Joy predominantly took on short term, emergency and respite placements. Ms Lowe was responsible for supporting Joy and had contact with her regularly including home visits. There was also regular telephone contact as well as meetings while dropping off and collecting children from her house. Based on these interactions, Ms Lowe reported:

‘I recall that over the time I was with the agency, Joy cared for several children with varying care needs including some children whose regular carer's had difficulty managing their behavior. My impression of Joy was that she was a capable lady who genuinely enjoyed caring for children and spending time with them. I had no concerns regarding Joy's ability to meet the physical care needs of the children in her care by providing appropriate clothing, food, shelter, school equipment and things of that nature, While Joy did not drive, she managed very well by taking the bus, including taking the children on outings. I was impressed with Joy's insight into the reasons for problem behaviors exhibited by some of the children. By that I mean that she seemed to appreciate the impact of past traumas and was understanding of the children's behavior without showing her frustration to the same extent as I observed from other carer's in similar circumstances, from what I can recall. I observed that

Joy was able to control her emotions well when children behaved in a challenging fashion. I recall that Joy was very welcoming and engaging in her home, the children had appropriate routines and that Joy set appropriate boundaries for behavior.'

She also reported that Joy was not reluctant to discuss any problems or ask for help.

Jeanene Lynam was the Service Manager at Families Plus and had worked for that organization since August 2005. She had over 27 years experience with Child Safety before joining Families Plus. She reviewed the Placement Register for Joy and was able to inform the court that Joy had cared for over 35 children over almost 50 placements between November 2006 and January 2009 with regular overlaps of children with moderate to high needs.

During the relevant period, the foster care agreement between Joy and the Department of Communities showed that Joy was approved to have four children placed with her in foster care.

I also had the opportunity to review the medical records from Joy's General Practitioner. There was nothing noted that might affect her capacity as a foster carer.

The Weather

The weather had impact on the events of 12 January 2009. Ex tropical cyclone Charlotte crossed the south east coast of the Gulf of Carpentaria early that morning and was headed across Cape York causing torrential rains (200 to 300mm) with flooding on the east coast around Cairns. A severe weather warning was in place for the north tropical coast.

The Narrative

The narrative relevant to Luke's death starts when he was placed into foster care with Joy on 23 December 2008.

At 11am on that date a General Foster Care Team Meeting was convened at Families Plus to address the break down of the foster care arrangement for Luke. A new foster carer was required. As Joy had provided respite care for Luke in October of that year, she was considered. Her present foster care commitments were considered and it was concluded that a short term placement of Luke with her was appropriate. The Service Manager Ms Lynam said that in identifying Joy, the meeting considered the fact that she had fostered numerous children with moderate to high needs on previous occasions and the combination proposed was appropriate and within the scope of her foster care agreement. Ms Lynam did concede, in her statement, it was difficult to find a carer for Luke so close to Christmas. The other foster carers under consideration were unable to care for Luke due to Christmas plans.

Ms Lowe was a party to that meeting and shortly afterwards, telephoned Joy to ask if she would accept Luke. Ms Lowe made a file note of that conversation and it is attached to her statement. Joy declined. The file note records Joy referring to her past experience with Luke, her belief that Luke needed constant supervision and her reluctance to accept children not toilet trained as she was too old to be bending over changing nappies.

Later that day, about 3pm, another PSW at Families Plus Ann Woodhouse telephoned Joy, unaware of the earlier contact between Ms Lowe and Joy. Ms Lowe was not in the office that afternoon. On this occasion Joy accepted the placement of Luke. Ms Woodhouse said she did so without any sign of reluctance. Arrangements were made for Luke to arrive at Joy's on the afternoon of 24 December.

On 24 December Luke started in Joy's care under a foster care arrangement.

On 30 December PSW Ms Lowe had contact with Joy about the behavior of a boy in her care. During that conversation, Joy mentioned that Luke was doing well and G9 was getting along with him. Joy said she was willing to continue caring for Luke.

On 3 January 2009 Suzan Vout was the on call PSW for Families Plus when she received a text message and then spoke with Joy on the telephone. Joy reported a child in her care had defecated in a neighbour's back yard and on the driveway, then smeared it with paper towels. This had occurred many times in the recent past and the neighbours had been to her house to complain. Joy said that she could not deal with that behavior and asked that the child be removed from her care. The child told Joy he had been in 6 placements before her and that his father had said if he continued to be kicked out of foster care, he would be returned to live with him. Joy said the child fully appreciated what he was doing was wrong and was intent on continuing his behavior. Joy also expressed concern that other children such as Luke may think the behavior was funny and copy it.

On 5 January Mr Borusiewicz said (in a statement to police) that he noticed some scratches on Luke's face and told the child safety worker about them. He said he later telephone Child Safety and said that he didn't want Luke with Joy, she had too many children, they picked on Luke and he ends up getting hurt. Ms Bartley, the CSO with Luke that day, reported that Luke had couple of small short scratches that had scabbed near an eye. She said that Joy thought Luke had fallen a couple of days before. Joy said he appeared to have balance problems. Ms Bartley said, from her observations, he was generally quite awkward and fell over often but not much more than most 2 year olds.

On 7 January CSO Ms Bartley collected Luke for contact with Ms Hurlstone at Muddy's. Later PSW Ms Lowe visited Joy and collected the misbehaving boy to take him to a new placement. Ms Lowe saw Luke during the visit. He appeared happy and content, playing with the other children. However, she noted that Luke fell over a few times and said "Ouch". Joy said that this was

his new favorite trick; he did it all the time. Luke appeared to be enjoying himself, laughing as he fell down.

On 8 January Ms Sheehan, Service Manager at Families Plus, recalls Joy telephoning to update her on Luke's progress. Ms Sheehan made notes of the conversation and they are attached to her statement. Joy reported to Ms Sheehan that Luke had settled in well, Joy had spent time with him explaining the rules of the house which he picked up quickly and she expressed a wish to continue caring for Luke until reunified with his father, however long that took.

On Friday 9 January, Mr Borusiewicz said in his statement to police that he telephoned Joy to speak to Luke but was told he was asleep. Mr Borusiewicz said that Joy told him that Luke had a bruise on his backside and she had informed Child Safety.

At about 5am on Sunday 11 January Joy was contacted and asked to take an emergency placement of G12. Joy agreed to the placement until Wednesday 14 January when alternative arrangements would need to be made.

Monday 12 January 2009

Joy woke early with the children and prepared them breakfast. All of the children had a bath after breakfast and dressed for the day.

At about 8.30am a boy aged 4 (B4), for whom Joy regularly provided day care, arrived.

At about 9.30am CSO Ms Bartley arrived to collect Luke to take him for a contact visit with his father. Ms Bartley recalls a general conversation with Joy about Luke's antics including his jumping between beds and a fall the day before in which he bumped his head on the bed frame. Ms Bartley felt Luke's head, noticed a bump but Luke didn't flinch when it was touched. Joy said that Luke didn't understand that he shouldn't be jumping on the beds. Ms Bartley responded to the effect that it was pretty normal behavior for little boys.

Ms Bartley left with Luke to meet Mr Borusiewicz.

At about 9.38am (as reflected in phone records), PSW Ms Lowe from Families Plus was working from home due to local flooding and telephoned Joy to discuss arrangements for G12. Ms Lowe noted that Joy was 'a bit under the weather'. Ms Lowe told the court there was no suggestion Joy was particularly unwell or required any assistance. If there was, it was available and would have been provided. Joy told the court that the term 'under the weather' was not a term she used and assumed it was an interpretation of the words she might have used such as 'a bit sick'. Joy conceded in examination that she never told Ms Lowe she was so ill that she couldn't look after the children.

Local flooding proved an insurmountable obstacle to Luke and his father meeting. Ms Bartley was in contact with Mr Borusiewicz on a mobile phone. At

one point, she placed the phone near Luke so he could hear his father. Ms Bartley returned Luke to Joy, arriving about 11am. Ms Bartley walked inside with Luke and left him with Joy. On leaving, she heard Luke start crying. He had cried when last dropped off so Ms Bartley didn't think any more of it.

Joy said that after Ms Bartley left, Luke was upset. She took him to his bedroom and changed his nappy. She recalls the phone ringing and leaving Luke with G9. Mr Borusiewicz said he telephoned and spoke to Joy at 11.04 am. According to Mr Borusiewicz, Joy reported that Luke had a tantrum and had gone to bed. The timing of the call is consistent with this sequence of events.

In her statement to police, Joy said after Luke calmed down when Ms Bartley left, she had a lie down because she was feeling ill. In her evidence at the inquest, Joy recalled a phone call from Mr Borusiewicz. At the end of that call, she saw G9 lying down with Luke, reading to him.

In her statement to police, Joy said she got up about 1pm or 1.30pm, walked past Luke's bedroom and saw him asleep on his bed. However, Mr Borusiewicz telephoned Joy again about 1.35pm. He spoke with a little boy who said that Luke was asleep. Presumably Joy was asleep otherwise she would have answered the phone. Therefore, it is more likely Joy woke after 1.35pm.

During the course of the early afternoon, Joy walked past the bedroom and saw Luke sleeping in the same position the whole time. She said that Luke generally slept a few hours each day. During this time the other children were playing and watching television. It was raining heavily outside so the children had settled down to indoor activities. Joy 'pottered' around the house but spent most of the time lying down. In evidence, Joy described 'bouts' of an upset stomach with occasional vomiting after which she needed to lie down. In evidence at the inquest, Joy told the court that she had eaten little in the day before 12 January, as she couldn't keep anything down, not even water (1/71). However, she was able to drink soda water.

In the a further statement dated 29 February 2012 Joy said that she had been unwell for a few days before 12 January, she thought it was a stomach bug but later found out a change in medication was making her unwell. That issue was resolved on attending her general medical practitioner a couple of days later.

When Joy gave evidence about her 'lie down' and movements about the house, it remained unclear whether she slept through from shortly after 11 to 1.30 – 1.45 or whether there were intermittent periods of sleep in between which she got up and pottered about briefly. The lack of clarity is likely to due to her being unwell.

Between 1.30 and 1.45pm, 2 CSS officers, Werner Rindlisbacher and Samantha Simeonidis, arrived to collect G12 and take her to an interview with police. Mr Rindlisbacher recalls Joy saying she did not feel well. It was a short

conversation. Ms Simeonidis did not recall that conversation or notice anything out of the ordinary about Joy. G12 was returned to Joy's sometime after 3.35pm (the time when a police interview was concluded). Pat Anderson, CSS Manager, stated that on return from Joy's, neither of the CSS officers reported any concerns about Joy's health.

In her statement to police, Joy said that at about 4.30pm, she decided to wake up Luke. However, the evidence of Mr Borusiewicz was that he telephoned Joy at 4.43 (as reflected in his phone records) and Joy told him Luke was still asleep. At the hearing, Joy said she did not recall a telephone call from Mr Borusiewicz although it could have occurred.

In any event, Joy went into the bedroom and found Luke non-responsive with eyes half open and teeth gritted. Joy conducted a quick assessment, checking his breathing and pulse. His breathing appeared shallow. An ambulance was called at 5.04pm. Joy remained with Luke until paramedics arrived. She made alternative arrangements for the care of the other children and went with the ambulance to Cairns Base Hospital.

Joy recalled asking the children what had happened to Luke. G9 told Joy that she was washing her hands in the bathroom when she saw Luke fall off the bed (T1-72/73). It was unclear when this conversation occurred. Joy thought it happened on her return from hospital that evening. However, the ambulance and hospital records show a fall was part of the admitting history. Joy told the court that she may have considered that the likely scenario in light of Luke's history of using his bed as a trampoline.

On admission to the Emergency Department, Luke was ventilated. He had sustained a serious head injury. Investigations revealed a fractured skull, a subdural haematoma and brain oedema. An emergency craniotomy was performed. Post-operatively, Luke required continued ventilation and his condition did not improve. He died on 18 January 2009.

Dr Paull Botterill, Forensic Pathologist, conducted an autopsy and confirmed that Luke died due to the head injury. Dr Botterill detailed the findings of his internal examination and noted the absence of any external signs of injury.

In his report and in evidence at the inquest, Dr Botterill said that the nature of the head injuries was consistent with a fall onto a metal bed frame and then fall onto a lino floor. He also said the injuries could be caused by a child throwing himself back against a metal bed frame as well as throwing his head against a door. Of the possible scenarios, Dr Botterill thought a fall from height onto a hard surface was more likely to cause skull fractures because of the opportunity for greater velocity. He said a fall was more likely to cause the injuries than head contact with a hard surface during a tantrum.

As to the relationship between early detection, timely intervention and survivability with respect to Luke's injuries, Dr Botterill was unable to offer an opinion beyond stating the general principle that the earlier the assessment and surgical intervention, the better the chance of survival. He said the

surgery performed on Luke, an emergency craniotomy, necessarily altered the pathological features that might have enabled him to give a more specific answer.

Dr Botterill reported that there was no evidence of any injuries suggesting mistreatment of Luke.

Forensic Examination of the House

A forensic examination was conducted of Joy's residence on 13 January for any sign of bloodstains in the living room and Luke's bedroom, in particular, the bed and nearby floor areas. No items of forensic value were found. Given the absence of any external sign of injury as reported by Dr Botterill, that outcome is consistent.

Police Interviews with Child Witnesses

Police officers interviewed the children on 13 January about their recollection of events during 12 January 2009.

G9 initially reported to police that after Luke's tantrum on returning home, she took him to the bedroom and then to the toilet. While she was washing her hands, she saw Luke push himself off the bed and bump his head. She said as soon as she saw him roll back, she rushed to try and save him from 'not falling off the bed' but missed. His eyes were closed and she thought he was unconscious or something. G9 said she lifted him up and put him on his bed. She thought he was 'like sleeping or knocked unconscious' so she tried everything – getting a flannel and wiping it over his face, calling his name to wake him – but he wouldn't wake. G9 said that she wanted to tell Joy but didn't want to wake her up because she was sick too.

Later in the interview, in the course of a longer narrative and in the context of what appears to be a continuation of a temper tantrum by Luke, G9 said:

'...he was kicking and then he was laying down like this and then going like this like that and kept on doing that then I'm like Luke stop it this is ridiculous so I walked out and I'm like no I'm not going um I'm just going to ignore you so I walked out and he kept on getting um more angry and angry and kept on jumping out of his room running and like running to me so I lifted him up and I placed him on his bed and like Luke stop and then I, I then I walked out cause I needed to go back to the toilet and then he then he kept on running out of his room so I put him on his bed he kept on kicking and then I needed to go to the toilet so I went to the toilet and then that as soon as I washed my hands that is when it happened that's was when he was laying on his bed kicking his legs rolled over and smack the end of his head and then he just laid on the floor like this and then I felt if he was breathing I felt his heart and it was still pumping so that when I thought he was like unconscious or something ...'

She later referred to Luke 'not calming down', falling out of bed and 'knocked himself' after which 'he was just quiet'.

Later again G9 referred to Luke continuing a temper tantrum on his bed while she was washing her hands. She saw him rolling on the bed and 'raced into the room', tried to catch him but missed him. Luke rolled off, banging his head on the edge of the bed and the back of his head on the ground.

G9 spoke about G12 being present while attempting to wake Luke.

G12 was interviewed. Initially G12 was asked about who slept in which bed including Luke. During the course of that line of questioning, she volunteered that Luke jumped on the beds. G12 later described G9 as playing with Luke while he was asleep and G12 told her to leave him alone. G12 then relates a conversation with G9 that appears to question whether Luke is alive and there is a reference to him still breathing and attempts to wake him. G12 said that Joy was asleep at this time. It was only later that Joy woke and attempted to wake Luke. Then the ambulance came and took Luke to the hospital.

Again, using the technique of a longer narrative, G12 spoke more extensively about the events of the day starting with breakfast that morning. During the course of this part of the interview, there is some reference to Luke falling down. G12 seems to place herself in the bathroom washing her hands with G9 when she saw Luke fall down on the bed and G9 run to help him. G12 said she saw Luke fall backwards and hit his head. She also reported G9 lifted and carried Luke to his bed.

I note that English is a second language for G12. So notwithstanding her age, the conversation is broken and difficult to follow.

The interview with B4 is interesting. When asked what the other children were doing at home yesterday, he referred to G9 'protecting the kids' and 'she protect the kids from not being naughty'. He appears to know that Luke hit his head, 'he bumped the side of his bed' and G9 saw it. He said that G9 told him about these matters.

B3 was interviewed and also appeared to know that Luke fell off the bed, hit his head on the floor, and afterwards he was asleep. B3 also said that Luke was bleeding but there was no evidence from the forensic scene examination of bleeding at the house. It is impossible to know whether his responses were based on events he saw or what he was told by others.

Analysis of the Events of 12 January

1. The fall occurred sometime after 11.15am.
2. Based on the fact that G12 was collected at 1.45pm for a 2pm interview with police officers and that according to G9 and G12, G12 was present after the fall, the fall must have occurred before 1.45pm.

3. Luke accidentally fell while on his bed striking his head on the floor, possibly also striking his head on the bed frame during the fall to the floor.
4. I have difficulty with the timing of the fall as implied in the account of G9. She gives the impression the fall occurred as part of the tantrum in the bedroom shortly after returning home. Joy barely had the opportunity to lie down at that stage. Joy spoke with Mr Borusiewicz on the phone and afterwards saw that Luke had settled with G9. Also, the way a child recalls, constructs and expresses temporal sequencing can be unreliable. In reviewing the transcript of the interviews, I was unable to gain any insight about the accuracy and reliability of G9's temporal sequencing in relation to other aspects of the timeline.
5. Joy's evidence that she laid down and slept intermittently between 11.15pm and, what must have been, about 1.45pm; is plausible.
6. Between periods of sleep, Joy pottered about the house, checked on the children and saw that Luke was asleep. There was no reason for Joy to suspect that Luke had fallen or suffered an injury.
7. In evidence, Joy explained her sleep as more napping with her ears alert to any unusual noises. The account of G9 suggests a degree of activity associated with the fall that should have alerted Joy if she was just napping in that manner. The fact that the activity associated with the fall was not heard or roused her from her nap, must mean her sleep was deeper than expected.
8. I have difficulty with the accounts of G9 and G12 with respect to their understanding of the Luke's condition. G9 said that she wanted to tell Joy about Luke's fall but she was asleep and had been sick. However, Joy was awake when G12 was collected. G9 did not alert her to Luke's fall or his condition. Similarly, G12 did not tell Joy, the CSO's or police of Luke's fall. I consider it more likely that G9 and G12 did not understand the seriousness of Luke's condition until Joy found him unconscious and Ambulance officers took Luke to hospital.
9. Joy was suffering fatigue associated with the prolonged period of an upset stomach and lack of sustenance. One of the symptoms of fatigue is reduced ability to judge your own level of tiredness. Joy laid down intending to rest and nap but fell into a deep sleep leaving the children unsupervised, an unintended consequence of her fatigue.

Concerns of the Parents

Mr Borusiewicz raised concerns about the capacity of Joy to care for Luke given her age, Luke's needs and those of the other children. Mr Borusiewicz pointed to previous injuries that Luke suffered in her care as indicative of limits to her capability. He also pointed to her initial reluctance to accept Luke into her foster care as reflective of an acceptance of her own limitations in providing care to Luke. Notwithstanding this reluctance, Mr Borusiewicz asserts that Child Safety persisted in placing Luke in her care on 24

December as well as the emergency placement of G12 in the following weeks, creating a workload that exceeded her capacity.

For any parent, the death of a young child is tragic. For Mr Borusiewicz and Ms Hurlstone, the tragedy is compounded by the fact that Luke was not in their care when he died. Further, he was removed from their care and placed in foster care. The community also has an interest in ensuring fostered children are given the care and protection that is essential for their wellbeing. Therefore, any concerns about Luke's care require careful investigation and analysis.

Specific Incidents Giving Rise to Concerns About Quality of Care

Mr Borusiewicz raised a number of concerns during the period that Luke was in respite care with Joy for October 2008.

Departmental records revealed that on 28 October Joy reported to a Child Support Officer that Luke had a burn to the top of his left hand. He'd apparently touched the stove after it had been turned off. Joy also reported that while they were on a public bus, Luke was in a pram and the bus stopped suddenly. Luke suffered a knock to the left side cheek causing a bruise. Mr Borusiewicz had contact with Luke on this day and he was told about Joy's explanation for the marks. The Department considered the marks accidental, attributed to normal activities of a two year old child and not seen as reflective of Joy's ability to care.

It is certainly evident from the narrative that Joy did not seek to conceal any injuries that Luke may have sustained. She was proactive in reporting them and explaining the circumstances in which they were sustained.

On 7 January CSO Ms Bartley collected Luke for contact with Ms Hurlstone at Muddy's. Towards the end of the visit, Ms Hurlstone changed Luke's nappy and reported concern about a red scratch like marks and swelling on Luke's penis. Ms Hurlstone wanted a doctor to examine Luke. Ms Bartley returned Luke to Joy and asked if she had noticed the marks on Luke's penis. She said she had not seen anything but said that Luke had nappy rash a few days earlier and he might have been scratching himself. Ms Bartley took Joy to a local medical centre and a doctor was consulted. Joy reported to CSS that the doctor examined Luke and concluded that the marks were self-inflicted scratches during normal behavior.

The only other specific instances of concern to Mr Borusiewicz was his observation on the morning following Luke's fall while in Intensive Care when he saw a purple mark on one of Luke's fingers. No-one else noticed that mark. Dr Botterill, Forensic Pathologist, was asked about whether he saw a purple mark on a finger during the autopsy and he responded, "No". His report details observations of an external examination and no mention is made of a feature that might be consistent with what Mr Borusiewicz saw.

It is interesting that Ms Sheehan, previously a Team Leader at Families Plus, was made aware of concern expressed about Joy's care for Luke and

reported that it was common for biological parents with periodic contact to raise matters of concern about a foster carer's care of their child at the slightest sign of any illness or the vaguest reference by the child to something that may have occurred.

There is no evidence about any concerns raised about the quality of care provided by Joy with respect to any other children placed in her care.

The nature of the incidents said to give rise to concerns about the quality of Joy's care were reviewed by professional officers within CSS who are trained in identifying children who are harmed. The explanations that Joy offered were found plausible and within the scope of what might be considered typical of two year old behavior. I similarly find the explanations plausible. Even if the incident could be interpreted as suggesting less than optimal care (which I don't accept), how does that assist in conducting an analysis of the events of 12 January? The evidence does not suggest a trend or pattern of behavior. For it to do so, you would expect other evidence from external sources would be readily available to support the trend or pattern. But no, notwithstanding the number of Placement Support Workers and Child Safety Officers having contact with Joy in the weeks before Luke's death, there is not any evidence to suggest Joy lacked the capacity to care for the children in her foster care.

Joy's Awareness of Her Own Limitations

It was suggested that when Joy expressed her reluctance to accept Luke, she was aware of the limits to the care she could provide. In reluctantly accepting Luke when a further approach was made, it was suggested that she took on a workload that exceeded her own capacity.

There are a number of difficulties with these propositions.

Joy articulated reasons for her initial reluctance to accept Luke. Her last experience with Luke was in October 2008. It was evident from the reports on Luke's progress towards the end of 2008 that there was marked improvement in most aspects of his development. On 23 December Joy agreed to accept Luke as a short-term measure.

It will be recalled from the narrative that on 8 January Joy reported to Ms Sheehan, Service Manager at Families Plus, Luke had settled in well, she had spent time with him explaining the rules of the house which he picked up quickly and expressed a wish to continue caring for Luke until reunified with his father, even if that took up to a year.

Therefore, while Joy may have reluctantly accepted the placement and even if it is assumed that she was concerned Luke was 'too much' for her, Joy had the benefit of two weeks with Luke. Her offer to continue caring for Luke was unsolicited. Her reasoning was objectively rational and without the pressure of any sense of urgency.

Further, it will be recalled that Joy demonstrated her readiness to say 'enough is enough' when on 3 January she asked that a misbehaving boy be placed elsewhere. He was removed on 7 January.

Finally, there are the reports of the many Placement Support Workers and Child Safety Officers who had contact with Joy over the period that Luke was in her care. Joy's report about Luke's progress and her willingness to continue caring for him was consistent with their observations.

I find that Joy understood her limitations when it came to the number and needs of the children in her care and demonstrated where that limit was. But for the fact she was unwell on 12 January, Joy acted within her capacity and limitations.

It will also be recalled, pursuant to my earlier finding, the reason why Joy was not supervising Luke at the time of the fall was she was resting then sleeping due to fatigue from an upset stomach. Further, her upset stomach was not associated with any workload issue from the number of children in her care. It was caused by her medication. Finally, the number of children in Joy's care had no bearing on the circumstances of Luke's fall, the fact that Luke was not supervised when he fell, nor the delay in discovering he'd fallen and suffered a head injury.

Availability of Respite for Joy

Although not expressly articulated by Mr Borusiewicz or Ms Hurlstone, their Counsel and Counsel Assisting did canvass the issue of respite for Joy in the examination of witnesses. To what extent did Joy have access to assistance if she was unwell and what role did Families Plus and CSS have in offering respite?

Ms Lynam, Service Manager for Families Plus, referred to the situation where a carer cannot look after children in their care for a brief period, for example, the carer is feeling unwell and needs to attend a medical appointment. PSW's do not have daily contact with carer's and the agency is reliant on carer's to notify the PSW if they require assistance. She said a replacement carer could be provided for such short term events. Further, on initial and ongoing assessments of carers there is a focus on establishing who is part of the carer's support network so the agency is assured the carer has such support. In immediate and urgent circumstances, persons from the carer's support network may care for children without the need to undertake the rigorous training and assessment undertaken by carer's. These are matters that Joy well appreciated.

Ms Lynam later states:

'I believe that if we were aware that Joy was unwell in January 2009 to the extent that she needed to lie down and could not care for the children for most of the day, the Agency would have provided support to her, probably in the form of an assistant carer. The circumstances of that day were unique, as there was a Cyclone in Cairns and resultant flooding. Even so, I believe that we could have found someone local to assist Joy if she needed help.'

I note that Joy called upon a babysitter who attended immediately when she was needed to go with Luke in the Ambulance to hospital.

Respite for carers is necessarily a response to a perceived need. There is no evidence that casts any doubt on the assertion of Families Plus that respite was available to Joy if she had made known that need. There is no evidence to suggest that Joy asked for any support let alone respite on 12 January. There is evidence that she informed her PSW that morning that she was unwell but the nature of that conversation did not suggest she was in need of assistance. I don't believe that Joy understood the extent to which her illness had exhausted her to the point where a lie down progressed from a light nap to a deeper sleep.

I find that there is no basis for any criticism of the support offered by Families Plus to Joy, particularly in relation to provision of respite care.

Findings as Required by Section 45

Who died: The deceased was Luke Anthony Borusiewicz.

When he died: Luke died on 18 January 2009.

Where he died: Luke died at Cairns Base Hospital.

What caused his death: Luke died due a head injury due to a fall

How he died:

1. In 2008, Luke was the subject of a Child Protection Order placing him in the care of the Chief Executive of Child Safety Services for a period of 12 months.
2. On 24 December 2008, Luke was placed in the foster care of Joy when there was a break down in his earlier foster care arrangement.
3. During 11 and 12 January, Joy had an 'upset stomach' that was limiting how much she could eat and drink. She had four fostered children in her care including Luke. He went with a CSS officer for contact with his father. However, local weather conditions including flood waters prevented them meeting. Luke was returned to Joy at about 11am.
4. At about 11.15am, Luke had settled in his bedroom in the company of the 9 year old foster child. Joy laid down on her bed for a rest. She fell asleep and slept intermittently over the next couple of hours.

5. Between 11.15am and 1.45pm (more likely it was closer to 11.15am), Luke became upset and began jumping on his bed. He fell and struck his head on the bed frame and floor causing a severe head injury. The fall occurred while Joy was sleep. The 9 year old foster girl and possibly the 12 year old foster girl witnessed the fall.
6. On waking, Joy checked on Luke and the other children. Luke appeared asleep. Neither of the girls reported the fall to Joy.
7. When Joy did attempt to wake Luke, she found him unconscious and called an ambulance. Luke was taken to Cairns Base Hospital and died 6 days later from his head injuries.
8. Joy was suffering fatigue from an upset stomach combined with limited consumption of food and water. This reduced her ability to assess her level of tiredness. The depth and duration of her sleep as well as her consequential lack of supervision of the children was an unintended consequence of fatigue.
9. The assessment of Joy as a foster carer was rigorous, comprehensive and thorough. Since starting as a foster carer in 2006, Joy demonstrated through the quality of her care provided to many foster children that the original assessment was well founded. Joy also demonstrated an awareness of her own limitations and did not hesitate in speaking with her Placement Support Workers, Families Plus or CSS officers about issues with children in her care.
10. There is no evidence to suggest that the nature of the support that Families Plus provided to Joy was less than adequate.
11. There is no evidence to suggest that Child Safety Services failed to discharge its responsibilities in managing the care and protection of Luke.

Recommendations

Considerable material was admitted into evidence about how foster care agencies work with Child Safety Services in managing foster care including the recruitment, assessment, training and monitoring of foster carers. However, as became evident during submissions, no amount of training and procedures can be developed and implemented to address the onset and possible consequence of fatigue in this context. The control measures used to mitigate the risks associated with fatigue in a workplace or transport setting do

not transfer into a domestic setting, let alone care arrangements for foster children.

Therefore, I am unable to formulate any recommendations for change in the training and monitoring of foster carers that might prevent a death in similar circumstances. However, the circumstances surrounding Luke's death should be used as a case study in the training of foster carers in self awareness and the insidious nature of fatigue; as well as the training of Placement Support Works and Child Safety Service officers in the need for vigilance in monitoring foster care arrangements.

A handwritten signature in black ink, appearing to read 'K Priestly', written in a cursive style.

Coroner Kevin Priestly

'JS 1'

Jane Sheehan
Families Plus
Ph 40 580 433

25/10/2006

Attention Pat Anderson

Re Joy [REDACTED]

I spoke with Joy [REDACTED] on the 23/10/2006 at her unit for approximately two hours. Below is the information we spoke about.

Joy has had experience with providing care for a child/young person with ADHD. Joy's younger son has ADHD. He experienced difficulties at school where Joy had to advocate on his behalf. Joy said that she knew all of the Deputy Principals as she spent a lot of time there. She tried Ritalin but found that it didn't provide benefit to her son (his lost weight and there was little behavioural change). Joy uses behaviour modification with her son and for most of the children she has worked with. She developed "quite time" for her son where they would do something that he enjoyed and quite. Joy used fishing with her son. They use to go fishing most Sundays. She explained to him and tried to instil the need for quite time. This worked well for her son and they managed to control his behaviour.

Joy has also worked with a young person (approximately aged 12) with bi-polar in her role as a Principal. The young person experienced the highs and lows involved with bi-polar as well as the uncontrollable aggression. Joy tried to speak with her parents about the needs of the child, but the parents didn't want mental health intervention and believed that when she went to boarding school there would be any further concerns. Joy had to put strategies in place at school that would benefit the child as well as incorporating the parents wishes. Joy learnt to identify her triggers and would intervene before there were concerns and she also provided gentle reinforcement. Joy spoke to other students about the need for no teasing and also about the need to be non-judgmental.

Joy also has dealt with substance abuse in her role as a teacher. She identified that a young person who was sniffing by the smell of petrol. She advocated on behalf of the young person to the Principal about the need for intervention. The Principal had the belief that substance abuse intervention was not the role of the school and believed that they should not become involved.

Joy also worked in a remote school in New Zealand where it was well known that parents grew and smoked marijuana. She didn't believe that the children were conscious users of the drugs but believed that they were passive users as their clothes and bags smelt of marijuana smoke. Joy found this difficult to work with as some of the children had short-term memory loss. They would learn something one day and the following day would forget. Joy's patient nature and her ability to work with children ensured that she had the persistence and ability to re-teach work as needed.

While Joy was teaching, she identified behaviours that led her to become concerned about sexual abuse. Joy stated that she did a lot of drawing in class and that was one medium that concerns her if the child was drawing inappropriate things and using blacks, browns and reds consistently and the pictures look "scary". She witnessed a young girl touching younger children inappropriately, pushing others toward boys, clingy towards adult males and a lot of little behavioural concerns. She also believed that the child's mother was a victim of domestic violence as she presented with bruising. Joy contacted a nurse and also the police about her concerns. As a result of the investigation, the young girl and her mother moved out of the home to ensure her safety.

Joy stated that children need to feel they are competent in something to build their self-esteem. She never set the standards too high so the child/young person can reach them. Joy also stated that this was a way to increase the child/young person's self-esteem. She sets firm clear boundaries and offers rewards and praise. Joy stated that she is very mindful of not offering "hollow praise" which is when a general praise is given "well done" but it needs to be specific regarding a particular behaviour and what aspect was good about it. Joy stated that this also builds a child/young person's self-esteem as they then know what behaviour they did was good.

Joy believes that she is multi-skilled. She sews, cooks, knows multi languages, jewellery making and drawing. She believes that children/young people need enough to do and for them to be interested so they don't get bored.

I spoke with Joy about what activities she would engage different age groups with. Joy stated that for the younger age group, she reads to them, plays with their toys with them, plays ball, draw, take them to the pool. During my home visits, I have observed that Joy interacts well with the two year old boy that she baby sits for two days a week. Joy offered lots of attention, affection, explanation, and praise to the child while I was there. Joy spoke to the child about books that he has read, toys that he brought with him and nursery rhymes that he likes. During my observations, I found the child to have a close relationship with Joy, as he felt comfortable in asking for things and wanting to play with her.

With the 5-10 age group, Joy stated that she would encourage them to read, involve them in sport that they like (swimming, dance, gym, taekwon-do), encourage them to write stories, use a journal, bikes or anything else the child shows enjoyment in doing. With the teenage age group, Joy stated that it would be similar, sports, talking/discussion, having their friends over, teaching them life skills, taking them out to restaurants, movies. I believe that Joy would engage the child in activities that the

child/young person wished to be involved in or activities that the Department or Families Plus may advocate for.

Joy also has used age appropriate strategies to "modify behaviour". They include a naughty corner, time out. Joy stated that each child is different and they require different behaviour strategies. Joy stated that different strategies have worked for different children and adults need to be flexible and not ridged when it comes to caring for children. Joy also stated that she picks her battles as "she doesn't need to be right all of the time".

Joy stated that she has support from the child/young person, school, health professionals, Department, Families Plus, library, friends and her daughter-in-law. When Joy is stressed she talks about the issue and tries to makes little changes that will benefit all who's involved. Joy doesn't rely on cigarettes, alcohol, aggression or food to cope with stress.

Joy did state that she does spend money on gambling. This isn't a form of stress management, but rather an enjoyment for her. Joy stated that she puts a proportion of her pension away for saving, then pays her rent and her bills. The money that is left over she will spend on recreation. This includes movies, videos, and gambling. Joy was very clear to say that at no time has gambling had a negative impact on her life. Joy stated that her spending a small amount at the casino or on the horse races will not have an impact on her ability to care for a child as this is not an addiction for her. If it doesn't fit in with her plans, then it didn't matter. I believe that the proportion that Joy does gamble will not impact on her ability to care for a child in care. Joy has been in the same location for a number of years, she has all of the furnishings and modern conveniences that she needs. This demonstrates that gambling is not an addiction for her. From my conversation with her, I have no concerns about her gambling.

Joy believes that fostering will not impact on her health. She eats healthily, exercises and has time out (massage, reads, swims, hot baths). I believe that if a time comes where Joy is unable to care, she will be open about the challenges she is facing. I didn't observe any concerns regarding her health that will impact on her ability to care.

Joy is happy to ensure that the child's needs are met, this includes making their room feel at home (mementoes, photos, putting their belongings around the house). Joy stated that if the need arises and a home phone is needed that she will consider that. After her discussion with a long term foster carer Joy had developed some boundaries for her house including pocket money and phone allowances. Joy stated that she will support all forms of contact with a child/young person family and their connections/supports.

Joy encourages communication of children/young people. She believes that they need to be encouraged to communicate in whatever medium, that the child/young person connects with – verbal, written, creatively (art, drawing etc). She stated that children can suppress many different emotions (sadness, anger, hurt) and this needs to be expressed (when the child/young person is ready).

I also spoke to Joy about travel options. She stated that she doesn't have a car but doesn't think this would impact on her ability to provide connection between the child and the community. [REDACTED] has been identified as a possible match to be placed with Joy. Joy has found out that the bus that will travel from her local bus stop to the front of the school and return at suitable times. [REDACTED] also attends cadets. Transport has been organised from other members of the group to pick up and drop off [REDACTED]. Joy is familiar with the bus system and if a bus is not suitable, then she has the option of a taxi. If the child is too young to travel on the bus system, then Joy will accompany them. Transport will need to be looked at creatively for children that are placed in Joy's care.

Joy and I discussed that placement types. Joy stated that she is happy with numerous types of placements. Joy has one room for a child, but if the need arises, she could make another room where is currently has a desk. She has a foldout couch if need be. Joy stated that she is able/willing to provide emergency care for children of all ages (from and infant till 18) and cultural backgrounds. She is willing to be contacted at night or over the weekend if a placement is needed. Joy is able and willing to offer respite to all age children and cultural backgrounds. Transport will need to be considered with regards to this form of placement. Joy stated that she is able to provide short term care options for any age child or cultural group. With regards to long term placements, Joy stated that she is only able to provide this type of placement for older young people as a time will come where she is unable to care.

I believe that Joy has the willingness and ability to provide the above types of placements. She has cared recently for young children from infancy to two years old. Joy has had numerous experiences working as a teacher, nanny, governess and a baby sitter to a wide range of children from different age groups and from different cultural backgrounds. I believe that from working with a wide variety of children for the last 43 years, Joy has had the experience of working with children with challenging behaviours. I have observed Joy to interact well with the two year old boy that she baby sits for. I have no concerns regarding her lifestyle and its impact on her ability to care for children in the care of the Department of Child Safety.

Throughout my three discussions with Joy, I have found her to have an extensive knowledge of children/young people and behaviours that they may present with. Joy was able to articulate that children that do come into care have experienced some trauma and may display challenging behaviours without prompting. I believe that Joy's framework regarding the need for children to feel safe and secure and then develop a style of communication that suits them is suited to becoming a foster carer. Joy has extensive knowledge of attachments and the need for children to maintain that attachment with their family and supports. Joy has spoke with an experienced foster carer and this carer believes that Joy has the skills and motivation to become a foster carer. Another Intensive Support Worker from Families Plus has also met Joy and believes that her lifestyle and personality will suit foster and particularly [REDACTED].

Joy spoke about her experience and knowledge regarding children/young people and also identified that she would like further information on children and has identified supports for her to gain this information. Joy offers a quite calm house that will offer a safe and secure home for children in care, especially children that have come from traumatic backgrounds and have experienced attachment difficulties. From her knowledge of children/young people Joy was able to articulate that the needs of the child come first. I believe that her experience will offer a wide range of insight understanding in caring for children in the care of the Department of Child Safety.

Regards



Jane Sheehan
Placement Support Worker
Families Plus

