

**OKLAHOMA COMMISSION ON CHILDREN AND YOUTH
OFFICE OF JUVENILE SYSTEM OVERSIGHT**

Report Release Date: September 28, 2011

**Review of the Death of Tamberlynn Wheeler
of Seminole County of Oklahoma**

Dates and Outcome of Investigations and Actions Taken by the Department of Human Services; Actions Taken by the District Attorney; and Dates and Summary of Judicial Proceedings and Rulings of the Court

General Information

On February 3, 2011, the Office of Juvenile System Oversight (OJSO) received a request for a public report pursuant to Title 10A Section 1-6-105 in regard to the death of Tamberlynn Wheeler, a three month old child that died on April 8, 2008. Tamberlynn's parents, Crystal Erb and Samuel Wheeler, Jr. were charged on January 25, 2011, with one count of Felony Child Neglect.

Authorization

Title 10A, Section 1-6-105, B, D and E, of the Oklahoma Statutes, states:

B. When a person responsible for a child has been charged by information or indictment with committing a crime resulting in the death or near death of the child, there shall be a presumption that the best interest of the public is served by public disclosure of certain information concerning:

1. The circumstances of the investigation of the death or near death of the child; and

2. Any other investigations concerning that child, or other children while living in the same household, within:

a. three (3) years of the death or near-death, and

b. one (1) year after the death or near-death.

D. 1. At any time subsequent to seven (7) days after the date the person responsible for the child has been criminally charged, the Oklahoma Commission on Children and Youth shall, upon request, release certain information to the public within sixty (60) days of the request as follows:

a. a confirmation shall be provided by the Commission as to whether a report of suspected child abuse or neglect has been made concerning the alleged victim or other children while living in the same household and whether an investigation

has begun,

b. confirmation shall be provided by the Commission as to whether previous reports of suspected child abuse or neglect have been made and the dates thereof, a summary of those previous reports, the dates and outcome of any investigations or actions taken by the Department [OKDHS] and the Commission in response to any previous report of child abuse or neglect, and the specific recommendation made to the district attorney and any subsequent action taken by the district attorney,

c. the dates of any judicial proceedings prior to the death or near death of the child,

d. recommendations submitted by the Department [OKDHS] and the Commission shall be provided in writing including recommendations made at the hearing as they relate to custody or placement of a child, and

e. the rulings of the court.

2. Specific recommendations made by the Commission described in any progress reports of a pending case submitted to the court may be disclosed by the Commission.

E. Any disclosure of information pursuant to this section shall not identify or provide an identifying description of any complainant or reporter of child abuse or neglect, and shall not identify the name of the child victim's siblings or other children living in the same household, the parent or other person responsible for the child, or any other member of the household, other than the person criminally charged.

Identifiers:

Child's Name: Tamberlynn Wheeler
Date of Birth: December 31, 2007

Alleged Perpetrators: Crystal Erb and Samuel Wheeler, Jr.

Half-Sibling (sibling) Ten months old

The Oklahoma Commission on Children and Youth did not become aware of this case until after the death of Tamberlynn.

The following is a summary of the actions taken by the Department of Human Services (OKDHS); the actions taken by the district attorney; judicial proceedings; and the rulings of the court, as authorized by 10A O.S., Section 7005-1.9, D and E (below).

The OJSO reviewed the OKDHS and deprived court actions regarding Tamberlynn that happened prior to and immediately following her death. The OKDHS documented three reports alleging abuse/neglect regarding the children's family within the past three years.

Case History

Report 1 June 28, 2007 (Seminole County)

A referral was received by the OKDHS alleging that Tamberlynn's four month old sibling was exposed to domestic violence. Reportedly, Tamberlynn's sibling was present when Mr. Wheeler, Jr. threw a knife at Ms. Erb after another man in the home flirted with Ms. Erb.

The OKDHS accepted the report as a Priority One Investigation with contact to be made with the child victim within twenty-four hours. Those persons interviewed during the child protective services (CPS) investigation were Mr. Wheeler, Jr., Ms. Erb, four relatives, and two collateral witnesses.

The OKDHS documented that all of the persons interviewed during the investigation denied that Mr. Wheeler, Jr. threw a knife at Ms. Erb and that Tamberlynn's sibling was exposed to domestic violence. Reportedly, the family resided with relatives and the relatives did not allow the couple to engage in physical altercations in the home and/or around Tamberlynn's sibling. The OKDHS also documented that during the investigation the CPS investigator noted that Mr. Wheeler, Jr. drank an excessive amount of alcohol and that it caused him to be argumentative. The OKDHS further documented that during the investigation, the couple moved from the current relatives' home and that Ms. Erb moved to the home of another relative that resided in California. The OKDHS further documented that the state of California contacted the CPS investigator and informed the state of Oklahoma that Ms. Erb was admitted to an emergency room upon her arrival in California due to problems with her pregnancy of Tamberlynn and that Ms. Erb tested positive for marijuana while she was in the hospital. Reportedly, Ms. Erb did not receive prenatal care, was in an abusive relationship with the father of Tamberlynn's sibling, and was observed with a burn on her back. The OKDHS documented that Ms. Erb reported that she sustained the injury after she was burned with a torch.

The OKDHS documented a finding of Services Recommended but did not document the services that were recommended. The OKDHS also documented that Tamberlynn's sibling was not exposed to domestic violence. The OKDHS further documented that Ms. Erb and Mr. Wheeler, Jr. were no longer a couple and that Ms. Erb, and Tamberlynn's sibling moved to the state of California.

Report 2 December 30, 2007 (Seminole County)

A referral was received by the OKDHS alleging that Tamberlynn was born prematurely with an undiagnosed birth defect and weighed approximately five pounds. The report

also alleged that Ms. Erb tested positive for benzodiazapine, marijuana, and prescription medication.

The OKDHS accepted the report as a Priority One Investigation with contact to be made with the child victims within twenty-four hours. Those persons interviewed during the CPS investigation were Mr. Wheeler, Jr., Ms. Erb, six relatives, and three collateral witnesses.

The OKDHS documented that Tamberlynn tested positive for marijuana at birth and that she was transported by an emergency medical helicopter to a hospital in Oklahoma City, Oklahoma due to her eating and breathing difficulties. The OKDHS also documented that Tamberlynn was discharged from the hospital approximately six weeks after her birth and that upon discharge, Tamberlynn weighed approximately five pounds. The OKDHS case documentation found that during a home visit conducted by the CPS investigator, Tamberlynn was observed to be "very small" and sleeping in a small hammock. The OKDHS documented that a relative reported that Tamberlynn would have her first well baby check-up when she was six months old.

The OKDHS documented that Ms. Erb reported that she, Tamberlynn, and Tamberlynn's sibling resided in the home of a relative. The OKDHS also documented that Ms. Erb tested positive for benzodiazapine, marijuana, and prescription medication upon the delivery of Tamberlynn. According to the OKDHS case documentation, Ms. Erb denied the use of illegal substances but admitted that she did take prescription medication.

The OKDHS documented that Mr. Wheeler, Jr. moved into the relative's home in January 2008. The OKDHS also documented that Mr. Wheeler, Jr. reported a history of methamphetamine and marijuana abuse. The OKDHS further documented that Mr. Wheeler, Jr. reported that he last used methamphetamine approximately two-three years ago and last used marijuana approximately one month ago.

The OKDHS documented that the interviews with relatives and collateral witnesses noted that Mr. Wheeler, Jr. had a history of substance abuse and anger management issues.

The OKDHS documented that the allegation of Substance Abuse by Ms. Erb was confirmed and that the allegation of Failure to Protect by Mr. Wheeler, Jr. was confirmed as the allegations pertained to the neglect of Tamberlynn by her parents. The OKDHS also documented that the allegation of Substance Abuse by Ms. Erb as it pertained to the neglect of Tamberlynn's sibling was Unsubstantiated. According to the OKDHS documentation, the drug use by Ms. Erb and Mr. Wheeler, Jr. did not affect their abilities to parent Tamberlynn's sibling. Further documentation found that the OKDHS recommended that Ms. Erb and Mr. Wheeler, Jr. participate in a drug and alcohol assessment, and follow through with all of the recommendations made by the service provider.

Report 3 April 8, 2008 (Seminole County)

The OKDHS received a referral alleging that three month old, Tamberlynn died while she was napping. The referral also alleged that Ms. Erb and Mr. Wheeler reported that they put Tamberlynn “down” for a nap and when they checked on her thirty minutes later, she was observed to be blue. Reportedly, the emergency room (ER) doctor noted that the initial cause of death was cardiopulmonary arrest. The referral alleged that Ms. Erb reported that Tamberlynn had been sick for three days, weighed six pounds, and was observed to be dirty.

The OKDHS accepted the report as a Priority One Investigation with contact to be made with the child victims on the same date. Those persons interviewed during the investigation were Ms. Erb, Mr. Wheeler, Jr., eight relatives, and ten collateral witnesses.

The OKDHS documented that Ms. Erb reported Tamberlynn had Sudden Infant Death Syndrome (SIDS) and that Tamberlynn was born before her heart and lungs were fully developed. The OKDHS further documented that Ms. Erb reported that she did not notice any weight loss by Tamberlynn and that Ms. Erb would “prop” the bottle when she fed Tamberlynn. The OKDHS documented that Ms. Erb reported that the hospital established women, infants, and children (WIC) services, and that she had three unused WIC vouchers because she lost the “code”.

The OKDHS documented that Mr. Wheeler, Jr. reported that he woke up in the bedroom at approximately 11:20 a.m., he “propped” Tamberlynn’s bottle, and left the room. Reportedly, Tamberlynn was in her crib and was lying on her back. The OKDHS also documented that Mr. Wheeler, Jr. reported that he found Tamberlynn dead when he returned to the bedroom approximately forty-five minutes later. The OKDHS documented that Mr. Wheeler, Jr. reported that he was Tamberlynn’s primary caregiver and that she ate less than eight ounces of formula a day. The OKDHS also documented that Mr. Wheeler, Jr. reported that he noticed that Tamberlynn lost weight and cried all of the time. The OKDHS further documented that Mr. Wheeler, Jr. reported that Ms. Erb agreed that Tamberlynn needed to be examined at the hospital but that the family did not have transportation, therefore; Tamberlynn was not examined at the hospital prior to her death. The OKDHS documented that three cans of formula were observed to be in the home and that the electric heater located in the living room was the only heat source in the home.

The OKDHS case documentation contained a Report of Autopsy completed by the Oklahoma Office of the Chief Medical Examiner regarding Tamberlynn’s death. The autopsy report noted that subcutaneous fat was almost totally absent from Tamberlynn’s body. The report also documented that the manner of Tamberlynn’s death was unknown and that the cause of her death was undetermined.

The OKDHS documented that during the CPS investigation Tamberlynn’s sibling was diagnosed as “Failure to Thrive” and was observed to be in the lowest fifth percent on the children’s growth chart. The OKDHS also documented that during the investigation Tamberlynn’s sibling was observed to be very dirty and infested with head lice.

The OKDHS documented a finding of Confirm Court Intervention Requested and documented that on April 8, 2008, Tamberlynn's sibling was placed in the emergency custody of the OKDHS by the verbal order of the Court.

The OKDHS case documentation contained an OKDHS Report to the District Attorney that documented that during the course of the permanency planning case regarding Tamberlynn's sibling, Ms. Erb failed to correct the conditions that led to the removal of the child and that Ms. Erb's parental rights of Tamberlynn's sibling were terminated on October 21, 2009. The report also documented that Ms. Erb gave birth to a child in California and that her parental rights of that child were terminated on December 30, 2009.