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STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DANE RICHARD KRUKOWSKI,

Defendant-Appellee.
_____/

Supreme Court
No. 160263

Court of Appeals
No. 334320

Lower Court
No. 15-041274-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

CODIE LYNN STEVENS,

Defendant-Appellee.
_____/

Supreme Court
No. 160264

Court of Appeals
No. 337120

Lower Court
No. 15-041275-FH

PLAINTIFF-APPELLANT'S APPENDIX

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DATE: 7/01/2020 STATE OF MICHIGAN, CIRCUIT COURT, COUNTY OF SAGINAW PAGE 1
PEOPLE VS DANE KRUKOWSKI

CASE: **15-041274-FH** OFFENSE: 2/10/2015

ACTIVE: 5/07/2015 JUDGE: JANET M. BOES
CLOSED: 6/14/2016 AGENCY: SAGINAW TOWNSHIP POLICE DEPA

DEFENDANT
KRUKOWSKI, DANE RICHARD
3909 AKRON ROAD
AKRON, MI 48701
DOB: 1/24/1991 E FINGERPRINTS 5/07/2015
PHONE:( ) -

DEFENSE ATTORNEY
STATE,(S.A.D.O.) ,
645 GRISWOLD SUITE
DETROIT, MI 48226
CT APP
CTN: SID:4891477X

DSP	CT	SEQ	MCLA/ORDINANCE	CHARGES	DATE	TYPE
DS	1	0	750.136B3	CHILD ABUSE-2ND DEGR	3/18/2015	F

*** **END OF CHARGES** ***

#/PD	JUDGE/BONDSMAN	TYP	AMOUNT	CHECK	SET/POST	FORF/REV
1	M. RANDALL JURRENS	SU	50000		S 3/19/2015	
	KOZY BAIL BONDS	$12500	OBL		P 4/16/2015	R 5/06/2016

*** **END OF BONDS** ***

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
3/18/2015	CF	COMPLAINT FILED		KJC
	WIR	WARRANT ISSUED AND RETURNED		KJC
3/19/2015	FCA	FILE SENT TO COURTROOM FOR ARRAIGNMENT	D5	KJC
	APR	PRE EXAM CONFERENCE SCHD FOR 4/07/2015 AT 1:30 PM	D4	CEJ
	APR	PRELIM EXAM SCHD FOR 4/13/2015 AT 2:00 PM	D4	CEJ
	MRF	MEDIA REQUEST FILED	D4	CEJ
	-	TV 12	D4	CEJ
3/19/2015	OF	ORDER FOR FINGERPRINTS	D4	GCR
	MIT	MITTIMUS	D5	GCR
	ADR	ADVICE OF RIGHTS SHEET SIGNED	D4	CNE
	ARR	ARRAIGNMENT	D5	CNE
	-	S/M, $50,000 C/S/10% BOND, TO HIRE COUNSEL, SFPE	D5	CNE
3/23/2015	ADJ	ADJOURNED PRE EXAM CONFERE ORIG SCHED 4/07/2015 AT 01:	D4	BJB
	ZCE	CLERICAL ERROR	D4	BJB
	APR	PRE EXAM CONFERENCE SCHD FOR 3/27/2015 AT 1:30 PM	D4	BJB
	-	***CHANGED PEC DATE AND TIME ONLY***	D4	BJB
3/24/2015	FPC	FILE PULLED FOR COURTROOM	D4	BJB
3/27/2015	ADJ	ADJOURNED PRELIM EXAM ORIG SCHED 4/13/2015 AT 02:	D4	BJB
	ZOT	OTHER (SPECIFY)	D4	BJB
	APR	PRE EXAM CONFERENCE SCHD FOR 4/13/2015 AT 2:00 PM	D4	BJB
	-	**CHANGED TO PEC**	D4	BJB
3/27/2015	*AT	STURTZ, PHILIP R. REPLACES PRO PER AS ATTORNEY	D4	LRB
	OAC	ORDER APPOINTING COUNSEL	C1	JO
3/31/2015	APP	APPEARANCE FILED	D4	LRB
4/08/2015	FPC	FILE PULLED FOR COURTROOM	D4	DPP
4/13/2015	APR	PRELIM EXAM SCHD FOR 5/05/2015 AT 1:30 PM	D4	BJB
4/16/2015	NOH	NOTICE OF HEARING	D4	CEJ
	-	MOTION FOR REDUCTION OR MODIFICATION OF BOND	D4	CEJ
4/16/2015	*	CANCEL MOTION FOR BOND REDUCTION/DEF POSTED BOND	D4	BJB
4/29/2015	FPC	FILE PULLED FOR COURTROOM	D4	DPP
5/05/2015	*	DEF PRESENT W/ATTY STURTZ; APA JANETSKY; PE HELD, BOCC	D4	BJB
	PEH	PRE-LIMINARY EXAM HELD	D4	KJC
	BOC	CTS 01-00;	D4	KJC

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DATE: 7/01/2020 STATE OF MICHIGAN, CIRCUIT COURT, COUNTY OF SAGINAW PAGE 2
PEOPLE VS DANE KRUKOWSKI

CASE: **15-041274-FH** OFFENSE: 2/10/2015

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
5/07/2015	ECG	PRINT/CHG TRANSMITTED TO MSP/CHR G414148304X/201407404		857
	C	CASE FILED WITH CIRCUIT COURT	C3	BRE
5/08/2015	7CA	FILE PULLED FOR COURT ADMINISTRATOR'S OFFICE	C3	TSB
	RCC	REVIEWED BY CRIMINAL ARRAIGNMENTS CLERK	C3	SRM
	SCH	COURT ADMIN TO SCHEDULE	C3	PAB
	-	W/CO DEF	C3	PAB
5/11/2015	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C3	TSB
5/19/2015	APR	TRIAL SCHD FOR 7/14/2015 AT 9:00 AM	C3	PAB
	-	W/CO DEF	C3	PAB
6/03/2015	INF	FELONY INFORMATION FILED BY PROSECUTOR	C3	DMM
	RQD	PROSECUTOR'S REQUEST FOR DISCOVERY	C3	DMM
	-	W/ PRF OF SVC	C3	DMM
6/09/2015	PXO	TRANSCRIPT OF PRELIM. EXAM ORDERED	C3	JMW
6/10/2015	ORT	ORDER FOR TRANSCRIPT FORWARDED TO RECORDER	C3	CEJ
	-	P WISE	C3	CEJ
6/29/2015	DM	DEFENSE MOTION	C3	BRE
	-	TO ADJOURN TRIAL; MTN TO REQUEST THE EMPLOYMENT OF AN	C3	BRE
	-	INDEPENDENT MEDICAL EXAMINER; NTC OF HRG; LIST OF	C3	BRE
	-	WITNESSES; PRF OF SVC BY ATTY PHILIP R STURTZ	C3	BRE
6/29/2015	APR	MOTION SCHD FOR 7/06/2015 AT 9:30 AM	C3	BRE
	-	ADJOURN TRIAL & TO REQUEST INDEPENDENT MEDICAL EXAMINER	C3	BRE
7/01/2015	PFC	PULLED FILE FOR COURTROOM	C3	CMJ
7/06/2015	0JS	CT. REPORTER: J. STUPAK, CSR-8314	C3	DMM
	H	HEARING HELD	C3	DMM
	-	DEFT'S MTN TO ADJOURN TRIAL AND REQUEST FOR INDEPENDENT	C3	DMM
	-	MEDICAL EXAMINER; DEFT PRESENT W/ ATTY P.R. STURTZ, PRO	C3	DMM
	-	ATTY P. DUGGAN; STATEMENTS OF COUNSEL; COURT GRANTED	C3	DMM
	-	MOTIONS; ATTY G. BUSH WAS PRESENT IN COURT ALSO AS	C3	DMM
	-	ATTY FOR CO-DEFT STEVENS AND HAS NO OBJECTION TO	C3	DMM
	-	AJDOURNMENT; ATTY STURTZ TO SUBMIT ORDER	C3	DMM
7/08/2015	*	ORDER TO ADJOURN TRIAL AND APPOINTMENT OF INDEPENDENT	C3	DMM
	-	MEDICAL EXAMINER	C3	DMM
7/13/2015	ADJ	ADJOURNED TRIAL ORIG SCHED 7/14/2015 AT 09:	C3	DMM
	-	STIP & ORDER SUBMITTED	C3	DMM
7/13/2015	SCH	COURT ADMIN TO SCHEDULE	C3	DMM
	-	TRIAL (W/ CO-DEFT)	C3	DMM
7/21/2015	PXT	PRELIM. EXAM TRANSCRIPT FILED	C3	NRS
	-	DTD 5-5-15, FILED BY P WISE	C3	NRS
7/22/2015	*	PD P WISE $209.35 PE TRANSCRIPT (2 CASES)	C3	PAB
7/24/2015	APR	TRIAL SCHD FOR 9/01/2015 AT 9:00 AM	C3	PAB
	-	W/CO DEF	C3	PAB
8/26/2015	*	STIP/ORDER FOR ADJOURNMENT	C3	PGD
8/31/2015	ADJ	ADJOURNED TRIAL ORIG SCHED 9/01/2015 AT :	C3	PGD
	SCH	COURT ADMIN TO SCHEDULE	C3	DMM
	-	TRIAL	C3	DMM
9/11/2015	APR	TRIAL SCHD FOR 11/10/2015 AT 9:00 AM	C3	PAB
	-	W/CO DEF	C3	PAB
	-	MAIL RETURNED - UNABLE TO FORWARD (NOTICE OF TRIAL)	C3	LMM
10/08/2015	RET	FILE RETURNED TO CLERK'S OFFICE	C3	DMM
10/09/2015	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C3	TSB
10/27/2015	*	PRF OF SVC OF INFORMATION FELONY BY ATTY PHILIP R STURT	C3	BRE

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DATE: 7/01/2020 STATE OF MICHIGAN, CIRCUIT COURT, COUNTY OF SAGINAW PAGE 3
PEOPLE VS DANE KRUKOWSKI

CASE: **15-041274-FH** OFFENSE: 2/10/2015

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
11/05/2015	PFC	PULLED FILE FOR COURTROOM	C3	CMJ
11/10/2015	0UW	CT. REPORTER: U. WEGERT, CSR-4553	C3	DMM
	H	HEARING HELD	C3	DMM
	-	DATE SET FOR TRIAL; DEFT PRESENT W/ ATTY P.R. STURTZ,	C3	DMM
	-	PROS ATTY P. DUGGAN; ATTY STURTZ REQUESTED AND ADJOURN-	C3	DMM
	-	MENT FOR FURTHER DISCOVERY AND POSSIBLE MTNS (WALKER	C3	DMM
	-	HRG, DISCOVERY MTNS); COURT ADVISED COUNSEL THAT MTNS	C3	DMM
	-	SHOULD BE FILED WITHIN 30 DAYS; TRIAL TO BE RESET IN	C3	DMM
	-	60-90 DAYS	C3	DMM
11/10/2015	SCH	COURT ADMIN TO SCHEDULE	C3	DMM
	-	TRIAL	C3	DMM
11/12/2015	*	ORDER TO PROSECUTOR TO PROVIDE DEFENSE COUNSEL COPY OF	C3	LMM
	-	VIDEO RECORD OF VICTIM/WITNESS INTERVIEW(S) CONDUCTED A	C3	LMM
	-	CHILD ADVOCACY CENTER	C3	LMM
12/01/2015	APR	TRIAL SCHD FOR 2/02/2016 AT 9:00 AM	C3	PAB
	-	W/CO DEF	C3	PAB
12/02/2015	RET	FILE RETURNED TO CLERK'S OFFICE	C3	DMM
	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C3	TSB
12/18/2015	*	DEF TRL NTC RETURNED IN MAIL	C3	PAB
1/19/2016	DM	DEFENSE MOTION	C3	HLL
	-	TO SUPPRESS STATEMENTS/NTC OF HEARING/BRIEF/PRF OF SVC	C3	HLL
	-	1ST AMENDED WITNESS, PRF OF SVC BY ATTY STURTZ	C3	HLL
1/19/2016	APR	MOTION SCHD FOR 2/01/2016 AT 9:30 AM	C3	HLL
	-	TO SUPPRESS STATEMENTS	C3	HLL
1/27/2016	APR	MOTION SCHD FOR 2/01/2016 AT 9:31 AM	C3	RJA
	-	SCHEDULING CONFERENCE FOR TRIAL & MOTION HRG	C3	RJA
1/28/2016	PFC	PULLED FILE FOR COURTROOM	C3	CMJ
	*	INQ MADE TO OFFICE OF DEF ATTY (STURTZ) AS TO DEFT'S	C3	RJA
	-	CORRECT ADDRESS (BASED ON TRIAL NTC BEING RETURNED),	C3	RJA
	-	RESP: DEFT CURRENT ADDRESS IS: CARE OF 3909 AKRON RD,	C3	RJA
	-	AKRON, MI 48701-9514	C3	RJA
1/28/2016	*AD	ADDR CHG/OLD: 205 S COLONY APT E	C3	LMM
	*AD	ADDR CHG/OLD: SAGINAW, MI 48638	C3	LMM
	*AD	ADDR CHG/NEW: 3909 AKRON ROAD	C3	LMM
	*AD	ADDR CHG/NEW: AKRON, MI 48701	C3	LMM
2/01/2016	0UW	CT. REPORTER: U. WEGERT, CSR-4553	C3	DMM
	H	HEARING HELD	C3	DMM
	-	DATE SET FOR DEFT'S MTN TO SUPPRESS STATEMENTS AND	C3	DMM
	-	SCHEDULING CONFERENCE FOR TRIAL; DEFT PRESENT W/ ATTY	C3	DMM
	-	P.R. STURTZ, PROS ATTY P. DUGGAN; PARTIES INFORMED	C3	DMM
	-	COURT THAT AN EVIDENTIARY HEARING IS NECESSARY; COURT	C3	DMM
	-	DIRECTED THAT A TRANSCRIPT OF STATEMENTS SHALL BE	C3	DMM
	-	PREPARED BY 3/3/16; EVIDENTIARY HEARING TO BE SET	C3	DMM
	-	FOR 3/17/16 AT 1:30 P.M.; PLEA OFFER PLACED ON THE	C3	DMM
	-	RECORD: IF DEFT PLEADS NO CONTEST TO ADDED CT 2	C3	DMM
	-	(ATT CHILD ABUSE 2ND DEGREE), PROS WOULD DISMISS	C3	DMM
	-	CT 1; GUIDELINES CALCULATED AT 0-17 MOS; PER COBBS:	C3	DMM
	-	PROBATION W/ ANY INITIAL INCARCERATION TO BE SERVED	C3	DMM
	-	ON TETHER; DEFT REJECTED OFFER; TRIAL SCHEDULED FOR	C3	DMM
	-	2/2/16 IS ADJOURNED, TENTATIVE TRIAL DATE OF 4/26/16	C3	DMM
	-	WILL BE SET - COUNSEL MUST ADVISE COURT ASAP OF ANY	C3	DMM

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PEOPLE VS DANE KRUKOWSKI

CASE: **15-041274-FH** OFFENSE: 2/10/2015

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
2/01/2016	-	CONFLICTS WITH THAT DATE	C3	DMM
2/02/2016	ADJ	ADJOURNED TRIAL ORIG SCHED 2/02/2016 AT 09:	C3	DMM
	APR	HEARING SCHD FOR 3/17/2016 AT 1:30 PM	C3	DMM
	-	EVIDENTIARY	C3	DMM
2/02/2016	RET	FILE RETURNED TO CLERK'S OFFICE	C3	DMM
2/03/2016	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C3	TSB
2/04/2016	*	PRETRIAL ORDER - TENTATIVE DATE OF 4/26/16 BE SET AS A	C3	LMM
	-	DATE CERTAIN TO BEGIN JOINT TRIAL OF BOTH CASES(2 JURIE	C3	LMM
	-	AS SUITABLE/CONFIRMED BY ALL COUNSEL IN WRITING NO LAT	C3	LMM
	-	THAN 2/12/16; IF GOOD CAUSE FOR COURT TO SELECT DIFFERE	C3	LMM
	-	TRIAL DATE; COURT WILL PROMPTLY SET SCHEDULING CONFEREN	C3	LMM
2/04/2016	SCH	COURT ADMIN TO SCHEDULE	C3	LMM
	-	TRIAL DATE CERTAIN 4/26/16 (JOINT TRIAL W/ 15-041275-FH	C3	LMM
2/05/2016	APR	TRIAL SCHD FOR 4/26/2016 AT 9:00 AM	C3	PAB
	-	SET W/15 41275 FH AS DATE CERTAIN PER ORDER 2-4-16	C3	PAB
2/24/2016	PFC	PULLED FILE FOR COURTROOM	C3	CH
	APR	SHOW CAUSE, CT ORDER SCHD FOR 2/29/2016 AT 9:30 AM	C3	DMM
	-	WHY ORDER NOT SUBMT'D PER 2/1 HRG/EXPARTE COMM W/INVSTG	C3	DMM
2/29/2016	0UW	CT. REPORTER: U. WEGERT, CSR-4553	C3	LMM
	H	HEARING HELD	C3	LMM
	-	ON DATE SET FOR SHOW CAUSE AS TO WHY ORDER SUBMITTED PE	C3	LMM
	-	2/1/16 HEARING RE: PAYING FOR TRANSCRIPTS AND EXPARTE	C3	LMM
	-	COMMUNCATION W/ INVESTIGATOR; PRESENT: APA P. DUGGAN;	C3	LMM
	-	P. R. STURTZ; STMTS OF COUNSEL; COURT ORDERED PEOPLE TO	C3	LMM
	-	PRODUCE TRANSCRIPTS OF MATERIAL FOR DISCOVERY TO COUNSE	C3	LMM
	-	TRIAL DATE SET **DATE CERTAIN** 4/26/16 AT 9:00AM	C3	LMM
	-	SET W/ CO-DEFT'S CASE 15-041275-FH	C3	LMM
3/04/2016	*	PRETRIAL ORDER RE: DUAL JURIES (COUNSEL TO SUBMIT IN	C3	DMM
	-	WRITING THEIR REQUESTS/EXPECTATIONS FOR HANDLING DUAL	C3	DMM
	-	JURIES BY 3/17/16; DATE CERTAIN TRIAL: 4/26/16)	C3	DMM
3/04/2016	*	STIPULATION/ORDER FOR ENTRY OF DISCOVERY ORDER	C3	DMM
3/07/2016	PM	PROSECUTION MOTION	C3	DMM
	-	FOR RECONSIDERATION OF DISCOVERY ORDER, FILED BY	C3	DMM
	-	PROS ATTY P. DUGGAN	C3	DMM
3/08/2016	*	TRANSCRIPT OF HEARING (2/1/16), FILED BY U. WEGERT	C3	DMM
	*	TRANSCRIPT OF HEARING (11/10/15), FILED BY U. WEGERT	C3	DMM
3/09/2016	*	TRANSCRIPT OF SHOW-CAUSE HEARING (2/29/16), FILED BY	C3	DMM
	-	U. WEGERT	C3	DMM
3/09/2016	*	PD U WEGERT $28.00 HRG 2-1-16, $33.25 HRG 11-10-15,	C3	PAB
	-	$28.00 HRG 2-29-16 TRANSCRIPTS	C3	PAB
3/09/2016	*	ORDER OF THE COURT (PROSECUTOR'S MTN FOR RECONSIDERATIO	C3	DMM
	-	DENIED IN PART AND GRANTED IN PART)	C3	DMM
3/11/2016	*	PEOPLES ANS TO DFNTS MTN TO SUPPRESS STATEMENTS; BRIEF	C3	KMS
	-	SUPPORT, PRF OF SVC FILED BY ATTY PATRICK O DUGGAN	C3	KMS
3/17/2016	0UW	CT. REPORTER: U. WEGERT, CSR-4553	C3	DMM
	H	HEARING HELD	C3	DMM
	-	EVIDENTIARY HEARING RE: DEFT'S MTN TO SUPPRESS STATE-	C3	DMM
	-	MENTS; DEFT PRESENT W/ ATTY P.R. STURTZ, PROS ATTY P.	C3	DMM
	-	DUGGAN; CO-DEFT ALSO PRESENT W/ COUNSEL; STATEMENTS OF	C3	DMM
	-	COUNSEL; TESTIMONY OF DETECTIVE ROBERT BEAN AND SERGEAN	C3	DMM
	-	CHAD BROOKS; COURT ADJOURNED TO 3/18/16 AT 9:00 A.M.	C3	DMM

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DATE: 7/01/2020 STATE OF MICHIGAN, CIRCUIT COURT, COUNTY OF SAGINAW PAGE 5
PEOPLE VS DANE KRUKOWSKI

CASE: **15-041274-FH** OFFENSE: 2/10/2015

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
3/17/2016	*	PROSECUTOR'S PROPOSALS REGARDING EMPANELLING DUAL JURIE	C3	DMM
3/18/2016	0UW	CT. REPORTER: U. WEGERT, CSR-4553	C3	DMM
	H	HEARING HELD	C3	DMM
	-	EVIDENTIARY HEARING CONT'D; DEFT PRESENT W/ ATTY P.R.	C3	DMM
	-	STURTZ, PROS ATTY P. DUGGAN; CO-DEFT ALSO PRESENT W/	C3	DMM
	-	COUNSEL; TESTIMONY OF DEFTS; COURT DENIED MTN; PROS	C3	DMM
	-	TO SUBMIT ORDER	C3	DMM
3/21/2016	*	ORDER DENYING DEFT'S MTN TO SUPPRESS STATEMENTS	C3	DMM
3/22/2016	*	PRETRIAL ORDER RE: TRIAL PROCEDURES (JURY SELECTION	C3	DMM
	-	SEPARATE ON 4/26/16: DEFT KRUKOWSKI AT 9 AM, DEFT	C3	DMM
	-	STEVENS AT 1:30 PM; 30 MINS INITIAL VOIR DIRE;	C3	DMM
	-	OPENING STMTS 4/27/16: 30 MINS OR LESS, DEFT KRUKOWSKI	C3	DMM
	-	9 AM, ATTY STEVENS 10:30 AM; CLOSING ARGUMENTS 1 HR	C3	DMM
	-	OR LESS; FINAL PRETRIAL TO BE HELD 4/18/16 AT 9:30 AM;	C3	DMM
	-	PRELIM JURY INSTRUCTION REQUESTES MUST BE SUBMITTED	C3	DMM
	-	BY 4/21/16)	C3	DMM
3/24/2016	RET	FILE RETURNED TO CLERK'S OFFICE	C3	DMM
3/28/2016	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C3	TSB
4/01/2016	*	PEOPLE'S AMENDED LIST OF WITNESSES; PRF OF SVC, FILED B	C3	NRS
	-	ATTY PATRICK DUGGAN	C3	NRS
4/15/2016	APR	PRE-TRIAL SCHD FOR 4/18/2016 AT 9:30 AM	C3	DMM
	PFC	PULLED FILE FOR COURTROOM	C3	CH
4/18/2016	*	PEOPLES NOTICE (PEOPLE V HANA, 447 MICH 325 (1994)	C3	HLL
	0UW	CT. REPORTER: U. WEGERT, CSR-4553	C3	DMM
	H	HEARING HELD	C3	DMM
	-	CO-DEFT'S MTN IN LIMINE AND PRE-TRIAL; ATTY P.R. STURTZ	C3	DMM
	-	PRESENT FOR DEFT, DEFT DID NOT APPEAR (W/ COURT'S	C3	DMM
	-	PERMISSION), CO-DEFT PRESENT W/ ATTY G. BUSH; STATEMENT	C3	DMM
	-	OF COUNSEL; COURT GRANTED MTN; PRE-TRIAL ISSUES	C3	DMM
	-	DISCUSSED: LATEST PLEA OFFER PLACED ON THE RECORD: IF	C3	DMM
	-	DEFT PLEADS GUILTY AS CHARGED, PROS WOULD RECOMMEND A	C3	DMM
	-	1 YR DELAYED SENTENCE; IF DEFT SUCCESSFULLY COMPLETES	C3	DMM
	-	THE 1 YR DELAY, PROS WOULD ALLOW DEFT TO WITHDRAW PLEA	C3	DMM
	-	AND PLEAD GUILTY TO A REDUCED CHARGE OF CHILD ABUSE -	C3	DMM
	-	4TH DEGREE (MISDEMEANOR), AND DEFT MUST RELINQUISH	C3	DMM
	-	APPEAL OF THE TERMINATION ORDER; ATTY STURTZ INDICATED	C3	DMM
	-	THAT DEFT HAS REJECTED THIS OFFER; THE COURT WILL SET	C3	DMM
	-	A STATUS CONFERENCE FOR 4/25/16 AT 9:30 A.M.	C3	DMM
4/18/2016	APR	HEARING SCHD FOR 4/25/2016 AT 9:30 AM	C3	DMM
	-	STATUS CONFERENCE	C3	DMM
4/21/2016	*	PRELIMINARY JURY INSTRUCTIONS, FILED BY PATRICK DUGGAN	C3	NRS
4/25/2016	0UW	CT. REPORTER: U. WEGERT, CSR-4553	C3	DMM
	H	HEARING HELD	C3	DMM
	-	STATUS CONFERENCE; ATTY P.R. STURTZ PRESENT FOR DEFT,	C3	DMM
	-	DEFT DID NOT APPEAR, PROS ATTY P. DUGGAN; JURY SELECTIO	C3	DMM
	-	TO BEGIN ON 4/27/16 AT 9:00 A.M., PROOFS TO BEGIN AT	C3	DMM
	-	1:30 P.M.	C3	DMM
4/27/2016	0UW	CT. REPORTER: U. WEGERT, CSR-4553	C3	DMM
	JTB	JURY TRIAL BEGUN	C3	DMM
	-	DEFT PRESENT W/ ATTY P.R. STURTZ, PROS ATTY P. DUGGAN;	C3	DMM
	-	JURY SELECTION BEGUN; VOIR DIRE BEGUN AND CONCLUDED;	C3	DMM

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DATE: 7/01/2020 STATE OF MICHIGAN, CIRCUIT COURT, COUNTY OF SAGINAW PAGE 6
PEOPLE VS DANE KRUKOWSKI

CASE: **15-041274-FH** OFFENSE: 2/10/2015

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
4/27/2016	-	JURY SELECTED AND SWORN; PRELIMINARY JURY INSTRUCTIONS;	C3	DMM
	-	PEOPLE'S OPENING STATEMENT; DEFT RESERVED THEIR OPENING	C3	DMM
	-	PEOPLE'S PROOFS BEGUN; COURT ADJOURNED TO 4/28/16 AT	C3	DMM
	-	9:00 A.M. (ONE FULL DAY)	C3	DMM
4/27/2016	INF	FELONY INFORMATION FILED BY PROSECUTOR	C3	DMM
	-	(AMENDED)	C3	DMM
4/28/2016	0UW	CT. REPORTER: U. WEGERT, CSR-4553	C3	DMM
	JTC	JURY TRIAL CONTINUED	C3	DMM
	-	DEFT PRESENT W/ ATTY P.R. STURTZ, PROS ATTY P. DUGGAN;	C3	DMM
	-	PEOPLE'S PROOFS CONTINUED; COURT ADJOURNED TO 4/29/16	C3	DMM
	-	AT 9:00 A.M. (ONE FULL DAY)	C3	DMM
4/29/2016	*	DEFT'S REQUESTED JURY INSTRUCTIONS, FILED BY DEF ATTY	C3	RJA
	-	P.R. STURTZ (HANDWRITTEN SHEET)	C3	RJA
4/29/2016	*	PEOPLE'S PROPOSED FINAL JURY INSTRUCTIONS, FILED BY	C3	DMM
	-	PROS ATTY P. DUGGAN	C3	DMM
4/29/2016	0UW	CT. REPORTER: U. WEGERT, CSR-4553	C3	DMM
	JTC	JURY TRIAL CONTINUED	C3	DMM
	-	DEFT PRESENT W/ ATTY P.R. STURTZ, PROS ATTY P. DUGGAN;	C3	DMM
	-	PEOPLE'S PROOFS CONTINUED; COURT ADJOURNED TO 5/3/16	C3	DMM
	-	AT 9:00 A.M. (ONE FULL DAY)	C3	DMM
5/03/2016	0JS	CT. REPORTER: J. STUPAK, CSR-8314	C3	DMM
	JTC	JURY TRIAL CONTINUED	C3	DMM
	-	DEFT PRESENT W/ ATTY P.R. STURTZ, PROS ATTY P. DUGGAN;	C3	DMM
	-	PEOPLE'S PROOFS CONTINUED; COURT ADJOURNED TO 5/4/16	C3	DMM
	-	AT 9:00 A.M. (ONE-HALF DAY)	C3	DMM
5/04/2016	0JS	CT. REPORTER: J. STUPAK, CSR-8314	C3	DMM
	JTC	JURY TRIAL CONTINUED	C3	DMM
	-	DEFT PRESENT W/ ATTY P.R. STURTZ, PROS ATTY P. DUGGAN;	C3	DMM
	-	PEOPLE'S PROOFS CONTINUED; PEOPLE REST; CO-DEFT'S OPENI	C3	DMM
	-	STATEMENT; CO-DEFT'S PROOFS BEGUN AND CONCLUDED; CO-DEF	C3	DMM
	-	RESTS; DEFT'S OPENING STATEMENT; DEFT'S PROOFS BEGUN;	C3	DMM
	-	COURT ADJOURNED TO 5/5/16 AT 9:00 A.M. (ONE FULL DAY)	C3	DMM
5/05/2016	0JS	CT. REPORTER: J. STUPAK, CSR-8314	C3	DMM
	JTC	JURY TRIAL CONTINUED	C3	DMM
	-	DEFT PRESENT W/ ATTY P.R. STURTZ, PROS ATTY P. DUGGAN;	C3	DMM
	-	DEFT RESTS; PEOPLE'S CLOSING ARGUMENT AS TO CO-DEFT;	C3	DMM
	-	CO-DEFT'S CLOSING ARGUMENT; PEOPLE'S CLOSING ARGUMENT	C3	DMM
	-	AS TO DEFT; DEFT'S CLOSING ARGUMENT; JURY INSTRUCTED;	C3	DMM
	-	JURY REDUCED; BAILIFFS SWORN; JURY DELIBERATIONS	C3	DMM
	-	BEGUN; COURT ADJOURNED TO 5/6/16 AT 9:00 A.M.	C3	DMM
	-	(ONE FULL DAY)	C3	DMM
5/06/2016	0JS	CT. REPORTER: J. STUPAK, CSR-8314	C3	DMM
	JTC	JURY TRIAL CONTINUED	C3	DMM
	-	DEFT PRESENT W/ ATTY P.R. STURTZ, PROS ATTY P. DUGGAN;	C3	DMM
	-	JURY DELIBERATIONS CONTINUED	C3	DMM
5/06/2016	JV	JURY VERDICT OF	C3	DMM
	JG	JURY-GUILTY 01-00 CHILD ABUSE-2ND DEGR	C3	DMM
	JTE	JURY TRIAL ENDED	C3	DMM
	DOC	REFERRED TO DEPARTMENT OF CORRECTIONS	C3	DMM
	DNA	ORDER FOR DNA PROFILING	C3	DMM
	102	DEFENDANT REMANDED TO CUSTODY OF SHERIFF PENDING FURTHE	C3	DMM

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DATE: 7/01/2020 STATE OF MICHIGAN, CIRCUIT COURT, COUNTY OF SAGINAW PAGE 7
PEOPLE VS DANE KRUKOWSKI

CASE: **15-041274-FH** OFFENSE: 2/10/2015

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
	-	PROCEEDINGS.	C3	DMM
	APR	SENTENCE SCHD FOR 6/14/2016 AT 2:00 PM	C3	DMM
	KJY	ADJUDICATED BY JURY TRIAL	C3	DMM
	*	DEFN INFO CHANGED BY CIRCUIT COURT PROBATION		MKM
6/07/2016	*	OBJECTION TO PRE-SENTENCE REPORT; PRF OF SVC BY ATTY	C3	BRE
	-	PHILIP R STURTZ	C3	BRE
	-	+++ FWD TO CTRM +++	C3	BRE
6/13/2016	*	PEOPLE'S RESPONSE TO DEFT'S OBJ TO PRE-SENTENCE REPORT	C3	NRS
	-	(SCORING GUIDELINES VARIABLES); PRF OF SVC, FILED BY AT	C3	NRS
	-	PATRICK DUGGAN	C3	NRS
6/14/2016	0JS	CT. REPORTER: J. STUPAK, CSR-8314	C3	DMM
	S	SENTENCED	C3	DMM
	-	DEFT PRESENT W/ ATTY P.R. STURTZ, PROS ATTY P. DUGGAN,	C3	DMM
	-	L. BOVEE FOR DOC; DEFT SENTENCED TO PRISON: 36 MOS MIN	C3	DMM
	-	TO 10 YRS MAX; 92 DAYS CREDIT; $60 DNA, $68 SMF AND	C3	DMM
	-	$130 VRF	C3	DMM
6/14/2016	NAR	NOTICE OF APPEAL RIGHTS PROVIDED TO DEFENDANT	C3	DMM
	SN	COUNT 01-00 SENTENCED	C3	DMM
	RPF	ORDER TO REMIT PRISONER FUNDS, MC288 SENT TO DEFENDANT	C3	DMM
	-	C. EGELER RECEPTION & GUIDANCE CENTER	C3	DMM
6/14/2016	JOS	JUDGMENT OF SENTENCE	C3	DMM
	FDJ	FINAL DISPOSITION-JURY TRIAL	C3	DMM
6/15/2016	*	DEFN INFO CHANGED BY CIRCUIT COURT PROBATION		LJS
6/21/2016	RET	FILE RETURNED TO CLERK'S OFFICE	C3	DMM
	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C3	TSB
6/23/2016	MSP	MSP EJUD COUNT 001 GTY CONFIRMED		943
	RAC	REQUEST FOR APPELLATE ATTY FORWARDED O-A-C	C3	HLL
7/05/2016	AFR	ATTORNEY FEES PAYMENT REQUESTED	C3	VW
7/07/2016	HDA	PROP.ORDER APPT APPEAL ATTY TO COURT FOR SIG'TURE	C3	VW
7/08/2016	*	JUDGE SIGNED ORDER APPOINTING APPELLATE ATTORNEY & CLAI	C3	LMM
	-	OF APPEAL ON 7/8/16	C3	LMM
7/19/2016	PAY	DISBURSEMENT VOUCHER/PAYMENT ORDER	C3	DMM
	-	$7,000 TO ATTY PHILIP R. STURTZ	C3	DMM
8/04/2016	OAA	ORDER APPOINTING APPELLATE ATTORNEY	C3	LMM
	CA	CLAIM OF APPEAL FILED	C3	LMM
	*AT	STATE,(S.A.D.O.) , REPLACES STURTZ, PHILIP R. AS ATTORN	C3	LMM
8/09/2016	*	REPORTER/RECORDER CERTIFICATE OF ORDERING OF TRANSCRIPT	C3	BRE
	-	ON APPEAL TO COURT OF APPEALS BY J STUPAK	C3	BRE
8/10/2016	*	REPORTER/RECORDER OF CERTIFICATE OF ORDERING OF	C3	HLL
	-	TRANSCRIPT ON APPEAL - COURT OF APPEALS	C3	HLL
9/01/2016	*	PER REQUEST, MAILED COPIES OF FILE/ROA/PRELIM TRANSCRIP	C3	HLL
	-	TO APPELLATE ATTORNEY S.A.D.O	C3	HLL
9/21/2016	*	PD U WEGERT $11.40 HRG 11-10-15, $9.60 HRG 2-1-16, $9.6	C3	PAB
	-	HRG 2-29-16, $180.95 HRG 3-17-16 AND $44.65 MTN 4-18-16	C3	PAB
	-	TRANSCRIPTS	C3	PAB
10/04/2016	*	NOTICE OF FILING OF TRANSCRIPT AND AFFIDAVIT OF MAILING	C3	BRE
	-	BY J STUPAK	C3	BRE
10/04/2016	*	TRANSCRIPT OF JURY TRIAL - VOLUME IV OF VII DTD 5/3/16	C3	BRE
	-	BY J STUPAK	C3	BRE
10/04/2016	*	TRANSCRIPT OF JURY TRIAL - VOLUME V OF VII DTD 5/4/16	C3	BRE
	-	BY J STUPAK	C3	BRE

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DATE: 7/01/2020 STATE OF MICHIGAN, CIRCUIT COURT, COUNTY OF SAGINAW PAGE 8
PEOPLE VS DANE KRUKOWSKI

CASE: **15-041274-FH** OFFENSE: 2/10/2015

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
10/04/2016	*	TRANSCRIPT OF JURY TRIAL - VOLUME VI OF VII DTD 5/5/16	C3	BRE
	-	BY J STUPAK	C3	BRE
	*	TRANSCRIPT OF JURY TRIAL - VOLUME VII OF VII DTD 5/6/16	C3	BRE
	-	BY J STUPAK	C3	BRE
10/04/2016	*	TRANSCRIPT OF SENTENCE DTD 6/14/16 BY J STUPAK	C3	BRE
	*	TRANSCRIPT OF HEARING DTD 7/6/15 BY J STUPAK	C3	BRE
10/05/2016	*	PD STUPAK $49.35 HRG 7-6-15, $39.95 TRL 5-3-16, $556.95	C3	PAB
	-	TRL 5-4-16 TRANSCRIPTS	C3	PAB
	-	ALSO PD STUPAK 444.15 TRL 5-5-16, $21.15 TRL 5-6-16,	C3	PAB
	-	$79.90 SENT 6-14-16 TRANSCRIPTS	C3	PAB
10/05/2016	*	PF WEGERT $14.10 HRG 4-25-16 AND $218.55 HRG 3-18-16	C3	PAB
	-	TRANSCRIPTS	C3	PAB
11/01/2016	*	PD WEGERT $726015 TRL 4-27-16 TRANSCRIPT	C3	PAB
11/21/2016	*	PD $655.65 TRIAL TRANSCRIPT 4-28-16/U WEGERT	C3	SAB
12/07/2016	*	EXPANDALBE PREPARED	C3	TSB
12/13/2016	*	PD U WEGERT $498.20 TRL 4-29-16	C3	PAB
5/19/2017	*	ORDER OF COURT OF APPEALS (DOCKET NO. 334320): MOTION T	C3	RJA
	-	REMAND IS GRANTED, CASE REMANDED TO TRIAL COURT SO DEFT	C3	RJA
	-	MAY HAVE AN EVIDENTIARY HRG RE: CLAIMS OF INEFFECTIVE	C3	RJA
	-	ASSISTANCE OF TRIAL COUNSEL; DEFT SHALL INITIATE PRO-	C3	RJA
	-	CEEDINGS ON REMAND WITHIN 14 DAYS; TRIAL COURT SHALL HE	C3	RJA
	-	AND DECIDE MATTER WITHIN 56 DAYS; THIS COURT RETAINS	C3	RJA
	-	JURISDICTION.	C3	RJA
5/19/2017	*	NOTE: COURT OF APPEALS ORDER REC'D ON 5/25/17.	C3	RJA
5/30/2017	PFC	PULLED FILE FOR COURTROOM	C3	CMJ
	-	AND EXPANDABLE	C3	CMJ
5/30/2017	*	SCHEDULING ORDER - SETTING DEADLINES/DATES PER COURT OF	C3	RJA
	-	APPEALS ORDERS OF 5/19/2017; DEFT TO FILE MOTION/BRIEF	C3	RJA
	-	6/2/17; PEOPLE RESP BY 6/12/17; EVIDENTIARY HRG TO BEGI	C3	RJA
	-	6/29/17 (MORNING ONLY), CONTINUE 6/30/17 (FULL DAY IF	C3	RJA
	-	NEEDED); SAME ORDER ENTERED IN CO-DEFT CASE.	C3	RJA
5/30/2017	APR	HEARING SCHD FOR 6/29/2017 AT 9:00 AM	C3	RJA
	-	GINTHER HRG ON REMAND *** NEED WRIT ***	C3	RJA
6/02/2017	DM	DEFENSE MOTION	C3	HLL
	-	FOR NEW TRIAL/BRIEF/NTC OF HEARING/PRF OF SVC	C3	HLL
	-	FILED BY S.A.D.O	C3	HLL
	-	+++DOCUMENTS & JUDGE'S COPY - FWD TO CRTRM+++	C3	HLL
6/02/2017	APR	MOTION SCHD FOR 6/29/2017 AT 9:00 AM	C3	HLL
	-	FOR NEW TRIAL	C3	HLL
6/07/2017	*	APPELLATE ATTY FOR DEF KRUKOWSKI SUBMITTED BY EMAIL:	C3	RJA
	-	COPIES OF PAPERS FILED IN COURT OF APPEALS: JOINT MOTIO	C3	RJA
	-	FOR EXTENSION OF TIME TO CONDUCT EVIDENTIARY HRG (ON	C3	RJA
	-	REMAND), STIPULATION FOR EXTENSION OF TIME WITHIN WHICH	C3	RJA
	-	TO CONDUCT EVIDENTIARY HRG (CAPTIONED IN BOTH CO-DEFT	C3	RJA
	-	CASES)	C3	RJA
6/08/2017	*	FILED BY DEF ATTY B. DEGROFF, AT COURT'S DIRECTION: COP	C3	RJA
	-	OF MOTION TO REMAND AND BRIEF FILED IN COURT OF APPEALS	C3	RJA
6/14/2017	*	ORDER OF COURT OF APPEALS (DOCKET NOS. 334320, 337120):	C3	RJA
	-	MTN FOR IMMEDIATE CONSIDERATION GRANTED; MTN TO EXTEND	C3	RJA
	-	TIME TO CONDUCT EV HRG GRANTED; TRIAL CT TO EXERCISE IT	C3	RJA
	-	DISCRETION TO COMPLETE PROCEEDINGS IN REASONABLY TIMELY	C3	RJA

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DATE: 7/01/2020 STATE OF MICHIGAN, CIRCUIT COURT, COUNTY OF SAGINAW PAGE 9
PEOPLE VS DANE KRUKOWSKI

CASE: **15-041274-FH** OFFENSE: 2/10/2015

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
6/14/2017	-	MANNER; DEF COUNSEL TO FILE PROGRESS REPORTS APPROX	C3	RJA
	-	EVERY 28 DAYS WITH COURT OF APPEALS	C3	RJA
	*	PEOPLE'S RESPONSE TO DFNT'S MTN FOR NEW TRIAL; BRIEF IN	C3	BRE
	-	SUPPORT; PRF OF SVC BY ATTY NATHAN COLLISON	C3	BRE
	-	(JUDGE'S COPY FWD TO CTRM)	C3	BRE
6/19/2017	*	COUNSEL ADVISED, BY EMAIL: IN LIGHT OF COURT OF APPEALS	C3	RJA
	-	ORDER EXTENDING TIME FOR REMAND HRG, STATUS CONFERENCE	C3	RJA
	-	WILL BE HELD 6/22/17 AT 8:45 AM	C3	RJA
6/19/2017	APR	MOTION SCHD FOR 6/22/2017 AT 8:45 AM	C3	RJA
	-	STATUS CONFERENCE AFTER COA ORDER EXTENDING TIME	C3	RJA
6/22/2017	PTH	PRETRIAL HELD	C3	RJA
	*	STATUS/SCHEDULING CONFERENCE HELD IN CHAMBERS IN BOTH	C3	RJA
	-	CODEFT CASES; N. COLLISON, M. HOOVER & P. DUGGAN FOR	C3	RJA
	-	PEOPLE; B. DEGROFF (SADO) FOR DEF KRUKOWSKI; R. DUNN FO	C3	RJA
	-	DEF STEVENS; JUNE 29-30 GINTHER HRG ADJ; RESCHEDULING I	C3	RJA
	-	PROBLEMATIC DUE TO LTD AVL OF EXPERT WITNESSES; DR. SHE	C3	RJA
	-	(PHONETIC) IS AVL ON 9/15/17 AND HRG WILL BE SET FOR TH	C3	RJA
	-	DAY; PARTIES MUST FILE WITNESS & EXHIBIT LISTS BY 7/10/	C3	RJA
	-	COURT WILL ISSUE AMENDED SCHEDULING ORDER.	C3	RJA
6/23/2017	ADJ	ADJOURNED HEARING ORIG SCHED 6/29/2017 AT 09:	C3	RJA
	-	GINTHER HRG ADJ PER EXT'N GRANTED BY CT OF APPEALS	C3	RJA
6/23/2017	ADJ	ADJOURNED MOTION ORIG SCHED 6/29/2017 AT 09:	C3	RJA
	APR	HEARING SCHD FOR 9/15/2017 AT 9:00 AM	C3	RJA
	-	MTN 4/NEW TRIAL/GINTHER HRG PER REMAND	C3	RJA
6/28/2017	*	ATTY DEGROFF'S COPY OF 5/30/17 SCHEDULING ORDER RETURNE	C3	RJA
	-	BY POSTAL SERVICE (SENT TO SADO LANSING OFFICE)	C3	RJA
6/29/2017	*	ATTY DEGROFF'S COPY OF 5/30/17 SCHEDULING ORDER REMAILE	C3	RJA
	-	TO SADO'S DETROIT OFFICE	C3	RJA
6/30/2017	*	AMENDED SCHEDULING ORDER (FOLLOWING COURT OF APPEALS	C3	PGD
	-	ORDER GRANTING EXTENSION OF TIME TO COMPLETE REMAND	C3	PGD
	-	PROCEEDINGS)	C3	PGD
7/07/2017	*	WITNESS LIST - PLTF; EXHIBIT LIST - PLTF; PRF OF SVC BY	C3	BRE
	-	ATTY MELISSA HOOVER	C3	BRE
7/10/2017	*	WITNESS/EXHIBIT LIST FILED BY S.A.D.O	C3	HLL
7/18/2017	WRT	WRIT OF HABEAS CORPUS ISSUED	C3	PGD
	-	****9/15/17 FROM NEWBERRY CORRECTIONAL**********	C3	PGD
7/21/2017	*	NOTICE OF SERVING THE PEOPLE'S DEMAND FOR DISCOVERY, PR	C3	BRE
	-	OF SVC BY ATTY MELISSA HOOVER	C3	BRE
8/09/2017	*	DFNT KRUKOWSKIS RESPONSE TO PROSECUTIONS DEMAND FOR	C3	KMS
	-	DISCOVERY; BRIEF IN SUPPORT; CERT OF SVC FILED BY ATTY	C3	KMS
	-	BRETT DEGROFF(JUDES COPIES & ASSIGNMENT CLERKS COPIES)	C3	KMS
	-	++++++++++++FWD TO CRTRM+++++++++++	C3	KMS
8/14/2017	PM	PROSECUTION MOTION	C3	AV
	-	TO COMPEL ANSWERS TO DISCOVERY REQUESTS, BRIEF IN SUPPO	C3	AV
	-	NTC OF HRG, PRF OF SVC BY ATTY MELISSA J HOOVER	C3	AV
8/14/2017	APR	MOTION SCHD FOR 8/28/2017 AT 9:30 AM	C3	AV
	-	PEOPLES MOTION COMPEL ANSWERS TO DISCOVERY REQUESTS	C3	AV
8/14/2017	*	SADO DEF ATTY DEGROFF ADVISES BY EMAIL: 9/29/17 WOULD	C3	RJA
	-	WORK FOR EVERYONE FOR DAY 2 OF GINTHER HRG - BELIEVE HR	C3	RJA
	-	CAN BE CONCLUDED	C3	RJA
8/15/2017	APR	HEARING SCHD FOR 9/29/2017 AT 9:00 AM	C3	RJA

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DATE: 7/01/2020 STATE OF MICHIGAN, CIRCUIT COURT, COUNTY OF SAGINAW PAGE 10
PEOPLE VS DANE KRUKOWSKI

CASE: **15-041274-FH** OFFENSE: 2/10/2015

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
	-	GINTHER HRG/DAY 2/COMPLETION OF HRG EXPECTED	C3	RJA
8/18/2017	*	PEOPLE'S AMENDED WITNESS LIST/RESPONSE & BRIEF TO COMPE	C3	HLL
	-	PRF OF SVC	C3	HLL
8/28/2017	WRT	WRIT OF HABEAS CORPUS ISSUED	C3	PGD
	-	******9/29/17***FROM NEWBERRY CORRECTIONAL @ 9:00 A.M.	C3	PGD
8/28/2017	OUW	CT. REPORTER: U. WEGERT, CSR-4553	C3	DMM
	H	HEARING HELD	C3	DMM
	-	PEOPLE'S MTN TO COMPEL ANSWERS TO DISCOVERY REQUESTS;	C3	DMM
	-	PROS ATTY M. HOOVER/N. COLLISON; ATTYS B. DEGROFF AND	C3	DMM
	-	J. EGGERT (S.A.D.O) PRESENT FOR DEFT; ATTY R. DUNN	C3	DMM
	-	PRESENT FOR CO-DEFT STEVENS; STATEMENTS OF COUNSEL;	C3	DMM
	-	COURT DENIED MTN, INCLUDING SUPPLEMENTAL REQUEST; ATTY	C3	DMM
	-	DEGROFF/EGGERT TO SUBMIT ORDER	C3	DMM
9/01/2017	*	PEOPLE'S AMENDED WITNESS LIST; PRF OF SVC BY ATTY MELIS	C3	BRE
	-	HOOVER	C3	BRE
9/06/2017	*	DFNT-APPELLANT DANE RICHARD KRUKOWSKI'S AMENDED WITNESS	C3	BRE
	-	LIST; CERT OF SVC BY ATTY BRETT DEGROFF	C3	BRE
9/07/2017	PM	PROSECUTION MOTION	C3	NRP
	-	PEOPLE'S MOT TO STRIKE ALL EXPERT TESTIMONY AS IRRELEVA	C3	NRP
	-	PURSUANT TO MRE 401 & 402; BRIEF; NTC OF HRG; PRF OF SV	C3	NRP
	-	FILED BY ATTY MELISSA HOOVER	C3	NRP
9/08/2017	*	PEOPLE'S AMENDED WITNESS LIST; NOTICE OF SERVING THE	C3	BRE
	-	PEOPLE'S AMENDED WITNESS LIST, PRF OF SVC BY ATTY MELIS	C3	BRE
	-	HOOVER	C3	BRE
9/08/2017	DM	DEFENSE MOTION	C3	HLL
	-	TO ALLOW REMOTE TESTIMONY/NTC OF HEARING/PRAECIPE	C3	HLL
	-	PRF OF SVC FILED BY S.A.D.P	C3	HLL
9/08/2017	APR	MOTION SCHD FOR 9/15/2017 AT 9:00 AM	C3	HLL
	-	TO ALLOW REMOTE TESTIMONY	C3	HLL
9/08/2017	APR	MOTION SCHD FOR 9/15/2017 AT 9:00 AM	C3	NRP
	-	MOT TO STRIKE DEFT'S EXPERTS WITNESSES	C3	NRP
9/12/2017	*	PEOPLE'S AMENDED WITNESS LIST; PRF OF SVC, FILED BY	C3	NRP
	-	ATTY HOOVER	C3	NRP
	-	(JUDGE'S COPY FWD TO CT RM)	C3	NRP
9/14/2017	*	ORDER ON DEFENDANT'S MOTION TO ALLOW REMOTE TESTIMONY	C3	JEO
	-	MOTION IS DENIED	C3	JEO
9/15/2017	OUW	CT. REPORTER: U. WEGERT, CSR-4553	C3	JEO
	H	HEARING HELD	C3	JEO
	-	ON DATE SET FOR MTN 4/NEW TRIAL/GINTHER HRG PER REMAND;	C3	JEO
	-	& MNT TP STROLE DEFNT'S EXPERT WITNESSES; DEFNT PRES.W/	C3	JEO
	-	ATTYS B. DEGROFF, R. DUNN, & J. EGGERT; ATTYS. N.	C3	JEO
	-	COLLISON & M. HOOVER PRESENT FOR PLTF. MTN TO STRIKE	C3	JEO
	-	DEFNTS EXPERT WITNESSES DENIED; GINTHER HEARING EXPECTE	C3	JEO
	-	TO BE COMPLETED WHEN IT IS CONTINUED ON 9/29/17.	C3	JEO
9/15/2017	*	PEOPLE'S REPLY TO DEFT'S RESPONSE TO THE PEOPLE'S MOT T	C3	NRP
	-	STRIKE ALL EXPERT TESTIMONY AS IRRELEVANT PURSUANT TO	C3	NRP
	-	MRE 401 & 402, NTC OF SERVING PEOPLE'S MOT TO STRIKE, P	C3	NRP
	-	OF SVC, FILED BY ATTY MELISSA HOOVER	C3	NRP
9/19/2017	*	DFNT KRUKOWSKI'S RESPONSE TO PROSECUTION'S MTN TO STRIK	C3	BRE
	-	ALL EXPERT TESTIMONY; BRIEF IN SUPPORT; CERT OF SVC BY	C3	BRE
	-	ATTY BRETT DEGROFF	C3	BRE

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DATE: 7/01/2020 STATE OF MICHIGAN, CIRCUIT COURT, COUNTY OF SAGINAW PAGE 11
PEOPLE VS DANE KRUKOWSKI

CASE: **15-041274-FH** OFFENSE: 2/10/2015

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
9/19/2017	-	(JUDGE'S COPY & ASSIGNMENT CLERK COPY FWD TO CTRM)	C3	BRE
9/29/2017	0UW	CT. REPORTER: U. WEGERT, CSR-4553	C3	DMM
	H	HEARING HELD	C3	DMM
	-	DEFT PRESENT W/ ATTYS B. DEGROFF AND J. EGGERT; PROS	C3	DMM
	-	ATTYS N. COLLISON AND M. HOOVER; CO-DEFT C. STEVENS	C3	DMM
	-	WAS ALSO PRESENT W/ ATTY R. DUNN; STATEMENTS OF	C3	DMM
	-	COUNSEL; TESTIMONY OF DR. KARL WILLIAMS AND DR.	C3	DMM
	-	RUNDELL; COUNSEL TO BE PROVIDED WITH COPY OF TRANSCRIPT	C3	DMM
	-	FROM TODAY'S HEARING; UPON RECEIPT OF TRANSCRIPT, COUNS	C3	DMM
	-	SHALL HAVE 21 DAYS TO BRIEF THEIR POSITION; COURT WILL	C3	DMM
	-	THEN SET DATE FOR ORAL ARGUMENT	C3	DMM
10/04/2017	*	REPORTER/RECORDER CERTIFICATE OF ORDERING OF TRANSCRIPT	C3	BRE
	-	ON APPEAL TO COURT OF APPEALS BY U WEGERT	C3	BRE
10/13/2017	*	TRANSCRIPT OF MOTION DTD 8/28/17 BY U WEGERT	C3	BRE
10/18/2017	*	PD WEGERT $84.60 MTN 8-28-17 TRANSCRIPT	C3	PAB
10/20/2017	*	TRANSCRIPT OF MOTION DTD 9/11/17 BY U WEGERT	C3	BRE
11/01/2017	*	PD WEGERT $77.55 MTN 9-11-17 TRANSCRIPT	C3	PAB
11/16/2017	*	REPORTER/RECORDER CERTIFICATE OF ORDERING OF TRANSCRIPT	C3	BRE
	-	ON APPEAL TO COURT OF APPEALS BY U WEGERT	C3	BRE
11/16/2017	*	TRANSCRIPT OF EVIDENTIARY HEARING - VOLUME I OF II DTD	C3	BRE
	-	9/15/17 BY U WEGERT	C3	BRE
11/29/2017	*	PD WEGERT $310.20 HRG 9-15-17 TRANSCRIPT	C3	PAB
12/26/2017	*	PD WEGERT $434.75 HRG 9-29-17TRANSCRIPT	C3	PAB
	*	NOTICE OF FILING OF TRANSCRIPT AND AFFIDAVIT OF MAILIN	C3	DMM
	*	TRANSCRIPT OF EVIDENTIARY HEARING - VOL II (9/29/17),	C3	DMM
	-	FILED BY U. WEGERT	C3	DMM
12/28/2017	*	IN RESP TO EMAIL MESSAGE FROM ATTY DEGROFF ASKING IF CR	C3	RJA
	-	WOULD APPROVE AGREEMENT OF COUNSEL TO EXTEND DEADLINE F	C3	RJA
	-	POST-HRG BRIEFS TO 1/23/18, COUNSEL ADVISED PER COURT	C3	RJA
	-	THAT REQUEST WOULD BE APPROVED, COUNSEL SHOULD SUBMIT A	C3	RJA
	-	ORDER, WHICH DEGROFF DID BY EMAIL	C3	RJA
12/28/2017	*	SCHEDULING ORDER [ESTABLISHING DEADLINES FOR POST-HEARI	C3	RJA
	-	BRIEFING] - OLD 1/9/18 DEADLINE EXTENDED TO 1/23/18	C3	RJA
1/23/2018	*	PEOPLES BRIEF FOLLOWING EVIDENTIARY HEARING ON REMAND,	C3	AV
	-	PRF OF SVC BY ATTY MELISSA J HOOVER ++JUDGE COPY++	C3	AV
1/24/2018	*	DFNTS BRIEF AFTER GINTHER HEARING/PRF OF SVC	C3	HLL
	-	+++JUDGE'S COPY - FWD TO CRTRM+++	C3	HLL
1/24/2018	*	NTC OF SERVING THE PEOPLES BRIEF FOLLOWING EVIDENTIARY	C3	AV
	-	HEARING ON REMAND, PRF OF SVC BY ATTY MELISSA J HOOVER	C3	AV
	-	++++JUDGE COPY FWD TO CRTRM++++	C3	AV
3/09/2018	APR	ORAL ARGUMENT SCHD FOR 4/02/2018 AT 10:00 AM	C3	RJA
	-	FINAL ARGUMENT ON ALL ISSUES ON REMAND FROM COA	C3	RJA
4/02/2018	0UW	CT. REPORTER: U. WEGERT, CSR-4553	C3	DMM
	H	HEARING HELD	C3	DMM
	-	ORAL ARGUMENT ON DEFT/APPELLANT'S MTN FOR NEW TRIAL;	C3	DMM
	-	PROS ATTYS N. COLLISON AND M. HOOVER, ATTY B. DEGROFF	C3	DMM
	-	PRESENT FOR DEFT; STATEMENTS OF COUNSEL; COURT DENIED	C3	DMM
	-	MTN; PROSECUTOR TO SUBMIT ORDER	C3	DMM
4/05/2018	7DY	SEVEN DAY NOTICE OF PRESENTMENT, W/PRF OF SERVICE, OF:	C3	NRP
	-	ORDER DENYING DEFT-APPELLANTS MOT FOR NEW TRIAL, FILED	C3	NRP
	-	ATTY MELISSA HOOVER +++FWD TO CT RM+++	C3	NRP

*** **CONTINUED NEXT PAGE** **

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DATE: 7/01/2020 STATE OF MICHIGAN, CIRCUIT COURT, COUNTY OF SAGINAW PAGE 12
PEOPLE VS DANE KRUKOWSKI

CASE: **15-041274-FH** OFFENSE: 2/10/2015

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
4/10/2018	*	REPORTER/RECORDER CERTIFICATE OF ORDERING OF TRANSCRIPT	C3	BRE
	-	ON APPEAL TO COURT OF APPEALS BY U WEGERT	C3	BRE
4/23/2018	*	EXPANDABVLE RETURNED WITH 18 TRANSCRIPTS	C3	TSB
	*	ORDER DENYING DEFENDANT-APPELLLANTS' MOTION FOR NEW TRI	C3	PGD
5/16/2018	*	PD WEGERT $72.85 ORAL ARGUMENT TRANSCRIPT 4-2-18	C3	PAB
	*	NOTICE OF FILING OF TRANSCRIPT & AFFIDAVIT OF MAILING B	C3	BRE
	-	U WEGERT	C3	BRE
5/16/2018	*	TRANSCRIPT OF ORAL ARGUMENT DTD 4/2/18 BY U WEGERT	C3	BRE
5/31/2018	*	FILE 2 PREPARED	C3	TSB
	PFC	PULLED FILE FOR COURTROOM	C3	TSB
	-	FILE 2	C3	TSB
6/06/2018	RET	FILE RETURNED TO CLERK'S OFFICE	C3	DMM
	-	FILES 1 & 2 AND EXPANDABLE FILE W/ EXHIBITS FROM	C3	DMM
	-	9/29/17 HEARING	C3	DMM
6/07/2018	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C3	CMJ
	-	FILES 1, 2, EXHIBIT EXPANDABLE	C3	CMJ
6/12/2018	*	PER REQUEST MAILED COMPLETE FILE AND TRANSCRIPTS TO COA	C3	NRP
	-	925 W OTTAWA ST LANSING MI 48909-7522	C3	NRP
1/17/2019	*	SUBSTITUTION OF ATTY; PRF OF SVC BY ATTY MELISSA HOOVER	C3	BRE
2/12/2019	*	COURT OF APPEALS ORDER - MOT FOR IMMEDIATE CONSIDERATIO	C3	NRP
	-	TO ADD AN ADDITIONAL ISSUE & TO ADJ ORAL ARGUMENT ARE	C3	NRP
	-	GRANTED; MOT TO FILE A SUPPLEMENTAL BRIEF IN DOCKET	C3	NRP
	-	334320 IS GRANTED; SUPPLEMENTAL BRIEF SUBMITTED ON 2-1-	C3	NRP
	-	IS ACCEPTED FOR FILING, PLTF MAY FILE SUPPLEMENTAL BRIE	C3	NRP
	-	IN RESPONSE; MOT TO ADJ IS ALSO GRANTED ON DOCKET NUMBE	C3	NRP
	-	337120 SO APPEALS WILL REMAIN CONSOLIDATED	C3	NRP
8/01/2019	*	COA VACATES CONVICTION AND SENTENCE, REMANDS, AND DIREC	C3	PJM
	-	THE TRIAL COURT TO ENTER JUDGMENT OF ACQUITTAL.	C3	PJM
8/20/2019	RI	RE-INSTATE CHARGE 01-00 CHILD ABUSE-2ND DEGR	C3	DMM
	DS	DISMISSED 01-00 CHILD ABUSE-2ND DEGR	C3	DMM
8/22/2019	*	ORDER OF ACQUITTAL (PER COURT OF APPEALS UNPUBLISHED	C3	DMM
	-	OPINION DATED 8/1/19)	C3	DMM
8/22/2019	MSP	MSP MJUD COUNT 001 DIS CONFIRMED		943
9/20/2019	*	PLTF-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL; PRF O	C3	BRE
	-	SVC; SUBSTITUTION OF ATTY; PRF OF SVC BY ATTY HEIDI	C3	BRE
	-	WILLIAMS	C3	BRE
11/15/2019	*	PLTF-APPELLANT'S REPLY, PRF OF SVC FILED BY ATTY HEIDI	C3	TG
	-	WILLIAMS	C3	TG

*** **END OF CASE** ***

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DATE: 7/01/2020 STATE OF MICHIGAN, CIRCUIT COURT, COUNTY OF SAGINAW PAGE 1
PEOPLE VS CODIE STEVENS

CASE: **15-041275-FH** OFFENSE: 2/10/2015

ACTIVE: 5/07/2015 JUDGE: JANET M. BOES
CLOSED: 6/14/2016 AGENCY: SAGINAW TOWNSHIP POLICE DEPA

DEFENDANT
STEVENS, CODIE LYNN
205 S COLONY DR APT E
SAGINAW, MI 48638
DOB: 5/23/1991 E FINGERPRINTS 3/24/2015 CT APP
PHONE:(989)397-2420 CTN: SID:5025015M

DEFENSE ATTORNEY
DUNN, ROBERT J.
3741 WILDER RD STE D
BAY CITY, MI 48706 2343

DSP	CT	SEQ	MCLA/ORDINANCE	CHARGES	DATE	TYPE
DS	1	0	750.136B3	CHILD ABUSE-2ND DEGR	3/18/2015	F

*** END OF CHARGES ***

#/PD	JUDGE/BONDSMAN	TYP	AMOUNT	CHECK	SET/POST	FORF/REV
1	M. RANDALL JURRENS	PR	10000		S 3/19/2015	
	CODIE STEVENS				P 3/19/2015	R 5/05/2016

*** END OF BONDS ***

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
3/18/2015	CF	COMPLAINT FILED		KJC
	WEL	WARRANT ENTERED INTO LEIN SYSIDNO: 448394		KJC
3/19/2015	*DI	PHONE CHANGED: OLD: ( ) - NEW: (989) 397-242		LRB
	WXL	WARRANT CANCELLED FROM LEIN SYSIDNO: 448394		LRB
	FCA	FILE SENT TO COURTROOM FOR ARRAIGNMENT	D5	LRB
	APR	PRE EXAM CONFERENCE SCHD FOR 4/07/2015 AT 1:30 PM	D4	SKF
	APR	PRELIM EXAM SCHD FOR 4/13/2015 AT 2:00 PM	D4	SKF
	OF	ORDER FOR FINGERPRINTS	D4	GCR
	*AD	ADDR CHG/OLD: 205 S COLONY APT E	D4	GCR
	*AD	ADDR CHG/OLD: SAGINAW, MI 48638	D4	GCR
	*AD	ADDR CHG/NEW: 123 SNOW	D4	GCR
	*AD	ADDR CHG/NEW: SAGINAW, MI 48602	D4	GCR
	MIT	MITTIMUS	D5	GCR
	*AT	BUSH, GEORGE C. REPLACES AS ATTORNEY	D4	LRB
	OAC	ORDER APPOINTING COUNSEL	C1	JO
	ARR	ARRAIGNMENT	D5	CNE
	-	S/M, $10,000 PR BOND, NO CONTACT W/VICTIM'S, REFER	D5	CNE
	-	OAC, SFPE	D5	CNE
3/19/2015	PET	PETITION FOR COURT APPOINTED ATTORNEY	D5	CNE
3/20/2015	MIT	AMENDED MITTIMUS	D5	GCR
	APP	APPEARANCE FILED	D4	LRB
	DFD	DEMAND FOR DISCOVERY	D4	LRB
	BCI	BOND CONDITION ISSUED EXPIRES 365 DAYS	D5	CNE
3/23/2015	ADJ	ADJOURNED PRE EXAM CONFERE ORIG SCHED 4/07/2015 AT 01:	D4	BJB
	ZCE	CLERICAL ERROR	D4	BJB
	APR	PRE EXAM CONFERENCE SCHD FOR 3/27/2015 AT 11:00 AM	D4	BJB
	-	***CHANGED PEC DATE AND TIME ONLY***	D4	BJB
3/24/2015	FPC	FILE PULLED FOR COURTROOM	D4	BJB
	ECG	PRINT/CHG TRANSMITTED TO MSP/CHR V515108063T/201501844		874
3/26/2015	ADJ	ADJOURNED PRE EXAM CONFERE ORIG SCHED 3/27/2015 AT 11:	D4	BJB
	ZCE	CLERICAL ERROR	D4	BJB
	APR	PRE EXAM CONFERENCE SCHD FOR 3/27/2015 AT 1:30 PM	D4	BJB
	-	***RESET WITH CO-DEFENDANT/TIME CHANGE ONLY***	D4	BJB

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DATE: 7/01/2020 STATE OF MICHIGAN, CIRCUIT COURT, COUNTY OF SAGINAW PAGE 2
PEOPLE VS CODIE STEVENS

CASE: **15-041275-FH** OFFENSE: 2/10/2015

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
3/27/2015	ADJ	ADJOURNED PRELIM EXAM ORIG SCHED 4/13/2015 AT 02:	D4	BJB
	ZOT	OTHER (SPECIFY)	D4	BJB
	APR	PRE EXAM CONFERENCE SCHD FOR 4/13/2015 AT 2:00 PM	D4	BJB
	-	**CHANGED TO PEC**	D4	BJB
3/27/2015	BWF	BENCH WARRANT FORM GENERATED	D4	BJB
3/30/2015	WEL	WARRANT ENTERED INTO LEIN SYSIDNO: 448583	D4	CNE
4/01/2015	*AD	ADDR CHG/OLD: 123 SNOW	D4	JLD
	*AD	ADDR CHG/OLD: SAGINAW, MI 48602	D4	JLD
	*AD	ADDR CHG/NEW: 205 S COLONY DR APT E	D4	JLD
	*AD	ADDR CHG/NEW: SAGINAW, MI 48638	D4	JLD
	WXL	WARRANT CANCELLED FROM LEIN SYSIDNO: 448583	D4	KJC
4/08/2015	FPC	FILE PULLED FOR COURTROOM	D4	DPP
4/13/2015	APR	PRELIM EXAM SCHD FOR 5/05/2015 AT 1:30 PM	D4	BJB
4/29/2015	FPC	FILE PULLED FOR COURTROOM	D4	DPP
5/05/2015	*	DEF PRESENT W/ATTY BUSH; APA JANETSKY; PE HELD, BOCC	D4	BJB
	MIT	AMENDED MITTIMUS	D4	BJB
	*	AMENDED BOND, $10,000 PR BOND, BOND CONT'D W/SUPERVISED	D4	KJC
	-	VISITATION IF DETERMINED BY FAMILY MEMBERS TO BE	D4	KJC
	-	APPROPRIATE	D4	KJC
5/05/2015	PEH	PRE-LIMINARY EXAM HELD	D4	CEJ
	BOC	CTS 01-00;	D4	CEJ
5/07/2015	C	CASE FILED WITH CIRCUIT COURT	C1	BRE
	-	CO DFNT IN CASE #15-041274-FH-3	C1	BRE
5/08/2015	7CA	FILE PULLED FOR COURT ADMINISTRATOR'S OFFICE	C1	TSB
	*JU	JANET M. BOES REPLACES FRED L. BORCHARD AS JUDGE	C3	SRM
	RCC	REVIEWED BY CRIMINAL ARRAIGNMENTS CLERK	C3	SRM
	RET	FILE RETURNED TO CLERK'S OFFICE	C3	SRM
	ORA	ORDER OF REASSIGNMENT ISSUED	C3	PAB
	SCH	COURT ADMIN TO SCHEDULE	C3	PAB
	-	W/CO DEF	C3	PAB
5/11/2015	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C3	TSB
5/19/2015	APR	TRIAL SCHD FOR 7/14/2015 AT 9:00 AM	C3	PAB
	-	W/CO DEF	C3	PAB
6/03/2015	INF	FELONY INFORMATION FILED BY PROSECUTOR	C3	DMM
	RQD	PROSECUTOR'S REQUEST FOR DISCOVERY	C3	DMM
	-	W/ PRF OF SVC	C3	DMM
6/08/2015	*	PRF OF SVC INFORMATION	C3	AV
6/11/2015	PXO	TRANSCRIPT OF PRELIM. EXAM ORDERED	C3	PGD
	-	BY 07/1/15	C3	PGD
6/16/2015	ORT	ORDER FOR TRANSCRIPT FORWARDED TO RECORDER	C3	CEJ
	-	P WISE	C3	CEJ
7/09/2015	PFC	PULLED FILE FOR COURTROOM	C3	CMJ
7/13/2015	ADJ	ADJOURNED TRIAL ORIG SCHED 7/14/2015 AT 09:	C3	DMM
	-	PER STIP & ORDER IN CO-DEFT'S CASE	C3	DMM
7/13/2015	SCH	COURT ADMIN TO SCHEDULE	C3	DMM
	-	TRIAL (W/ CO-DEFT)	C3	DMM
7/13/2015	RET	FILE RETURNED TO CLERK'S OFFICE	C3	DMM
7/14/2015	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C3	TSB
7/21/2015	PXT	PRELIM. EXAM TRANSCRIPT FILED	C3	NRS
	-	DTD 5-5-15, FILED BY P WISE(ORIGINAL FILED W/15-41274-F	C3	NRS
7/22/2015	*	PD P WISE $209.35 PE TRANSCRIPT (2 CASES)	C3	PAB

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DATE: 7/01/2020 STATE OF MICHIGAN, CIRCUIT COURT, COUNTY OF SAGINAW PAGE 3
PEOPLE VS CODIE STEVENS

CASE: **15-041275-FH** OFFENSE: 2/10/2015

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
7/24/2015	APR	TRIAL SCHD FOR 9/01/2015 AT 9:00 AM	C3	PAB
	-	W/CO DEF	C3	PAB
8/26/2015	*	STIP/ORDER FOR ADJOURNMENT	C3	DMM
8/27/2015	PFC	PULLED FILE FOR COURTROOM	C3	CMJ
8/31/2015	ADJ	ADJOURNED TRIAL ORIG SCHED 9/01/2015 AT 09:	C3	DMM
	-	STIP & ORDER SUBMITTED	C3	DMM
8/31/2015	SCH	COURT ADMIN TO SCHEDULE	C3	DMM
	-	TRIAL	C3	DMM
9/01/2015	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C3	TSB
9/11/2015	APR	TRIAL SCHD FOR 11/10/2015 AT 9:00 AM	C3	PAB
	-	W/CO DEF	C3	PAB
11/05/2015	PFC	PULLED FILE FOR COURTROOM	C3	CMJ
11/10/2015	OUW	CT. REPORTER: U. WEGERT, CSR-4553	C3	DMM
	H	HEARING HELD	C3	DMM
	-	DATE SET FOR TRIAL; DEFT PRESENT W/ ATTY G. BUSH,	C3	DMM
	-	PROS ATTY P. DUGGAN; ATTY BUSH CONCURRED IN CO-DEFT	C3	DMM
	-	ATTY'S REQUEST FOR ADJOURNMENT; COURT GRANTED ADJOURN-	C3	DMM
	-	MENT; ANY MTNS TO BE FILED WITHIN 30 DAYS; TRIAL TO	C3	DMM
	-	BE SET IN 60-90 DAYS	C3	DMM
11/10/2015	SCH	COURT ADMIN TO SCHEDULE	C3	DMM
	-	TRIAL	C3	DMM
12/01/2015	APR	TRIAL SCHD FOR 2/02/2016 AT 9:00 AM	C3	PAB
	-	W/CO DEF	C3	PAB
12/02/2015	RET	FILE RETURNED TO CLERK'S OFFICE	C3	DMM
	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C3	TSB
1/27/2016	APR	MOTION SCHD FOR 2/01/2016 AT 9:30 AM	C3	RJA
	-	SCHEDULING CONFERENCE FOR TRIAL & MOTION HRG	C3	RJA
1/27/2016	APR	MOTION SCHD FOR 2/01/2016 AT 9:31 AM	C3	RJA
	-	SCHEDULING CONFERENCE FOR TRIAL & MOTION HRG	C3	RJA
1/27/2016	ADJ	ADJOURNED MOTION ORIG SCHED 2/01/2016 AT 09:	C3	RJA
	-	DUPL SETTING	C3	RJA
1/28/2016	PFC	PULLED FILE FOR COURTROOM	C3	CMJ
2/01/2016	*	DEFT STEVENS' MTN TO SUPPRESS HER STATEMENTS UTTERED	C3	DMM
	-	IN RESPONSE TO POLICE DURING INTERROGATION AND BRIEF	C3	DMM
	-	IN SUPPORT	C3	DMM
2/01/2016	OUW	CT. REPORTER: U. WEGERT, CSR-4553	C3	DMM
	H	HEARING HELD	C3	DMM
	-	DATE SET FOR DEFT'S MTN TO SUPPRESS STATEMENTS AND	C3	DMM
	-	SCHEDULING CONFERENCE FOR TRIAL; DEFT PRESENT W/ ATTY	C3	DMM
	-	P.R. STURTZ, PROS ATTY P. DUGGAN; PARTIES INFORMED	C3	DMM
	-	COURT THAT AN EVIDENTIARY HEARING IS NECESSARY; COURT	C3	DMM
	-	DIRECTED THAT A TRANSCRIPT OF STATEMENTS SHALL BE	C3	DMM
	-	PREPARED BY 3/3/16; EVIDENTIARY HEARING TO BE SET	C3	DMM
	-	FOR 3/17/16 AT 1:30 P.M.; PLEA OFFER PLACED ON THE	C3	DMM
	-	RECORD: IF DEFT PLEADS NO CONTEST TO ADDED CT 2	C3	DMM
	-	(ATT CHILD ABUSE 2ND DEGREE), PROS WOULD DISMISS	C3	DMM
	-	CT 1; GUIDELINES CALCULATED AT 0-17 MOS; PER COBBS:	C3	DMM
	-	PROBATION W/ ANY INITIAL INCARCERATION TO BE SERVED	C3	DMM
	-	ON TETHER; DEFT REJECTED OFFER; TRIAL SCHEDULED FOR	C3	DMM
	-	2/2/16 IS ADJOURNED, TENTATIVE TRIAL DATE OF 4/26/16	C3	DMM
	-	WILL BE SET - COUNSEL MUST ADVISE COURT ASAP OF ANY	C3	DMM

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DATE: 7/01/2020 STATE OF MICHIGAN, CIRCUIT COURT, COUNTY OF SAGINAW PAGE 4
PEOPLE VS CODIE STEVENS

CASE: **15-041275-FH** OFFENSE: 2/10/2015

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
2/01/2016	-	CONFLICTS WITH THAT DATE	C3	DMM
2/02/2016	ADJ	ADJOURNED TRIAL ORIG SCHED 2/02/2016 AT 09:	C3	DMM
	APR	HEARING SCHD FOR 3/17/2016 AT 1:30 PM	C3	DMM
	-	EVIDENTIARY	C3	DMM
2/02/2016	RET	FILE RETURNED TO CLERK'S OFFICE	C3	DMM
2/03/2016	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C3	TSB
2/04/2016	*	PRETRIAL ORDER - TENTATIVE DATE OF 4/26/16 BE SET AS A	C3	LMM
	-	DATE CERTAIN TO BEGIN JOINT TRIAL OF BOTH CASES(2 JURIE	C3	LMM
	-	AS SUITABLE/CONFIRMED BY ALL COUNSEL IN WRITING NO LATE	C3	LMM
	-	THAN 2/12/16; IF GOOD CAUSE FOR COURT TO SELECT DIFFERE	C3	LMM
	-	TRIAL DATE; COURT WILL PROMPTLY SET SCHEDULING CONFEREN	C3	LMM
2/04/2016	SCH	COURT ADMIN TO SCHEDULE	C3	LMM
	-	TRIAL DATE CERTAIN 4/26/16 (JOINT TRIAL W/ 15-041274-FH	C3	LMM
2/05/2016	APR	TRIAL SCHD FOR 4/26/2016 AT 9:00 AM	C3	PAB
	-	SET W/15 41274 FH AS DATE CERTAIN PER ORDER 2-4-16	C3	PAB
2/24/2016	PFC	PULLED FILE FOR COURTROOM	C3	CH
	APR	SHOW CAUSE, CT ORDER SCHD FOR 2/29/2016 AT 9:30 AM	C3	DMM
	-	WHY ORDER NOT SUBMT'D PER 2/1 HRG/EXPARTE COMM W/INVSTG	C3	DMM
2/29/2016	OUW	CT. REPORTER: U. WEGERT, CSR-4553	C3	LMM
	H	HEARING HELD	C3	LMM
	-	ON DATE SET FOR SHOW CAUSE AS TO WHY ORDER SUBMITTED PE	C3	LMM
	-	2/1/16 HEARING RE: PAYING FOR TRANSCRIPTS AND EXPARTE	C3	LMM
	-	COMMUNICATION W/ INVESTIGATOR; PRESENT: APA P. DUGGAN;	C3	LMM
	-	DEFENSE ATTY G. BUSH; STMTS OF COUNSEL; COURT ORDERED	C3	LMM
	-	PEOPLE TO PRODUCE TRANSCRIPTS OF MATERIAL FOR DISCOVERY	C3	LMM
	-	TO COUNSEL; TRIAL DATE **DATE CERTAIN** 4/26/16 AT 9:00	C3	LMM
	-	SET W/ CO-DEFT'S CASE 15-041274-FH	C3	LMM
3/04/2016	*	PRETRIAL ORDER RE: DUAL JURIES (COUNSEL TO SUBMIT IN	C3	DMM
	-	WRITING THEIR REQUESTS/EXPECTATIONS FOR HANDLING DUAL	C3	DMM
	-	JURIES BY 3/17/16; DATE CERTAIN TRIAL: 4/26/16)	C3	DMM
3/04/2016	*	STIPULATION/ORDER FOR ENTRY OF DISCOVERY ORDER	C3	DMM
3/07/2016	PM	PROSECUTION MOTION	C3	DMM
	-	FOR RECONSIDERATION OF DISCOVERY ORDER, FILED BY	C3	DMM
	-	PROS ATTY P. DUGGAN	C3	DMM
3/08/2016	*	TRANSCRIPT OF HEARING (2/1/16), FILED BY U. WEGERT	C3	DMM
	*	TRANSCRIPT OF HEARING (11/10/15), FILED BY U. WEGERT	C3	DMM
3/09/2016	*	TRANSCRIPT OF SHOW-CAUSE HEARING (2/29/16), FILED BY	C3	DMM
	-	U. WEGERT	C3	DMM
3/09/2016	*	PD U WEGERT $4.80 COPY HRG 2-1-16, $5.70 COPY 11-10-15,	C3	PAB
	-	AND $4.80 COPY HRG 2-29-16 TRANSCRIPTS	C3	PAB
3/09/2016	*	ORDER OF THE COURT (PROSECUTOR'S MTN FOR RECONSIDERATIO	C3	DMM
	-	DENIED IN PART AND GRANTED IN PART)	C3	DMM
3/11/2016	*	PEOPLES ANS TO DFNTS MTN TO SUPPRESS STATEMENTS; BRIEF	C3	KMS
	-	SUPPORT, PRF OF SVC FILED BY ATTY PATRICK O DUGGAN	C3	KMS
3/17/2016	OUW	CT. REPORTER: U. WEGERT, CSR-4553	C3	DMM
	H	HEARING HELD	C3	DMM
	-	EVIDENTIARY HEARING RE: DEFT'S MTN TO SUPPRESS STATE-	C3	DMM
	-	MENTS; DEFT PRESENT W/ ATTY G. BUSH, PROS ATTY P. DUGGA	C3	DMM
	-	CO-DEFT ALSO PRESENT W/ COUNSEL; STATEMENTS OF COUNSEL;	C3	DMM
	-	TESTIMONY OF DETECTIVE ROBERT BEAN AND SERGEANT CHAD	C3	DMM
	-	BROOKS; COURT ADJOURNED TO 3/18/16 AT 9:00 A.M.	C3	DMM

*** **CONTINUED NEXT PAGE** **

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DATE: 7/01/2020 STATE OF MICHIGAN, CIRCUIT COURT, COUNTY OF SAGINAW PAGE 5
PEOPLE VS CODIE STEVENS

CASE: **15-041275-FH** OFFENSE: 2/10/2015

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
3/17/2016	*	PROSECUTOR'S PROPOSALS REGARDING EMPANELLING DUAL JURIE	C3	DMM
3/18/2016	0UW	CT. REPORTER: U. WEGERT, CSR-4553	C3	DMM
	H	HEARING HELD	C3	DMM
	-	EVIDENTIARY HEARING CONT'D; DEFT PRESENT W/ ATTY G.	C3	DMM
	-	BUSH, PROS ATTY P. DUGGAN; CO-DEFT ALSO PRESENT W/	C3	DMM
	-	COUNSEL; TESTIMONY OF DEFTS; COURT DENIED MTN;	C3	DMM
	-	PROS TO SUBMIT ORDER	C3	DMM
3/21/2016	*	ORDER DENYING DEFT'S MTN TO SUPPRESS STATEMENTS	C3	DMM
3/22/2016	*	PRETRIAL ORDER RE: TRIAL PROCEDURES (JURY SELECTION	C3	DMM
	-	SEPARATE ON 4/26/16: DEFT KRUKOWSKI AT 9 AM, DEFT	C3	DMM
	-	STEVENS AT 1:30 PM; 30 MINS INITIAL VOIR DIRE;	C3	DMM
	-	OPENING STMTS 4/27/16: 30 MINS OR LESS, DEFT KRUKOWSKI	C3	DMM
	-	9 AM, ATTY STEVENS 10:30 AM; CLOSING ARGUMENTS 1 HR	C3	DMM
	-	OR LESS; FINAL PRETRIAL TO BE HELD 4/18/16 AT 9:30 AM;	C3	DMM
	-	PRELIM JURY INSTRUCTION REQUESTES MUST BE SUBMITTED	C3	DMM
	-	BY 4/21/16)	C3	DMM
3/24/2016	RET	FILE RETURNED TO CLERK'S OFFICE	C3	DMM
3/28/2016	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C3	TSB
4/01/2016	*	PEOPLE'S AMENDED LIST OF WITNESSES; PRF OF SVC, FILED B	C3	NRS
	-	PATRICK DUGGAN	C3	NRS
4/07/2016	*	PRF OF SVC OF SUBPOENA ORDER TO APPEAR &/OR PRODUCE -	C3	NRS
	-	GINGER REZMER	C3	NRS
4/11/2016	DM	DEFENSE MOTION	C3	BRE
	-	IN LIMINE, NTC OF HRG, PRF OF SVC BY ATTY GEORGE BUSH	C3	BRE
4/11/2016	APR	MOTION SCHD FOR 4/18/2016 AT 9:30 AM	C3	BRE
	-	DFNT'S MTN IN LIMINE	C3	BRE
4/14/2016	PFC	PULLED FILE FOR COURTROOM	C3	CMJ
4/15/2016	APR	PRE-TRIAL SCHD FOR 4/18/2016 AT 9:30 AM	C3	DMM
	*	DEFENDANT'S WITNESS AND EXHIBIT LIST	C3	PGD
	-	FILED BY ATTY G.BUSH	C3	PGD
4/18/2016	*	PEOPLES NOTICE (PEOPLE V HANA 447 MICH 325 (1994)	C3	HLL
	0UW	CT. REPORTER: U. WEGERT, CSR-4553	C3	DMM
	H	HEARING HELD	C3	DMM
	-	DEFT'S MTN IN LIMINE AND PRE-TRIAL; DEFT PRESENT W/	C3	DMM
	-	ATTY G. BUSH, PROS ATTY P. DUGGAN; STATEMENTS OF	C3	DMM
	-	COUNSEL; COURT GRANTED MTN; PRE-TRIAL ISSUES DISCUSSED;	C3	DMM
	-	LATEST PLEA OFFER PLACED ON THE RECORD: IF DEFT PLEADS	C3	DMM
	-	GUILTY AS CHARGED, PROS WOULD RECOMMEND A 1 YR DELAYED	C3	DMM
	-	SENTENCE; IF DEFT SUCCESSFULLY COMPLETES THE 1 YR DELAY	C3	DMM
	-	PROS WOULD ALLOW DEFT TO WITHDRAW PLEA AND PLEAD GUILTY	C3	DMM
	-	TO A REDUCED CHARGE OF CHILD ABUSE - 4TH DEGREE (MISD),	C3	DMM
	-	AND DEFT MUST RELINQUISH APPEAL OF THE TERMINATION	C3	DMM
	-	ORDER; DEFT REJECTED PLEA OFFER; THE COURT WILL SET A	C3	DMM
	-	STATUS CONFERENCE FOR 4/25/16 AT 9:30 A.M.	C3	DMM
4/18/2016	APR	HEARING SCHD FOR 4/25/2016 AT 9:30 AM	C3	DMM
	-	STATUS CONFERENCE	C3	DMM
4/21/2016	*	PRELIMINARY JURY INSTRUCTIONS, FILED BY PATRICK DUGGAN	C3	NRS
4/25/2016	0UW	CT. REPORTER: U. WEGERT, CSR-4553	C3	DMM
	H	HEARING HELD	C3	DMM
	-	STATUS CONFERENCE; DEFT PRESENT W/ ATTY G. BUSH, PROS	C3	DMM
	-	ATTY P. DUGGAN; JURY SELECTION WILL BEGIN 4/26/16	C3	DMM

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DATE: 7/01/2020 STATE OF MICHIGAN, CIRCUIT COURT, COUNTY OF SAGINAW PAGE 6
PEOPLE VS CODIE STEVENS

CASE: **15-041275-FH** OFFENSE: 2/10/2015

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
4/25/2016	-	AT 1:30 P.M., PROOFS TO BEGIN 4/27/16 AT 1:30 P.M	C3	DMM
4/26/2016	0UW	CT. REPORTER: U. WEGERT, CSR-4553	C3	DMM
	JTB	JURY TRIAL BEGUN	C3	DMM
	-	DEFT PRESENT W/ ATTY G. BUSH, PROS ATTY P. DUGGAN, JURY	C3	DMM
	-	SELECTION BEGUN; VOIR DIRE BEGUN AND CONCLUDED; JURY	C3	DMM
	-	SELECTED AND SWORN; PRELIMINARY JURY INSTRUCTIONS;	C3	DMM
	-	PEOPLE'S OPENING STATEMENTS; DEFT RESERVED THEIR	C3	DMM
	-	OPENING; COURT ADJOURNED TO 4/27/16 AT 1:30 P.M.	C3	DMM
	-	(ONE FULL DAY - NOT FINISHED UNTIL AFTER 5 PM)	C3	DMM
4/27/2016	0UW	CT. REPORTER: U. WEGERT, CSR-4553	C3	DMM
	JTC	JURY TRIAL CONTINUED	C3	DMM
	-	DEFT PRESENT W/ ATTY G. BUSH, PROS ATTY P. DUGGAN;	C3	DMM
	-	PEOPLE'S PROOFS BEGUN; COURT ADJOURNED TO 4/28/16	C3	DMM
	-	AT 9:00 A.M. (ONE-HALF DAY)	C3	DMM
4/27/2016	INF	FELONY INFORMATION FILED BY PROSECUTOR	C3	DMM
	-	(AMENDED)	C3	DMM
4/28/2016	0UW	CT. REPORTER: U. WEGERT, CSR-4553	C3	DMM
	JTC	JURY TRIAL CONTINUED	C3	DMM
	-	DEFT PRESENT W/ ATTY G. BUSH, PROS ATTY P. DUGGAN;	C3	DMM
	-	PEOPLE'S PROOFS CONTINUED; COURT ADJOURNED TO 4/29/16	C3	DMM
	-	AT 9:00 A.M. (ONE FULL DAY)	C3	DMM
4/29/2016	*	DEFT CODIE LYNN STEVENS' REQUEST FOR JURY INSTRUCTIONS,	C3	RJA
	-	FILED BY DEF ATTY GEORGE BUSH	C3	RJA
4/29/2016	*	PEOPLE'S PROPOSED FINAL JURY INSTRUCTIONS, FILED BY	C3	DMM
	-	PROS ATTY P. DUGGAN	C3	DMM
4/29/2016	0UW	CT. REPORTER: U. WEGERT, CSR-4553	C3	DMM
	JTC	JURY TRIAL CONTINUED	C3	DMM
	-	DEFT PRESENT W/ ATTY G. BUSH, PROS ATTY P. DUGGAN;	C3	DMM
	-	PEOPLE'S PROOFS CONTINUED; COURT ADJOURNED TO 5/4/16	C3	DMM
	-	AT 9:00 A.M. (ONE FULL DAY)	C3	DMM
5/04/2016	0JS	CT. REPORTER: J. STUPAK, CSR-8314	C3	DMM
	JTC	JURY TRIAL CONTINUED	C3	DMM
	-	DEFT PRESENT W/ ATTY G. BUSH, PROS ATTY P. DUGGAN;	C3	DMM
	-	PEOPLE'S PROOFS CONTINUED; PEOPLE REST; DEFT'S OPENING	C3	DMM
	-	STATEMENT; DEFT'S PROOFS BEGUN AND CONCLUDED; DEFT REST	C3	DMM
	-	CO-DEFT'S OPENING STATEMENT; CO-DEFT'S PROOFS BEGUN;	C3	DMM
	-	COURT ADJOURNED TO 5/5/16 AT 9:00 A.M. (ONE FULL DAY)	C3	DMM
5/05/2016	0JS	CT. REPORTER: J. STUPAK, CSR-8314	C3	DMM
	JTC	JURY TRIAL CONTINUED	C3	DMM
	-	DEFT PRESENT W/ ATTY G. BUSH, PROS ATTY P. DUGGAN;	C3	DMM
	-	CO-DEFT RESTS; PEOPLE'S CLOSING ARGUMENT AS TO DEFT;	C3	DMM
	-	DEFT'S CLOSING ARGUMENT; PEOPLE'S CLOSING ARGUMENT	C3	DMM
	-	AS TO CO-DEFT; CO-DEFT'S CLOSING ARGUMENT; JURY	C3	DMM
	-	INSTRUCTED; JURY REDUCED; BAILIFFS SWORN; JURY	C3	DMM
	-	DELIBERATIONS BEGUN	C3	DMM
5/05/2016	JV	JURY VERDICT OF	C3	DMM
	JG	JURY-GUILTY 01-00 CHILD ABUSE-2ND DEGR	C3	DMM
	JTE	JURY TRIAL ENDED	C3	DMM
	DOC	REFERRED TO DEPARTMENT OF CORRECTIONS	C3	DMM
	DNA	ORDER FOR DNA PROFILING	C3	DMM
	102	DEFENDANT REMANDED TO CUSTODY OF SHERIFF PENDING FURTHE	C3	DMM

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DATE: 7/01/2020 STATE OF MICHIGAN, CIRCUIT COURT, COUNTY OF SAGINAW PAGE 7
PEOPLE VS CODIE STEVENS

CASE: **15-041275-FH** OFFENSE: 2/10/2015

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
	-	PROCEEDINGS.	C3	DMM
	APR	SENTENCE SCHD FOR 6/14/2016 AT 2:00 PM	C3	DMM
	*	JURY INSTRUCTIONS PACKET	C3	RJA
	KJY	ADJUDICATED BY JURY TRIAL	C3	SAB
5/06/2016	*	DEFN INFO CHANGED BY CIRCUIT COURT PROBATION		BSP
6/14/2016	OJS	CT. REPORTER: J. STUPAK, CSR-8314	C3	DMM
	S	SENTENCED	C3	DMM
	-	DEFT PRESENT W/ ATTY G. BUSH, PROS ATTY P. DUGGAN,	C3	DMM
	-	L. BOVEE FOR DOC; DEFT SENTENCED TO PRISON: 18 MOS	C3	DMM
	-	MIN TO 10 YRS MAX; 41 DAYS CREDIT; $60 DNA, $68 SMF	C3	DMM
	-	AND $130 VRF	C3	DMM
6/14/2016	NAR	NOTICE OF APPEAL RIGHTS PROVIDED TO DEFENDANT	C3	DMM
	SN	COUNT 01-00 SENTENCED	C3	DMM
	RPF	ORDER TO REMIT PRISONER FUNDS, MC288 SENT TO DEFENDANT	C3	DMM
	-	C. EGELER RECEPTION & GUIDANCE CENTER	C3	DMM
6/14/2016	JOS	JUDGMENT OF SENTENCE	C3	DMM
	FDJ	FINAL DISPOSITION-JURY TRIAL	C3	DMM
6/15/2016	*	DEFN INFO CHANGED BY CIRCUIT COURT PROBATION		LJS
6/16/2016	AFR	ATTORNEY FEES PAYMENT REQUESTED	C3	VW
6/21/2016	RET	FILE RETURNED TO CLERK'S OFFICE	C3	DMM
	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C3	TSB
6/22/2016	PAY	DISBURSEMENT VOUCHER/PAYMENT ORDER	C3	LMM
	-	ATTY G. BUSH IN THE AMOUNT OF $5,000.00	C3	LMM
6/23/2016	MSP	MSP EJUD COUNT 001 GTY CONFIRMED		943
6/24/2016	BCR	CONDITIONAL BOND RECALLED/CANCELLED	C3	SAB
	BCT	BOND CONDITION RETURNED, REMOVAL CONFIRMED	C3	SAB
	-	REMOVED FROM LEIN 3-20-16	C3	SAB
8/10/2016	RAC	REQUEST FOR APPELLATE ATTY FORWARDED O-A-C	C3	RJA
8/15/2016	RAA	REQUEST FOR APPELLATE ATTY REC'D BY OAC	C3	VW
	-	AND FORWARDED TO HAZEL IN THE CLERK'S OFFICE	C3	VW
8/16/2016	HDA	PROP.ORDER APPT APPEAL ATTY TO COURT FOR SIG'TURE	C3	VW
8/17/2016	OAA	ORDER APPOINTING APPELLATE ATTORNEY	C3	LMM
	-	AND TRANSCRIPT	C3	LMM
8/17/2016	*AT	STATE,(S.A.D.O.) , REPLACES BUSH, GEORGE C. AS ATTORNEY	C3	LMM
9/02/2016	HDA	PROP.ORDER APPT APPEAL ATTY TO COURT FOR SIG'TURE	C3	VW
	-	(SUBSTITUTION)	C3	VW
9/08/2016	*	PROPOSED ORDER FOR SUBSTITUTION OF APPELLATE ATTORNEY	C3	RJA
	-	RETURNED TO OAC BY HAND-DELIVERY FOR APPOINTMENT OF ATT	C3	RJA
	-	OFF THE CAPITAL LIST	C3	RJA
9/08/2016	*	ORDER (FOR APPOINTMENT OF SUBSTITUTE COUNSEL)	C3	DMM
9/12/2016	HDA	PROP.ORDER APPT APPEAL ATTY TO COURT FOR SIG'TURE	C3	VW
	-	(SUBSTITUTION)	C3	VW
9/15/2016	OAA	ORDER APPOINTING APPELLATE ATTORNEY	C3	LMM
	-	AND TRANSCRIPT (SUBSTITUTION ORDER)	C3	LMM
9/15/2016	*AT	DUNN, ROBERT J. REPLACES STATE,(S.A.D.O.) , AS ATTORNEY	C3	LMM
9/21/2016	*	PD U WEGERT $5.70 HRG 11-10-15, $4.80 HRG 2-1-16, $4.80	C3	PAB
	-	HRG 2-29-16, $46.20 HRG 3-17-16 AND $11.40 MTN 4-18-16	C3	PAB
	-	TRANSCRIPTS	C3	PAB
10/04/2016	*	NOTICE OF FILING OF TRANSCRIPT & AFFIDAVIT OF MAILING	C3	BRE
	-	BY J STUPAK	C3	BRE
10/04/2016	*	TRANSCRIPT OF JURY TRIAL - VOLUME V OF VI DTD 5/4/16	C3	BRE

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DATE: 7/01/2020 STATE OF MICHIGAN, CIRCUIT COURT, COUNTY OF SAGINAW PAGE 8
PEOPLE VS CODIE STEVENS

CASE: **15-041275-FH** OFFENSE: 2/10/2015

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
	-	BY J STUPAK	C3	BRE
	*	TRANSCRIPT OF JURY TRIAL - VOLUME VI OF VI DTD 5/5/16	C3	BRE
	-	BY J STUPAK	C3	BRE
10/04/2016	*	TRANSCRIPT OF SENTENCE DTD 6/14/16 BY J STUPAK	C3	BRE
10/05/2016	*	PD STUPAK $142.20 TRL 5-4-16, $113.40 TRL 5-5-16 AND	C3	PAB
	-	$37.60 SENT 6-14-16 TRANSCRIPTS	C3	PAB
10/05/2016	*	PD WEGERT $3.60 HRG 4-25-16, $55.80 HRG 3-18-16 AND	C3	PAB
	-	$415.95 TRL 4-26-16 TRANSCRIPTS	C3	PAB
11/01/2016	*	PD WEGERT $185.40 TRL 4-27-16 TRANSCRIPT	C3	PAB
11/21/2016	*	PD $167.40 TRIAL TRANSCRIPT 4-28-16/U WEGERT	C3	SAB
12/06/2016	*	NOTICE OF FILING OF TRANSCRIPT & AFFIDAVIT OF MAILING B	C3	BRE
	-	U WEGERT	C3	BRE
12/07/2016	*	EXPANDABLE PREPARED	C3	TSB
12/13/2016	*	PD U WEGERT $127.20 TRL 4-29-16	C3	PAB
12/28/2016	DM	DEFENSE MOTION	C3	BRE
	-	FOR AMENDED JUDGMENT OF SENTENCE; NTC OF HRG; PRF OF SV	C3	BRE
	-	BY ATTY ROBERT J DUNN (JUDGE'S COPY FWD TO CTRM)	C3	BRE
1/05/2017	APR	MOTION SCHD FOR 1/23/2017 AT 9:30 AM	C3	BRE
	-	MTN FOR AMENDED JUDGMENT OF SENTENCE	C3	BRE
1/05/2017	PFC	PULLED FILE FOR COURTROOM	C3	CH
1/12/2017	*	DEF ATTY R. DUNN ADVISED BY EMAIL: COURT WANTS A BRIEF	C3	RJA
	-	IN SUPPORT OF THE MOTION FOR AMENDED JUDGMENT	C3	RJA
1/19/2017	*	MEMORANDUM OF LAW IN SUPPORT OF MOTION TO AMEND JUDGMEN	C3	AV
	-	OF SENTENCE, PRF OF SVC BY ATTY ROBERT J DUNN	C3	AV
	-	++++JUDGE COPY FWD TO CRTRM++++	C3	AV
1/23/2017	0UW	CT. REPORTER: U. WEGERT, CSR-4553	C3	DMM
	H	HEARING HELD	C3	DMM
	-	DEFT'S MTN FOR AMENDED JUDGMENT OF SENTENCE; ATTY	C3	DMM
	-	R. DUNN PRESENT FOR DEFT, PROS ATTY A. REIMERS;	C3	DMM
	-	STATEMENTS OF COUNSEL; COURT GRANTED MTN AND	C3	DMM
	-	SIGNED ORDER; CLERK TO PREPARE AMENDED JUDGMENT	C3	DMM
1/23/2017	*	ORDER (DEFT'S MTN FOR AMD JOS GRANTED)	C3	DMM
	JOS	JUDGMENT OF SENTENCE	C3	DMM
	-	AMENDED	C3	DMM
2/16/2017	RET	FILE RETURNED TO CLERK'S OFFICE	C3	DMM
	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C3	TSB
3/02/2017	*	CLAIM OF APPEAL, PRF OF SVC FILED BY ATTY DUNN	C3	HLL
	*	APPEARANCE FOR PROSECUTOR'S OFFICE; PRF OF SVC BY ATTY	C3	BRE
	-	NATHAN COLLISON	C3	BRE
3/08/2017	*	PER REQUEST, FAXED ROA TO APPELLATE ATTORNEY DUNN	C3	HLL
5/19/2017	*	COURT OF APPEALS ORDER (DOCKET NO. 337120): MOTION TO	C3	RJA
	-	REMAND IS GRANTED, CASE IS REMANDED TO TRIAL COURT SO	C3	RJA
	-	DEFT MAY HAVE EVIDENTIARY HRG RE: CLAIMS OF INEFFECTIVE	C3	RJA
	-	ASSISTANCE OF TRIAL COUNSEL; DEFT SHALL INITIATE PRO-	C3	RJA
	-	CEEDINGS ON REMAND WITHIN 14 DAYS; APPEALS COURT RETAIN	C3	RJA
	-	JURISDICTION; TRIAL CT TO HEAR/DECIDE MATTER WITHIN 56	C3	RJA
	-	DAYS (ORDER REC'D 5/25/17)	C3	RJA
5/30/2017	PFC	PULLED FILE FOR COURTROOM	C3	CMJ
	-	AND EXPANDABLE	C3	CMJ
5/30/2017	*	SCHEDULING ORDER - SETTING DEADLINES/DATES PER COURT OF	C3	RJA
	-	APPEALS ORDERS OF 5/19/17; DEFT TO FILE MOTION/BRIEF BY	C3	RJA

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DATE: 7/01/2020 STATE OF MICHIGAN, CIRCUIT COURT, COUNTY OF SAGINAW PAGE 9
PEOPLE VS CODIE STEVENS

CASE: **15-041275-FH** OFFENSE: 2/10/2015

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
5/30/2017	-	6/2/17; PEOPLE RESP BY 6/12/17; EVIDENTIARY HRG TO BEGI	C3	RJA
	-	6/29/17 (MORNING ONLY), CONTINUE 6/30/17 (FULL DAY IF	C3	RJA
	-	NEEDED; SAME ORDER ENTERED IN CO-DEFT CASE.	C3	RJA
5/30/2017	APR	HEARING SCHD FOR 6/29/2017 AT 9:00 AM	C3	RJA
	-	GINTHER HRG ON REMAND *** NEED WRIT ***	C3	RJA
6/01/2017	WRT	WRIT OF HABEAS CORPUS ISSUED	C3	PGD
	-	****6/29/17 AT 9:00AM FROM NEWBERRY********	C3	PGD
6/01/2017	WRT	WRIT OF HABEAS CORPUS ISSUED	C3	PGD
	-	***********6/29/17 AT 9:00 AM FROM HURON VALLEY ****	C3	PGD
6/02/2017	DM	DEFENSE MOTION	C3	NRP
	-	MOT FOR NEW TRIAL BASED ON INEFFECTIVE ASSISTANCE OF	C3	NRP
	-	COUNSEL; PRF OF SVC, FILED BY ATTY ROBERT DUNN	C3	NRP
	-	+++FWD TO CT RM+++ (JUDGE'S COPY FWD TO CT RM)	C3	NRP
6/07/2017	*	APPELLATE ATTY FOR DEF KRUKOWSKI SUBMITTED BY EMAIL:	C3	RJA
	-	COPIES OF PAPERS FILED IN COURT OF APPEALS: JOINT MOTIO	C3	RJA
	-	FOR EXTENSION OF TIME TO CONDUCT EVIDENTIARY HRG (ON	C3	RJA
	-	REMAND), STIPULATION FOR EXTENSION OF TIME WITHIN WHICH	C3	RJA
	-	TO CONDUCT EVIDENTIARY HRG (CAPTIONED IN BOTH CO-DEFT	C3	RJA
	-	CASES)	C3	RJA
6/08/2017	*	FILED BY DEF ATTY B. DEGROFF, AT COURT'S DIRECTION: COP	C3	PGD
	-	OF MOTION TO REMAND AND BRIEF FILED IN COURT OF APPEALS	C3	PGD
6/14/2017	*	ORDER OF COURT OF APPEALS (DOCKET NOS. 334320, 337120):	C3	RJA
	-	MTN FOR IMMEDIATE CONSIDERATION GRANTED; MTN TO EXTEND	C3	RJA
	-	TIME TO CONDUCT EV HRG GRANTED; TRIAL CT TO EXERCISE IT	C3	RJA
	-	DISCRETION TO COMPLETE PROCEEDINGS IN A REASONABLY TIME	C3	RJA
	-	MANNER; DEF COUNSEL TO FILE PROGRESS REPORTS APPROX	C3	RJA
	-	EVERY 28 DAYS WITH COURT OF APPEALS	C3	RJA
6/14/2017	*	PEOPLE'S RESPONSE TO DFNT'S MTN FOR NEW TRIAL, ADDITION	C3	BRE
	-	MATTER; BRIEF IN SUPPORT; PRF OF SVC BY ATTY N COLLISON	C3	BRE
	-	(JUDGE'S COPY FWD TO CTRM)	C3	BRE
6/15/2017	*	CLERK ADVISED BY PROSECUTOR N. COLLISON THAT COURT OF	C3	RJA
	-	APPEALS GRANTED EXTENSION; ORDER DOWNLOADED, PRINTED	C3	RJA
6/19/2017	*	COUNSEL ADVISED, BY EMAIL: IN LIGHT OF COURT OF APPEALS	C3	RJA
	-	ORDER EXTENDING TIME FOR REMAND HRG, STATUS CONFERENCE	C3	RJA
	-	WILL BE HELD 6/22/17 AT 8:45 AM	C3	RJA
6/19/2017	APR	MOTION SCHD FOR 6/22/2017 AT 8:45 AM	C3	RJA
	-	STATUS CONFERENCE AFTER COA ORDER EXTENDING TIME	C3	RJA
6/22/2017	PTH	PRETRIAL HELD	C3	RJA
	*	STATUS/SCHEDULING CONFERENCE HELD IN CHAMBERS IN BOTH	C3	RJA
	-	CODEFT CASES; N. COLLISON, M. HOOVER & P. DUGGAN FOR	C3	RJA
	-	PEOPLE; B. DEGROFF (SADO) FOR DEF KRUKOWSKI; R. DUNN FO	C3	RJA
	-	DEF STEVENS; JUNE 29-30 GINTHER HRG ADJ; RESCHEDULING I	C3	RJA
	-	PROBLEMATIC DUE TO LTD AVL OF EXPERT WITNESSES; DR. SHE	C3	RJA
	-	(PHONETIC) IS AVL ON 9/15/17 AND HRG WILL BE SET FOR TH	C3	RJA
	-	DAY; PARTIES MUST FILE WITNESS & EXHIBIT LISTS BY 7/10/	C3	RJA
	-	COURT WILL ISSUE AMENDED SCHEDULING ORDER.	C3	RJA
6/23/2017	ADJ	ADJOURNED HEARING ORIG SCHED 6/29/2017 AT 09:	C3	RJA
	-	GINTHER HRG ADJ PER EXT'N GRANTED BY CT OF APPEALS	C3	RJA
6/23/2017	APR	HEARING SCHD FOR 9/15/2017 AT 9:00 AM	C3	RJA
	-	MTN 4/NEW TRIAL/GINTHER HRG PER REMAND ***NEED WRIT***	C3	RJA
6/30/2017	*	AMENDED SCHEDULING ORDER (FOLLOWING COURT OF APPEALS	C3	PGD

*** **CONTINUED NEXT PAGE** **

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DATE: 7/01/2020 STATE OF MICHIGAN, CIRCUIT COURT, COUNTY OF SAGINAW PAGE 10
PEOPLE VS CODIE STEVENS

CASE: **15-041275-FH** OFFENSE: 2/10/2015

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
	-	ORDER GRANTING EXTENSION OF TIME TO COMPLETE REMAND	C3	PGD
	-	PROCEEDINGS)	C3	PGD
7/07/2017	*	WITNESS LIST - PLTF; EXHIBIT LIST - PLTF; PRF OF SVC BY	C3	BRE
	-	ATTY MELISSA HOOVER	C3	BRE
7/10/2017	WRT	WRIT OF HABEAS CORPUS ISSUED	C3	PGD
	-	****9/15/17 FROM HURON VALLEY CORRECTIONAL****	C3	PGD
7/21/2017	*	NOTICE OF SERVING THE PEOPLE'S DEMAND FOR DISCOVERY, PR	C3	BRE
	-	OF SVC BY ATTY MELISSA HOOVER	C3	BRE
8/14/2017	PM	PROSECUTION MOTION	C3	AV
	-	TO COMPEL ANSWERS TO DISCOVERY REQUESTS, BRIEF IN SUPPO	C3	AV
	-	NTC OF HRG, PRF OF SVC BY ATTY MELISSA J HOOVER	C3	AV
8/14/2017	APR	MOTION SCHD FOR 8/28/2017 AT 9:30 AM	C3	AV
	-	PEOPLES MOT COMPEL ANSWERS TO DISCOVERY REQUESTS	C3	AV
8/14/2017	*	SADO ATTY DEGROFF ADVISES BY EMAIL: 9/29/17 WOULD WORK	C3	RJA
	-	FOR EVERYONE FOR DAY 2 OF GINTHER HRG - BELIEVE HRG CAN	C3	RJA
	-	BE CONCLUDED	C3	RJA
8/15/2017	APR	HEARING SCHD FOR 9/29/2017 AT 9:00 AM	C3	RJA
	-	GINTHER HRG/DAY 2/COMPLETION OF HRG EXPECTED	C3	RJA
8/28/2017	WRT	WRIT OF HABEAS CORPUS ISSUED	C3	PGD
	-	****9/29/17***FROM HURON VALLEY CORRECTIONAL @ 9:00 A.M	C3	PGD
8/28/2017	OUW	CT. REPORTER: U. WEGERT, CSR-4553	C3	DMM
	H	HEARING HELD	C3	DMM
	-	PEOPLE'S MTN TO COMPEL ANSWERS TO DISCOVERY REQUESTS;	C3	DMM
	-	PROS ATTY M. HOOVER/N. COLLISON; ATTYS B. DEGROFF AND	C3	DMM
	-	J. EGGERT (S.A.D.O) PRESENT FOR DEFT; ATTY R. DUNN	C3	DMM
	-	PRESENT FOR CO-DEFT STEVENS; STATEMENTS OF COUNSEL;	C3	DMM
	-	COURT DENIED MTN, INCLUDING SUPPLEMENTAL REQUEST; ATTY	C3	DMM
	-	DEGROFF/EGGERT TO SUBMIT ORDER	C3	DMM
9/01/2017	*	PEOPLE'S AMENDED WITNESS LIST; PRF OF SVC BY ATTY MELIS	C3	BRE
	-	HOOVER	C3	BRE
9/06/2017	*	DFNT-APPELLANT CODIE LYNN STEVENS AMENDED WITNES LIST;	C3	BRE
	-	EXHIBIT LIST; PRF OF SVC BY ATTY ROBERT J DUNN	C3	BRE
	-	(JUDGE'S COPY FWD TO CTRM)	C3	BRE
9/07/2017	PM	PROSECUTION MOTION	C3	NRP
	-	PEOPLE'S MOT TO STRIKE ALL EXPERT TESTIMONY AS IRRELEVA	C3	NRP
	-	PURSUANT TO MRE 401 & 402; BRIEF; NTC OF HRG; PRF OF SV	C3	NRP
	-	FILED BY ATTY MELISSA HOOVER	C3	NRP
9/08/2017	*	PEOPLE'S AMENDED WITNESS LIST; NOTICE OF SERVING THE	C3	BRE
	-	PEOPLE'S AMENDED WITNESS LIST, PRF OF SVC BY ATTY MELIS	C3	BRE
	-	HOOVER	C3	BRE
9/08/2017	APR	MOTION SCHD FOR 9/15/2017 AT 9:00 AM	C3	NRP
	-	MOT TO STRIKE DEFT'S EXPERT WITNESSES	C3	NRP
9/12/2017	*	PEOPLE'S AMENDED WITNESS LIST; PRF OF SVC, FILED BY ATT	C3	NRP
	-	HOOVER	C3	NRP
9/12/2017	*	DFNT-APPELLANT CODIE LYNN STEVENS SECOND AMENDED WITNES	C3	BRE
	-	LIST; PRF OF SVC BY ATTY ROBERT DUNN	C3	BRE
9/15/2017	OUW	CT. REPORTER: U. WEGERT, CSR-4553	C3	JEO
	H	HEARING HELD	C3	JEO
	-	ON DATE SET FOR MTN 4/NEW TRIAL/GINTHER HRG PER REMAND	C3	JEO
	-	MTN TO STRIKE DEFNT'S EXPERT WITNESS. DEFNT PRESENT W/	C3	JEO
	-	ATTYS B. DEGROFF, R. DUNN, & JASON EGGERT; N. COLLISON	C3	JEO

*** **CONTINUED NEXT PAGE** **

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DATE: 7/01/2020 STATE OF MICHIGAN, CIRCUIT COURT, COUNTY OF SAGINAW PAGE 11
PEOPLE VS CODIE STEVENS

CASE: **15-041275-FH** OFFENSE: 2/10/2015

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
9/15/2017	-	& M. HOOVER PRESENT FOR THE PLNTF. MOTION TO STRIKE	C3	JEO
	-	EXPERT WITNESS DENIED, GINTHER HRG EXPECTED TO BE	C3	JEO
	-	COMPLETED WHEN IT IS CONTINUED ON 9/29/17.	C3	JEO
9/15/2017	*	PEOPLE'S REPLY TO DEFT'S RESPONSE TO THE PEOPLE'S MOT T	C3	NRP
	-	STRIKE ALL EXPERT TESTIMONY AS IRRELEVANT PURSUANT TO	C3	NRP
	-	MRE 401 & 402, NTC OF SERVING PEOPLE'S MOT TO STRIKE, P	C3	NRP
	-	OF SVC, FILED BY ATTY MELISSA HOOVER	C3	NRP
9/18/2017	*	JOINDER OF CO-DFNT KRUKOWSKI'S REPLY TO PROSECUTO'S MTN	C3	BRE
	-	TO STRIKE BY ATTY ROBERT DUNN	C3	BRE
9/29/2017	0UW	CT. REPORTER: U. WEGERT, CSR-4553	C3	DMM
	H	HEARING HELD	C3	DMM
	-	DEFT PRESENT W/ ATTYS R. DUNN, PROS ATTYS N. COLLISON	C3	DMM
	-	AND M. HOOVER; CO-DEFT D. KRUKOWSKI WAS ALSO PRESENT W/	C3	DMM
	-	ATTYS B. DEGROFF AND J. EGGERT; STATEMENTS OF COUNSEL;	C3	DMM
	-	TESTIMONY OF DR. KARL WILLIAMS AND DR. RUNDELL; COUNSEL	C3	DMM
	-	TO BE PROVIDED WITH COPY OF TRANSCRIPT FROM TODAY'S	C3	DMM
	-	HEARING; UPON RECEIPT OF TRANSCRIPT, COUNSELSHALL HAVE	C3	DMM
	-	21 DAYS TO BRIEF THEIR POSITION; COURT WILL THEN SET	C3	DMM
	-	DATE FOR ORAL ARGUMENT	C3	DMM
10/13/2017	*	TRANSCRIPT OF MOTION DTD 8/28/17 BY U WEGERT	C3	BRE
10/18/2017	*	PD WEGERT $21.60 MTN 8-28-17 TRANSCRIPT	C3	PAB
10/20/2017	*	TRANSCRIPT OF MOTION DTD 9/11/17 BY U WEGERT	C3	BRE
11/01/2017	*	PD WEGERT $19.80 MTN 9-11-17 TRANSCRIPT	C3	PAB
11/16/2017	*	TRANSCRIPT OF EVIDENTIARY HEARING - VOLUME I OF II DTD	C3	BRE
	-	9/15/17 BY U WEGERT	C3	BRE
11/28/2017	*	DFNT CODIE STEVENS' CLOSING ARGUMENT; PRF OF SVC BY ATT	C3	BRE
	-	ROBERT J DUNN (JUDGE'S COPY FWD TO CTRM)	C3	BRE
	-	++++ FWD TO CTRM ++++	C3	BRE
11/29/2017	*	PD WEGERT $79.20 HRG 9-15-17 TRANSCRIPT	C3	PAB
12/26/2017	*	PD WEGERT $111.00 HRG 9-29-17 TRANSCRIPT	C3	PAB
	*	TRANSCRIPT OF EVIDENTIARY HEARING - VOL II (9/29/17),	C3	DMM
	-	FILED BY U. WEGERT	C3	DMM
12/28/2017	*	IN RESP TO EMAIL MESSAGE FROM ATTY DEGROFF ASKING IF CR	C3	RJA
	-	WOULD APPROVE AGREEMENT OF COUNSEL TO EXTEND DEADLINE F	C3	RJA
	-	POST-HRG BRIEFS TO 1/23/18, COUNSEL ADVISED PER COURT	C3	RJA
	-	THAT REQUEST WOULD BE APPROVED, COUNSEL SHOULD SUBMIT A	C3	RJA
	-	ORDER, WHICH DEGROFF DID BY EMAIL.	C3	RJA
12/28/2017	*	SCHEDULING ORDER [ESTABLISHING DEADLINES FOR POST-HEARI	C3	RJA
	-	BRIEFING] - OLD 1/9/18 DEADLINE EXTENDED TO 1/23/18.	C3	RJA
1/23/2018	*	PEOPLES BRIEF FOLLOWING EVIDENTIARY HEARING ON REMAND,	C3	AV
	-	PRF OF SVC BY ATTY MELISSA J HOOVER ++JUDGE COPY++	C3	AV
1/24/2018	*	NTC OF SERVING THE PEOPLES BRIEF FOLLOWING EVIDENTIARY	C3	AV
	-	HEARING ON REMAND, PRF OF SVC BY ATTY MELISSA J HOOVER	C3	AV
	-	++++JUDGE COPY FWD TO CRTRM++++	C3	AV
3/09/2018	APR	ORAL ARGUMENT SCHD FOR 4/02/2018 AT 10:00 AM	C3	RJA
	-	FINAL ARGUMENT ON ALL ISSUES ON REMAND FROM COA	C3	RJA
4/02/2018	0UW	CT. REPORTER: U. WEGERT, CSR-4553	C3	DMM
	H	HEARING HELD	C3	DMM
	-	ORAL ARGUMENT ON DEFT/APPELLANT'S MTN FOR NEW TRIAL;	C3	DMM
	-	PROS ATTYS N. COLLISONAND M. HOOVER, ATTY R. DUNN	C3	DMM
	-	PRESENT FOR DEFT; STATEMENTS OF COUNSEL; COURT DENIED	C3	DMM

*** **CONTINUED NEXT PAGE** **

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DATE: 7/01/2020 STATE OF MICHIGAN, CIRCUIT COURT, COUNTY OF SAGINAW PAGE 12
PEOPLE VS CODIE STEVENS

CASE: **15-041275-FH** OFFENSE: 2/10/2015

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
4/02/2018	-	MTN; PROSECUTOR TO SUBMIT ORDER	C3	DMM
4/05/2018	7DY	SEVEN DAY NOTICE OF PRESENTMENT, W/PRF OF SERVICE, OF:	C3	NRP
	-	ORDER DENYING DEFT'S MOT FOR NEW TRIAL, FILED BY ATTY	C3	NRP
	-	MELISSA HOOVER +++4-5-18+++ ++++FWD TO CT RM+++	C3	NRP
4/23/2018	*	EXPANDABLE RETURNED WITH 14 TRANSCRIPTS	C3	TSB
	*	ORDER DENYING DEFENDANT-APPELLLANTS' MOTION FOR NEW TRI	C3	PGD
5/16/2018	*	PD WEGERT $18.60 COPY ORAL ARGUMENT TRANSCRIPT	C3	PAB
	*	REPORTER/RECORDER CERTIFICATE OF ORDERING OF TRANSCRIPT	C3	BRE
	-	ON APPEAL TO COURT OF APPEALS BY U WEGERT	C3	BRE
5/16/2018	*	TRANSCRIPT OF ORAL ARGUMENT DTD 4/2/18 BY U WEGERT	C3	BRE
5/21/2018	*	PER REQUEST MAILED ROA TO APPELLATE ATTY	C3	NRP
5/31/2018	*	PREPARED FILE 2	C3	TSB
	PFC	PULLED FILE FOR COURTROOM	C3	TSB
	-	FILE 2	C3	TSB
6/04/2018	RET	FILE RETURNED TO CLERK'S OFFICE	C3	DMM
	-	FILES 1 & 2	C3	DMM
6/05/2018	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C3	CMJ
	-	FILES 1, 2	C3	CMJ
8/02/2018	*	PER REQUEST MAILED COMPLETE FILE AND TRANSCRIPTS TO COA	C3	NRP
	-	925 W OTTAWA ST LANSING, MI 48909-7522	C3	NRP
2/12/2019	*	COURT OF APPEALS ORDER - MOT FOR IMMEDIATE CONSIDERATIO	C3	NRP
	-	TO ADD AN ADDITIONAL ISSUE & TO ADJ ORAL ARGUMENT ARE	C3	NRP
	-	GRANTED; MOT TO FILE A SUPPLEMENTAL BRIEF IN DOCKET	C3	NRP
	-	334320 IS GRANTED; SUPPLEMENTAL BRIEF SUBMITTED ON 2-1-	C3	NRP
	-	IS ACCEPTED FOR FILING, PLTF MAY FILE SUPPLEMENTAL BRIE	C3	NRP
	-	IN RESPONSE; MOT TO ADJ IS ALSO GRANTED ON DOCKET NUMBE	C3	NRP
	-	337120 SO APPEALS WILL REMAIN CONSOLIDATED	C3	NRP
6/14/2019	AFR	ATTORNEY FEES PAYMENT REQUESTED	C3	VW
6/20/2019	PAY	DISBURSEMENT VOUCHER/PAYMENT ORDER	C3	HH
	-	$1900.46 TO ATTY R.DUNN	C3	HH
8/01/2019	*	COA VACATES CONVICTION AND SENTENCE, REMANDS, AND DIREC	C3	PJM
	-	THE TRIAL COURT TO ENTER JUDGMENT OF ACQUITTAL.	C3	PJM
8/12/2019	DM	DEFENSE MOTION	C3	BRE
	-	FOR BOND PENDING PROSECUTOR'S APPLICATION FOR LEAVE TO	C3	BRE
	-	APPEAL TO THE MICHIGAN SUPREME COURT; BRIEF IN SUPPORT;	C3	BRE
	-	NTC OF HRG; PRF OF SVC BY ATTY ROBERT DUNN	C3	BRE
	-	(JUDGE'S COPY FWD TO CTRM 8/13/19)	C3	BRE
8/13/2019	APR	MOTION SCHD FOR 9/16/2019 AT 9:30 AM	C3	BRE
	-	DFNT MTN FOR BOND	C3	BRE
8/19/2019	RI	RE-INSTATE CHARGE 01-00 CHILD ABUSE-2ND DEGR	C3	DMM
	DS	DISMISSED 01-00 CHILD ABUSE-2ND DEGR	C3	DMM
8/22/2019	*	ORDER OF ACQUITTAL (PER COURT OF APPEALS UNPUBLISHED	C3	DMM
	-	OPINION DATED 8/1/19)	C3	DMM
8/22/2019	MSP	MSP MJUD COUNT 001 DIS CONFIRMED		943
8/26/2019	ADJ	ADJOURNED MOTION ORIG SCHED 9/16/2019 AT 09:	C3	DMM
	-	PER ATTY DUNN	C3	DMM
9/20/2019	*	PLTF-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL; PRF O	C3	BRE
	-	SVC; SUBSTITUTION OF ATTY; PRF OF SVC BY ATTY HEIDI	C3	BRE
	-	WILLIAMS	C3	BRE
10/15/2019	*	PLTF-APPELLANT'S REPLY; PRF OF SVC BY ATTY HEIDI WILLIA	C3	BRE
	-	+++ FWD TO CTRM 10/17/19 +++	C3	BRE

*** **END OF CASE** ***

9-16-15

Original – Court
1st copy – Corrections
2nd copy – Corrections (for return)
d copy – Michigan State Police CJIC
4th copy – Defendant
5th copy – Prosecutor

Approved, SCAO

STATE OF MICHIGAN 10th JUDICIAL CIRCUIT SAGINAW COUNTY	JUDGMENT OF SENTENCE COMMITMENT TO DEPARTMENT OF CORRECTIONS	CASE NO. 15-041275-FH

ORI
MI-730015J
Police Report No.

Court address
111 S. Michigan Ave., Saginaw, Michigan 48602

Court telephone no.
(989)790-5471

THE PEOPLE OF THE STATE OF MICHIGAN

The State of Michigan

v

Defendant's name, address, and telephone no. 989-397-2420
Stevens, Codie Lynn
205 S Colony Dr Apt E
Saginaw, MI 48638

CTN/TCN	SID	DOB
73-15-001557-02	5025015 M	5/23/91

Prosecuting attorney's name: Patrick O Duggan — Bar no. P29978

Defendant attorney's name: Bush, George C. — Bar no. P11465

THE COURT FINDS:

1. The defendant was found guilty on 5/05/16 (Date) of the crime(s) stated below.

Count	CONVICTED BY Plea*	Court	Jury	DISMISSED BY*	CRIME	CHARGE CODE(S) MCL citation/PACC Code
1			X		CHILD ABUSE-2ND DEGR	750.136B3

*Insert "G" for guilty plea, "NC" for nolo contendere, or "MI" for guilty but mentally ill, "D" for dismissed by court, or "NP" for dismissed by prosecutor/plaintiff.

☐ 2. The conviction is reportable to the Secretary of State under MCL 257.625(21)(b). S-315-122-564-389 (Defendant's driver's license number)

☐ 3. HIV testing and sex offender registration are completed.

☐ 4. The defendant has been fingerprinted according to MCL 28.243.

☐ 5. A DNA sample is already on file with the Michigan State Police from a previous case. No assessment is required.

IT IS ORDERED:

☐ 6. Probation is revoked.

7. Participating in a special alternative incarceration unit is ☐ prohibited. ☐ permitted.

8. The defendant is sentenced to custody of the Michigan Department of Corrections. This sentence shall be executed immediately.

Count	SENTENCE DATE	MINIMUM Years	MINIMUM Mos.	MINIMUM Days	MAXIMUM Years	MAXIMUM Mos.	MAXIMUM Days	DATE SENTENCE BEGINS	JAIL CREDIT Mos.	JAIL CREDIT Days	OTHER INFORMATION
1	6/14/16		18		10			6/14/16		41	

☐ 9. Sentence(s) to be served consecutively to (If this item is not checked, the sentence is concurrent.)
☐ each other. ☐ case numbers _____.

10. The defendant shall pay:

State Minimum	Crime Victim	Restitution	DNA Assess.	Court Costs	Attorney Fees	Fine	Other Costs	Total
$68.00	$130.00		$60.00					$258.00

The due date for payment is 7/14/16. Fine, costs, and fees not paid within 56 days of the due date are subject to a 20% late penalty on the amount owed.

☐ 11. The concealed weapon board shall ☐ suspend for _____ days ☐ permanently revoke the concealed weapon license, permit number _____, issued by _____ County.

☐ 12. The defendant is subject to lifetime monitoring under MCL 750.520n.

13. Court Recommendation:

6/14/16
Date

Judge Janet M Boes — P37714 Bar no.

I certify that this is a correct and complete abstract from the original court records. The sheriff shall, without needless delay, deliver the defendant to the Michigan Department of Corrections at a place designated by the department.

PRISON DMM

(SEAL)

Deputy court clerk

MCL 765.15(2), MCL 769.1k, MCL 769.16a, MCL 775.22, MCL 780.766, MCR 6.427

CC 219b (6/15) JUDGMENT OF SENTENCE, COMMITMENT TO DEPARTMENT OF CORRECTIONS

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916-15

Original – Court
1st copy – Corrections
2nd copy – Corrections (for return)
d copy – Michigan State Police CJIC
4th copy – Defendant
5th copy – Prosecutor

Approved, SCAO

STATE OF MICHIGAN 10th JUDICIAL CIRCUIT SAGINAW COUNTY	JUDGMENT OF SENTENCE COMMITMENT TO DEPARTMENT OF CORRECTIONS	CASE NO. 15-041274-FH

ORI
MI-730015J
Police Report No.

Court address
111 S. Michigan Ave., Saginaw, Michigan 48602

Court telephone no.
(989)790-5471

THE PEOPLE OF THE STATE OF MICHIGAN

The State of Michigan

v

Defendant's name, address, and telephone no.
Krukowski, Dane Richard
3909 Akron Road
Akron, MI 48701

CTN/TCN	SID	DOB
73-15-001557-01	4891477 X	1/24/91

Prosecuting attorney's name	Bar no.	Defendant attorney's name	Bar no.
Patrick O Duggan	P29978	Sturtz, Philip R.	P21115

THE COURT FINDS:

1. The defendant was found guilty on 5/06/16 (Date) of the crime(s) stated below.

Count	CONVICTED BY Plea*	Court	Jury	DISMISSED BY*	CRIME	CHARGE CODE(S) MCL citation/PACC Code
1			X		CHILD ABUSE-2ND DEGR	750.136B3

*Insert "G" for guilty plea, "NC" for nolo contendere, or "MI" for guilty but mentally ill, "D" for dismissed by court, or "NP" for dismissed by prosecutor/plaintiff.

☐ 2. The conviction is reportable to the Secretary of State under MCL 257.625(21)(b). K-622-135-738-065 (Defendant's driver's license number)
☐ 3. HIV testing and sex offender registration are completed.
☐ 4. The defendant has been fingerprinted according to MCL 28.243.
☐ 5. A DNA sample is already on file with the Michigan State Police from a previous case. No assessment is required.

IT IS ORDERED:

☐ 6. Probation is revoked.
7. Participating in a special alternative incarceration unit is ☐ prohibited. ☐ permitted.
8. The defendant is sentenced to custody of the Michigan Department of Corrections. This sentence shall be executed immediately.

Count	SENTENCE DATE	MINIMUM Years	Mos.	Days	MAXIMUM Years	Mos.	Days	DATE SENTENCE BEGINS	JAIL CREDIT Mos.	Days	OTHER INFORMATION
1	6/14/16		36		10			6/14/16		92	

☐ 9. Sentence(s) to be served consecutively to (If this item is not checked, the sentence is concurrent.)
☐ each other. ☐ case numbers _____.

10. The defendant shall pay:

State Minimum	Crime Victim	Restitution	DNA Assess.	Court Costs	Attorney Fees	Fine	Other Costs	Total
$68.00	$130.00		$60.00					$258.00

The due date for payment is 7/14/16. Fine, costs, and fees not paid within 56 days of the due date are subject to a 20% late penalty on the amount owed.

☐ 11. The concealed weapon board shall ☐ suspend for _____ days ☐ permanently revoke the concealed weapon license, permit number _____, issued by _____ County.
☐ 12. The defendant is subject to lifetime monitoring under MCL 750.520n.
13. Court Recommendation:

6/14/16
Date

Judge Janet M. Boes

P37714
Bar no.

I certify that this is a correct and complete abstract from the original court records. The sheriff shall, without needless delay, deliver the defendant to the Michigan Department of Corrections at a place designated by the department.

PRISON DMM

(SEAL)

Deputy court clerk

MCL 765.15(2), MCL 769.1k, MCL 769.16a, MCL 775.22, MCL 780.766, MCR 6.427

CC 219b (6/15) **JUDGMENT OF SENTENCE, COMMITMENT TO DEPARTMENT OF CORRECTIONS**

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RECEIVED by MSC 7/2/2020 10:30:16 AM

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANE RICHARD KRUKOWSKI,

Defendant-Appellant.

UNPUBLISHED
August 1, 2019

No. 334320
Saginaw Circuit Court
LC No. 15-041274-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CODIE LYNN STEVENS,

Defendant-Appellant.

No. 337120
Saginaw Circuit Court
LC No. 15-041275-FH

Before: TUKEL, P.J., and SERVITTO and RIORDAN, JJ.

PER CURIAM.

In these consolidated appeals, defendants appeal as of right their jury trial convictions of second-degree child abuse, MCL 750.136b(3).[1] The trial court sentenced defendant Dane Krukowski to 36 months to 10 years' imprisonment and sentenced defendant Codie Stevens to 18 months to 10 years' imprisonment as well. We reverse, vacate defendants' convictions and sentences, remand, and direct the trial court to enter judgements of acquittal in both cases.

[1] Defendants had a joint jury trial before separate juries.

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I. BACKGROUND

Defendants are the biological parents of RK. RK was born after a 19-hour labor and, according to Stevens, was bruised from forehead to mid-chest from the cesarean section delivery. A few days after his birth, Stevens took RK to see pediatrician Elvira M. Dawis. According to Stevens, the baby was having trouble keeping formula down and was not easily comforted. Dr. Dawis testified that, despite being slightly jaundiced, RK was a "well-child" with a "normal-sized" head. Over time, RK became less fussy.

On Saturday, February 7, 2015, Krukowski was bathing approximately two-month-old RK in the bathtub. At some point, RK "jerked" and fell from Krukowski's soapy hands. RK hit his head on the side of the bathtub and fell facedown into the water. Krukowski immediately "scooped" him out of the water and called out to Stevens. The couple dried and dressed the baby and checked him for injuries. According to Krukowski, RK's head was "a little red" and "in due time, bruising started and swelling" and a "dime-sized bruise" eventually appeared. Stevens said that she observed "slight swelling" and a "tiny little dot" that was yellow in color on RK's head. Defendants placed a cool cloth on the baby's head and then later a frozen bag of peas. According to Stevens, after the fall RK was a little fussy and would not take a bottle, but his breathing was normal and he ate later that day. Stevens contacted her mother, who advised that defendants take the baby to the hospital "just to be safe." The grandmother visited the home later that day and observed a "dime-sized" bump on the baby's head that was not "really raised up high" with "slight shadowing." Stevens and Krukowski said that the infant was awake, smiling, and acting normal by the next day.

It is undisputed that defendants did not seek medical attention after the bathtub incident on either February 7 or February 8, 2015. On Monday, February 9, 2015, Stevens, accompanied by her mother, took RK to see Dr. Dawis for a previously scheduled appointment. The "bump" on RK's head was gone. Stevens said that she told the doctor that RK was still somewhat colicky and that he would not sleep on his back, but that a new formula was working. According to Dr. Dawis, Stevens reported that RK was fussy, irritable, and could not be pacified. Stevens testified and her mother confirmed that Stevens told the doctor about RK's "incident in the tub" explaining that the baby "had fallen out of [Krukowski's] arms and had hit his head." However, Dr. Dawis denied that Stevens told her about the accident and the doctor's notes from the visit stated that "mom denies any fall."

Because RK was fussy and irritable, Dr. Dawis recommended that he see a chiropractor. Later that day, chiropractor Michael J. Dense performed chiropractic adjustments on the baby. He explained that to treat an infant he suspends the baby by their feet and "give[s] a little pump," which makes "the baby arch its back" and causes the spine to align. He said it would make a sound like "a little click." Dr. Dense said that the baby "seemed to be relieved after the first adjustment" and that he was not crying. The maternal grandmother testified that she was "shocked" at the adjustment and heard RK's back "crack" at least twice; Stevens said she was "skeptical" and also heard RK's back "crack." RK attended a second and third chiropractic appointment with another chiropractor in the practice, Dr. Jason Barrigar, on February 10, 2015 and February 18, 2015. Dr. Barrigar observed RK to be "very happy" and "looking around the room." He said that he was not informed that RK had hit his head and he said that he did not personally observe any bumps or bruises on the baby.

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On February 21, 2016, RK vomited after Stevens fed him. When she attempted to feed him three or four hours later, he vomited again. She laid him in his crib and when she checked on him later he was "covered in vomit." She testified that she was concerned, but thought he might have the flu. She made him a bottle of peppermint water, which he was able to keep down. At 10:30 p.m., she made him a smaller bottle of peppermint water. She said he kept it down and slept through the night, but the next morning she awoke to him "whimpering." RK was "lying on his side, [and] his arm was twitching." She told Krukowski that it looked like the baby was having a seizure. According to defendants, they immediately took RK to the emergency room.

Emergency room nurse Sara Markle testified that RK was alert, his vital signs were stable, and he did not have any outward signs of trauma. She did not recall defendants disclosing that RK had suffered a fall weeks earlier. Dr. Jessica Kirby, the emergency room physician, also said that RK had no obvious signs of trauma, but was exhibiting shaking activity. Her initial thought was that low-sodium levels or an electrolyte abnormality could be causing the seizures. According to Stevens, RK was administered Ativan intravenously to stop the seizures. Krukowski testified that RK's hand or arm was "cranked" back in an "abnormal position" in order to insert the needle.

The baby's laboratory results were normal, so Dr. Kirby ordered a CAT scan, which revealed that the baby's brain was bleeding. Dr. Kirby was concerned that the brain bleeds were caused by "non-accidental trauma" and suspected abuse right away. After defendants were informed of the CAT scan results, they relayed to Dr. Kirby that RK had fallen in the bathtub approximately two weeks earlier. RK was transferred to the pediatric intensive care unit (PICU) where his condition "deteriorated" to the point that he needed a ventilator and a feeding tube and had to have a catheter inserted into his fontanelle to relieve pressure and remove fluid from his skull. Pediatrician Michael Fiore testified that RK had bleeding in the brain, multiple rib fractures, ongoing seizure activity, and retinal hemorrhages, all of which were assessed as being the result of "non-accidental trauma." According to Dr. Fiore, the baby would have died if he had not received medical treatment when he did.

Ophthalmologist Majed Sahouri performed diagnostic testing and took "RetCam" photographs of the back of the baby's eye. He said that RK had multiple retinal hemorrhages that were "too numerous to count" and severe enough to be characterized as nonaccidental. He said that shaking could cause the hemorrhages, but in his opinion, blunt-force trauma could not. He testified that the hemorrhages were "very consistent . . . with non-accidental trauma, and shaking" and that he doubted that chiropractic treatment could cause the hemorrhages. He indicated that some of the hemorrhages appeared darker, which could indicate different ages; however, he could not specify with medical certainty the ages of the hemorrhages.

Radiologist Gerard Farrar testified about MRI images of RK's brain taken on February 22, 2015, which showed "subdural hygroma" or abnormal "fluid around the brain," as well as more recent "acute blood." He said these were from at least two separate injuries. He said there was "a possibility" that either the subdural hygroma or the acute blood could have been caused by the bathtub fall. The prosecutor asked him if he had heard of shaken baby syndrome (SBS) and whether that could have caused the injuries. Dr. Farrar said that SBS could have caused the

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injuries. He also said it was possible that the older fluid was caused by a rough delivery, but that the newer fluid was "unlikely" to be from delivery.

Neurological surgeon Frank Paul Schinco testified that the hemorrhages in RK's brain were 36 to 48 hours old. He estimated that the older bleed was at least more than a week old. He said that the blood clots in RK's brain, in conjunction with the retinal hemorrhages, "would indicate a very significant probability and likelihood that the child had been shaken in a typical manner . . . that is highly diagnostic of that shaken baby syndrome."

Radiologist Kristin Constantino interpreted a skeletal survey x-ray of the baby's entire body taken on March 1, 2015. RK had a new fracture on the left side of his skull, an old one on his left forearm, and old ones on multiple ribs. She opined that the skull fracture could "potentially" have been from the bathtub fall.

RK ultimately spent nine days in the PICU. Shortly after he was released, defendants were charged with second-degree child abuse, MCL 750.136b(3). At trial, the prosecution called the child's treating doctors as witnesses, including Dr. Sahouri (ophthalmology), Dr. Dawis (pediatric medicine), Dr. Kirby (emergency medicine), Dr. Dense (chiropractic medicine), Dr. Barrigar (chiropractic medicine), Dr. Farrar (neuroradiology), Dr. Constantino (radiology), Dr. Schinco (neurosurgery), and Dr. Fiore (pediatric critical care). They also called the maternal grandmother. Defendants both testified on their own behalf and police interviews recorded at the hospital were played for the jury. The defense did not call any expert witnesses. At the conclusion of the six-day trial, both defendants were found guilty of second-degree child abuse.

Defendants appealed as of right. On appeal, they both moved this Court to remand for a *Ginther*[2] hearing, claiming that their attorneys were ineffective for failing to obtain an expert to dispute the prosecution's evidence that RK had been shaken. Alternatively, they argued that their attorneys were ineffective for failing to object to the shaking evidence as irrelevant and unfairly prejudicial. We consolidated[3] the appeals and remanded to the trial court for an evidentiary hearing.[4] These matters now return to this Court.

---

[2] *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

[3] *People v Krukowski*, unpublished order of the Court of Appeals, entered May 4, 2017 (Docket Nos. 334320; 337120).

[4] *People v Krukowski*, unpublished order of the Court of Appeals, entered May 19, 2017 (Docket No. 334320); *People v Stevens*, unpublished order of the Court of Appeals, entered May 19, 2017 (Docket No. 337120).

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II. SUFFICIENCY OF THE EVIDENCE

In supplemental briefs, defendants contend that there was insufficient evidence to support their convictions because the alleged omission of failing to seek medical attention for RK is not proscribed in the second degree child abuse statute, MCL 750.136b(3). We agree.[5]

We review a challenge to the sufficiency of the evidence de novo. *People v Martin*, 271 Mich App 280, 340; 721 NW2d 815 (2006). When reviewing such a claim, this Court reviews the record in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *Id*. This Court also reviews issues of statutory interpretation de novo. *People v Williams*, 475 Mich 245, 250; 716 NW2d 208 (2006).

The statute under which defendants were convicted, MCL 750.136b, states, in relevant part:

> (3) A person is guilty of child abuse in the second degree if any of the following apply:
>
> (a) The person's omission causes serious physical harm or serious mental harm to a child or if the person's reckless act causes serious physical harm or serious mental harm to a child.
>
> (b) The person knowingly or intentionally commits an act likely to cause serious physical or mental harm to a child regardless of whether harm results.

In addition, MCL 750.136b(1)(c) defines "omission" as "a willful failure to provide food, clothing, or shelter necessary for a child's welfare or willful abandonment of a child."

As previously stated, the prosecutor set forth three theories of second-degree child abuse: an "abandonment" theory, a "reckless act" theory, and an "intentional act" theory. During final jury instructions, the trial court also stated that the jurors had three theories to consider in support of second-degree child abuse. It said that the first theory was an "abandonment" theory, and that to convict under this theory, one needed to find that defendants "wilfully abandoned" RK and thereby caused him serious physical harm. It defined "abandon" as "to withdraw one's support or one's help, especially to do so despite a duty, allegiance, or responsibility." The trial court identified the second theory as a "reckless act" theory, and stated that to convict under this theory, one needed to find that the child was seriously harmed because defendants "did some reckless act, consisting of treating [the child] . . . with inadequate home remedy for an obvious head injury, rather than seeking professional medical treatment." The trial court stated that, to convict under the third theory, one needed to find that defendants "knowingly or intentionally

[5] Defendant have raised additional arguments on appeal, but due to our complete resolution of these matters on the arguments based on sufficiency of the evidence, we need not address the additional arguments.

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did an act likely to cause serious physical harm to" RK, and that the "intentional act alleged consists of treating [the child] . . . with inadequate home remedy for an obvious head injury, rather than seeking professional medical treatment." Defendants contend that the prosecutor's theories in this case were all theories of *omission*, and that such theories under the facts of the present case do not comport with the wording of MCL 750.136b because of the way that statute defines the term "omission."

People v Murphy, 321 Mich App 355, 357-359, 910 NW2d 374 (2017), provides this Court with guidance on this issue. In that case, the defendant was convicted of second-degree child abuse under MCL 750.136b(3)(a) based on the death of her child, which occurred after the child ingested a toxic amount of morphine. The child's grandmother had been living in the home of the defendant and the child, and the grandmother, who died before the child did, had been prescribed morphine. *Id*. at 358. The prosecutor "argued that a [morphine] pill had likely fallen to the floor and that because [the child's] parents had failed to clean the bedroom, [the child] found the pill and consumed it." *Id*. at 358 n 2. The prosecutor contended that the defendant committed a reckless act because the home was in a deplorable condition and the defendant "failed to clean the home to ensure that the morphine pills were removed . . . ." *Id*. at 358.

This Court noted that the "omission" portion of MCL 750.136b(3)(a) was inapplicable because there was "no evidence that [the defendant] willfully failed to provide food, clothing, or shelter to [the child] or that she willfully abandoned her." *Id*. at 360 n 4. This Court stated that "the only theory on which the jury was instructed" was the theory of "a reckless act causing serious physical harm . . . ." *Id*. at 360. The Court concluded that "[s]imply failing to take an action does not constitute an act" and that "the prosecutor presented no evidence that any affirmative act taken by [the defendant] led to [the child's] death." *Id*. at 361. The Court stated that the prosecutor "only directed the jury to [the defendant's] reckless *inaction*, i.e., her failure to clean her house to ensure that morphine pills were not in [the child's] reach." *Id*. Accordingly, the Court vacated the defendant's conviction of second-degree child abuse. *Id*.

The statutory language encompasses an "act" which is, according to *Murphy*, *id*., "[s]omething done or performed." (Quotation marks and citation omitted.). As implied by the *Murphy* Court, the "act" alleged must be the causative factor in causing serious harm, MCL 750.136b(3)(a), or in being likely to cause serious harm, MCL 750.136b(3)(b). Here, the prosecutor identified the use of home remedies, specifically using cold peas as a compress and giving the child peppermint water, as the affirmative "acts" at issue. The problem, however, is that there was no allegation that the use of these home remedies is what harmed the child or was likely to harm the child. Indeed, as a matter of pure common sense, applying a cold compress to a child's head or giving a child peppermint water is not likely to lead to seizures and severe swelling of the brain or otherwise lead to harm. It is overwhelmingly clear that the causative factor as alleged by the prosecutor was *the failure to seek professional medical treatment*.[6]

[6] This is reinforced by the prosecutor's various arguments at trial. In addition, the felony information in each case lists the relevant misdeed as "failing to seek medical treatment after significant trauma which resulted in further or exacerbated physical injuries or deterioration of the child's health and/or intentionally causing physical trauma." And, at the preliminary

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Indeed, the trial court explicitly incorporated this failure to seek professional medical treatment into its instructions for the prosecutor's second and third theories. The *Murphy* Court has clearly stated that *inaction* cannot be equated with an "act" for purposes of the child-abuse statute. *Murphy*, 321 Mich App at 361. Accordingly, the "reckless act" and "intentional act" theories set forth by the prosecutor were not encompassed by the language of MCL 750.136b.

Although defendants do not specifically mention the prosecutor's "abandonment" theory in their supplemental briefs, an argument about this theory is encompassed by way of their argument that "a failure to provide medical treatment is not covered under the definition of omission in MCL 750.136b(1)(c)." Indeed, the prosecutor's allegation regarding the "abandonment" theory was that defendants abandoned the child by failing to provide him with adequate medical care. MCL 750.136b(1)(c) defines "omission" as "a willful failure to provide food, clothing, or shelter necessary for a child's welfare or willful abandonment of a child." MCL 750.136b does not define "abandonment." However, unambiguous statutory language must be enforced as written. *Williams*, 475 Mich at 250. In addition, terms not expressly defined in a statute are to be interpreted in accordance with their ordinary meaning and the context in which they are used. *People v Lewis*, 302 Mich App 338, 342; 839 NW2d 37 (2013). It is a stretch to equate the failure to seek medical care with the plain and ordinary meaning of the term "abandonment." And, "when a term is not defined in a statute, the dictionary definition of the term may be consulted or examined." *Id*. *Merriam-Webster's Collegiate Dictionary* (11th ed.) defines "abandon," in part, as "to give up with the intent of never again claiming a right or interest in; to withdraw protection, support, or help from." The failure to seek a certain type of medical care is not equivalent to withdrawing protection, help, or support from a child, or giving a child up with the intent never to claim an interest in the child.

Moreover, under the doctrine of *expressio unius est exclusion alterius*, the "express mention of one thing implies the exclusion of another." *Coalition Protecting Auto No-Fault v Mich Catastrophic Claims Ass'n (On Remand)*, 317 Mich App 1, 15 n 6; 894 NW2d 758 (2016) (quotation marks and citations omitted). The Legislature has defined omission to encompass the willful failure to provide "food, clothing, or shelter" but does not mention the willful failure to provide medical care. MCL 750.136b(1)(c). Finally, statutes should be interpreted in order to give effect to every term. *People v Peltola*, 489 Mich 174, 181; 803 NW2d 140 (2011). Under the prosecutor's overarching theory, "abandonment" of a child would encompass not only the failure to provide medical care, but also the failure to provide, for example, food, because both these failures would represent the shirking of parental duties. Yet, this would render the delineation of "a willful failure to provide food" in MCL 750.136b(1)(c) surplusage, which is to be avoided. *Id*.

Clear statutory language is to be enforced as written, *Williams*, 475 Mich at 250, and *Murphy* is binding under MCR 7.215(J)(1). Under the factual circumstances in this case, and based on the theories presented, the prosecutor failed to present sufficient evidence under which

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examination, the prosecutor argued for a bindover based on an "omission" theory, and the court authorized the bindover without much explanation regarding its reasoning.

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to convict defendants of second-degree child abuse. Accordingly, defendants cannot be retried for second-degree child abuse, MCL 750.136b(3) as dictated by double jeopardy principles. *People v Mitchell*, 301 Mich App 282, 294; 835 NW2d 615 (2013). See also, *Burks v United States*, 437 US 1; 98 S Ct 2141; 57 L Ed 2d 1 (1978) (when an appellate court finds that the evidence is insufficient to sustain guilt, that court determines that the prosecution has failed to prove guilt beyond a reasonable doubt and to permit a second trial would negate the purpose of the Double Jeopardy Clause); *Lockhart v Nelson*, 488 US 33; 33-34; 109 S Ct 285; 102 L Ed 2d 265 (1988) (A reversal for evidentiary insufficiency "is the functional equivalent of a trial court's granting a judgment of acquittal at the close of all the evidence.").

Reversed. We vacate defendants' convictions and sentences, remand, and direct the trial court to enter judgements of acquittal in both cases. We do not retain jurisdiction.

/s/ Jonathan Tukel
/s/ Deborah A. Servitto
/s/ Michael J. Riordan

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW

PEOPLE OF THE STATE OF MICHIGAN

vs. File No. 15-041274-FH-3
Volume I
DANE RICHARD KRUKOWSKI,
Defendant.
_____/

PEOPLE OF THE STATE OF MICHIGAN

vs. File No. 15-041275-FH-3
Volume II
CODIE LYNN STEVENS,
Defendant.
_____/

JURY TRIAL
BEFORE THE HONORABLE JANET M. BOES, CIRCUIT JUDGE
Saginaw, Michigan - April 27, 2016

APPEARANCES:

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Official Court Reporter

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MR. DUGGAN: She was getting numbers from the reporter. I apologize, Your Honor.

THE COURT: All right. All of you need to have your exhibits marked before we have jurors waiting around, and when we have witnesses waiting. You know, we've -- me and my staff have gone out of our way to accommodate you, to make sure this thing goes smoothly and you get things done in a timely way, so please be considerate of that, and let us know what's going on.

MR. DUGGAN: Yes, Your Honor.

THE COURT: So let's bring the jurors in.

THE LAW CLERK: Well, both juries?

THE COURT: Both juries.

MR. STURTZ: Judge, how late do you plan on going?

THE COURT: Until at least five.

MR. STURTZ: If I said I had a doctor's appointment at 5:30, would you be persuasive to leave at 4:30?

THE COURT: I don't know, because I don't know what the witness situation is. But you're well aware that the prosecutor has been trying to schedule his witnesses due to, you know, their scheduling issues with their practices and places they have to be, so I don't know. And it's kind of late to be bringing that

up. So we'll see where we're at.

THE LAW CLERK: All rise for the jury.

(At 2:46 p.m. Stevens and Krukowski juries are present.)

THE COURT: Please be seated.

Counsel, would you approach the bench, please?

(Bench conference.)

THE COURT: All right. We are prepared to proceed, I believe, with testimony, in this case.

So, Mr. Duggan, you may proceed.

MR. DUGGAN: Thank you, Your Honor. We call Sara Markle.

THE COURT: Ma'am, if you'd step forward, and -- stop right there. Raise your right hand, please.

Do you solemnly swear to tell the truth, the whole truth and nothing but the truth?

MS. MARKLE: I do.

THE COURT: Please have a seat in the witness box.

SARA MARKLE,

Being first duly sworn at 2:48 p.m., testified under oath as follows:

D I R E C T E X A M I N A T I O N

BY MR. DUGGAN:

Q Good afternoon. Please state your name.

A Sara Gwen Markle.

Q What is your occupation?

A I am a nurse in the emergency room.

Q Can you pull the mic down, so it might make it easier to see you?

A Okay.

Q Which emergency room?

A Covenant.

Q And what is your license in the State of Michigan as a nurse?

A I'm a BSN or a registered nurse.

Q And BSN stands for bachelor of science --

A Bachelor --

Q -- in nursing?

A Correct.

Q And how long have you been an RN?

A 17 years.

Q Prior to becoming an RN, did you have any other medical licensure?

A I worked as an LPN for a year while I got my RN, and then went to --

Q So you have 18 years in nursing?

A Correct.

Q Any other medical profession before those two?

A No.

Q Were you at the Covenant ER back on February 22nd, 2015?

A Yes, I was.

Q And you have a medical record up there?

A Correct.

Q Okay.

MR. DUGGAN: For the record, Counsel, she's looking at Proposed Exhibit 3, the first few pages.

BY MR. DUGGAN:

Q On that date did the emergency department at Covenant have a young baby in for an emergency medical problem?

A Yes.

Q And what is your first exposure to that?

A I was back in the pediatric-emergency-room part, and the patient came in through triage; and I was the nurse taking care of the patient.

Q Explain what triage means.

A Triage means you come into the hospital, and you go to an area where somebody takes your vital signs, and they ask you what you are being seen for. And the nurse at that area places you in an appropriate area.

Q Is that also a way of describing the level of acuteness

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of the problem or the need for immediate action, to say somebody is triaged at one level, versus another?
A Yes, it is.
Q Okay. And what was this young baby's level; what was the need to see a doctor?
A I believe that they put the patient in as a priority three, which, if it's two or above, they usually need to go to a trauma room. This patient had stable vitals; vital signs. The heart rate was a little bit elevated; but, otherwise, the baby was alert, and vital signs were well enough to go back to the area they assigned him to.
Q What was the baby's name?
A The baby's name was Roegan, I believe; Roegan Krukowski.
Q And showing you a picture marked Proposed Exhibit 7, or, Exhibit 7. Do you recognize the baby in that picture?
A Yes.
Q Is that basically how Roegan looked upon his admission to the emergency department?
A When he came back to the emergency room he did not have oxygen on, but he was in just a diaper.
Q Okay. I'm going to put that on the display, to let the jury be able to see the baby.

Was there anything -- and I'll zoom in here -- is there anything significant to you about the appearance of the baby's head or eyes?
A The head looked large to us, very rounded, not really having definition to the eyebrows or anything like that, so --
Q What, based on your training and experience, were you concerned about when you saw the shape of the head?
A When the baby came in, it was for nausea and vomiting. When you see a large head, you're concerned for too much CSF or spinal fluid.
Q CSF is an acronym for what?
A Cerebral spinal fluid.
Q Is that stuff that's inside the head?
A Yes, and if it's blocked or you have too much, your head gets a little bit larger.
Q Would that be some condition more serious than vomiting?
A Yes, it can cause nausea and vomiting.
Q Would it require medical-assistance intervention quickly?
A You would need to go to CAT scan, and the results of the CAT scan would let us know if they needed to go to the operating room or see a neurologist.
Q And when you said the baby didn't have oxygen, that's

the little cannula-type thing under its nose?
A Yes.
Q Okay. But, otherwise, it was in its diaper, like this, when you saw the baby?
A Yes.
Q Okay. And did there appear to be any signs of obvious trauma, like bruises and cuts and blood and so forth, on the exterior of the baby's surface?
A No, we did not see any trauma.
Q Did you have other ER nurses there, doing things with the baby, besides yourself?
A Yes, I did. There was Kelly Henris, who is a nurse who was in the room with me.
Q When you had the chance to look at Roegan, did you notice something about his eyes; his use of his eyes?
A According to my charting, when I went into the room, the patient -- I asked mom and dad questions; and I looked at the patient, and the patient seemed to be having some jerking movements and some -- when we opened the eyes -- the eyes were closed -- the eyes were gazing to the right, and then also to the left. So the baby didn't follow us as we were looking at the baby.
Q As an emergency room nurse with your training, did you characterize the shaking and the eye movement as a --

as a condition or symptom?
A Yes, we call it a seizure.
Q All right. Is that something that could be related to the cerebral spinal fluid filling up in the baby's head?
A Yes.
Q Was there any concern, at that point, even though you may not have seen any external evidence, that the baby had some type of brain or head injury?
A According to our notes -- and we were told the baby came in with nausea, vomiting and no trauma -- we were concerned because the baby was receiving water; and when you give newborns water it messes up their electrolytes, which causes seizures, also. So we really wanted to get the lab work. And when you're having a seizure and have the round head, you're concerned about having too much spinal fluid, so a CAT scan was the next place that we needed to go.
Q Did you note the time when you, in the ER, first started interacting with the baby, on February 22nd?
A It was around 9:40 a.m.
Q Did you or the ER nurses provide any medications, to give the baby some relief?
A Yes, we started -- we started an IV in the patient's hand, and we gave normal saline, which is an IV bag

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that we usually give for dehydration. And we gave Ativan, which is for seizures.

Q And that, what? That use of the IV and the liquids in it wouldn't further add to problems, if water had contributed to --

MR. STURTZ: Judge, I'm going to object. These are all leading and suggestive.

MR. DUGGAN: I'll withdraw that question.

THE COURT: All right.

BY MR. DUGGAN:

Q You said you interacted with the parents, who were there?

A Yes.

Q Both parents were there?

A Yes.

Q Do you have any -- I know it's been more than a year. Do you have any memory of them, what they looked like, or has there just been too many patients since then?

A There's been a lot of patients since, and --

Q Okay.

A I do remember that one of them had red hair.

Q Okay. The man or the woman?

A The man.

Q All right. And did your charts also indicate that they provided information for -- a medical history for you

to assist the baby?

A Yes.

Q So they were cooperating with you?

A Yes.

Q And at the time you're seeing the baby, has an emergency room physician seen the baby yet?

A I believe we called out for the physician as soon as we noticed that the baby was twitching.

Q And who would that have been; who would be on call in the emergency room?

A Dr. Kirby.

Q Which, when I say on call, was she actually there, working a shift?

A Yes.

Q All right.

A And it's Jessica Kirby. There are two Kirbys.

Q Two doctors named Kirby?

A Yes. They're husband and wife. So it's Jessica Kirby.

Q Thank you. And when you were still observing Roegan, did his seizures come to an end?

A Yes.

Q Okay. And then would you -- how would you describe how he was when the seizures ended?

A Sleepy.

Q Okay. Were you with the baby up until the baby went to

the CT scan?

A Yes.

Q What is a CT scan?

A It's a CAT scan of which -- it's a medical machine that takes images of your brain, which shows if there's bleeding or fluid or any trauma.

Q And that's not something done by the ER, that's a separate department?

A That's a separate department.

Q And did you notice any more problems, either of the shaking or seizing or any other problems, before the baby went to CT?

MR. DUGGAN: For your information, Counsel, looking at page five, for the record.

THE WITNESS: I do have a note that, just prior to going to CAT scan, there was noted to be a left-sided gaze and some jerking. It resolved on its own, and we did not have to do any further medication. Then we went to CAT scan, and on the way returning, started having more gazing and jerking, but no respiratory distress or anything like that.

BY MR. DUGGAN:

Q Did you accompany the baby to the CAT scan or bring him back?

A Yes. I didn't ever leave the baby's side while they

were in the emergency room, that I can remember.

Q And when you got back to the emergency department, after the CAT scan, at some point are you ending your services; is the emergency department and another department taking over for the baby's care?

A Yes.

Q And who was that?

A The --

Q What other department?

A -- pediatric intensive care unit.

Q Also called the PICU?

A The PICU.

Q And is that the end of your involvement, personally, with Roegan, as far as you know, from the records you've reviewed?

A Yes.

Q You've reviewed records, lots of them, I know, before testifying, and a lot of patients, you say, have been seen. But, today, do you have any memory of treating this particular baby; at least, limited memory?

A I do remember this baby, and I remember we were very worried because the baby was having a lot of jerking and sleepiness. After the CAT scan, we did -- am I supposed to say the results?

Q No, they'll talk about the --

A Yeah.
Q -- CAT scan. We'll get that --
A Okay.
Q -- from other people.
A We did transport the patient to the pediatric intensive care unit, where an ICU nurse or an intensive care nurse and intensive care doctors take over for us.
MR. DUGGAN: Than you.
THE COURT: Cross-exam?
MR. DUGGAN: Oh, one other question, before they begin.
BY MR. DUGGAN:
Q Did either parent tell you, the emergency room nurse, that the baby had a fall two weeks before?
A Not that I remembered. I saw it in the charting, though.
Q Is it in your charting or other people's notes; is it in any of your charted notes?
A It is in -- I do not believe it's in my notes; it's in the emergency physician note.
Q All right. And those come after you, in time?
A Yes.
Q Is there any charted note from Kelly Henris or you, the emergency room nurses, that the baby had a fall? I'm looking at page one, at the bottom.

A That note is by Dr. Jessica Kirby.
Q Okay.
A At the bottom. My note is at the top.
Q All right.
A So she was the one that charted that.
MR. DUGGAN: Thank you.
I'm sorry, Counsel.
THE COURT: All right. Counsel, we discussed this previously. We're going to use the same order, in terms of questioning on cross. So which one wants to go first, and then we'll start --
MR. STURTZ: Mr. Bush is going to go first.
THE COURT: -- or, proceed with -- all right. Mr. Bush. Cross-exam?
C R O S S - E X A M I N A T I O N
BY MR. BUSH:
Q The mother of the child had advised you that she is giving the baby water with peppermint oil?
A Correct.
Q Is that right? Were you with the baby constantly, until the CAT scan?
A Yes.
Q Any other nurses there, male or female?
A Kelly Henris, and she's female.
Q That was it, just the two of you?

A I -- I cannot remember if any other people were in the room.
Q Okay. Due to passage of time?
A Due to passage of time. I know Dr. Kirby was in the room, also.
MR. BUSH: All right. Thank you.
THE COURT: Cross-exam, Mr. Sturtz?
MR. STURTZ: Thank you, Judge.
C R O S S - E X A M I N A T I O N
BY MR. STURTZ:
Q I'm married to one of you ladies. I don't know why you're all worried about signing things.
THE COURT: Do you want to explain that? The jury doesn't know what you're talking about.
MR. STURTZ: I'm married to an RN, and I -- they're all concerned about signing the charts, make sure they're complete.
BY MR. STURTZ:
Q You were in the triage when they arrived?
A I was in -- I was not the triage nurse, I was the emergency room nurse. They're -- a triage nurse is at the front of the hospital, and they bring the patient back to a hospital -- a room assignment. There's nine rooms in the pediatric side. So the triage nurse does the vital signs, gets information from the parents, and

then brings them back to the room. I was the nurse taking care of them back in the emergency area.
Q So when these people first entered the hospital, their contact was with the triage nurse?
A Correct.
Q And triage nurse takes the information, is that correct?
A Correct.
Q Is that recorded in a digital form or a dictate --
A Nope, it's recorded in the nurse's note.
Q All right. And is the triage notes made part of the emergency room notes?
A Yes.
Q And the -- who was the triage nurse?
A It was Kelly Henris.
Q Kelly Henris. How do you spell her last name?
A H-E-N-R-I-S.
Q When she brought him back, had she made a decision as to what level the child was at?
A They put in a triage acuity on this chart. I cannot -- I don't visualize an acuity of the child.
Q When you say you don't visualize, that means you did not do it or you did not have the skill to do it?
A I do not put in the acuity because I'm not the triage nurse. The triage nurse puts in the acuity as they're

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1 typing. On these nurse's notes it doesn't show me that
2 number.
3 Q I thought you said there was some sort of level; there
4 was a level priority?
5 A That's how we do our nursing care, is we prioritize.
6 Q So who made that determination, you?
7 A No.
8 Q I'm sorry?
9 A No.
10 Q Who made that determination?
11 A The triage nurse.
12 Q The triage nurse. Kelly Henris?
13 A Yes.
14 Q So the baby comes back to you, and at that time the
15 baby had no oxygen, and you tell us that the vital
16 signs were stable?
17 A Correct.
18 Q Vital signs mean what; the --
19 A The heart rate, the --
20 Q Heart rate.
21 A -- respiratory rate, the --
22 Q All right. From your chart, what was the heart rate?
23 A The heart rate was 180.
24 Q Respiration?
25 A 64.

1 Q What's that mean?
2 A How fast they are breathing.
3 Q And was the heart strong or weak?
4 A I would say strong.
5 Q All right. What was the blood pressure?
6 A The blood pressure is not charted in the triage because
7 we do blood pressures on two and under at triage.
8 Q What other items did you have listed, as far as vitals?
9 A They have a temperature of 99, and a weight of 6.12
10 kilos.
11 Q And 99, is that high for a baby of this age?
12 A That's normal.
13 Q That's normal. You also indicated there was no trauma
14 visible on the outside of the body?
15 A Correct.
16 Q Was the child having difficulty breathing, gasping for
17 air; breathing through his mouth or through his nose?
18 A According to my note, I walked into the room, and I
19 noticed the patient having a gaze; that the patient was
20 not having any respiratory distress, and the patient
21 was twitching.
22 Q When you say the patient had a gaze, what do you mean
23 by that?
24 A That means that the patient's eyes were looking to the
25 side.

1 Q What side?
2 A When I walked in the room, the patient had a gaze to
3 the right side.
4 Q All right. Did that remain constant while you were
5 with the baby?
6 A The gaze changed to the left side while I was in the
7 room, and that's what I have charted.
8 Q All right. So there was no visual looking straight
9 ahead; the baby was either looking all the way to the
10 right or all the way to the left?
11 A Correct.
12 Q Was the child able to follow or track? Did you ever do
13 anything with your hand, to see whether the child was
14 following your hand?
15 A That's -- that's what we look at when we are looking to
16 see if a patient has a seizure. If they have a gaze to
17 the right, they are not looking anywhere else.
18 Q All right.
19 A That's why we would chart a gaze.
20 Q And is that what you determined, at that point in time,
21 that there was some sort of stroke happening or
22 something?
23 A It would be a seizure, because there was also twitching
24 involved.
25 Q How does a seizure differ from a stroke?

1 A A stroke is an infarct to the brain.
2 Q All right. And a seizure is doing what?
3 A You -- the CAT scan is what tells you what the patient
4 is having. We call it seizure activity. You can be
5 having a stroke and a seizure at the same time.
6 Q Now, with this gaze being as it is, left or right, did
7 you put the oxygen clip on his nose?
8 A I charted that I put a non-rebreather mask, because
9 when a patient has a seizure they're not getting enough
10 oxygen to their brain. So any patient that has a
11 seizure, we automatically put oxygen on.
12 Q While the baby was with you, did Jessica Kirby come
13 into the room?
14 A Yes.
15 Q And what did she do, from your observation, in checking
16 the baby?
17 A She did a full head-to-toe assessment. She checked the
18 fontanelle, saw the baby was seizing.
19 Q What is the fontanental -- fontanelle?
20 A That's the soft spot on the head.
21 Q All right. And what do you do -- how do you check the
22 fontanelle, just push it on top?
23 A We feel across the head, yes.
24 Q All right. And from her charting, can you -- is that
25 part of the chart?

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A That is part of the chart.
Q Is Kirby's observations and notes there with you?
A I do have Jessica Kirby's notes.
Q All right. Let's turn to those note --
THE COURT: Counsel, would you approach for a minute?
(Bench conference.)
THE COURT: Hang on, while we're sort of disrupted here. Is your question for this witness?
KRUKOWSKI JUROR NO. 14: Yes.
THE COURT: All right. Then wait until they're all done with their questions.
KRUKOWSKI JUROR NO. 14: I'm sorry.
THE COURT: And then we'll -- we'll ask you about it, and then you can give it to us. So --
KRUKOWSKI JUROR NO. 14: Okay.
THE COURT: -- that's kind of how the procedure rotates.
KRUKOWSKI JUROR NO. 14: Sorry.
THE COURT: Is there something else, in the back?
Okay. That's fine. We're okay.
Go ahead, Mr. Sturtz.
BY MR. STURTZ:
Q As far as the fontanelle that Dr. Kirby did, what did

that reveal?
A She charted that the interior fontanelle is full, which means that it's rounded.
Q Okay. Did she note any type of bruises or abrasions on the head?
A No.
Q As a result of that, did she direct that the CT scan take place?
A She is the one that places the order, and, yes, placed an order for the CAT scan.
Q When was the CAT scan taken?
A Somewhere around 11:15, when I wrote my note, just prior to going to CAT scan.
Q But you took the baby down to the CAT scan?
A Correct.
Q And I believe, as you said, the baby was going down and was having some sort of seizures?
A I said, just prior to going to CAT scan, patient had a left-sided gaze and some jerking noted. It resolved within a few seconds. Continued to CAT scan.
Q Continued to CAT scan. While the baby was in the CAT scan, did it have any difficulties, would you say, with the -- through the CAT scan?
A I didn't chart any difficulties, so I'm going to say no.

Q And when the baby was through, you brought the baby back to what room, back to the emergency room?
A Yes.
Q Now, as -- as I have here, in my notes, when you were returning you said it had a left-sided gaze, and there was a lot of jerking?
A My chartings, on the way returning to room, patient had a right-sided gaze and jerking on the right extremities. No respiratory distress, and the family is at the bedside.
Q Would you describe the jerking that you saw when you brought the baby back?
A When I re -- when I chart jerking it's a -- kind of like a --
Q Is it a stiffening of the whole body or is it just the movement of the arms?
A It can be arms and legs. I wrote right extremities, so I would say it's the right and left [sic] leg.
Q Right and left leg were stiffening up, and then relaxing?
A Jerking is a --
Q Up and down?
A Usually an up-and-down motion. And they go together.
Q You -- your shift terminated, and you apparently left the baby, at what time?

A There is a note at -- note time of 3:32 p.m., the patient was transported to room 247, bed one. A report was given, and Dr. Schinco was in to see the patient.
Q What was done from the time the baby came back from the CAT scan until it went to 247; did it stay in the emergency room?
A It stayed in the emergency room.
Q All right. And were you with the baby during that whole period of time?
A I believe I -- I was with the baby almost the entire stay in the emergency room.
Q Was there any type of medication that was prescribed to the baby, from the time you returned until --
A The baby was given Dilantin for the seizure and jerking activity.
Q Was that done intravenously?
A Yes.
Q Now, was there an IV placed into the child?
A Yes.
Q Who did that?
A I did.
Q Did you have any assistance with that IV?
A Yes, with the other nurse that was in the room.
Q Why did you need the assistance?
A Because we usually do it as a team, and --

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Q I'm sorry, I didn't hear what you said.
A Because we usually start IVs as a team. Because babies move all around, you need someone to help hold. You have to draw blood, you have to tape it.
Q All right. There was no male orderly that came in to assist you, or a male doctor?
A Not that I can recall.
Q When the baby went to room 247, what department would that be?
A That would be the pediatric intensive care unit or the peds ICU.
Q PICU?
A Yes.
Q And that ended your emergency-room care for the child?
A Correct.
MR. STURTZ: That's all. Thank you.
THE COURT: All right. Redirect, Mr. Duggan?
MR. DUGGAN: None, Your Honor.
THE COURT: All right. I think we have at least one juror with a question. You can grab it. And if you want to approach the bench?
Anybody else have a question, from the jury?
Counsel, please approach.
(Bench conference.)
THE COURT: Let's take care of this question

first.
All right. Ma'am -- do you want me to read this whole thing, Counsel, or just the question part?
MR. STURTZ: Yes, please.
MR. DUGGAN: I agree.
MR. BUSH: Also.
THE COURT: You said the baby was taking water, which could cause complications in an infant. Who gave or was giving the baby water?
THE WITNESS: The mother was giving the baby water.
THE COURT: Okay. Any follow-up, Counsel?
MR. DUGGAN: Just regarding the picture, the one I showed her, which I actually displayed. I apologize, I hadn't officially moved to admit it in front of the jury. I move to admit it, and the others, which are Nos. 5 through 12. We resolved those, I think, out of the presence of the jury.
MR. STURTZ: Also, Exhibits 19, 18, 17, 16, and 14. I'd ask for admission, also.
MR. DUGGAN: Did you take some out that you previously had marked?
MR. STURTZ: No, that was it.
MR. DUGGAN: Because you had additional numbers. Well, the total numbers were 14 through 19,

inclusive. You want all of them in?
MR. STURTZ: Yes.
MR. DUGGAN: I would move that all of them be allowed.
THE COURT: Mr. Bush, any objection?
MR. BUSH: No, no objection.
THE COURT: All right. Exhibits 5 through 12, 14, 16, 17, 18 and 19 will be admitted.
MR. DUGGAN: And for the record, they're all marked with a People's exhibit tag. They did come from my file, even though counsel pointed them out. And I have no problem letting them be People's exhibits, all of them.
THE COURT: All right.
MR. DUGGAN: No further questions for her.
THE COURT: All right. You can step down, ma'am.
MR. DUGGAN: May the witness be excused?
THE COURT: Yes.
Call your next witness, Mr. Duggan?
MR. DUGGAN: We call Dr. Sahouri.
THE COURT: Sir, if you'd step forward here, and raise your right hand, please?
Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth?

DR. SAHOURI: I do.
THE COURT: Please have a seat in the witness box.

DR. MAJED SAHOURI,

Being first duly sworn at 3:20 p.m., testified under oath as follows:

D I R E C T E X A M I N A T I O N

BY MR. DUGGAN:
Q Good afternoon. Please state your name.
A Majed Sahouri.
Q Could you please spell both first and last name?
A M-A -- M-A-J-E-D S-A-H-O-U-R-I.
Q What is your profession?
A Ophthalmologist.
Q And although most of us know what that is, exactly what does that mean?
A Medical eye doctor.
Q All right. So you have an M.D., and your specialty is in the eye?
A Yes.
Q Are you permitted to do surgery in the eye?
A Yes.
Q Diagnose conditions and diseases?
A Yes.
Q Is there a higher level of physician than an

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ophthalmologist who does treat the eye or is that the top?
A You can do fellowships, but --
Q Okay.
A But, generally, no.
Q Okay. And were you working in your profession as an ophthalmologist back on February 22nd and thereafter, of 2015, at Covenant Hospital?
A Yes.
Q I should ask you, how long have you been licensed as a physician in the State of Michigan?
A Medical degree was in 1992.
Q 1990 --
A '2.
Q And when -- is that when you were licensed to be a physician in the State of Michigan or was that another state?
A Well, I believe so, yes.
Q Okay.
A I mean --
Q So --
A -- I don't -- I completed my boards, I think, in 1993.
Q Okay. And is Michigan the only state you practiced in?
A Yes.
Q Do you see patients both in an office setting and at

the hospital?
A Yes.
MR. DUGGAN: Your Honor, I would offer the witness as an expert in the area of ophthalmology. I'll be asking questions, some of which might call for an opinion.
MR. STURTZ: I have no --
THE COURT: Any objection?
MR. STURTZ: I have no objection to the doctor's qualifications.
MR. BUSH: No questions.
THE COURT: All right. The doctor will be recognized as an expert in the area of ophthalmology.
BY MR. DUGGAN:
Q Doctor, did you have occasion to see a young baby patient at Covenant, named Roegan Krukowski?
A Yes.
Q And have you had a chance to do some diagnostic work on him at that hospital?
A Yes.
Q And why were you called in?
A Physicians wanted me to do an eye exam and take some photographs.
Q Do you take specialized photographs of the eye, using specialized equipment?

A Yes.
Q What is that called?
A It's called a RetCam, and I take fundus photographs.
Q What does fundus photographs mean?
A Fundus is the back part of the eye; retina, optic nerve.
Q So the part that you have to have special equipment to look through the pupil to see?
A Yes.
Q You can take these pictures without doing any cutting or insertion of anything?
A I just have to put eyedrops, dilate the pupil.
Q And then the camera lens gets up close to it?
A Yes.
Q Does that camera, RetCam, permit you to take lifelike or realistic reproductions in photography of the conditions you see as an ophthalmologist?
A Yes.
Q Did you do that on Roegan Krukowski?
A Yes.
Q Do you know what date you did that service? I don't want you to speculate. If you have the records here, if you'd like to have them up there, I'll give them to you.
A It was -- it was just one occurrence, and it's -- I

can't -- it was February, I believe, 19 -- 2015.
Q All right. And did you have success in taking these images?
A Yes.
Q Did you provide those or have -- have they been provided from Covenant Healthcare on an image that we can show the jury what you actually saw when you did the diagnosis?
A Yes.
MR. DUGGAN: I'd move the admission of 13, so we can show that to the jury.
THE COURT: Any objection?
MR. STURTZ: Well, what is 13, for the record?
MR. DUGGAN: It's just the images of the RetCam that the doctor has already took.
MR. STURTZ: CD?
MR. DUGGAN: Yes. They're going to display up there.
MR. STURTZ: I have no objection.
MR. BUSH: No objection.
THE COURT: All right. Exhibit 13 will be admitted.
MR. DUGGAN: They're fairly bright, so I don't think we need to turn the lights down. We'll

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have Detective Worden bring them up here.
BY MR. DUGGAN:
Q Doctor, could you step over -- don't block anybody's view, if you could, if you could avoid that. Maybe you'll want to get on the other side, where the image is. Make sure all the jurors can see, even this lady in the back, here.
A Okay.
Q Could you tell us --
THE COURT: Do you need a pointer?
MR. DUGGAN: Pardon?
Oh, excellent.
THE WITNESS: Thank you.
BY MR. DUGGAN:
Q Could you tell the jury what we're seeing in the image, Exhibit 13, on the screen now?
A This is the right eye. This is --
Q Keep your voice up real loud, please.
A This is the right eye. This is the optic nerve. This, here, is one of the blood vessels. These blotched areas of redness are hemorrhages, and they go -- they extend all the way out, as far as in the picture.
Q Doctor, obviously --
A They're too numerous to count.
Q Thank you. Repeat that. I over-spoke.

A Too numerous to count.
Q Okay. And while you're still there, this is a large image; it's -- as it's sitting here, it's a couple feet wide. The eye is quite smaller. How much of -- what distance, in inches, if you could, or parts of an inch, is represented on the back of the eye on this image?
A About a third.
Q A third of an inch?
A No, a third of the retina.
Q A third of the retina?
A So --
Q How much does the retina cover of the back of the eye?
A It's roughly about -- about an -- roughly, an inch.
Q Okay. So we're looking at about a third of an inch? You have to say -- answer out loud.
A Correct.
Q And you said the optic nerve. As we're looking at this image, is that what the camera or you with a scope would be seeing, looking through the -- the pupil?
A You can see straight back, yes.
Q And the optic nerve goes where?
A Goes to the brain.
Q Does it go backward from what we're looking at to the brain?
A Correct.

Q What would a normal retina look like, without hemorrhages; are there any surfaces you see in the picture which would be more --
A It's really hard to -- but maybe in between there.
Q Okay.
A But maybe here.
Q Lighter than the --
A There's a smaller hemorrhage right there.
Q Okay. There's some area that looks lighter, almost a flesh tone. What is that color?
Yes, is that -- would that be a normal --
A That variation? Maybe -- that could be from the lighting, but that could be -- that could be normal, but --
Q Okay. And you said these blotches that are kind of red are retinal hemorrhages?
A Correct.
Q What about those much darker areas above the optic nerve? Point those out.
A These are still retinal hemorrhages, but they are darker. That may mean there's more blood in that area.
Q Does it have anything to do with the age, that that has an impact on the coloration?
A That's hard to determine.
Q Okay. You said they're too numerous to count?

A Correct.
Q Do you have an opinion, as an expert in this area of ophthalmology, on how these retinal hemorrhages occur?
A Hemorrhages of this severity usually -- I would characterize as non-accident.
Q Non-accident? Well, what -- what physically happens to the eye to change it from normal to having hemorrhages; what forces or actions?
A There must be an internal force that occurred, that caused bleeding.
Q You said an internal?
A Well --
Q Or an external? I want to make sure you used the right word.
A Internal, inside the eye.
Q Inside the eye. Okay. What -- give an example of what kind of force you're talking about that changes a normal eye to have retinal hemorrhage. What kind of force?
A Shaking.
Q Shaking?
A Shaking force.
Q Can trauma cause it, as well; a blunt-force trauma.
A Not to this severity, in my opinion.
Q Okay. And, now, when I say blunt-force trauma, I mean

one strike of, let's say, the head.
A Correct.
Q Maybe the baby falling and hitting the head?
A We may have a few hemorrhages, but not to this extreme.
Q And what does the extreme tell you, based on your training and experience?
A Well, they start right up around the optic nerve, and they go all the way out to the peripheral.
Q And what can you tell the jury that means to you, as a professional, trying to assist this baby?
A That's consistent with, you know, shaking force.
Q And did you look at both eyes?
A Yes.
MR. DUGGAN: Do we have images of both eyes, Detective?
BY MR. DUGGAN:
Q We're going to switch the images around. Why don't you tell Detective Worden when to stop. She'll leave an image up there, and perhaps you'll want to comment on it.
Is that the same eye or a different eye?
A That's the same.
Q Okay.
A The right eye. Right eye. Right eye. The right eye. That, I can't tell, but you can see the hemorrhage is

going all the way out. That's --
Q So are we going up?
A That's -- that's superior, yes.
Q Okay. Go ahead.
A This is the left eye.
Q Okay. And there's a difference here?
A Yes.
Q What do you see in the differences?
A You see much larger -- what's called pre-retinal hemorrhages here.
Q Hold on, you're blocking the view of the jury. Back up just a little bit.
MR. DUGGAN: Thank you, jurors. Is that what the problem was?
BY MR. DUGGAN:
Q Say that again?
A These are called pre-retinal hemorrhages.
Q Why?
A They're much larger, and they actually sit on the surface of the retina. The other hemorrhages are retinal hemorrhages, and they're actually the retinal tissue itself.
Q What is the significance of both pre-retinal hemorrhages and retinal hemorrhages being in the same patient?

A It's also consistent, very consistent, with non-accidental trauma, and shaking.
Q And --
A It's called a head trauma.
Q -- is the size of the hemorrhages, either the pre-retinal hemorrhages or the retinal hemorrhages, significant to you, that some are so much bigger than others?
A Yes.
Q What is the significance of that?
A It's more likely to be from trauma.
Q And what is the effect on vision, to have hemorrhages in the eye?
A The hemorrhage is clear; vision -- vision may come back to normal.
Q What if they don't?
A The scarring and the vision will be decreased.
Q Not blindness, but decreased?
A It depends on the severity of the -- severity of the hemorrhages and the scarring.
MR. DUGGAN: Are there any more images?
BY MR. DUGGAN:
Q Say which eye we're looking at, if you know.
A Left eye.
Q Go ahead. Is there anything else?

MR. DUGGAN: Go back.
THE WITNESS: Nothing new.
BY MR. DUGGAN:
Q We're going to go back to that left eye.
A This is the optic nerve, right -- right here.
Q So it's not centered in the picture?
A Correct.
Q All right. You're scanning with your scope or camera off to a side of the optic nerve, now?
A Well, I -- I move it around to a different area.
Q Do you believe you covered the surfaces, all the surfaces of the retina in --
A Well, the far periphery, I cannot get.
Q Would you say you had the majority of the retina showing in the images?
A Correct.
Q All right. Could you see, with your instruments -- not the RetCam, but with the other instruments -- the far periphery yourself?
A I did not look.
Q Okay. Why would that not be significant, to look?
A I just didn't do it, I'm sorry.
Q Well, do you have enough information --
A Yes.
Q -- in what you got?

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A Yes.
Q To be able to diagnose?
A Yes.
Q What -- okay. We're going to continue on with the images. Tell her to stop if you want to show the jury. Which eye?
A This is the left eye. And the hemorrhages go all the way out, you know, to the picture.
Q Okay.
A Same thing with -- left eye, pre-retinal hemorrhage, the retinal hemorrhage, optic nerve.
Q They're getting quite dark now.
A Well, that's similar, but more temporal.
Q What does temporal mean?
A Towards the ear.
Q Oh, toward the temple of the head?
A Yes, yes.
Q I'm sorry, go ahead. What eye?
A This is the left eye. This is --
Q Don't block the jury.
A Okay. And this is just a clearer photograph and a little bit lighter, where you can see the hemorrhages. You can't even see the blood vessel. That's why it's called a pre-retinal hemorrhage, it's on the surface of the retina. The other ones are retinal hemorrhages.

Q Is it significant that you can't see the blood vessel?
A Well, that's what pre-retinal indicates. It's on the surface of the retina, to block the view. Pre-retinal means it's on the surface of the retina, and it blocks the view. To block the view of the retina.
Q You can have a seat. In case you're wondering, I just kicked the cord.
A Okay.
Q It will come back. Do you have your record from Covenant in front of you?
A No.
Q Okay. Showing you --
MR. DUGGAN: Page 33, Counsel.
BY MR. DUGGAN:
Q Just wanted you -- it's a very brief record that you made in the Covenant PICU unit. I'll let you take a moment to review that. Did you have a chance to read that before coming to Court?
A Yes.
Q Okay. Could you comment to the jury, what are the observations you made, specifically, point by point, about the retina of each eye?
A Well, I said there was extensive retinal hemorrhage that extend from the optic nerve to the periphery. Some of the hemorrhages appear darker. That may

indicate different ages. Same thing in the left eye. Left eye also showed pre-retinal hemorrhage.
Q And you used the expression, may indicate differences in ages?
A Right.
Q You're -- are you prepared to say with any degree of medical certainty that they do indicate different ages or --
A I really can't.
Q And was the constellation of both pre-retinal and retinal hemorrhages significant to you; that they were both kinds?
A That part is significant.
Q What is it -- why is it significant?
A That's more consistent with traumatic injuries.
Q Okay. Do these types of retinal hemorrhages occur without trauma, without shaking?
A Not to this degree, no.
Q Okay. And what was your role, after diagnosing or seeing the condition; what medical assistance did you render, if any, at that point?
A Just have to monitor, see how much they clear over time.
Q All right. And that's something that you just have to do with instruments, because you can't talk to a

two-month-old baby?
A Correct.
Q To say how you see?
A I have to look. You have to dilate and look.
Q Was this the only time you had interaction with Roegan, according to the records?
A Yes.
MR. DUGGAN: I'll leave that up there, Counsel.
I have no further questions.
THE COURT: Mr. Bush?
C R O S S - E X A M I N A T I O N
BY MR. BUSH:
Q Doctor, did you get a history from anybody before you did your camera work?
A No.
Q All right. You didn't -- nobody talked to you about --
A I read the report.
Q Pardon?
A I had a general sense of what -- what they were looking -- what they wanted me to look for, yes.
Q All right. But you got no history of what had happened, in the case, as far as that goes?
A I did not get that personal, you know. I just -- I looked in the chart.

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Q Okay. You make your observation, and draw a conclusion?
A I just made an observation.
MR. BUSH: All right. Thank you.
THE COURT: All right. Mr. Sturtz?
C R O S S - E X A M I N A T I O N
BY MR. STURTZ:
Q Good afternoon.
A Hello.
Q Doctor, you were called in as a consulting physician on this date?
A Correct.
Q Who called you in?
A I'm not exactly sure, but the answering service usually calls me, and then I, you know, I call -- then I call the -- then they get ahold of the hospital, and they tell me they want me to see a patient.
Q Does Schinco -- does the name Schinco -- does that ring a bell?
A The neurosurgeon?
Q Yes.
A I'm not sure if he was the one that consulted me or not. Most of the time it's the primary caring physician.
Q How about a lady by -- in the emergency room, by the

name of Dr. Jessica Kirby?
A I don't believe so.
Q So your job was to take the photographs of the retina?
A Right.
Q You've described the various pictures that we've seen here. There's no way you can tell us when -- when the these various blobs occurred; they occurred a week ago, or two weeks ago, back in January?
A Timing is difficult, but, in general, it takes at least four to six weeks for the hemorrhages to clear.
Q Takes four to six weeks?
A In general, for some of the smaller hemorrhages to clear.
Q Now, the darker ones, would those suggest older hemorrhages?
A It's hard to say for certainty, but, in general, yes.
Q And you said the darker ones are on the surface of the retina?
A Those are -- no, those -- there's a difference between pre-retinal and dark. The bigger, larger ones are pre-retinal hemorrhages. That actually blocks the view of the retina.
Q All right. And is that on the surface or is that on --
A That's on the -- if you think, you know, the --
Q Cut a ball?

A Cut a ball in half, the inside of the -- inside is pre-retinal.
Q Okay.
A And the outside curve is the retina.
Q I see. And you used the word shaken. Was there any other indications inside the eye that the retina was disturbed, torn, or anything like that?
A I did not see any retinal tears or retinopathy prematurity or anything.
Q How about the lens, is -- the lens was okay?
A The lens looked okay.
Q How much force would there have to be exerted to create that -- the one we're looking at here, there seems to be two large globules on the lower left-hand corner.
A That's difficult to determine, but --
Q Spanking?
A No, that would not do it.
Q Would it have to be some sort of trauma to the head?
A It would have to be a deceleration/acceleration force, in general, from what I understand.
Q Okay.
A You know, no one does studies on these, they just -- they're all -- antidote.
Q How about if you take the baby upside down and shake it, crack the baby's back?

A Hitting the baby in the back?
Q Crack the baby's back.
A What do you mean?
Q Like a chiropractor.
A I doubt that would do it.
Q You doubt that would do it? Well, would you have to hit it in the head with a stick or what; some sort of trauma, outside force?
A Single force would not do it. Unlikely.
Q And from your -- from your observation of the photographs and what you saw, you say it takes four to six weeks for them to dissipate or be gone?
A In general. In general, retinal hemorrhages take that long.
Q To go?
A You know -- correct.
Q Would you go back to No. 1, please? This one, right here. We see a whole bunch of little ones all over the place.
A These are retinal hemorrhages, yes.
Q Those are all retinal hemorrhages?
A Correct.
Q But could all those be caused by one type of shaking?
A Well, that's -- it could be caused from shaking, yes.
Q How many -- how many shakes do you have to get to do

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this?
A It would have to be considerable, yes.
Q So does --
A But one -- one shake, I doubt, would do it.
Q So if you took the baby and shook it three or four, five times, and -- you don't know?
A Don't know.
Q And you don't know if it took 20 or 30 or anything like that?
A No.
MR. STURTZ: Thank you, Doctor.
THE COURT: Redirect?
R E D I R E C T E X A M I N A T I O N
BY MR. DUGGAN:
Q Would some of your last answers have to do with the fact that doctors don't shake babies to cause injuries?
A Well, there's no studies to see, you know, what it -- what force it would take, correct.
Q That would be like torture, to shake a baby until you could make these injuries intentionally?
A Correct.
Q All right. You have to study things that have already happened, and try to make deductions?
A Correct.
Q Does the baby being young change that four-to-six-weeks

period for hemorrhages to clear?
A Not necessarily.
Q Adults and babies might take about the same amount of time?
A Correct.
Q Okay. Are you able to offer an opinion as to the most recent retinal hemorrhage or pre-retinal hemorrhage that you observed; how soon before you saw the baby at Covenant it had happened?
A No, I can't.
Q Okay. When you just used the term deceleration/acceleration, you were also using your hands. Is it -- let's say you had a baby in your hands and were moving it back and forth. Is that what you mean by shaking?
A Correct.
Q That's the type of deceleration/acceleration that can cause the pre-retinal and retinal hemorrhages?
A From what I understand, yes.
Q Based on your training and experience?
A Correct.
Q Did you -- you've commented to counsel that the lens looked okay and so forth. Did the -- did the white of the eye, whatever that's called, look okay?
A I did not notice any sub -- I did not notice any

subconjunctival hemorrhages.
Q Okay.
THE COURT REPORTER: Any what?
BY MR. DUGGAN:
Q She's going to have to --
A Subconjunctival. S-U-B-C-O-N-J -- subconjunctival hemorrhage.
Q Does that refer to the white of the eye?
A That's -- yes.
Q Okay. And you didn't see any apparent injury there?
A Correct.
Q Is it often the case that you can get the pre-retinal or retinal hemorrhages inside the eye without having any subconjunctival hemorrhages on the white of the eye?
A Correct.
MR. DUGGAN: Thank you.
THE COURT: Any questions from the jury for this witness?
We've got one. You want to pass it over there?
Thank you.
Counsel, you want to approach the bench?
Is that the only one?
(Bench conference.)

THE COURT: Doctor, could a seizure cause the retinal hemorrhage?
THE WITNESS: Not to this extent.
THE COURT: Okay. Any follow-up, Counsel?
MR. DUGGAN: No, Your Honor.
MR. BUSH: No, Your Honor.
MR. STURTZ: No, Judge.
THE COURT: All right. You can step down, sir.
THE WITNESS: Thank you.
(At 3:45 p.m. witness is excused.)
MR. DUGGAN: May the doctor be excused?
MR. STURTZ: Yes.
THE COURT: Yes.
MR. DUGGAN: Shall I call the next witness?
THE COURT: Yes. Unless you all -- wait a minute.
Anybody need a break?
Okay. Let's go.
MR. STURTZ: Counsel, who is your next witness?
MR. DUGGAN: Tammy Nowaczyk.
We call Tammy Nowaczyk.
THE COURT: Ma'am, if you'd step forward and raise your right hand, please?

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1 Do you solemnly swear to tell the truth, the
2 whole truth and nothing but the truth?
3 MS. NOWACZYK: Yes, I do.
4 THE COURT: Please have a seat in the witness
5 box.
6 TAMMY NOWACZYK,
7 Being first duly sworn at 3:48 p.m., testified under
8 oath as follows:
9 D I R E C T E X A M I N A T I O N
10 BY MR. DUGGAN:
11 Q Please state your name.
12 A Tammy Nowaczyk.
13 Q Please spell the last name.
14 A N-O-W-A-C-Z-Y-K.
15 Q May I call you Tammy?
16 A Yes.
17 Q Thank you. What is your profession?
18 A I'm an RN.
19 Q Where do you currently do your work as an RN?
20 A Covenant Healthcare PICU.
21 Q And that's the pediatric intensive care unit?
22 A That's correct.
23 Q We've heard the previous witness say PICU and then peds
24 ICU. Is there an accepted term?
25 A It's both.

1 Q All right. Interchangeable?
2 A Yes.
3 Q Okay. How long have you been an RN?
4 A Since July of '05.
5 Q So, coming up, 11 years?
6 A Uh-huh, yes.
7 Q And were you in the medical profession before you were
8 an RN, doing other things?
9 A Yes, I --
10 Q What?
11 A -- have worked at Seatons and Covenant for 26 years,
12 here. I was an NCA in pediatrics before I became a
13 nurse.
14 Q What's an NCA?
15 A A nursing care assistant; certified nursing assistant.
16 Several names for that, as well.
17 Q Well, go back to '05.
18 A Uh-huh.
19 Q How long before that were you that other thing?
20 A About 14 years.
21 Q Fourteen. Okay. Does that have a license, like
22 nursing?
23 A It's certified, through the state.
24 Q Okay. Certified -- say that again?
25 A Certified through the State of Michigan.

1 Q The title?
2 A Oh, it's --
3 Q The acronym?
4 A -- certified nursing assistant. CNA or NCA.
5 Q Thank you. So you've got 25, 26 years in medical work?
6 A Correct.
7 Q And have all your 11 years as an RN been at the PICU?
8 A No, I've been there since the end of '08.
9 Q Okay. Before that, you did other things at Covenant?
10 A Adult critical care.
11 Q Okay. Did you have interaction with a patient, a baby
12 named Roegan Krukowski, at the PICU, on February 22,
13 2015?
14 A Yes, I did.
15 Q And there's some medical records up there. You had the
16 chance to review those, have you not?
17 A I have.
18 Q And the way they're set up, there's a couple of
19 packets, but they usually go in chronological order?
20 A Correct.
21 Q All right. And the author of the report is usually
22 identified with the date and time?
23 A Correct.
24 Q That would include nurses like you, as well as doctors?
25 A Yes.

1 Q Registered dieticians?
2 A Yes.
3 Q Respiratory therapists?
4 A Yes.
5 Q Chaplains?
6 A Yes.
7 Q Social workers?
8 A Yes.
9 Q Please take a look at these photographs. I'm going to
10 have you look at all of them. They start -- the ones
11 I'm showing you are 7 through 19, inclusive. Just spin
12 through them and see if you recognize them, because
13 I'll ask you some questions about them.
14 A I recognize all of them.
15 Q You actually saw them before the jury was brought into
16 the room?
17 A Yes, and I remember the child. And this is me, in this
18 photo.
19 Q Okay. The top one?
20 A Yes.
21 Q For the record, you're referring to Exhibit 7?
22 A Yes.
23 Q That's Roegan Krukowski?
24 A Yes.
25 Q And showing Exhibit 7 to you, you remember Roegan being

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at the hospital, coming into the PICU, looking like this?
A Yes.
Q And you say that's your hands in the picture?
A That is my hands.
Q Okay. You had to perform, in the PICU, quite a number of things to give the baby assistance?
A Yes.
Q And showing you Exhibit 8, which has a date on it of 2-25-15. Is that also the baby at the PICU?
A Yes.
Q And I'm going to put the two pictures side by side, and ask you about what significance you see, and any differences. Try to zoom in a little bit. What significance -- differences do you see between the baby on February 22 and then after he had been in the PICU, after February 25th?
A On the left of the screen, which would be your right --
Q This one?
A Yes. Obviously, he is not needing any kind of ventilator support, any support to breathe. He is also not being fed through a tube in his nose. His head is very round. And in the one in the picture closest to me, he is on a ventilator, requiring assistance to breathe; he's being fed through a tube in his nose; and

his head is less round, as you can see. And you can see kind of the -- the shape of the skull better, even through the eyebrows and that kind of thing.
Q So there's been some reduction in the swelling of the head?
A Correct.
Q Has that been brought about through actions by doctors, nurses, in the PICU?
A Yes, it -- primarily, through the top of the head, there. That was placed by Dr. Schinco. That's a --
Q What is that?
A It's a -- it's a catheter that was inserted into his fontanelle, to relieve pressure and to remove fluid.
Q Okay. How many fontanelles are there on a baby?
A Two.
Q And are they in a left-right position or forward-backward?
A Anterior and posterior, so front --
Q Using your head, tip your head forward and show the jury where the anterior fontanelle is.
A The anterior fontanelle is here.
Q Okay.
A And it's large. And the posterior fontanelle is back here, but it's very small.
Q Okay. These are spaces where there isn't skull

material yet?
A Right.
Q There will be later, as they grow?
A Yes.
Q Okay. Showing the jury Exhibit 10. Is the baby in this picture?
A Yes.
Q That's the baby?
A Yes.
Q I'll back up again. Why all of this stuff? And I'm not looking for you to tell me every --
A Sure.
Q -- single item; just generally, why all this stuff, at this point?
A That his --
Q On February 25th --
A His condition had --
Q -- 6th.
A His condition had deteriorated to the point where he needed assistance with breathing, primarily; and he had been seizing. And so we'll see some different medications there. I mean, we're hydrating him, we're giving him all he needs to -- to get through this phase.
Q Showing, then, Exhibit 12.

A Those --
Q Are these some of the things you were just referring to?
A Yes. That would be IV fluid to keep him hydrated, give him some electrolytes. There can be several different medications that are hung there. Right there.
Q Up to the side, a photograph was taken by the detective. Showing the jury Exhibit 11. What is this for?
A That's the fluid that has been drained off of his head through that catheter.
Q Is that the color; is that an accurate rendition of the color of the fluid?
A It's the accurate rendition of the color of the fluid, at that time; it's not normal.
Q And that's on -- it's reported to be on February 26th, according to the date that's been added here. Did you see that fluid in different colors, from the time he came into the PICU until he was done?
A I don't recall the color changes specifically, but a normal color would be clearer.
Q And is this -- does this have a particular reason why it's pigmented that color?
A Most likely, from blood.
Q Well, how come -- or, not how come. This is the bag

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that collects the fluid that came from the thing on the head?
A Correct.
Q We'll talk to the doctors who installed that a --
A Yes.
Q -- little later, we won't try to have you comment on that. Is this put in this bag with these line gradations for a reason; is there a reason to save it and to measure it?
A Yes. The importance is measuring to see how much fluid is accumulating over a -- certain periods of time; not only to chart the -- the amounts of it, but we also need to replace this with IV fluid, because it's also a form of dehydration. But the amount is specific -- or, important, rather, because it's producing more than what can be held in his head.
Q Okay. I'm showing you Exhibit 16, purportedly from February 22nd, the date of admission. Is this, as far as you can tell, from your vantage point in that seat up there, a fairly accurate representation of the appearance of the baby's head?
A Yes.
Q Can you comment on whether or not we are seeing or not seeing anything abnormal?
A You are seeing abnormality in the fact that his head is

very round.
Q Okay.
A It's --
Q Was bigger than it should have been?
A Yes.
Q And what about the -- on the rear part, above the ear, on the left side, is that bruising or is that just the coloration of hair or something?
A I believe that to be the coloration of hair and veins, showing, like, a slightly darker hue, right, that's what I believe that to be.
Q You don't remember it, at that time, being a bruise or a --
A No.
Q -- a recovering bruise or a healing bruise?
A No.
Q Okay. Did you see any knot on the head or a goose egg on the head, if you know what I mean?
A No, I just remember that his head was round and big.
Q Going to show you the right side of the head, Exhibit 17. Did it appear to be similar to the left side, in terms of these colorations and so forth?
A It looks the same to me.
Q Okay. So this area is not bruising or anything; it's just, there's hair there?

A Right, and the veins.
Q It makes it look larger?
A Uh-huh.
Q Veins show through the baby's skin quite --
A Sure.
Q -- obviously. I'm showing the jury Exhibit 19. This is the back of the head, on February 22nd, the same hair. No bruising, just the hair of the head growing?
A Correct.
Q No apparent surface injuries?
A No.
Q That's correct?
A That's correct, just the roundness.
Q And, lastly, Exhibit 18. From the front, no apparent surface injuries?
A Correct.
Q What type of activity was the baby engaging in or displaying when you first interacted with the baby at the PICU?
A Can I refer to my notes?
Q Sure, it will help you refresh your memory. If there's page numbers at the bottom right, maybe you can tell what -- tell us what page you're on. All of us have copies of this.
A Simply, my name appears at the bottom of page 14,

but -- or, on -- yes. And then at the top of page 15, I make note that the baby is sleeping, that he responds to touch appropriately, and he has spontaneous movements, and he opens his eyes.
Q And then it says, Dr. Schinco in to see patient?
A Yes.
Q And what is his duty?
A He's a neurosurgeon.
Q For a baby?
A Yes.
Q All right. So this is when you take over --
A Yes.
Q -- from the emergency department from Sara Markle?
A That's correct.
Q All right. And were you aware that certain tests had been done --
A Yes.
Q -- by that time? Did you ever see, in -- and chart in your notes the baby engaging in any seizure activity?
A Yes.
Q When did that come in?
A I'll have to refer. Let me see.
MR. DUGGAN: I'm looking at page 25, Counsel.
BY MR. DUGGAN:
Q And that's what I'd like you to look at.

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A Okay. If I recall right, I was -- Dr. Fiore was at the bedside, as well. Oh, well, I was told in report that he had been having seizures through the night. That's what my note indicates there.

MR. STURTZ: Objection as hearsay.

MR. DUGGAN: It's all hearsay, it's medical records. It's received under that exception.

THE COURT: All right. Go ahead.

BY MR. DUGGAN:

Q What is the time of your note, and date?

A That note is 8:43 in the morning, and on the 23rd.

Q Okay. Have you -- have you worked through the night, past midnight, or have you come in in the morning to start a shift?

A I would come in in the morning.

Q So you saw the baby earlier, the previous day, on the 22nd?

A Right.

Q You'd gone home and got some rest?

A Right.

Q And you come back to work --

A Correct.

Q -- for another shift. But the baby has nurses like you 24/7, correct?

A Yes.

Q Okay. All right. And they have various notes in here, as well, just like you, when it was their turn?

A Correct.

Q And the PICU, is there a nurse always at a baby's side when they're in this condition?

A Not until they're intubated.

Q What does that mean?

A Having the breathing tube in.

Q Did that happen in Roegan's case?

A Yes.

Q Pardon me. On February 23rd, at 8:06 p.m., at the bottom of page 34, from what I just said, you were there at 8:43 a.m., and you're still there at 8:06 p.m.?

A Yes.

Q So you work 12 hours?

A I'm scheduled 12 hours, but we often work over.

Q If you have something going on with the patient?

A Correct.

Q All right. Have you already worked more than 12 hours, by this point?

A Yes.

Q Your shift started when?

A 7:00 a.m.

Q And at the 8:06 p.m., on February 23rd, Dr. Schinco was

there, and Dr. Fiore; both were there to see Roegan?

A I'm sorry, where were you?

Q I'm at the top of page 35.

A Oh, okay. Yes, Dr. Schinco and Dr. Fiore were both there, at the same time.

Q And Dr. Schinco, we've been told, is a neurosurgeon?

A That's correct.

Q Dr. Fiore is a what?

A A pediatric intensivist. He's a doctor who specializes in the care of ICU patients.

Q And was there notations made by you that the head had changed in size?

A Yes.

Q So swelling was going up, instead of coming down?

A Correct.

Q Is that a good thing or a bad thing?

A A bad thing.

Q Was this when Dr. Sahouri, the ophthalmologist, also came in to do the RetCam?

A Yes.

Q Is this when Dr. Schinco, the neurosurgeon, did surgery to relieve the pressure on the head?

A Yes.

Q That's the installation of the drain that you see in the picture, coming out, that's taped on the baby's

head?

A Right.

Q Through the fontanelle?

A Right.

Q Were you aware, as one of the PICU nurses, that you had to provide some level of protection of the baby because of ongoing investigations done by CPS, police, so forth?

A I was informed that there were to be no visitors. In addition to that, we have safety issues or safety protocols that we follow, as well.

Q Was this baby in -- a conscious baby or unconscious baby when you were dealing with him?

A He was conscious when I started caring for him, and his condition deteriorated to the point that he was seizing then, and eventually needed help with his breathing.

Q At page 49, there's a reference to a registered dietician performing an evaluation. Is the baby getting food orally or is it all through intravenous needles?

A I'll read her note to -- to clarify.

Q Don't read it out loud, just read it to yourself, and then I'll --

A Okay.

Q -- ask you a question. Take your time.

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1 A Okay.
2 Tube-feeding and IV fluid.
3 Q Both, then?
4 A Both.
5 Q Okay. The baby was able to get formula-type
6 nourishment?
7 A Yes.
8 Q So you nurses would literally provide a bottle, and
9 feed it, like, held in your arms?
10 A We were hanging the feeding from a pump and infusing it
11 through a tube, feeding into the nose, that goes into
12 the belly.
13 Q Is -- when you said intubated a while ago, is that the
14 tube you're talking about or is that a different tube?
15 A That would be a different tube.
16 Q Okay. What is the one that goes in the belly, through
17 the nose?
18 A Nasogastric tube.
19 Q It's to put nourishment in only?
20 A Correct.
21 Q The other intubation was to provide breathing
22 assistance?
23 A That's correct.
24 Q So both those had things happening in the PICU for this
25 baby?

1 A Yes.
2 Q Which happened first, if you know?
3 A It would be the intubation.
4 Q And then when the baby wanted nourishment, it would be
5 pumped in, not fed like a bottle, to the lips?
6 A Correct.
7 Q On February 24th, bottom of page 50, is -- or, not the
8 bottom, but I'm on page 50 -- you have a note that you
9 saw the baby on the next day, February 24th, at 4:19
10 p.m. Could you describe for the jury how Roegan's
11 progress was then?
12 A I talked about him stirring easily, moving about, calms
13 easily with swaddling; that we've increased the tube
14 feeding, because he's tolerating it. His IV fluid has
15 been decreased because, as the feeding through the
16 stomach increases, the feeding through the IV
17 decreases. And I talk about the drain having 14 ccs of
18 fluid out, and that --
19 Q The drain out of the head?
20 A Correct. Sorry. And that I've replaced that 14 ccs
21 with normal saline through his IV.
22 Q Normal saline is not water, correct?
23 A Correct.
24 Q Would regular water be bad to use in giving this baby
25 medical assistance?

1 A Yes. Normal --
2 Q That is the preferred thing, the normal saline
3 solution?
4 A Through the IV, correct.
5 Q Okay. The bottom of page 51, there's a note from you
6 later that day -- 6:26 p.m., on February 24th -- about
7 some additional behaviors that were observed and
8 services performed. Could you tell the jury about
9 that?
10 A I speak about hooking the drain that is in the top of
11 the baby's head to ICP monitoring.
12 Q Which stands for what?
13 A Intracranial pressure. So, initially, the tube -- or,
14 the catheter was placed to relieve pressure, and now
15 it's in there; and the neurosurgeon is now wanting to
16 see what the pressure is inside. So I talk about
17 hooking that up. And what the reading is -- my note is
18 quite long.
19 Q Okay. I won't have you go any further. So these
20 actions by these various physicians and yourself and
21 the other nurses is providing some relief to the child?
22 A Correct.
23 Q But still not ready to be discharged from the PICU --
24 A No.
25 Q -- to a regular floor?

1 A Correct.
2 Q Okay. And the second packet of papers, the smaller
3 one, I believe it's marked No. 2 on the outside?
4 A Okay.
5 Q Well, tell me, is it marked; what is -- are the red
6 tags?
7 A Oh, I'm sorry. It says 4.
8 Q Okay. Thank you. On page two of that packet, you show
9 a note on February 25th, the next day, at 8:24 a.m.
10 You started another shift?
11 A Yes.
12 Q And at that point -- you can refresh your memory. Just
13 read your note, and tell the jury what the progress is
14 there.
15 A I refer, in different ways, to his neuro status. All
16 of my comments are meant to give an indication of what
17 the baby's status is like.
18 Q Is there improvement?
19 A I wouldn't say that there's improvement, at this point.
20 Q Is it stable?
21 A Critically stable.
22 Q Okay. In the course of looking through these notes,
23 which I -- I know you've done, and I have looked, also,
24 I see a nurse's name; Papenfuse, Goidosik, Brown, as
25 well as yourself. Those are all PICU nurses?

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A That's correct.
Q You just hand off the case of the patients to each other as you go home?
A That's right.
Q And return?
A Yes.
Q On page 52 of that packet, at the bottom, there's a note from March 1st, 2015, 7:59 p.m., your note. Please review that to yourself quietly, so I can ask you a question about it.
What is his progress, up to that point? He's been there now since February 22nd; this is March 1st. So it's the seventh day?
A Yeah. He has been fed by a bottle, at this point, and I indicate that he's progressing towards goals.
Q Okay. Did the baby tend to stay in the bed all the time he was in PICU, rather than get up and be walked around or strolled around?
A Correct.
Q Was the baby handled minimally, its body?
A Yes.
Q Okay. You would -- you would change -- he would wear a diaper?
A Yes.
Q You would change the diaper?

A Yes.
Q So there's some movement of -- of the body for that?
A Yes, and we reposition them every two hours, or as needed.
Q As you look through the notes, have you come across the various imaging studies from radiology, both for the head, the ribs, the arm; have you noted those?
A I've seen them, yes.
Q You're aware this -- this child had fractures --
A Yes.
Q -- in these areas?
A Yes.
Q A fracture in the skull area?
A Yeah.
Q Does that cause you to behave in a certain way toward your handling of the baby?
A It does, to some degree. With his head injury that we were dealing with, that requires careful handling. The fractures that he had, if I recall correctly, rib fractures and an arm fracture, those weren't anything that were casted or anything. I believe they were old, if I remember right. And then -- but there's careful handling with any infant that's intubated, as well.
Q Please jump ahead, to page 63. A progress note at the bottom, referring to cosigner, Dr. Schinco. Does this

indicate that the patient may be discharged, from a neurological standpoint?
A Yes.
Q All right. And then, on 67, in the middle of the page, was there an order about what to do with the dressing on the baby's head?
A Yes.
Q Is that the dressing that we saw in the pictures, with the tube for the catheter coming out to put into the bag?
A Correct.
Q So that was on from February -- from the beginning, when the baby went into the PICU, until March 3rd, 2015?
A It would have either been the catheter present after placement, and then when it was removed, the dressing, correct. That's what it's indicating.
Q Okay. And, finally, to page 68, the nurse's note, Lauramae Parson. And what does that indicate about Roegan?
A That he's being discharged.
Q So he was there through, approximately, 4:00 p.m., March 3rd, 2015?
A Yes.
Q And that's a discharge directly out of the PICU to

home?
A That's correct.
Q To whoever is going to care for him?
A That's correct.
MR. DUGGAN: Thank you.
THE COURT: All right. I think we should take a break here.
So, ladies and gentlemen, I'm going to give you an afternoon break. You've been in here for well over two hours. So Mr. Allen and Ms. Maddox will meet you in the hallway.
I'll have this group of jurors start out first. You know your way back toward the jury room. Ms. Maddox will meet you in the hallway there. And we'll take about a 10, 15-minute break.
I'm having the jurors on the floor go first.
THE LAW CLERK: Okay. She was on the phone with the clerk.
THE COURT: Okay. Well, they can get started that way.
Maybe you should check that hallway, so there's not people consulting.
THE LAW CLERK: It's a long hallway.
THE COURT: Oh. Well, I mean, where the holding cell is.

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THE LAW CLERK: Oh.
THE COURT: All right. Well, this group can go now. This group can go.
THE LAW CLERK: This is just a break, Judge?
THE COURT: Yes.
(At 4:19 p.m. jurors are excused.)
THE COURT: You can step down, ma'am.
Does somebody want to get the door for a second? I just have a question.
Is this your last witness for today?
MR. DUGGAN: Well, I -- we have more, but I know, when we're done with her on cross, we'll probably be done, right, for the day?
THE COURT: Well, I would hope so. I don't know what else you've got or --
MR. DUGGAN: I couldn't put on another one and finish another one.
THE COURT: Okay. All right. So we'll take about 10 or 15 minutes, and then try to resume by 25 to and, hopefully, get her done. But it's been a very long day or afternoon, so I wanted to give them at least a little break.
We'll be in recess.
MR. STURTZ: We're coming back to what time, 25 to?

THE COURT: Yeah, in about 10 minutes.
(At 4:20 p.m. break is taken.)
(At 4:35 p.m. proceedings resumed.)
THE CLERK: All rise, please. Circuit Court is again in session.
THE COURT: Counsel, before we bring the jurors in, I'd like to give them a schedule. And we had -- and I don't -- I know we had talked about this with you, Mr. Bush.
I'm not sure you were here, Mr. Sturtz.
Tomorrow, Thursday, we'll go nine to 12, and then 1:30 to four, because I have probation violations. They're actually scheduled at 3:30, but we can go until four. And then Friday we'll have all day.
And then next week I have sentencings on Tuesday afternoon, so my plan would be going nine to 12 on Tuesday; and then if we need Wednesday, we'll go nine to 12 and 1:30 to five.
And we may -- we'll probably need to adjust that, I assume, based on some of your witness -- with the different -- where you have some evidence for one jury, and some evidence for another jury. But I don't know that we can determine that, at this point, in terms of timing, can we?
MR. DUGGAN: Well, I probably will put on

that evidence at the end.
THE COURT: All right.
MR. DUGGAN: It's statements. And, therefore, I'd rather have all the other evidence done.
THE COURT: Right.
MR. DUGGAN: And you tell one jury to go home a little early or something, because --
THE COURT: Yeah.
MR. DUGGAN: -- they're about two hours each.
THE COURT: All right. Oh, yeah. Okay.
MR. DUGGAN: It's the same stuff you heard.
THE COURT: All right. All right. So that may -- that all is in line with what your understanding is, then?
MR. DUGGAN: Correct. Could I have you repeat? Tuesday, all day?
THE COURT: Well, I'll give you a copy of this, if you want.
MR. DUGGAN: Oh, that's -- that's fine.
THE COURT: All right. I'll have these made up, and we'll give them to the jury, because I let -- I give them the numbers to call, because they don't have numbers to chambers unless I give it to them. And they've gotten mixed up before, because they end up calling the hot-line thing, and they get all confused.

So it's much better --
MR. DUGGAN: Could we go off the --
THE COURT: -- to give them this information.
MR. DUGGAN: Could we go off the record for a second, about this schedule issue?
THE COURT: Yeah.
(Off-the-record discussion.)
THE COURT: All right. So let's bring the jury in. Juries, I guess I should say.
If you all are warm in the back, there, you can pull the chain on that fan, to get it going. I know it's warm up here.
(Off the record.)
THE COURT: I'm going to run this 8:30 time by the jury, too. It shouldn't be a problem, but you never know.
THE LAW CLERK: All rise, please.
(At 4:40 p.m. juries are present.)
THE COURT: Please be seated.
All right. A couple of housekeeping matters, ladies and gentlemen.
In our jury in the box, the Stevens jury, you probably noticed that we have one juror missing. That's why we pick 14. And we pick a couple extra jurors because things happen, where somebody isn't able

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to continue.
And so that's why we have a missing person there.
The other thing is, we'd like to start at 8:30 tomorrow. Would anybody have a problem being here by 8:30 tomorrow morning?
Yes, ma'am.
KRUKOWSKI JUROR NO. 10: It might be a few minutes after 8:30.
THE COURT: Okay. Get here as close to 8:30 as you can.
KRUKOWSKI JUROR NO. 10: Okay. Because my daughter goes to school at 8:00.
THE COURT: Okay.
KRUKOWSKI JUROR NO. 10: She can't get in the building before eight o'clock.
THE COURT: Okay.
STEVENS JUROR NO. 10: Yeah, it's the same with me.
THE COURT: Okay. So -- all right. So we're all set on that, trying to get started. Get here by 8:30 if you can, and as soon as -- and after that, we'll get started.
With that, Mr. Bush, cross-exam?
MR. BUSH: Yes.

C R O S S - E X A M I N A T I O N
BY MR. BUSH:
Q You indicated there was a no-visitors order placed on Roegan?
A That's correct.
Q Who -- that was done by CPS, I take it?
A It would have either come from the detective or CPS, yes.
Q Okay. And was that immediately or was that after a passage of time that this happened?
A It was pretty immediate from my taking care of him.
Q Any exceptions for family to that?
A Not for visitation. There was phone calls with brief updates allowed to a grandmother.
Q A grandmother?
A Correct.
Q Okay. During the time that you talked about on direct examination by the prosecutor, there were a number of electroencephalograms run, were there not, on Roegan?
A I know that there was a neurologist, and I know that there were tests done. I don't know how many or anything like that. I -- without --
Q Right.
A -- referring to this chart, yes.
Q I understand, but you were aware that they were going

on?
A Yes.
MR. BUSH: All right. I thank you.
C R O S S - E X A M I N A T I O N
BY MR. STURTZ:
Q Witness, you said the baby was intubated?
A That's correct.
Q That means it was put on a breathing machine, is that correct?
A That's correct.
Q And that was done when? I've got, from my notes, 2-23.
A That sounds correct. I remember the first day being okay.
Q Who -- who ordered that procedure?
A That would have been Dr. Fiore.
Q And that intubation continued right up until the time the baby was discharged?
A I don't know the date that the baby was extubated, meaning the breathing tube was taking out -- taken out. But it would have been done, you know, at least 24 hours in advance, because the baby was eating and things like that.
Q When the baby left, the baby was breathing on its own?
A Correct.
Q Eating from a bottle or -- or feeding itself? Not

feeding itself, having a --
A Correct.
Q -- bottle?
A Uh-huh.
Q Any -- anything being done to his hole in his head?
A The discharge? No. It just indicates that it had a dressing that was removed, so, no, nothing that would have been ongoing with that.
Q Was there any -- from the discharge summary or discharge papers, was the baby to follow up and see Dr. Schinco?
A I don't know without referring to the notes. I mean, I can look through it. Typically, a neurosurgeon -- well, I shouldn't say typically. In some cases, a neurosurgeon doesn't have to follow with a baby or a patient, but a neurologist might.
Q Okay. There was no neurologist visiting the baby while the baby was in the NIC unit, was there?
A In the PICU, I believe I saw notes from Dr. Majowski, who's a neurologist.
Q All right. And how about the retina problems; anybody come in and visit the baby in the PIC unit for any retina problems?
A Dr. Sahouri.
Q He's the only one?

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A Correct.
Q Was there any follow-up orders in regards to his retina problems?
A I don't know if there was. I would presume that he would probably follow up with the ophthalmologist, but I don't know without looking through his chart.
Q From your taking care of the baby in the intensive care unit, were you doing anything at that time, for his retinas?
A Not for his retinas.
Q How about his ribs; did you do anything for his ribs?
A No.
Q He had -- something about a broken arm, is that correct?
A Yes.
Q Was that a right arm?
A I don't recall without looking through the notes, but there was a fracture of his arm, I remember.
Q Where the fracture, say, was, was there an intravenous feeding?
A There could have been an IV in that arm, I don't know.
MR. STURTZ: Okay. That's all the questions I have.
THE COURT: All right. Any redirect?
MR. DUGGAN: No, Your Honor.

THE COURT: Any questions from the jury for this witness?
Okay.
KRUKOWSKI JUROR NO. 11: I have a question, not necessarily for the --
THE COURT: Wait, you need to write it down.
KRUKOWSKI JUROR NO. 11: It's here.
THE COURT: Okay.
KRUKOWSKI JUROR NO. 11: It's not necessary for the witness.
THE COURT: Oh, okay. Well, let me take a look.
Counsel?
You can step down, ma'am.
STEVENS JUROR NO. 7: I have a question.
THE COURT: Wait a minute.
Counsel, you want to grab the note from the juror, please?
Counsel, approach.
(Bench conference.)
THE COURT: All right. Ma'am, how long after February 22nd was the breathing tube and feeding tube put into the baby?
THE WITNESS: If I recall correctly -- my notes have been taken away from me, but I do believe it

was the 23rd. So it would have been the next day that he was intubated, that the breathing machine was placed, the breathing tube connected to the machine.
The tube feeding, I'm not sure. We start that after someone has been on the vent for a little bit, the ventilator, and we start it at a very slow rate. So it's something that is started when we know that things are stable, and they can tolerate a feeding.
THE COURT: Okay.
THE WITNESS: The tube to be started.
THE COURT: And you might have answered that, but -- this second part of this, why did he need those, the breathing tube and feeding tubes, if you think you can answer that?
THE WITNESS: The -- it would be helpful if I had my long note. I can actually tell you exactly what happened.
MR. DUGGAN: These?
THE WITNESS: Yes, please.
In short, the ventilator was needed to assist the baby who had been having trouble breathing, even the night prior. We were doing things different times to stimulate the baby and get him to breathe on his own. But that's a very momentary thing that we do.

And then when the baby resumes breathing on their own, they're okay. But, eventually, the intubation was needed. So let me just refer to my note, and I can tell you what was going on.
I'm almost there.
Oh, let's see. Okay. So Dr. Fiore, our pediatric intensivist, was in the room --
THE COURT REPORTER: I'm sorry, could you slow down?
THE WITNESS: Oh. Dr. Fiore, our pediatric intensivist -- just to remind them -- was at the bedside, and noted the baby to be seizing. The seizures persisted, despite some medicine, and Dr. Fiore was then holding the baby's jaw forward, to open up the airway, and providing oxygen. And with the -- with that having to be done, and it's a -- to know you're getting pretty serious when that happens. The additional Ativan, which is given for the seizure, was given, and a decision was made to intubate. So that --
STEVENS JUROR NO. 7: So because he had trouble breathing, he got to --
THE COURT: Whoa, whoa, you cannot ask a question directly. If you have another question, write it down.

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STEVENS JUROR NO. 7: Sorry.
THE COURT: You can write it down if you want. If you don't need it, that's fine. And the doctors will be testifying, I understand.
STEVENS JUROR NO. 7: All right.
THE COURT: So you may get more information tomorrow, and you might have questions, at that point.
So, okay, with that, any follow-up by counsel?

R E D I R E C T E X A M I N A T I O N

BY MR. DUGGAN:
Q Did -- do you still have your place in the record?
A I do, I do have it.
Q Just tell us the page number, at the bottom, you're looking at.
A It's page 31, on the --
Q And tell us the date and time of the note you just referred to.
A 2-23, 12:26.
Q And that's the --
A P.M.
Q -- intubation for the ventilator?
A That's correct.
Q And the gastro -- nasogastric feeding tube is some time after that?

A We initially placed a tube, which we do to decompress the belly from air. So there was a tube placed, but it wasn't for feeding, at that moment.
Q Was it the tube that was later used for feeding that was already in place?
A I'm not certain of that, but --
MR. DUGGAN: We'll wait, then, for the doctors.
THE COURT: Okay. Anything, Mr. Bush or Mr. Sturtz?
MR. BUSH: No, Your Honor.
THE COURT: All right. You can step down, ma'am. Thank you. You're excused.
(At 4:53 p.m. witness is excused.)
THE COURT: As to the first note, that was the second question that was just submitted. The first one, with -- was regarding who took the photos. There will be testimony about that tomorrow.
So with that --
MR. DUGGAN: May this witness be excused, Your Honor?
THE COURT: Yes.
MR. DUGGAN: Thank you.
THE COURT: It's just about five o'clock, so we can conclude for today, ladies and gentlemen. And

we'll get Mr. Allen in here, too.
I think we have schedules -- for both juries? We have schedules for you. So those will give you our estimated times that we'll be starting and concluding each day. There's some days where I have to finish at four. Next Tuesday afternoon I have other things scheduled, and won't be here at all. Next Monday you don't have to be here. Those kinds of things.
There's also a phone number with -- a phone number for Mr. Allen and Ms. Maddox. If you have something come up in the morning, call one of these numbers. Don't call the hot line, because that hot -- sometimes people get confused; they call the hot line, and it tells them, oh, we don't need jurors today. That doesn't mean you. You're assigned to this courtroom for the rest of this trial, and you don't need to call that hot line as long as you're in this trial. But if you have questions or concerns or emergency, you can call these two numbers. You can reach Dawn and Bob.
So we'll give you these to take home with you or keep in your purse or pocket or whatever you want to do. And have a good evening.
Don't talk about the case with anyone, don't read anything about the case, don't listen to anything

about the case, don't do any kind of independent research about the case.
We'll see you tomorrow morning, as close to 8:30 as possible.
THE LAW CLERK: All rise, please, for the jury.
THE COURT: Just report back to your respective jury rooms tomorrow morning.
Go ahead.
(At 4:55 p.m. juries are excused.)
THE COURT: All right. We'll be in recess. We'll see you tomorrow morning, about 8:30.
Yes?
DETECTIVE WORDEN: This only says Dane.
THE COURT: There should be one for each of them. I don't know if they separated them out. The original one I saw said Stevens on it, so I think they have a packet for each set of jurors.
DETECTIVE WORDEN: Just checking.
MR. DUGGAN: Off the record?
THE COURT: Yes.
Off-the-record discussion.)
THE COURT: We'll be in recess.
(Proceedings adjourned.)

1 STATE OF MICHIGAN)
2) SS
3 COUNTY OF SAGINAW)
4
5
6
7
8 I certify that this transcript is a complete, true
9 and correct transcript of the proceedings and testimony
10 taken in this case before the Honorable Janet M. Boes,
11 Circuit Judge, in Saginaw, Michigan.
12
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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW

PEOPLE OF THE STATE OF MICHIGAN

vs. File No. 15-041274-FH-3
Volume II
DANE RICHARD KRUKOWSKI,
Defendant.
_____/

PEOPLE OF THE STATE OF MICHIGAN

vs. File No. 15-041275-FH-3
Volume III
CODIE LYNN STEVENS,
Defendant.
_____/

JURY TRIAL

BEFORE THE HONORABLE JANET M. BOES, CIRCUIT JUDGE

Saginaw, Michigan - April 28, 2016

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Official Court Reporter

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DIRECT EXAMINATION

BY MR. DUGGAN:

Q Good morning.

A Good morning.

Q Please state your name.

A My name is Elvira M. Dawis.

Q Please spell both names.

A E-L-V-I-R-A; middle name, M.; last name, D-A-W-I-S.

Q Are you a doctor?

A Yes, sir.

Q What is your practice in?

A Pediatrics, children.

Q Before you took the stand, you indicated you would have no objection to me asking your age, so the jury would know your background fully. How old are you today?

A I'm 76 years old.

Q How long have you been a pediatrician?

A I graduated 1963, in the Philippines. I came in the U.S. to train in '64; came back home to practice; and came back here, in the U.S., in '72.

I've been in Michigan from '78 until now.

Q And how long -- how many of those years have been pediatrics, all of them?

A It's all pediatrics.

Q All right. Which is the treatment of children and

infants?

A Yes. My -- the scope of pediatrics is from birth until, depending, 17 to 18. I used to see babies at the hospital, too, when they're born and when they're sick. But for the last 10 years I have given that up, and I'm strictly office-based, which means --

THE COURT REPORTER: I'm sorry, I'm having trouble --

THE COURT: Slow down a little bit.

THE WITNESS: Oh, I'm sorry, honey. My practice right now is strictly office-based, which is full time, four and-a-half days a week, Monday to Friday. And I don't go to the hospitals anymore; meaning to say, like, if the baby is born, I used to see them there, at birth. And then if they're sick, I also used to see them in the second floor of General. But now I have altering doctors which are the neonatologists from Saginaw General, Dr. Chai's group, to see the babies; and then, if they're sick, CMU people.

So, for example, of the baby that we have seen, we're discussing today, he was seen at the hospital, and then they are asked to call me and follow me anywhere from two days, the next day, a week, a month, for the first checkup after birth.

BY MR. DUGGAN:

Q Thank you, Doctor. And just so you know -- you told me before you had been in court before, so this wasn't brand new to you -- she's the court reporter, and she has to try to take down everything --

A Yes.

Q -- you say.

A Yeah, I -- yeah, I'm with you. Just, if you -- if my accent is, you know, just tell me to stop and slow down. Thank you.

MR. DUGGAN: I would offer the witness, to the extent that she offers an opinion as an expert, as one in pediatrics.

THE COURT: All right. Any objection?

MR. STURTZ: I have no objection.

MR. BUSH: No comment.

THE COURT: All right. Dr. Dawis will be recognized as an expert in the area of pediatrics.

BY MR. DUGGAN:

Q I believe it's pronounced Dawis? Is it pronounced Dawis?

A Dawis, yes.

Q Okay. For your information, we grabbed your purse off the bench, and put it up here with the detectives. When you walk out, don't be shy. We just moved it.

A Thank you.

Q Because this is public, and people can come in and out.

A Okay. Thank you, sir.

Q Doctor, you began to speak about a certain patient. You know that you're here to testify about Roegan Krukowski --

A Yes, sir.

Q -- correct? And you have --

MR. DUGGAN: By the way, for our purposes today, I'd move the admission of 1, 2, 3 and 4, which are four packets of medical records previously discussed with the Court and counsel.

THE COURT: All right. Exhibits 1, 2, 3 and 4 will be admitted.

BY MR. DUGGAN:

Q When you see a patient, you write things down on some sort of chart or you type into a medical-records system?

A I do. When I get into the room, I have the piece of paper, which is, you know, the information. And I do not bring in a computer at the office. There's no way I can do computer and examine the patient at the same time. So I check with mom; and the things that I need to remember, you know, like injury or anything like that, that is not common thing, I put there a fair or

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1 something, or different, or jaundice. So then I
2 examine the child. And then most of the time I'm not
3 able to do it right away, to put it on computer,
4 because of patient load, but I try to do it within 48
5 hours.
6 Q And are you the one who personally transfers your
7 handwritten notes into the --
8 A I do.
9 Q -- keyboard?
10 A I do.
11 Q Nurses and assistants don't do that?
12 A They're not allowed to.
13 Q All right. One of the medical records shows that you
14 saw Roegan Krukowski on December 11th, 2014, indicating
15 he was born five days before. I'm going to put this
16 record up here, on the computer -- it's from Exhibit 1,
17 toward the very end -- and ask you to comment about it.
18 Do you have a copy of this in front of you?
19 A Yes, sir. I think so, yeah.
20 Q Okay. I'm looking at the one that, at the very top,
21 indicates, December 11th, 2014, 10:00 a.m., office
22 visit. Is that true, that you saw this baby as a
23 patient for the first time, at your office? We're on
24 the December 11th record.
25 A Yes, sir.

1 Q Okay. And it lists a bunch of vital signs; pulse,
2 temperature, respiration, height, weight. What is HC?
3 36 --
4 A Head circumference.
5 Q Head circumference?
6 A Head circumference. You know, you measure the -- the
7 head size. And my girls do that; my -- my medical
8 assistant do that.
9 Q All right. And a little bit below that, where it says,
10 progress notes, it does have the date, 12-11, 4:48 p.m.
11 Does the computer automatically put the time in, as of
12 when you're entering the records in?
13 A Yes, everything is -- whatever the time, it's
14 computerized there; it shows there, when they do it.
15 Q All right.
16 A Yeah.
17 Q So you were actually doing the exam, as the record
18 indicates, a little earlier; 10:00 a.m. But the
19 computer wasn't -- it wasn't typed in until --
20 A Until the --
21 Q -- later?
22 A -- late afternoon, yeah.
23 Q Okay. And this was an opportunity to see the baby with
24 his mother. The baby was brought in by the mother, is
25 that true?

1 A Yes, sir.
2 Q And you have a few notes below that; how it was
3 delivered?
4 A Uh-huh.
5 Q Formula-feeding, passing stool, urine; no issues. You
6 indicate circumcision will be done on the 18th, and he
7 got his hepatitis vaccine. Those are just sort of
8 notes of progress, at that point in the baby's life?
9 A Yes.
10 Q You have a note, though, under current issues. Could
11 you read that for the jury?
12 A Current issues. Current concerns on the part of
13 Roegan's mother include vomiting. And she mentioned
14 dad had pyloric stenosis, and had surgery at six weeks
15 old.
16 Q So those are family history and patient concerns she's
17 raising?
18 A (Witness nodding.)
19 Q Yes?
20 A Yes, sir.
21 Q Now, in the general section of the notes, you have a
22 lot more details. Are these describing problems or
23 just things that are okay?
24 A These are the -- the basic examination of a baby, like
25 the general inspection, palpation. But the very

1 important thing is inspection. I use my eyes, my ears.
2 As I'm talking to the mother I'm looking at the baby,
3 head to toe, and I'm usually having them undress,
4 except the diaper first. Plus, I do not see them in
5 the nursery, so I want to --
6 THE COURT REPORTER: I'm sorry?
7 THE WITNESS: I'm sorry, sweetheart. If --
8 since I have not seen them in the nursery, I make it a
9 point that I get them undressed at the office, all
10 right? I see everything from head to toe. I count
11 their fingers, I count their toes, I put my hand over
12 their head, to see if there's anything bulging and the
13 fontanelle is okay. Everything, inspection. And then
14 I also do what you call Moro reflex, which the baby is
15 laying there, and then I -- slap the table, like that.
16 MR. DUGGAN: Record reflect --
17 THE WITNESS: Yeah, so --
18 MR. DUGGAN: The record -- one minute, one
19 minute. The -- I know the reporter will note this, but
20 there was a noise. It was the doctor making the sound,
21 as --
22 THE WITNESS: Yeah. And what the baby --
23 what I'm expecting the baby to do is, the baby will do
24 like this. You know, like, the arm will do, like, an
25 embrace. And so it has to be symmetrical, and the baby

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1 cries. And if they're sleeping, they wake up, they
2 cry. And that's so I --
3 BY MR. DUGGAN:
4 Q Doctor, let me interrupt you. What does symmetrical
5 mean?
6 A Same side. So if it -- meaning to say, they respond
7 this way, that is symmetrical. If the baby respond
8 like this, then that is asymmetrical.
9 MR. DUGGAN: Record reflect the doctor is
10 holding up just her left hand that time.
11 THE WITNESS: Right.
12 MR. DUGGAN: Thank you.
13 THE WITNESS: So that means something is
14 wrong with the side. And repeated several of times,
15 what could this be, do? Many things it could be.
16 First, injury. It could be anything. But the main
17 thing that I'm trying to find out is, the response
18 should be like this, and the baby cries.
19 BY MR. DUGGAN:
20 Q And was that --
21 A And that is --
22 Q Was that --
23 A -- what is normal.
24 Q -- the case?
25 A That should be --

1 Q Was that the --
2 A That should be normal, Moro reflex.
3 Q Okay. You've had a section called HEENT. And those --
4 that's the abbreviation for what?
5 A Head -- head, ears, eyes, nose and throat.
6 Q Okay.
7 A So that's what I mean. When I do the head, I -- all
8 over the head; see the fontanelle is bulging and
9 everything, there's anything -- anything crooked or
10 what. So that's the general report.
11 Q Let me show a picture. Is this demonstrative of where
12 the fontanelles are -- take a look at the screen --
13 viewed from above?
14 A Here, this is the anterior fontanelle.
15 Q All right.
16 A Which is almost always --
17 Q You're holding your finger where it would be on your
18 head?
19 A Uh-huh.
20 Q Where is the other one?
21 A The other one is here. And most of the time it's not
22 open, it's just -- because this is where we, you know,
23 see them. And it's, you know, open or bulging or what.
24 And sometimes -- most of the time, also pulsating. So
25 I show that to the parents; say, here, come here, this

1 is what you call the fontanelle.
2 Q Okay. And you noted, under HEENT --
3 A Normal.
4 Q -- normal. Normo --
5 A Cephalic.
6 Q -- cephalic, meaning what?
7 A Which means no bulging, it's a normal size. No
8 asymmetry, no bulging.
9 Q Asymmetry would be -- it would be uneven?
10 A Right.
11 Q Okay. So it's -- the head is symmetrical?
12 A Yes.
13 Q And you've noted the fontanelle is not bulging?
14 A Yes.
15 Q Was the 33 --
16 A Cm.
17 Q -- centimeters for the head circumference normal for
18 the baby?
19 A Yes, sir.
20 Q For the baby's overall weight and -- and body build, it
21 had a normal-shaped head?
22 A Yes, sir.
23 Q Not an oversized head?
24 A Not an oversized head.
25 Q You've seen a few babies' heads?

1 A Yes, sir.
2 Q And I'm not going to go through every one of the
3 details below, I'll skip to the one that's got a little
4 bit of highlighting. It looks like everything is okay
5 down to where it says, skin. What is -- what do you
6 mean, good turgor?
7 A Good turgor means when you lift the skin it goes right
8 back. It's -- it's -- it always exclude dehydration,
9 which means it kind of folds a little bit, if you
10 are -- if there is dehydration. But if I lift it up,
11 it goes right back; so that means it's good turgor.
12 Q But you did notice -- jaundice noted?
13 A Very slight jaundice noted.
14 Q Which is what?
15 A Yellowish skin from bilirubin, which was, you know,
16 maybe it appears second or third at birth, and it has
17 been followed through the volume -- the value, I mean.
18 Q Bilirubin is something -- what, in the body?
19 A That is, you know, like the breakdown of the red cells,
20 and it's broken down. There is an enzyme, the
21 bilirubin, that has to be excreted. And because the
22 liver function, sometimes it doesn't excrete it very
23 well, especially if they're breastfed. Then it shows
24 in the system. Plus, also what you call -- if there's
25 any blood incompatibility --

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THE COURT REPORTER: I'm sorry?
THE WITNESS: There is any blood discrepancy in the mother and the baby, then this shows up sometimes as a jaundice, or what we call bilirubinemia or hyperbilirubinemia.
BY MR. DUGGAN:
Q And the word you used a moment ago was incompatibility?
A ABO incompatibility.
Q All right.
A If there is any such -- such thing, with the baby and the mother.
Q So the mother and the baby's blood types are different?
A Yeah.
Q I see.
A It would be.
Q But your -- your bottom line, under diagnosis, was?
A Well child.
Q So other than this jaundice, this baby is fine?
A Yes, sir.
Q You do have a plan under here. Why don't you go through this. This is what you would have talked to the mother about?
A Yes, all mothers that come to me, whatever age they are, especially babies; you monitor the baby closely. Safety is always discussed, child-care issues, and then

we ordered a total bilirubin, which I got right away, within the timeframe, in the next couple of hours. It was 10.7, total. And always notify the parents about this result.
Q And you wrote, low risk for age?
A Right, because -- there is a graph at my office which shows level; and then it shows low range, intermediate range, high risk. But it is in the low range, where there's no need to do what you call phototherapy.
Q Light?
A Yes, light therapy.
Q That wasn't needed?
A No, it was not needed.
Q And you say, mom notified of that result?
A Yes, sir.
Q Go on.
A Diary of vomiting episodes. And then it also --
Q What did you mean by writing that in the note; who is doing the diary?
A The mom. I want them to make a log; see any -- anything, in terms that I receive in my practice, whatever age. If I see them for the first time and I see the baby's normal and everything, it's maybe just concerned parents or just something else. I always ask them, make a log of the symptoms you are -- if it is

diarrhea, if it is throwing up; anything at all. Call me, make a log; I'm available to you 24/7. Call or chart. And if there's anything unusual, at any time. If not, then one week, two weeks. And many times I personally call them back.
Q You have down here, try another formula, question mark, three times. Why did you do that?
A Well, because, you know, because of the vomiting. It's -- is the vomiting due to otherwise overfeeding, formula? It could be what we call lactose intolerance, where the baby cannot take regular milk. So I can always say ProSobee, and then --
THE COURT REPORTER: I'm sorry, say it --
THE WITNESS: ProSobee, P-R-O-S-O-B-E -- it's a -- it's a soy formula. So -- so when I say formula -- and, see, what I'm telling to you is what I tell the parents. But if I put it all in the chart it's going to be a humungous record, so I try to minimize and maximize it as much as I can. And that way, if I explain, like explaining it to you, you know what I'm talking about.
BY MR. DUGGAN:
Q You also noted here, call any time if there is any concern?
A Correct.

Q Is that part of your regular routine, that --
A That's my twenty-four-hour seven-days-a-week practice.
Q But you tell that to the mother?
A Oh, I do. I do, I do, I do.
Q You wrote down, at the end, return in one month; sooner if any problem?
A Correct.
Q Was it your normal plan for a newborn to have a one-month checkup?
A Yes, if -- if -- you know, the first visit from the hospital, and then the next visit is one month. And I always say, return in one month or -- or sooner if there is any problem. So if there was a persistence of the vomiting, I ask them to make a log, and I ask them to call me any time.
Q Did the mother contact you for another visit in one month?
A No.
Q Did you have another record that followed this one, that shows the mother contacted you with the baby on February 9th?
A I do have it here.
Q I have now, on the presenter for the jury, a record that, at the top, has a note. I'm sorry, it's curved.
THE COURT: Oh, just a minute, just a minute.

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KRUKOWSKI JUROR NO. 2: Can you repeat the question?

THE COURT: Can you repeat the question?

BY MR. DUGGAN:

Q I have a note, here, of a visit on February 9th. Do you have that in front of you, Doctor?

A Yes, sir.

Q And it says, 2-15 office visit?

A Correct.

Q That's when you next saw Roegan Krukowski?

A Yes, sir.

Q And what was the reason for this office visit?

A He presented with a -- being fussy. He's irritable, and the mom and the maternal grandma brought him.

Q And you did, before much else, the vital signs, like you did in the other visit?

A Yes, sir.

Q I notice the head circumference is larger. Did the head seem normal or larger than it should be?

A Not really. I was not impressed with the size.

Q Okay. And I want to go back -- I'm sorry for not asking you the final question on the other record, back from December 11th, on the well-child visit. Did the child present to you with bruises on its body?

A No, sir.

Q If there would have been bruises on its body, would you have noted that on December 11th?

A Yes, sir.

Q As a pediatrician, sometimes you have to notify authorities if you suspect child abuse, correct?

A Yes, sir.

Q You understand it's -- you're under mandatory legal duty to do so?

A Yes, sir.

Q There wasn't anything on December 11th that made you feel that way, was there?

A Yes, sir, nothing.

Q There was nothing on that --

A Nothing.

Q Okay. And going down, on the progress note of February 9th, you -- you've already told the jury that Roegan was presented with the mom and maternal grandmother saying he was irritable and fussy for quite some time, but increasingly more so, and cannot be pacified; no fever. And then you have the words, mom denies any fall. Why are those words in there?

A I always ask them, if the presentation is irritability or fussy, is there any injury, is there any fall; anything happen that could have caused this? And the answer was no.

Q And did you look at the baby in the same way you did at the well-child visit on December 11th?

A Yes, sir.

Q Head to toe, except for the diaper?

A Yes, I do that for the first six months, the first year of life. It's very easy, because they're small, so it's very easy to undress them and take everything off.

Q Did you see a lump or bump on the child's head?

A No, sir.

Q And I was speaking of February 9th.

A Yes, sir.

Q By the way, there is a note here, it's highlighted, that it says -- progress note is February 10. This is, again, with a computer?

A Yeah, it's been there, that, you know, like I just said, I don't have time to do it right away because of the inpatient coming again, so I try to do it within 48 hours.

Q Okay. So in this case, although you saw the baby 2:15, on February 9th, your chart note is more than 24 hours later?

A 5:17 the next day.

Q Doctor, please understand that this question is not meant to be offensive. Do you think the mom could have told you the baby had a fall, and you would have made a

mistake and written that she denies any fall?

A No, sir.

Q Do you think that baby could have had a bump on its head, and you would have not noted that?

A No, sir.

Q Would both of those things have been critically important to you, as the pediatrician?

A Yes, and it -- I would have it in the chart, noted.

Q Let me ask you, if the mom told you two days before -- February 7th -- from the day you saw the baby, the baby had a fall in the bathtub, bumped his head and had a bump on his head, a goose egg, a raised area, and she had called you -- like you said, they can call 24/7 -- would you have said, wait a couple days and see if it goes down?

A No.

Q What would you have advised?

A I would advise them to go directly to ER, not MedExpress. Emergency room.

Q Under the next part of your note, on February 9th, you have a fair number of details. I'd like to go to where it begins with, appears. Tell the jury about that.

A Appears crying, fussy, not toxic, not in distress, no meningitic sign. Cannot be comfortable in any position that mom and grandma is doing. You know, the baby is

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1 just -- you know how they're irritable, and the grandma
2 and the mom is just in the office, and doing this and
3 doing that?
4 Q Bouncing?
5 A Bouncing, and trying to pacify the baby. And some of
6 them will stop right -- and some just continue on
7 crying, continue on crying, continue on crying. So I
8 always tell them, okay, let's see what's going on.
9 I -- we have several options; these are the options
10 that I will, you know, want to discuss with you.
11 I believe a lot in natural approaches, so I
12 said, would you like a chiropractic approach? Which
13 means adjustment, not -- what is the regular term --
14 manipulation, no. I always say adjust.
15 So what I usually do is, when I say -- they
16 say yes, then I pick up the phone. If they have their
17 cell phone, I let them -- say, go ahead and dial
18 781-7700. That's the Shields Chiropractic. They
19 answer; hi, this is Dr. Dawis, how are you? Fine. I
20 have nine-week-old Caucasian male here that is having
21 this fussiness and irritability and vomiting. I don't
22 know the etiology, but is this something that our
23 chiropractic doc can help?
24 Q Let me stop you. You just said, I don't know the
25 etiology. That word is in the assessment. What does

1 etiology mean?
2 A Cause.
3 Q Cause.
4 A I don't know what the cause is, okay? So is this
5 something that our chiropractic docs can help me
6 evaluate? So they either call or talk; by all means,
7 Dr. Dawis, do you want to send this baby here right
8 now? Fine. So I told mom, are you willing to go?
9 It's only three -- three-tenths of a mile from my
10 office. So, bingo, they go there.
11 Q And you did that, in this case?
12 A Yes, sir.
13 Q And the mother was fine with that?
14 A Yes, sir.
15 Q Was the grandmother fine with that?
16 A Yes, sir.
17 Q Did either one of them object?
18 A No.
19 Q Did either one of them tell you, oh, we've had a bad
20 experience with chiropractors?
21 A No.
22 Q You have a note here, under, plan; safety and
23 child-care issues discussed. Is that just part of the
24 normal part of your examination?
25 A Yeah, I do, I always tell them that. Don't leave the

1 baby alone, don't -- if the phone rings, don't do that.
2 It's safety, safety, safety.
3 Q That was the last time you saw Roegan Krukowski?
4 A Yes, sir.
5 Q Besides chiropractic, when you say you discussed
6 options, do you recall what other types of options you
7 discussed with the mother?
8 A I did not discuss anything anywhere, because they said
9 yes.
10 Q Okay. They said yes right away, you're --
11 A Right away, yeah.
12 Q And you've been recommending chiropractic for infants
13 before that day?
14 A Yes, I have sent a lot of infants; not just vomiting,
15 could be sleeping. It could be poor sleep. You name
16 it, any -- constipation. You name it, anything that I
17 would like to see if it can be taken care of in a
18 natural approach, by adjustment, that is my first
19 recourse.
20 MR. DUGGAN: Thank you, Doctor.
21 No further questions.
22 THE COURT: All right. Mr. Bush, cross-exam?
23 C R O S S - E X A M I N A T I O N
24 BY MR. BUSH:
25 Q Doctor, on the first of the two visits that you've

1 talked about, December 11th, 2014, did you inquire
2 about any fall on that occasion?
3 A I did. Oh, first visit? Five days old?
4 Q Yeah, December 11th.
5 A No.
6 Q Okay. So you don't do that as a matter of routine?
7 A As a matter of routine, no. If -- I always ask the
8 parents, you're here -- I explain myself, and I'll say,
9 okay, these are the things that I need to find out.
10 Any concern. Is there anything that you want to tell
11 me, any -- anything at all? Have you -- the things
12 that we ask is, have you been out of the country?
13 Any -- anything at all that you want to -- you want to
14 share with me? And if they say, no, Doc, everything is
15 well, she's doing well, no problem eating, I always say
16 is their sleep, eating, urine and stool functions fine?
17 Yeah. Anything else that you want to tell me? No. So
18 I make it a note, doing well, no problems discussed, no
19 issues discussed.
20 Q Okay. Well, on that occasion you were told by Roegan's
21 mother that he was vomiting, right? December 11th,
22 2014?
23 A Yes, sir. Uh-huh, yes, I have it here.
24 Q And you did this -- you did measure his head?
25 A Yeah, my girls measured the head, right.

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1 Q Who?
2 A My -- my medical assistants measured the head, the head
3 circumference. That -- all the vital signs are being
4 done by my medical assistant.
5 Q Okay. And in -- are you there when those are being
6 done?
7 A No, I -- I'm not there. I go in and then --
8 Q All right.
9 A -- review the findings.
10 Q The mother, Codie Stevens, brought the child in on
11 December 11th?
12 A Yes, sir.
13 Q Well, anybody else with her, at that time?
14 A No, just the mom.
15 Q And you did this test, where you slam your two hands
16 down?
17 A Yes, sir.
18 Q You note that in your report, here?
19 A Yeah. Moro, suck, rooting reflex elicited. Yeah,
20 that -- the Moro is that slam, the rooting -- yeah.
21 Well, I'm going to just ask -- answer you what you're
22 asking me about, the slam.
23 Q Okay. That's where you note, rooting reflexes
24 elicited?
25 A Rooting reflex is, I put my hand in the cheek.

1 Q Oh.
2 A And the baby always think that is the mom's nipple, so
3 they'll -- so they root into it to feed. And that is
4 normal.
5 Q And you recommended what for the vomiting?
6 A Depending upon the cause, I try to find out from them
7 how often is the vomiting. If it's not -- if they
8 don't give me much information of, you know, like, it's
9 all the time, so I tell them, make a log. And then I'd
10 say, okay, what are you feeding? The baby is only five
11 days old, let's try a formula change. Let's find out
12 first, and see. I try to be very conservative the
13 first few days. I don't, right away, get x-rays; and
14 say, okay, log, log, log, tell me when this happens.
15 That is the first approach. Okay?
16 So, let's see -- yeah, that's why I put here
17 a question mark, try another formula, and diary of
18 vomiting episodes, which is a log; making a log, making
19 a diary of how it's happening, how many times a day.
20 Q All right. Well, you've got question marks after try
21 another formula, right?
22 A Yes.
23 Q Was there another formula tried, thus far?
24 A I -- the parents never call me back within the
25 timeframe.

1 Q Okay.
2 A And telling me if they tried another thing. The next
3 visit was in February.
4 Q Now, you measured the head again in February?
5 A Right.
6 Q Did you do the Moro or whatever it is --
7 A Yes.
8 Q -- that --
9 A Uh-huh.
10 Q -- that time?
11 A Yes, I always do that the first four months of life.
12 Q All right. The mother and the grandmother were both
13 there, on that occasion?
14 A Yes, sir.
15 Q And what resulted was a referral to a chiropractor?
16 A Yes, sir.
17 Q And, apparently, arrangements were made for that; an
18 examination by a chiropractor right --
19 A I do --
20 Q -- away?
21 A I do the arrangement myself. I do it while I'm at the
22 office, in the room. I ask the mom, do you want me to
23 do this? Yes. Okay. Give me your cell phone. I dial
24 781-7700, and they answer. This is Dr. Dawis, I have a
25 baby here, this and this and that. Will you be able to

1 see this kid? Let me talk to doctor. Yes, Dr. Dawis,
2 have the patient come right now. Okay. Go. It's only
3 about three-tenths of a mile from my office.
4 Q Okay. So that arrangement was made that day?
5 A Yes, sir.
6 Q All right. At that time, do you inform the
7 chiropractor of what you've done?
8 A Yes, I always mention there's a vomiting, and always
9 kind of try to follow up with them. And, yes, I always
10 let them know what I am calling them for, what the --
11 what the cause of the -- my call, and what the visit is
12 for.
13 Q Well, the vomiting was December 11th of 2014?
14 A Yeah.
15 Q All right. Was there a chiropractic referral for that?
16 A No.
17 Q All right.
18 A The first time? No, I do not.
19 Q All right. So there was in February?
20 A Right. Yes, sir.
21 Q And did you inform the chiropractor of what you did
22 that -- prior to making the appointment?
23 A I -- what are you --
24 MR. DUGGAN: That was asked and answered.
25 I'm objecting.

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THE WITNESS: What do you mean, inform about what?
THE COURT: Well, wait a minute. Wait, stop.
MR. BUSH: No.
THE COURT: What's your objection, asked and answered?
MR. DUGGAN: I thought you just asked that, did you -- did you tell the chiropractor. And she had just answered that, I thought.
MR. BUSH: She answered --
THE COURT: All right.
MR. BUSH: -- vomiting.
THE COURT: I'll allow it. It appears to be a clarification, so go ahead.
MR. DUGGAN: Okay.
THE COURT: Now you probably need to repeat it.
BY MR. BUSH:
Q All right. We're into -- we're into the February 9th visit.
A Okay. Yeah.
Q All right? And that's -- that was a chiropractic referral, right?
A Right.
Q All right. Did you tell the chiropractor what you've

done before you made the referral?
A Irritability is the main thing that I mentioned. Irritability, the child being fussy. Yeah, that's the one that is -- assessment, irritability. That's the main thing that I mentioned.
Q Irritability?
A Yes.
Q Do you tell the chiropractor what you have done, as far as an examination of what you -- what the results are and so forth?
A I don't think so. I did not; I just mentioned that I needed -- if they needed to examine the child, this is the -- the issue, irritability.
Q Okay. And as I understand it, you did not see that child anymore after that?
A Yes, sir.
Q I'm right, right?
A Yes, sir.
MR. BUSH: All right. Thank you.
MR. STURTZ: Mr. Duggan, I want to use the overhead for this.
MR. DUGGAN: Certainly. It will take a moment for the TV to just come on.

C R O S S - E X A M I N A T I O N
BY MR. STURTZ:
Q Doctor, good morning. My name is Phil Sturtz. The first time you saw this baby was on December 11th, at your office, is that correct?
A Yes, sir.
Q And when the baby was presented, the baby was just with the mother?
A Yes, sir.
Q There was no grandmother, there was no other support people with --
A Yes, sir.
Q -- the mother. The baby's birth date, according to my knowledge, was 12-6, was the birth date of the child, when he was born. Did you understand how the child was born; Caesarean section, natural birth?
A Caesarean section.
Q Did you have any information that the child had extreme difficulty and got caught in the birth canal?
A I must have read it, but I didn't put it in my note.
Q Okay.
A No, so --
Q And from your notes or from the hospital's, were you aware that there was some disfigurement of the child's head?

A I wasn't aware.
Q Okay. The fontella [sic] --
A Fontanelle.
Q -- that you described -- fontonella [sic]?
A Fontanelle.
Q Fontanelle. That's two holes in the head. If they're depressed, what does that indicate?
A Either that they're dehydrated or there's not enough water in the system, in the body.
Q And if the fontanelle is level with the bones on the head, it's normal?
A If it's normal, if it's -- it is just flat, then we call it not bulging; it's normal, flat.
Q And if it's bulging, there's a problem?
A If it's bulging, then -- yeah, if it's bulging, then you kind of raise a question mark, what is the cause; which means there is an increased pressure in the brain, due to what?
Q All right. The child, on this particular date, when he first came to you, on 12-11-14, that's when your office personnel measured the child, correct?
A Yes, sir.
Q And they took all the vitals here. The pulse was 112, the temperature was 96.7. Is that high or low for a child?

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A It's usually -- see, the computer is so sensitive. .1, .2 low, it will just say it's kind of low.
Q Respiration, 32; what does that mean?
A How the child is breathing. And it depends upon, if they're crying, you can have it higher; if they're sleeping, it can be lower. So it all depends on the child's level of activity, whether it's crying or what. So any increased movement, it can go up.
Q Weight was seven pounds, five ounces. BMI, .33; what's that?
A That's the body mass index.
Q Is there anywhere on the vital signs that indicates the circumference of the head?
A 33 CM
Q Right here. That's underneath, pulse?
A It's at the bottom -- yeah.
Q 33 CM, that's 33 centimeters?
A Correct.
Q Where is that measured, around the top of the head?
A The top of the head, right there, to the most prominent part of the head.
Q And at the time, you said the head was smooth, there was no bumps. Well, you didn't do that?
A Well, they measured, but when I say smooth, I always --
Q Touch the child?

A -- touch the head at the -- at the room, when I'm examining it.
Q Now, under current issues, the mother had some problems. It indicates, current concerns on the part of Roegan's mother include vomiting, is that correct?
A Yes, sir.
Q Did she describe what kind of vomiting it was; a projectile, was it just coming out the side of its mouth? What was -- what was going on, do you recall?
A No, it was not projectile. Otherwise, I would have put it here. Like --
Q Sure.
A -- spit up a little bit here and there, but -- I always try to demonstrate to them, is it like throwing up, like this? And she said no.
Q The child was also seen in the hospital on or about 12-18 of 2014, and that was for a circumcision; is that correct? Do you have any idea when the child was in the hospital?
A No, sir, I just put there, in the note, that he was going to be circumcised on the 18th. That's what they told me.
Q Okay. You had nothing to do with that?
A No, they made their own appointment with the obstetrician who --

Q And the doctor -- and the doctor was Dr. Orvis [sic]?
A Oravitz.
Q And you didn't receive any reports or anything from him of any problems with the baby?
A None that I'm aware of.
Q Everything went normal at the hospital, according to your information?
A I -- I haven't received any note, accept the hospital note.
Q The next time they -- they visit you is 2-9, is that correct?
A Yes, sir.
Q And from your notes, it indicates that the mother and maternal grandmother brought him in, is that correct?
A Yes, sir.
Q You took his vitals, at that time; and the head circumference, at that time, was -- now it's 40.6, is that correct?
A Yes, sir.
Q Versus 33. You saw nothing, at this point in time, when the child came in, about any type of bruises or abrasions on the child's body?
A Yes, sir.
Q How about to his head; did you see anything about his head?

A No, sir.
Q And his fontanelle, at that point in time, was it flat?
A Yes, sir.
Q How about his eyes; was he having difficulty, at that point in time, of seeing? Was the eyes glazed to the left or glazed to the right? Do you know what I mean by that?
A None that I'm aware of.
Q His weight, he had gained weight; 12 pounds, now.
A Yes. Yes, sir.
Q His respiration was 40. Is that normal?
A Yes, sir. It could be, still be normal, depending upon the situation. And if there's no red flag, then that's within normal limits.
Q Now, apparently, the notes that were made to you or told to you is that he has been fussy for quite some time, now, but increasingly more so. Can be pacified?
A Cannot be pacified.
Q Cannot be pacified. That means what, calmed down?
A Yes, it is.
Q No fever, mother denies any fall. Now, the grandmother was there during this whole period of time, when you were talking to her?
A Yes, sir.
Q You indicate in your notes that, appears crying, fussy,

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1 nontoxic. What did you mean by not -- not toxic.
2 Q Like, the child doesn't look ill, doesn't look -- the
3 child doesn't look ill. You know, like, you know
4 how -- and I'm basing it on my experience -- when I
5 look at the child, look ill, look sick. And that's not
6 how I saw the child. Child is fussy, no crying, but --
7 how can I simulate term?
8 Q Do I look sick or ill when you're looking --
9 A No, sir, you're fine. I'll take you home.
10 Q Doctor -- doctor -- mustn't talk to lawyers.
11 A No diapers.
12 Q All right. Well, maybe you don't know that. All
13 right.
14 A Sorry about that. You need a little laugh, right?
15 Q That's correct.
16 Not in distress. No -- then you use the word
17 melingic [sic]?
18 A No -- let me see, where is that? Appears --
19 Q Appears --
20 A Let's see, appears --
21 Q -- crying, fussy, not toxic?
22 A Where is that, to be --
23 Q No melingic?
24 A Irritable. Mom -- okay. Fussy quite some time, but
25 increasingly -- crying, not toxic, not -- no meningitic

1 sign. Okay. Meningitic sign is they can be lethargic,
2 they can have -- neck is on one side; and then if I
3 bend the neck, the child cries; and there is a
4 resistance when I bend the neck forward. Then there
5 could be a sign of -- a meningitic sign.
6 Q Isn't it being non-meningitic kind of opposite of not
7 to be comfortable in any position that the mom and
8 grandmother is doing?
9 A Not really. I -- it's more of a medical term that I
10 can't explain in a lay language.
11 Q All right. We'll accept that. Now, you do your head,
12 ears, nose and throat. Nasal passages are fine, no
13 discharge, no infection noted in the ears, nose and
14 throat. Neck is normal, lungs appear -- no wheezing.
15 Any type of medication provided to the child, at that
16 time?
17 A None.
18 Q Didn't give him any vitamins or anything like that?
19 A No.
20 Q Is the mother breastfeeding, at this time?
21 A No.
22 Q She's just feeding the child by a bottle?
23 A I didn't ask.
24 Q You didn't ask.
25 A Yeah.

1 Q Now, the next report I got here -- this talks about
2 2-9. The next one here says 2-10.
3 A Oh, 2-9 is at the top. 2:15 is the time that the
4 patient was seen in the room, and 2-10, at 5:17 p.m. is
5 the time that I put all this -- things that you are
6 reading in the computer.
7 Q I see. So this -- this report here, that's labeled
8 2-9 --
9 A That's the time the patient was seen; and the time
10 this -- this is transferred by me, personally, in the
11 computer, was 5:17 p.m., the next day.
12 Q All right. So, then, this note here, that we see on
13 2-10, is actually the time you put the note in?
14 A Yes, sir.
15 Q So you didn't see the child on 2-10?
16 A No.
17 Q The day when you slapped the couch or slapped the
18 table, is that that 2-19 date? Do you understand what
19 I'm talking about?
20 A Yes, but I always do that. I mean, I --
21 Q Every time they come in?
22 A What -- I always do that in babies, from birth until
23 almost six months old.
24 Q Okay.
25 A Because that is a test of how the brain is developing.

1 Q Now, you, that day, when the grandmother and the mother
2 are in, on 2 -- 2-9, you called the chiropractor?
3 A Yes, sir.
4 Q And you feel, at that point in time, based upon your
5 expertise, that it's important that the child go see a
6 chiropractor, is that correct?
7 A Yes, sir.
8 Q Did you -- did you feel the baby's spine and legs and
9 arms and neck? And, apparently, from what I see in
10 your report, they were all normal, is that right?
11 A Yes, sir.
12 Q All right. And the adjustment that the chiropractor --
13 that you anticipated he would be doing, would be moving
14 or adjusting the child's spine, is that correct?
15 A I do not know what they do. I -- I mean, I -- I will
16 be amazed if I tell you, yes, I know how they do it,
17 because it's --
18 Q Now, you apparently have had a lot of contact with the
19 Shields Chiropractic office?
20 A I beg your pardon, sir?
21 Q You have had a lot of contact?
22 A I do.
23 Q And you had their -- well, you just memorized their
24 number, and you called them --
25 A Yeah.

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Q -- for treatment? And on this particular day, when the grandmother and mother were in, you called and set up an appointment?
A Yes, sir.
Q And they went immediately down to visit with them, to your knowledge?
A Yes, sir.
Q Do they refer patients to you, also?
A No.
Q When you were talking to the mother and the grandmother, did you ever tell them that they were to come see you before they went to the emergency room?
A My policy in my office is, do not go to ER, do not go to MedExpress; call me 24/7. Don't wait until five o'clock if the patient sick at 6:00 a.m. Call me right then and there. And if I have a slot open, I would squeeze you in in my practice.
Q So you would rather have them come see you before they would go to the emergency room?
A Yes, sir.
Q You saw the baby on that one day, on the 9th, and that was it, is that correct?
A Yes, sir.
Q Were you ever consulted from the hospital when the child was admitted, on the 22nd of February?

A Not that I'm aware of.
Q You never visited the child in the hospital, because that's --
A No, sir.
Q -- not your policy, at this point in time. The child didn't appear to be having problems putting weight on; he looked good?
A Yes, sir.
Q And if the grandmother and the mother told you that the child had had a fall, you would -- you would have noted that?
A Yes, sir.
Q Do you -- as I recall, when Mr. Duggan was asking you some questions, you said you're quite busy when you observe the baby, and you don't always make notes right after you make the noise on the desk and whatever; you could make those notes later on, but you do it within 48 hours?
A Yes, sir, I do.
Q May you have forgotten that?
A No, because when I see a child and there's particular thing that I need to stand out that is not normal, quote-unquote, in the normal findings, doing that, blah-blah-blah, I always make a note on the side; fussy, Moro unequal. Anything that I think is

abnormal, I jot it down, so that when I transfer it to the computer I am as accurate as I can be.
Q All right. And you, on the 9th, your office, on -- the first visit was done by your office staff. The second time you measured the child's head yourself?
A No, it's always measured by them, but I always do my hand --
Q Oh, you always do your hand?
A Yeah, I always do my hand exam on the part of the body, especially the head.
Q You felt no goose egg or bump that's the size of a dime around the child's left temporal area?
A None that I was aware of.
Q And you saw no bruising or any discoloration of the skin or anything?
A I didn't see anything, sir.
Q The head in that area is very vascular, isn't it?
A I beg your pardon, sir?
Q The head, the blood supply, is very vascular; there's a lot of blood in that area, above the ear?
A I don't understand your question.
Q Well, when I say something is vascular, does that mean -- what does that mean to you, that -- anything at all?
A What do you mean, vascular or -- if there is bruise?

Q Means that it bleeds a lot. There's a lot of blood supply to that area?
A There's -- there should be what -- a hematoma; there could be a bulging, like a goose bump. If you call it goose bump, it would show.
MR. STURTZ: All right. Thank you. Nothing further.
THE COURT: Mr. Duggan, redirect?
R E D I R E C T E X A M I N A T I O N
BY MR. DUGGAN:
Q Doctor, when we were listening to your answers a moment ago about what you would do if patients call about a baby that's had a problem, you said you'd like them to call you before they call the emergency room or use --
A Yes.
Q -- MedExpress?
A Yes, sir.
Q What I want to understand is, is that for normal appointments?
A For everything.
Q Okay.
A Normal, sick, everything. Call me. I'm available 24/7.
Q You have an answering service that would get ahold of you?

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A I do, but during office hours, when the phone rings at the office, many times I answer my own phone, if they're busy. And if it's anything that, I'm panicked, dot, dot, dot, dot, can you come right now?
Q Okay.
A So --
Q When you would have -- if you would have been told by a patient, my baby has had a fall and has a bump on his head, if you get that call, you just say, come into the office, or do you say go to the emergency room?
A No, my triage person say, okay, what happened? Because sometimes it's just the mother, and says, oh, my baby, freak out. So, okay, come down. What's wrong? So I get a history; the baby is smiling right now, blah, blah, blah. Okay. What do you want me to do, do you want to bring the baby right now, do you want to wait? So, depending upon the answer, come right now if you are unsure. Right now.
Q What I wanted to know is -- because you answered this one way on direct examination, I want to make sure I understood your answer -- if you were told the baby had an actual bump from the fall on the head, would you tell them to bring the baby to you before you sent them to the ER?
A Like I said, depends the level of conversation. If it

is something I'm not sure, okay, then go to the emergency room.
MR. DUGGAN: No further questions.
THE COURT: All right. Any questions from the jury for this witness?
Okay. You can step down, ma'am. Thank you.
THE WITNESS: Thank you.
MR. DUGGAN: May the witness be excused?
THE COURT: Yes.
MR. DUGGAN: Watch your step, Doctor.
THE WITNESS: Thank you. I don't need to fall.
MR. DUGGAN: Cords, everything.
THE WITNESS: Thank you.
(At 9:49 a.m. witness is excused.)
MR. DUGGAN: We call Jessica Kirby.
THE COURT: All right. Ma'am, if you'd step forward and raise your right hand, please, up here?
Do you solemnly swear to tell the truth, the whole truth and nothing but the truth?
DR. KIRBY: I do.
THE COURT: Please have a seat in the witness box.
DR. KIRBY: Thank you.
DR. JESSICA KIRY,

being first duly sworn at 9:49 a.m., testified under oath as follows:

D I R E C T E X A M I N A T I O N

BY MR. DUGGAN:
Q Good morning.
A Good morning.
Q Please state your name.
A My name is Dr. Jessica Kirby, D.O.
Q Well, I don't have to ask your occupation. How long have you been a physician?
A I graduated from medical school in 2004.
Q And what do you practice, in what particular area?
A I practice emergency medicine, and I am board certified in emergency medicine; I care for kids that are newborns, to the geriatric population.
Q Geriatric, being the other end of life?
A That's right.
Q All right. So everybody that comes into the ER, you are trained and qualified to treat their emergency situations?
A That is correct.
Q How long have you worked here, in Saginaw?
A I believe I began at Covenant in January of 2014; so, approximately, two and-a-half years.
Q And in the course of your work, have you treated

hundreds of patients?
A Yes, sir.
Q More than that?
A Yes.
MR. DUGGAN: All right. I would offer the doctor, to the extent that she offers any opinions as an expert, as one in the area of emergency medicine.
THE COURT: Any objection?
MR. BUSH: No questions.
MR. STURTZ: I have one question.
Doctor, you're board-certified in emergency medicine?
THE WITNESS: Yes, sir.
MR. STURTZ: And when did you become board-certified?
THE WITNESS: I became board-certified within a few months of graduating, so I believe it was August of -- 2010?
MR. STURTZ: And for the ladies and gentlemen of the jury, could you explain what board-certified means?
THE WITNESS: A board-certified physician has passed all of their board examinations. That means they're an expert in their field, and have passed certification exams that prove your knowledge base.

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MR. STURTZ: I have no objection to the doctor's qualifications.

THE COURT: The doctor will be qualified as an expert in the area of emergency medicine.

MR. DUGGAN: I know they're supposed to raise their hand, but does anybody have any difficulty hearing this witness?

Thank you.

BY MR. DUGGAN:

Q Doctor, on February 22nd, 2015, while in the emergency department at Covenant, here in Saginaw, did you have occasion to see a patient named Roegan Krukowski?

A Yes, sir, I did.

Q You have the big packet of records marked Exhibit 1, with the little tag, a red tag? It might be -- not 1; maybe 3?

A Yes, sir.

Q It's No. 3? And at page one of those records, it indicates that an ER nurse was seeing the baby, and you then became involved on being at the bedside fairly quickly. In the notes, at the beginning, on page one, it says, Dr. Kirby to bs, meaning bedside?

A Correct.

Q Okay. What did you -- well, I'm going to show you a picture on this TV screen. I realize you deal with

hundreds, and you were indicating even more than that, as far as numbers of patients. Do you happen to remember, from reading the records and reviewing for this trial, having contact with this particular patient?

A I remember the patient from the medical records; I do not recognize the child from the picture.

Q Okay. Did you take into consideration all the history information provided by the parents, who brought the child?

A Yes.

Q Did you consider what the nurses who were working in the ER were gathering, as far as vital signs and other information?

A Yes.

Q Now, you come into it sort of after that, correct, but pretty quickly, in the beginning?

A Correct.

Q All right. Do you interact with the parents?

A Yes.

Q And when you're testifying here, you're testifying because you have reviewed medical records, correct?

A That's correct.

Q All right. And did the baby have any obvious signs of trauma?

A No, sir.

Q Okay. Did the baby have -- and by that, I mean on the surface of the skin.

A Correct, on the surface of --

Q Bruising, cuts, et cetera?

A No abrasions, no bruising, no obvious signs of external trauma, at the time of exam.

Q What did you formulate as a plan, to try to figure out why the baby was behaving in the way the nurses and you observed?

A Uh-huh. The baby was exhibiting shaking activity and quivering that was suspicious of a seizure. And my initial thought was perhaps the patient's sodium was low and there was some kind of electrolyte abnormality, so we initially ordered laboratory studies.

Q When you say these things, remember, we're not in your field. What does sodium and electrolytes mean to us?

A Oh, boy, this is basic science. Let's see. Sodium is a salt in the body that's essential for metabolism and activities of the body, and when it's very low it can cause seizure-like activities, similar to what we witnessed with this child. So when we saw this activity, we were concerned that perhaps the labs were abnormal.

Q So you had laboratory tests done?

A We ordered laboratory tests.

Q And electrolytes were also a concern?

A Yes, and that's included in the laboratory studies.

Q And when you got those studies done, did they give you any intuition as to what the baby's seizing activity was from?

A Those studies were all normal or unremarkable, so at that point, you have to consider other etiologies or other causes of the seizure activity. And we were pretty convinced, on what we were seeing the patient do, that it was, in fact, seizure activity; and so then we were concerned about possible trauma or bleeding in the brain. And so we ordered imaging of the brain.

Q Based on you training and experience, having been an emergency room physician for five years that -- by that time, that is one of the preliminary diagnoses or possible explanations for that activity, is bleeding of the brain?

A Yes.

Q What is bleeding of the brain caused by, or can it be caused by?

A It can be caused from trauma.

Q Which is a blow?

A A blow to the head, yes. Other patients can have, like, bleeding abnormalities or bleeding problems.

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1 That's typically seen in more of the adult patients,
2 not typically the pediatric patients.
3 MR. STURTZ: Objection, Judge. The doctor's
4 voice is falling off, and I cannot hear it.
5 MR. DUGGAN: Do we have the amplification up,
6 too? Because we have speakers above our heads here.
7 THE COURT: Yup, I understand.
8 MR. DUGGAN: Thank you. We'll see if that
9 makes it a little louder.
10 BY MR. DUGGAN:
11 Q So you don't see, usually, a bleeding abnormality in a
12 baby?
13 A Not typically.
14 Q Whoa, you're loud now. And so was there a plan put in
15 place to have additional testing done?
16 A Following the CAT scan?
17 Q Well, no, that's what I was getting to. Did you feel
18 that that was an appropriate next step, after the labs
19 came back?
20 A Absolutely.
21 Q And a CAT scan is -- is a slang term for a CT?
22 A Yes.
23 Q Meaning -- and what does that acronym mean?
24 A Oh, boy. Computerized axial tom -- topography.
25 Q Okay. And that does what?

1 A It's multiple x-ray images of the area in very small
2 slices, so that you can get a lot of information in
3 regard to what's appearing at every level of the
4 imaging study. So, multiple; multiple x-rays.
5 Q And that is -- if an x-ray is two-dimensional, like one
6 sheet --
7 A Yes.
8 Q -- a CT would be -- just keep moving the machine until
9 it captures all those slices?
10 A Correct.
11 Q You can sort of get a 3D feeling, instead of a 2D?
12 A Correct.
13 Q And that will possibly assist you in figuring out what
14 is going on with the child for the seizures?
15 A Yes.
16 Q So you ordered that?
17 A Yes.
18 Q That's something within your focus, your area of
19 interest and area of duty, is to order such tests, as
20 the ER physician?
21 A Correct.
22 Q And is there another higher-level test of the head that
23 gets those images, beyond a CAT scan?
24 A Yes, we can also do an MRI study.
25 Q Which stands for?

1 A Oh, magnetic resonance imaging.
2 Q And that's sort of the same thing, but better --
3 A I --
4 Q -- than a CAT scan?
5 A It's a little bit different, in that it assesses more
6 of the soft tissues. A CAT scan is probably a more
7 appropriate test for bones, for, like, a fracture, but
8 can also see soft tissues. MRI is a better study for
9 soft tissues. So in the event of -- or, an imaging of
10 the brain, an MRI would be a more sensitive or better
11 study, yes.
12 Q And are you the person that orders that, the MRI?
13 A Yes, and I believe, in this case, at the request of the
14 admitting doc or the intensivist, I was asked to order
15 the MRI study.
16 Q And the intensivist refers to that person in charge of
17 the pediatric intensive-care unit, correct?
18 A Correct.
19 Q And are you starting to communicate now with those
20 people in that unit, so that they can be aware of what
21 they might be dealing with soon?
22 A Yes, ultimately, once I began getting results back, I
23 recognized the child would need admission. So at that
24 point, I spoke to the intensivist or the pediatric ICU
25 doctor, because we begin to bridge the care, to let

1 them understand the patient that I'm working with in ER
2 and the tests I have performed, and what they all need
3 to do next. So we -- we begin that conversation as
4 soon as possible, to begin to transition care.
5 Q And bridge and transition just means turn them over to
6 the next --
7 A Correct.
8 Q -- level? And were you getting -- you said you were
9 getting -- were you reacting to the actual findings of
10 the CAT scan and the MRI, as the emergency room doctor?
11 A Yes.
12 Q And what -- what were those studies indicating, in the
13 soft tissues?
14 A The --
15 MR. STURTZ: Objection. Unless the doctor is
16 qualified to give that information, I'll object to her
17 saying.
18 BY MR. DUGGAN:
19 Q Did you look at these studies?
20 A Yes, I did.
21 Q And are you trained to evaluate them and figure out
22 what to do, medically?
23 A Yes, I can act upon what you find on imaging studies.
24 I'm not the definitive reader of the tests, but I
25 certainly do act upon them, prior to being read by

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1 radiology, yes.
2 Q And did you, in this case, act upon them?
3 A Yes.
4 Q And what were you -- what were those findings; what
5 were you seeing?
6 A There was bleeding on the brain, based on the CAT scan.
7 And I spoke with the radiologist directly in the
8 emergency department, and notified of these findings.
9 At this time, I was concerned about the bleeding, and
10 called the intensive care doctor.
11 Q As an emergency room physician, what was the basis of
12 your concern when you saw there was bleeding on the
13 brain; what is the potential outcome to this patient if
14 action isn't taken?
15 A Concern about death. And we are concerned with
16 bleeding in a child this young, that it was
17 non-accidental trauma.
18 Q Death is -- is everything. You jumped right to that;
19 you were concerned about death. Why is it, in the
20 physiology or the mechanics of the brain -- that's
21 bleeding of the brain -- lead to that ultimate result?
22 A God designs the head so that there are sutures, and so
23 that if there is any kind of bleeding or edema of the
24 brain, that the head can expand and there's room for
25 that. But the physiology is such that if there's a lot

1 of bleeding in the brain there can be swelling in the
2 brain, and the brain can hemorrhage -- or, I'm sorry,
3 can herniate. And when the brain herniates, the brain
4 stem goes into the bones of the neck, and the patient
5 dies.
6 Q That can be quickly?
7 A I'm certainly not an expert on that timeline, but --
8 Q Then I won't --
9 A -- it's timely.
10 Q I won't ask it.
11 A Yeah.
12 Q It's something you have to act on quickly?
13 A That is correct.
14 Q You just made a reference. I'm going to put a
15 demonstrative exhibit up here. And you just referred
16 to --
17 A To sutures.
18 Q -- sutures?
19 A Correct. They're the lines between the bones.
20 Q Why don't you take the pointer -- step off carefully,
21 because there's a step. There's a pointer leaning next
22 to the TV stand?
23 A Sure.
24 MR. DUGGAN: We have one, Judge. Thank you.
25 BY MR. DUGGAN:

1 Q And stay about where you're standing now, so everybody
2 can see. No, it's -- no, it's the wooden thing, like,
3 behind the TV. Point to what this -- trace the sutures
4 you're talking about.
5 A Sure. So here are the sutures.
6 Q Keep your voice up.
7 A A suture here, a suture here, a suture here. And these
8 are the bones. And this allows for growth. As the
9 brain and the body brows, these are not fused, so that
10 the bones can grow and expand as the child is growing
11 and expanding. And if there's bleeding or a swelling
12 in his brain, these sutures here allow for expansion,
13 but only to a certain degree. So if there's more
14 expansion or bleeding or swelling than that, then the
15 brain will herniate and collapse into the neck, and
16 cause death.
17 Q Why wouldn't the bleeding come out the fontanelles, or
18 would it?
19 A No, because there's a thick connective tissue there
20 that, over -- that, you know, that's more strong than
21 the area below. So it would not.
22 Q And it's not skull yet, in the fontanelle?
23 A Correct.
24 Q It's not formed bone? You --
25 A There's no bone there.

1 Q -- can set the pointer down.
2 And as the brain gets more fluid from the
3 bleeding and expands, that does what you said about the
4 brain stem, what does the head look like from the
5 outside?
6 A It could look normal.
7 Q Okay. Could it look larger than normal?
8 A I guess it could, if there was expansion of those
9 sutures. But it's hard for me to assert that, just
10 physically looking at a child.
11 Q Okay. And you said a moment ago there was -- that
12 there was concern that the injuries, from the point of
13 view of the emergency room physician, are
14 non-accidental?
15 A Uh-huh.
16 Q What does that mean to you, based on you duty under the
17 law?
18 A Non-accidental, implying that something was inflicted
19 onto the child; some type of trauma was inflicted to
20 the child.
21 Q And you can't immediately say what that is or who did
22 that, correct?
23 A That's correct.
24 Q But you have to act to protect the child?
25 A Correct.

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1 Q Which requires you to do what?
2 A Notify CPS.
3 Q And did they take the lead, then, in terms of
4 investigating or trying to figure out what happened?
5 A Yes.
6 Q You're concerned with medically assisting the child,
7 not with trying to investigate possible crimes,
8 correct?
9 A Correct.
10 Q But they come right to the emergency room, the workers?
11 A Most of the time, yes.
12 Q The police come, sometimes?
13 A Most of the time, yes.
14 Q And there is some type of form that's become standard
15 in the -- in the CPS process, and has got a number to
16 it. What is that called?
17 A 3200.
18 Q So that every doctor, police officer, professionals,
19 that form is the numbered form that you have to do?
20 A Uh-huh.
21 Q Yes?
22 A Correct.
23 Q And that's not a choice on you part, as a care
24 provider?
25 A Correct. It's my obligation, as a provider, to fill

1 that form out if I suspect abuse.
2 Q Okay. And how long into the process of dealing with
3 Roegan Krukowski, examining results of labs and CTs and
4 so forth, did you arrive at the conclusion you were
5 compelled to get that going?
6 A Nearly, at the time he was seen.
7 Q And we all come to find out -- every person in the
8 room, I think, has come to find out or knows something
9 about the fact that medical relationships with patients
10 are privileged; they're not to be publicized. We have
11 HIPAA -- whatever the heck that means -- so that
12 people's medical stuff isn't let out to anybody?
13 A Uh-huh.
14 Q It seems just the opposite when a child appears to be
15 suffering non-accidental injury, is that true?
16 A That everyone gets to know?
17 Q No, that you disclose, when you normally wouldn't
18 disclose --
19 A Yes.
20 Q -- personal business. If the parents bring a child
21 into the emergency room, and there's an apparent injury
22 they want help with, and they tell you enough
23 information to convince you, well, it sounds like an
24 accident, we'll help the baby, you call CPS for every
25 accident?

1 A No.
2 Q Was a decision made to admit the child to the pediatric
3 intensive-care unit or PICU?
4 A Yes.
5 Q And was that something you fostered or recommended?
6 A Yes.
7 Q And you have to interact with other doctors to
8 accomplish that?
9 A Uh-huh.
10 Q I know you're nodding yes, but she's typing.
11 A Yes. Yes.
12 Q And approximately how many doctors did you have to
13 consult -- I'm not asking this as a test, but how many
14 people are we talking about have to figure this out
15 or --
16 A I spoke with the intensivist, I spoke with the ICU
17 resident, I spoke with the radiologist, I spoke with
18 the neurosurgeon, and I spoke with -- that might be it.
19 Q Okay. Do you specifically recall now, from review of
20 you notes --
21 A Uh-huh.
22 Q -- that you were apprised of the baby having some fall,
23 according to the parents?
24 A Yes. After we found the CAT scan findings we
25 approached the family again, to explain to them what we

1 had found. And I believe it was that time that we were
2 told that the child had a fall approximately two weeks
3 prior; and that was disclosed, at that time.
4 Q And was the disclosure also indicating, in addition to
5 the fact of the fall, that there was an injury from the
6 fall? And you can refresh your notes.
7 A I already did.
8 Q I'm looking at page one.
9 A Okay.
10 Q Under history of present illness. Why don't you -- why
11 don't you read, if you're there, about five lines to
12 the bottom of the note, history of present illness,
13 where it says, father, however. Just read that from
14 there to the end.
15 A Father, however, does state that approximately two
16 weeks ago he was lifting the child from the bathtub
17 when the child fell to the ground, sustaining injury to
18 the head. Father and mother agreed that, since that
19 time, the child has been acting appropriately. Mother
20 and father agree that they are the primary caregivers.
21 They solely watch the child, exclusive of what sounds
22 to be the maternal mom, who, on rare occasion, will
23 watch the child.
24 Q And you said a moment ago you had discussed the
25 decision to do the transfer or admission to PICU, and

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then you recite a bunch of professional areas. Was one of the person's materials you looked at Dr. Ludka's radiology reports?
A Yes.
Q Did you confer with Dr. Schinco, the neurosurgeon?
A Yes.
Q Is he a pediatric neurosurgeon or an --
A He --
Q -- all-purpose neurosurgeon?
A Yes, he does -- I believe he does all cases, including children.
Q Did you consult with the resident, Tyler Dickey?
A Yes, I did.
Q He's the PICU resident?
A Correct.
Q And what about PICU neurologist, Dr. Majkowski?
A I didn't -- I don't believe I spoke with Dr. Majkowski. She --
Q What about Dr. Stargardt?
A I did speak with Dr. -- let me see my notes. I talked to intensivists. Yes, I spoke with Dr. Stargardt, yes.
MR. DUGGAN: Thank you very much, Doctor.
THE WITNESS: Thank you.
THE COURT: Cross-exam, Mr. Bush?

C R O S S - E X A M I N A T I O N
BY MR. BUSH:
Q Doctor, again referring to your notes, before the disclosure of the fall --
A Yes.
Q -- the parents revealed that the child was having episodes of trauma, is that right?
A Correct.
Q And decreased appetite?
A Correct.
Q Constipation?
A Yes, sir.
Q And mother stated that the child began refusing anything by mouth?
A Yes.
Q And she indicated, also, that, thereupon, she spoke with the pediatrician, who -- who she states told her to try some free water?
A Correct.
Q Is that right?
A Yes.
Q And then she went on to say that that -- that morning, the morning we're talking about --
A Uh-huh.
Q -- the child woke up and was having a shaking-type

activity?
A Yes, sir.
MR. BUSH: Thank you.
THE COURT: All right. Cross-exam, Mr. Sturtz?
MR. STURTZ: Can you turn the overhead projector on, please?
C R O S S - E X A M I N A T I O N
BY MR. STURTZ:
Q Doctor, you referred to this term, non-accidental. Is that the term that's cited in this 3200 form? It's not -- not going to be up there. You used the term, non-accidental?
A Yes.
Q Is that term used in the Form 3200, that gets everybody upset?
A Can it be used or did we use it?
Q Is it in the form?
A I'm sorry, sir, I don't -- I don't know, I don't have the form in front of me.
Q Did you fill a form out that date?
A The form was filled out. Typically, the nursing staff will initiate the form, and then I will fill out a portion of the form, yes.
Q So as far as filling out the form yourself, it's

actually done by the hospital personnel?
A It can be done by any extent of practitioners. If you had the form, I could look at it and tell you. I don't know who filled it out, in this case.
Q Okay. You didn't fill it out?
A I don't remember, sir.
Q All right.
A Typically, there's a physician portion; and, typically, I will write something on the form; but because it was over a year ago and I don't have the form, I can't tell you by memory.
Q Now, you're an emergency room physician?
A Correct.
Q When the patient comes into the hospital --
A Uh-huh.
Q -- they go to a triage area?
A Correct.
Q And the triage then decides where the patient is going to go?
A Correct.
Q And how many steps are there before they end up seeing you?
A It depends on the time of day. Typically, the patient will present to triage and be seen by the triage nurse, where vitals will be obtained. Then they will come

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1 back to the area, to be evaluated by the physician. At
2 the end of that time, they're either evaluated by the
3 nurse prior to myself or I will evaluate the patient
4 with the nurse.
5 Q All right. And in your hospital records, on page
6 two -- excuse me, I have to play with this for a
7 while -- this is a physician's exam, physical exam.
8 Did you do that?
9 A Yes, I did.
10 Q Did you take the baby's temperature?
11 A I did not take the baby's temperature.
12 Q All right. But it's reduced here to 99 F?
13 A Yes.
14 Q What does that mean?
15 A 99 degrees Fahrenheit means no temperature; afebrile.
16 We consider a temperature 100.4 and greater.
17 Q Heart rate was 180. Is that normal?
18 A It's probably in the upper end of normal or very
19 slightly tachycardic for this child's age.
20 Q Okay. Would that be evident by any type of perspiring
21 or any type of outward appearances because of the high
22 heart rate?
23 A You're saying would we visualize that, could we tell by
24 the -- ask me again. What are you asking?
25 Q Is there any visual sign of a heartbeat being 180,

1 which you say is high?
2 A No, not usually.
3 Q So there's no chest pounding?
4 A Not usually.
5 Q The baby isn't yelling or screaming?
6 A Not usually. You can't usually see that just by
7 looking at a child, no.
8 Q Respiration was 64?
9 A Again, that's probably a varying normal, just a little
10 bit fast.
11 Q The next one is SpO2 is 100 percent. He's 100 percent
12 oxyginate -- oxy --
13 A Correct.
14 Q He's fully --
15 A Oxygenated.
16 Q That's where you put the little thing on your finger?
17 A Correct.
18 Q The baby weighed 13 pounds. Was that pretty much
19 consistent with his age, and what he looked like?
20 A 13 pounds -- yes.
21 Q You write in the notes, here, the child appears pale,
22 with twitching-type movement of the upper extremities
23 and quivering of the lips. Did you observe that
24 yourself?
25 A Yes, I did.

1 Q What color were -- was his lips?
2 A They were normal color.
3 Q At the time, the eyes were closed; but when opened,
4 they moved together, never focusing on a provider or
5 family. No obvious sign of trauma.
6 A Correct.
7 Q Any trauma at all seen to this baby on any part of his
8 body; feet, toes, ears?
9 A I don't believe that we could see any outward sign of
10 trauma, based on physical exam alone.
11 Q All right. I assume, when you examined the baby, you
12 did it when it was unclothed?
13 A Yes, of course.
14 Q Was the diaper off, too?
15 A Yes.
16 Q Was the baby having bowel movements and passing urine
17 in a normal fashion?
18 A Per history, it was reported that the child had been
19 somewhat constipated. I don't recall if the child had
20 a bowel movement or urinated in the department; but,
21 per history, was somewhat constipated.
22 Q The mouth and throat were normal, eyes conjunctive.
23 What does that mean?
24 A It's the outer connected tissue overlay in the white
25 part of the eye.

1 Q So the red part -- or, the white part of the eye looks
2 normal?
3 A Correct.
4 Q There was nothing in the white part of the eye that
5 would suggest any type of trauma to the eye itself?
6 A Right, the conjunctiva was normal, yes.
7 Q Red -- red reflex. What is a red reflex?
8 A It's the normal reflex of the retina that you see when
9 you look in an eye.
10 Q Did you look into the eye?
11 A Yes, I did.
12 Q Dilate the eye?
13 A I did not dilate the eye, which means I did not
14 complete a full eye exam in the emergency department.
15 Q So if there was any bleeding in the retina or anything,
16 you didn't see that?
17 A I did not. And it's not uncommon for us to miss that
18 in the ER, because it's not an exam that we can perform
19 very well in the ER.
20 Q You say there's no -- and the word is petechia?
21 A No petechia.
22 Q Petechia. What is that?
23 A Petechia would be a sign of strangulation. So you can
24 often see little red spots underneath the eye if
25 there's signs of strangulation. We did not appreciate

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that during this exam.
Q When you say you did not appreciate it, you did not see it?
A Correct.
Q The neck was in -- within normal range, and supple?
THE COURT: You need to answer out loud, ma'am. She's taking it down.
THE WITNESS: Neck was normal.
BY MR. STURTZ:
Q What does supple mean?
A Appropriate fullness.
Q Pulmonary/chest sounds were fine?
A Correct.
Q Abdomen soft, he exhibits no distension?
A Yes.
Q What does distension mean?
A Bloating or enlargement.
Q Musculoskeletal, normal range of motion?
A Yes.
Q Skin is warm. Was he breathing alright, at that time?
A We did make a mention that he was occasionally breathing erratically, meaning occasionally having breaths that were not in sequence with other breaths.
Q Okay. Because up here, in respiratory, you say, negative for coughing and choking.

A Yes.
Q Page one of your report, apparently you took some history. Did you sit down with both the mother and the father?
A Yes, I did.
Q Was the father in the room, talking, along with the mother?
A Yes.
Q And the child was present?
A Yes.
Q Anybody else from the hospital there?
A When I spoke with the family?
Q Yes.
A I believe the nursing staff and/or techs were present, during this time.
Q How was this stuff recorded that we see here, on the history and present illness; did you record it in a dictating machine?
A We occasionally have scribes with us in the emergency department that will type for us, but this note does not have a scribed access-station note, which means that I did the typing myself.
Q So you don't go out, like a couple good friends of mine, and they dictate, oh, yeah, this is that, blah, blah, blah?

A No, I do not have a dictating machine.
Q You don't do that?
A No.
Q You gotta get higher in the pecking order.
Father, however, does state that, approximately two weeks ago, he was lifting the child from the bathtub when the child fell --
A Uh-huh.
Q -- to the ground, sustaining injury to the head?
A Uh-huh.
Q Father and mother agree that since that time the child has been acting appropriately?
A Uh-huh.
Q Did they use the word appropriately or did they say he was acting normal? That doesn't sound like a normal word coming from a client.
A Right, that's probably a medical word, meaning what they told me seems to indicate that they did not notice anything different than normal in the child's behavior, other than what I had written; the constipation, those kinds of things.
Q Apparently, the baby was taking water, was hydrated?
A Sounds like the child had been vomiting and wasn't taking their soy milk, so it had been suggested that they feed the child water, and maybe some peppermint

water; and they were attempting to do that.
Q And it was suggested that the peppermint water, the water came from the pediatrician they had visited with?
A That was in -- that was how it was explained to me, yes.
Q Were the mother and father dressed appropriately to be in the hospital?
A Best I can remember, yes.
Q Did you talk to any other family members about the history of the child?
A Not that I can recall.
Q So there were no aunts or uncles or grandma or grandpas or anything like that?
A I remember a discussion about a grandmother, but I do not believe that I spoke with her myself, no.
Q You did all these tests first?
A Uh-huh.
Q And they all come back negative, and then you decided that you would do a CAT scan?
A Correct.
Q Who -- who read the CAT scan?
A Dr. Mark Ludka, M.D.
Q Okay. And then there was an MRI done, and that was of the brain or the skull?
A Yes, that's correct.

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1 Q Now, you tell the ladies and gentlemen of the jury that
2 you had an opportunity to review the MRI or you read it
3 yourself, is that correct?
4 A The CAT scan, sir, is what I saw myself and read
5 myself.
6 Q You didn't do anything with the MRI?
7 A No, sir.
8 Q And the CAT scan, did that reveal where the bleed was
9 taking place at?
10 A Yes, it does.
11 Q Okay. And from your remembrance of the CAT scan, where
12 were the bleeds coming from?
13 A There was a bleed overlying -- I'll tell you the
14 medical word, and then I'll explain where it is.
15 Q Yeah.
16 A The superior left parietal. So approximately this area
17 here.
18 Q What side of the head?
19 A The left.
20 Q Left?
21 A Correct.
22 Q And, now, you're showing us, if you put your hand on
23 top of your head, it would be a little down, going
24 towards the ear?
25 A This is the parietal area, here.

1 Q Right.
2 A So, upper parietal, here.
3 Q Okay. How deep was it?
4 A How deep was the bleeding?
5 Q Yes.
6 A That's not in the report. I can't tell you.
7 Q Would the MRI reveal that?
8 A Oh, let me see. I don't see it written on the MRI
9 report. That was something that you certainly could
10 see looking at the images, but I don't see it
11 documented in the report, of how deep it was, no.
12 Q The findings of the MRI talk about a bilateral
13 subdural --
14 A Uh-huh.
15 Q -- hygromas?
16 A Uh-huh.
17 Q Hygromas is --
18 A Uh-huh.
19 Q -- to my understanding --
20 A Uh-huh.
21 Q -- is a bursa sac, filled with fluid?
22 A Uh-huh.
23 Q Would they be evident on the MRI, as to where they were
24 located at inside that subdural -- bilateral subdural
25 area?

1 MR. DUGGAN: I'm going to object for just a
2 moment, because I think we're now getting her to do
3 things beyond where she was, and the next witness is
4 actually the one who wrote this and did this. It's --
5 I think it's just a matter of saving time, rather than
6 having her recite what she's reading somebody else did.
7 THE COURT: Mr. Sturtz?
8 MR. STURTZ: Well, I think the doctor has
9 read these, and she observed it, and it's from her that
10 everything got started. So she had some idea of where
11 it was at.
12 THE COURT: Well, if she can answer your
13 question, that's fine.
14 BY MR. STURTZ:
15 Q Do you understand what the Court has ruled? If you can
16 answer that, please do. If you can't --
17 A I saw the report of the MRI; I did not use it in my
18 decision-making or processing in the -- taking care of
19 the patient. But the CAT scan, I did see and use.
20 Q How many bleeds were there in the CAT scan, from what
21 you observed?
22 A There was more bleed than one, and they appeared to be
23 different times.
24 Q Different times, meaning what, young and old?
25 A Correct.

1 Q Were they all located in the same area?
2 A No.
3 Q Were they located in other parts or other lobes of the
4 brain?
5 A There was one in the left parietal lobe.
6 Q Now, left parietal, that's where you showed us?
7 A Correct. And then there's one that may have been an
8 older bleed in the left sylvian fissure. And it's a
9 little harder to show where it is, but it's a different
10 location.
11 Q Is it in the same area or is it deeper into the brain?
12 A Deeper.
13 Q All right. Do you have any idea how much deeper; two
14 inches, one inch?
15 A No, I don't know --
16 Q Okay.
17 A -- the size.
18 Q Any others?
19 A On the CAT scan, I believe those are the only two
20 bleeds that we saw. Again, it suggested they were
21 different ages.
22 Q Different ages?
23 A Uh-huh.
24 Q Do you have any idea, knowing how -- what the ages
25 would be?

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A What I can tell you is that, when a bleed is acute on a CAT scan -- and you can talk to the radiologist, as well, but my understanding is that acute bleeds are typically less than 72 hours old; more likely, 24 to 48 hours old. And after 72 hours we likely would not call them acute bleeds.
Q But you just witnessed two?
A I -- you mean on the CAT scan I saw two? There appeared to be two different areas of bleeding; one that was acute, and one that appeared older.
Q Which one was the acute?
A The left parietal bleed.
Q The upper one?
A Yup, that is correct.
MR. STURTZ: Thank you, Doctor.
THE WITNESS: Yes.
THE COURT REPORTER: I need a break, I need to change my disc.
THE COURT: Well, we're going to have -- okay. Do you have enough whatever you -- okay. I guess we'll take a break.
MR. DUGGAN: Well, I have no further questions.
THE COURT: The jury does.
Let me ask the court reporter, because I --

she's got to take this down.
You can't even deal with the questions? Okay.
All right. All right. We're going to take a break right now, so --
THE WITNESS: I work at noon.
THE COURT: Okay. It's not going to be that long of a break. 10, 15 minutes.
THE WITNESS: Okay. Okay.
THE COURT: All right.
All right. So we'll bring in the clerks, and, ladies and gentlemen, we'll take a break, at this time. You can go back to your respective jury rooms, and we'll bring you back in about 10 or 15 minutes. You can leave your notes on your chairs, if you would like, or you can take them with you; whatever you prefer.
The clerks will meet you in the hallway. I think you know the way to go. So we'll have --
THE LAW CLERK: Ms. Maddox is on the phone.
THE COURT: All right. Well, they can --
THE LAW CLERK: About getting somebody --
THE COURT: Well, they can start in the direction, they know where to go. Because they need to go first.

(At 10:30 a.m. juries are excused.)
THE COURT: All right. You may step down, ma'am. We'll take about 15 minutes, and we'll resume.
Court will be in recess.
(At 10:30 a.m. break is taken.)
(At 10:50 a.m. proceedings resumed.)
THE LAW CLERK: All rise. Circuit Court is again in session.
THE COURT: Please be seated.
We have those cover things, but I don't think they'll help, so . . .
All right. We're ready for the jury?
MR. DUGGAN: I'll bring the witness in.
THE COURT: Let's bring the jurors in, then.
MR. STURTZ: Yes, Judge.
(People's Proposed Exhibit No. 20 was marked for identification.)
MR. STURTZ: Judge, may our clients move back in the --
THE COURT: Yeah.
MR. BUSH: See the screen?
THE COURT: Yeah.
(Off-the-record discussion.)
THE LAW CLERK: All rise for the jury.
THE COURT: Please watch --

THE LAW CLERK: Watch your step.
THE COURT: -- your step.
THE CLERK: All rise for the jury, please. And watch your steps.
(At 10:53 a.m. juries are present.)
THE COURT: All right. Please be seated.
All right. I think we had questions from the jury, is where we were at.
Counsel, if you want to grab the notes from the jurors?
Mr. Bush, Mr. Sturtz, please approach.
(Bench conference.)
THE COURT: All right. Let me say, first, ladies and gentlemen, sometimes your questions -- as I explained at the beginning, sometimes we can ask them, sometimes we can ask part of them, sometimes we know that there's information that's going to come out later, that will probably explain things for you. So I'm just going to ask this witness the things that -- the things she might be able to answer, based on your questions and concerns.
So, Doctor, did the father explain about the fall before or after CPS was notified?
THE WITNESS: I believe that we initially asked about trauma. There was no recollection of

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1 trauma. Once we found the CAT scan findings, we
2 approached the family again, and said, really, no
3 trauma, nothing happened? And then it was disclosed.
4 I don't feel it was mischievously not told
5 initially, I think it was a -- initially, they didn't
6 think about it; and then, when we asked it again, it
7 was, oh, yeah, I guess two weeks ago there was this
8 event.
9 So I don't think it was disclosed initially;
10 but when we asked the second time, it did come out that
11 there had been something.
12 THE COURT: All right. And then the next
13 question is, during interactions with the parents in
14 the beginning, what were the reactions of the parents
15 after getting tests back and results of bleed on the
16 brain, if you can answer that?
17 THE WITNESS: I can't say that I explicitly
18 remember their reaction. That's a difficult discussion
19 to have with any parents; and at that point, you kind
20 of -- it's kind of -- you kind of distance yourself
21 from the family, in that sense, because I think they
22 don't trust you as much. And you're certainly
23 skeptical of them. So it's kind of an odd part of the
24 care. I don't remember them doing anything out of
25 characteristic or abnormal, nor do I remember the

1 opposite.
2 So I don't remember any unusual activity or
3 any unusual response, but, again, that's a little bit
4 difficult, at that time, because you're suspicious that
5 there's something more going on, and they don't trust
6 you as much anymore. So it's a difficult transition,
7 in the case.
8 THE COURT: Any follow-up by counsel?
9 MR. DUGGAN: None, Your Honor.
10 MR. BUSH: No, Your Honor.
11 MR. STURTZ: No, Judge.
12 THE COURT: All right. Thank you, Doctor.
13 You're excused.
14 THE WITNESS: I can go? Thank you.
15 (At 10:59 a.m. witness is excused.)
16 MR. DUGGAN: People call Gerard Farrar.
17 THE COURT: Sir, if you'd step forward and
18 raise your right hand, please?
19 Do you solemnly swear to tell the truth, the
20 whole truth and nothing but the truth?
21 DR. FARRAR: Yes.
22 THE COURT: All right. Please have a seat in
23 the witness box.
24 DR. GERARD FARRAR,
25 being first duly sworn at 11:00 a.m., testified under

1 oath as follows:
2 D I R E C T E X A M I N A T I O N
3 BY MR. DUGGAN:
4 Q Please state your name.
5 A Gerard Farrar.
6 Q Are you a physician?
7 A Yes.
8 Q Do you have a specialty?
9 A Radiology.
10 Q Is there any further specialization within radiology
11 than just all radiology?
12 A Yes, neuroradiology.
13 Q Could you explain what the specific skill is or
14 professional commitment it is to neuroradiology?
15 A Oh, that's the study of the brain and spine.
16 Q And you deal with types of images?
17 A That's correct.
18 Q What do they include?
19 A Mostly CAT scans, MRIs; some ultra sounds and x-rays.
20 Q And how long have you been a doctor licensed to
21 practice medicine anywhere, including Michigan?
22 A Over 20 years.
23 Q Do you have any specialized certification?
24 A I'm board-certified in radiology.
25 Q How long?

1 A Over 20 years.
2 Q The previous witness explained the concept --
3 A Yeah.
4 Q -- of board certification, so I won't have you repeat
5 what that is. And were you working at Covenant
6 Hospital on February 22nd, 2015, and thereafter, in
7 addressing the needs of a patient named Roegan
8 Krukowski?
9 A Yes.
10 MR. DUGGAN: At this time, I would offer the
11 witness as an expert in the area of neuroradiology,
12 because he may express opinions during the course of
13 his testimony.
14 MR. BUSH: I have no questions, Your Honor.
15 MR. STURTZ: I have no objections to the
16 doctor's qualifications.
17 THE COURT: All right. Dr. Farrar will be
18 recognized as an expert in the area of neuroradiology.
19 MR. DUGGAN: Thank you, Your Honor.
20 BY MR. DUGGAN:
21 Q Doctor -- excuse me -- we have some medical records; I
22 propped open one, there, to page 59. It's Exhibit 3, I
23 believe, part of the hospital records. We also have,
24 on the computer, for the jury to see --
25 MR. DUGGAN: And I thank the jury for letting

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1 us know that there was trouble seeing the TV, we hope
2 everyone can see it.
3 Raise your hand if you can't see the TV
4 screen adequately right now.
5 Thank you.
6 BY MR. DUGGAN:
7 Q We have Exhibit 13 on the computer. The detective is
8 going to display this. Perhaps, if you would, step
9 over here, Doctor, come around. You can bring your
10 record, if you would like to have it. Come over this
11 way. And if you need a place to rest the record,
12 because I'm going to have you point to the screen, you
13 can have that spot.
14 MR. DUGGAN: Thank you, Mr. Sturtz.
15 BY MR. DUGGAN:
16 Q Just go all the way back alongside the TV screen. And
17 this is yours, if you want to demonstrate for the jury
18 anything.
19 First of all, from Exhibit 13, what is the
20 jury seeing?
21 You have to keep your voice up, nice and
22 loud.
23 A These are both MRIs of the brain. This one is what we
24 call an axial view. It's -- they're both sort of like
25 slices of bread; not the whole loaf. So this is a

1 slice from front to back, and this is a side slice.
2 And the reason that colors are different is because, on
3 MRI, you have different pulse sequences, which
4 determines whether water shows up as white or black.
5 And so these are different pulse sequences.
6 And on this image here, what we're seeing is
7 some fluid around the brain. Okay. This -- the gray
8 stuff is the brain; the outside is the skull and the
9 skin. And this is some fluid, which we're calling the
10 subdural hygroma, which is old fluid that's been there
11 for some time.
12 Q Let me ask you, does that belong there; should that be
13 there in the normal --
14 A No.
15 Q -- baby?
16 A No, that's not normal fluid there.
17 Q Hygroma means fluid?
18 A Yes.
19 Q And does it have a cause that makes it happen in the
20 brain?
21 A Often it's from hemorrhage that is old and has changed
22 its -- from thicker blood to thinner fluid. And that's
23 why we call it a hygroma, rather than hematoma, which
24 would be acute blood.
25 Q And acute blood has got a period of time during which

1 you call it acute?
2 A Yes.
3 Q Is that from after the trauma; is that when you start
4 the acute time?
5 A Yes.
6 Q A trauma, just so we understand, means what to you?
7 A An injury of some sort.
8 Q That thing may come apart in your hands, by the way.
9 But don't worry, they're all numbered.
10 A Okay.
11 Q The papers are all falling apart there.
12 With the acute hematoma, after the blow to
13 the head or whatever caused the traumatic cause, that
14 will turn into a hygroma at about what period of time?
15 A It can takes weeks.
16 Q Okay. And --
17 MR. STURTZ: I'm sorry, I didn't hear the
18 witness.
19 THE WITNESS: It can take weeks.
20 MR. STURTZ: Take weeks?
21 THE WITNESS: Weeks.
22 BY MR. DUGGAN:
23 Q And what about the image on the right, what does this
24 show us?
25 A So on the right side, this is a side view, and it shows

1 this same fluid that you see here, white, it shows it
2 as dark. But there's also another area here that's
3 brighter, and that's more acute blood; that's happened
4 recently.
5 Q Define recently.
6 A Within a day or two, or -- or a couple days.
7 Q And from the time of this image -- before this image,
8 is that what you're saying?
9 A Yes.
10 Q Before this image is made?
11 A Yes.
12 Q And the date of this image is when?
13 A This is February 22nd, 2015.
14 Q The computer stamps dates and times in?
15 A Yes.
16 Q This is just one of the -- or, a couple of the slices
17 that the MRI collects, as far as images, correct?
18 A Yes, there's over -- over 200 images.
19 Q If --
20 A Of this.
21 Q -- you need the detective to scroll to other images at
22 any time, please tell her, and she'll go to wherever
23 you need to go.
24 Do these two images together indicate a
25 normal brain situation?

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A No.
Q What is not normal?
A The first thing that's abnormal is the amount of fluid around the brain; the second thing that's abnormal is the new blood, here. And there's some little spots of blood, as well, in the -- in the subdural hygroma that shouldn't be there.
Q Can you tell the jury the significance, if any, to the number of them; these hygromas or hematomas, bleeds, what have you? The number of them, as -- and the location of them; what is significant to you about that?
A I'm not quite sure I understand --
Q Well --
A -- the question.
Q -- what I was getting at was, did they all happen from one trauma or do they appear to happen from different traumas?
A What we can say from this is that this fluid here is older fluid that's probably been there for at least a few weeks; whereas, this fluid here, that's new blood. That probably happened within a few days.
MR. STURTZ: Judge, for the record, I'd like to have the doctor explain this, since he's talking about two places, so we know which ones he's talking

about.
MR. DUGGAN: Well, for the record, there's two images, if that's what you mean. One is the one view, and one is the side view.
BY MR. DUGGAN:
Q When you refer to them now, even though we see you doing it --
A Uh-huh.
Q -- for the sake of the record, say, I'm looking at the --
A On the --
Q Are these images numbered?
A Yes. Up here, this one, is series four out of 10, image 15 out of 20.
Q Okay.
A And this one is series eight out of 10, image 11 out of 24.
Q Okay.
THE COURT: All right. Counsel, so handle that the best you can.
MR. DUGGAN: All right. The one on the left was the first one he referred to, the one on the right is the second one he referred to.
BY MR. DUGGAN:
Q And when we go, from now, please make reference to

that.
A Okay.
Q So if we ever pull this up later, the jury wants to look at it --
A Sure.
Q -- they know which one.
So you've now indicated that the age of these things is differently -- is different from their appearance?
A That's correct.
Q And that's based on your training and experience in reading these --
A Yes.
Q -- types of x-rays on numerous occasions before?
A Yes.
Q Would you say you've looked at thousands of MRI images, in your experience as a --
A Yes.
Q -- neuroradiologist?
A Yeah.
Q Have you looked at babies' skull images?
A Yes.
Q In terms of the severity of the trauma, what type of trauma would have caused one or the other of these two types; can you comment?

A Well, it would be hard for me to say how -- how severe the trauma was that would have caused this.
Q Okay. If -- and I offer this as a hypothetical -- if it was suggested that the baby was being given a bath and slipped out of the father's hands, the father kneeling by the side of the tub, such that the baby struck the edge of the tub, is that the kind of trauma that leads to either of these types of injuries, or could it?
A There's a possibility.
Q When you say it that way, it sounds like it's not as likely as likely?
A Well, it would kind of depend on -- a small bump probably would not, but a fall from a certain height with a little extra force from trying to grab the baby and it slipping could add some additional force, and that could happen.
Q Okay. What about other causes that, in your experience and training and study, have led to these types of images that you see; what other types of traumatic events can happen to a child?
A Well, there's -- there's certainly a lot of things that could happen; that a child could fall out of a crib, fall down the stairs, be in a car accident. There's several things that can cause an injury severe enough

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to cause a hemorrhage.
Q Are some of these injuries consistent with repetitive actions, rather than just a single blow, like you get falling to the floor from a crib, et cetera?
A There's no way, on these images, that I can state that there was repetitive injuries to that extent.
Q Okay. And what -- why is that; what's the limitation?
A We're seeing one picture in time, and we're not -- what we're not seeing is a series of pictures over a period of time. So all I can say from these images is that there are at least two times of injury; one is where this fluid on the left side that's white occurred, and the other is where the other blood -- and I'm pointing to the picture on the right -- occurred more recently.
Q Okay. You've heard the term shaken baby syndrome?
A Yes.
Q Is that a type of trauma?
A Yes.
Q Does that sometimes cause injuries like you observed on these --
A It can be.
Q -- images? And what is the process by which that shaking -- which is what I meant a while ago, when I said repetitive; like repetitive movements, back and forth; accelerate, decelerate -- leads to these

injuries in the blood vessels that cause hematomas and hygromas?
A Well, it's just that it's -- it's the shaking of the baby vigorously.
Q Okay. But tell us, mechanically, why a blood vessel which is sound and healthy and is pumping blood through the head stops doing that or is ruptured or injured; what -- what is the process?
A Well --
Q If you're comfortable answering that question.
A Yeah, that's -- the brain is encased in a bone that's hard, and the structures inside are soft. And it's sort of like if you took an egg and you shook it, the membranes inside would break. So it's similar in the brain, in that a sudden acceleration or deceleration can cause tearing of blood vessels, and they would bleed. And that could happen with shaking; it could happen in trauma, such as car accident, a fall, that sort of thing.
Q And are there other images that the detective should scroll through, that you need to use to explain any of your findings?
A I think these would suffice for showing everything I need to show.
MR. DUGGAN: Thank you. I'm done answering

[sic] questions. Should he remain there or come to the witness stand, Counsel, who's ever going next?
THE COURT: Mr. Bush?
MR. DUGGAN: Should he stay there?
MR. BUSH: Not necessarily.
MR. DUGGAN: Okay.
THE COURT: All right. You can return to the witness box, sir.

C R O S S - E X A M I N A T I O N

BY MR. BUSH:
Q Doctor, can conditions like we see on these two diagrams occur in a rough delivery?
A It's possible that the fluid around the brain on the left-hand side can occur, because that's old. Now, but the -- the more acute fluid that I pointed out on the right side would be unlikely to have occurred during delivery.
Q Okay. Too recent?
A Yes.
Q But, nevertheless, the one on the left could be a result of such a --
A It's possible.
MR. BUSH: I think that's all I have.
THE COURT: All right. Mr. Sturtz, cross-exam?

MR. STURTZ: Yes, Judge.

C R O S S - E X A M I N A T I O N

BY MR. STURTZ:
Q The emergency room doctor, she said there were two areas; one was deeper and one was more towards the surface of the -- of the hygromas, correct?
A I'm not quite sure what she's referring to.
Q All right. I'm pointing at it on the left-hand side. This is -- I don't know which the number is on here, but the one on the left of 13, there's a darker area. Is that the hygroma you've been talking about?
A No, that corresponds to the more acute blood, which, on the side view, is white.
Q That's right --
A Yes.
Q -- here?
A Yes.
Q All right. So this one, where I'm pointing on the right, that would be the top or upper top of the skull?
A Yes.
Q Corresponds to this one?
A Yes.
MR. DUGGAN: Excuse me, Counsel, could you take that? Because you just blocked half of us from seeing what you're talking about.

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BY MR. STURTZ:
Q This one?
A Yes.
Q Corresponds to this one?
A Yes.
Q This is a slice of the head, right?
A Yes.
Q Where is the other hygroma?
A The other one is the white on your left, all around.
Q All this?
A Yes. And that corresponds to the darker, on the right.
Q Here?
A Yes.
Q And this, this is the old one?
A Yes.
Q And this is the new one?
A Yes.
Q The old one would be more than several weeks?
A It could be anywhere from a couple weeks to several weeks.
Q All right. And the one we see on top, here?
A That would be within a few days.
Q Within a few days?
A Yeah.
Q Now, these -- these hygromas that we see here and here,

those are little bursa sacs, aren't they, filled with fluid?
A No.
Q What are they?
A One is properly termed the hygroma; that would be the white fluid, okay? And that is fluid that's between a few layers of brain, which normally shouldn't have much, if any, fluid. The other one that's the darker or the -- on the right-hand side, the brighter stuff, that's what we call a hematoma, which is sort of like clotted blood.
Q You can't say what kind of trauma caused these hygromas?
A No, I could -- would only be able to guess.
MR. STURTZ: That's all I have, Doctor. Thank you.

R E D I R E C T E X A M I N A T I O N

BY MR. DUGGAN:
Q Doctor, you've aged the hygromas on the left image, and we've only had two images up here the whole time, for the record; so it's series four of 10, and then 15 of 20, as from a couple to a few weeks, to --
A To several weeks.
Q To several. Okay.
A Yeah.

Q Do you see the date of birth of the baby on here is December 6, '14? These images are two and-a-half months --
A Yeah.
Q -- after birth? If birth caused something, some type of injury, some traumatic event in birth caused some type of injury that would lead to such hygromas, would they have resolved by the time of February 22nd?
A You would expect them to have mostly resolved.
Q Would they be this pronounced, by that time?
A It would be unlikely that, over two and-a-half months, that they would be that large.
MR. DUGGAN: No further questions.
THE COURT: Any questions from the jury for this witness?
All right.
MR. STURTZ: Wait, I have a follow-up to that question.
THE COURT: All right. Go ahead. And then we'll get the jury questions.

R E C R O S S - E X A M I N A T I O N

BY MR. STURTZ:
Q What happens if there was a C-section and the baby got caught in the canal, birth canal, and had very severe problems with the delivery of the baby; would the

pressure that was exerted upon the skull cause these hygromas on the outside?
A It's hard to say. I don't know what a lot of pressure during a birth would be, but the birth canal is relatively soft, so it's unlikely that there would be severe trauma during that.
Q When you say the birth canal is soft, it has to pass or open up the pelvis of the female?
A Sure.
Q And in doing so, that exerts quite a bit of pressure on the head and the bones, doesn't it?
A Some. Most people survive.
MR. STURTZ: And a lot of people used to die back then, in the old days.
Thank you, sir.
THE COURT: Mr. Bush, did you have something?

R E C R O S S - E X A M I N A T I O N

BY MR. BUSH:
Q Just -- how about a chiropractic adjustment involving holding a child by his ankles, you know?
A I've never been to a chiropractor.
Q Okay. But a violent shaking, that which you describe in your egg example, could cause this type of --
A That's a correct statement.
MR. BUSH: All right. Thank you.

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MR. DUGGAN: Nothing further.
THE COURT: All right. The jurors have questions.
In front. Is there any other question?
Okay. Counsel, please approach.
(Bench conference.)
THE COURT: All right. Doctor, if you can answer this specific question, if you're qualified -- let me give you the question, and then you can tell us if you think you can answer it, and then what your answer would be.
MR. DUGGAN: Excuse me. Can the jury hear the Court? Because I was having difficulty because of the fans.
Thank you.
THE COURT: Sit down.
If the older fluid in the left image happened during a fall, is there any way the hematoma in the right image happened as a result of that fall?
THE WITNESS: I can answer that.
THE COURT: Okay. Go ahead.
THE WITNESS: Because of the timing of the newer blood, that wouldn't -- probably not have occurred at the time of the hydroma that we saw on the left.

THE COURT: Okay. Any follow-up, Counsel?
MR. DUGGAN: No, Your Honor.
THE COURT: All right. You can step down, sir.
THE WITNESS: Thank you.
THE COURT: You're excused.
(At 11:25 a.m. witness is excused.)
THE COURT: It's about 11:30, Counsel. Do you --
MR. DUGGAN: I have one more witness I'd like to bring in.
THE COURT: Okay.
MR. DUGGAN: We call Michael Dense.
THE COURT: Sir, if you'd step forward right here, and raise your right hand, please?
Do you solemnly swear to tell the truth, the whole truth and nothing but the truth?
DR. DENSE: I do.
THE COURT: Please have a seat in the witness box.

DR. MICHAEL DENSE,

being first duly sworn at 11:26 a.m., testified under oath as follows:

D I R E C T E X A M I N A T I O N

BY MR. DUGGAN:
Q Please state your name.
A Michael J. Dense.
Q The microphone is okay, so you can stay right in the position you are; you don't have to lean in to answer. What is your profession?
A I'm a chiropractor.
Q Do you have an office out of which you have practiced for some time?
A I do, on Gratiot Road.
Q And that's called Shields Chiropractic?
A It is.
Q Do you practice there with another chiropractor named Barrigar?
A Yes, Dr. Jason Barrigar.
Q Are you the two chiropractors in the office?
A We are.
Q How long have you been licensed as a chiropractic physician in Michigan?
A Since 2009.
Q Have you previous licensures, other states, prior to Michigan?
A No, I became a chiropractor -- I went back to school in my -- and graduated in my 50s.

Q All right. And did you have any previous employment in the medical profession?
A I worked at Preferred Chiropractic as an intern, and that's it.
Q Okay. And that was in conjunction with studies to obtain your degree and licensure?
A That's correct.
MR. DUGGAN: At this time, I would offer the witness for voir dire. To the extent that he offers any testimony in the form of expert opinion, based on his qualifications, I would offer him in the area of chiropractic medicine.
THE COURT: All right. Any questions or objections for this witness from counsel?
MR. BUSH: I have no questions, at this time.
MR. STURTZ: I'm satisfied, Judge, with the judge -- with the gentleman's qualifications.
THE COURT: All right. This witness will be qualified as an expert in the area of chiropractic medicine.
BY MR. DUGGAN:
Q Dr. Dense, did your office receive a call on which it acted to provide services to an infant named Roegan Krukowski, on February 9, 2015?
A That's correct.

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Q And your office generated various records associated with the treatment provided for that baby?
A That's correct.
Q And now that you're in court, and the jury has listened as to which -- the system you had would allow you to describe that treatment, as if it was actually to a baby?
A We have --
Q What is the form?
A It's an EHR system that -- that is not perfect, and it talks as if it was the patient, or when you type it in it talks as if it was the patient that was giving you the information. And we did send in an addendum that said it was as the mother said.
Q All right. In other words, the EHR is some type of electronic record-keeping?
A Electronic health record, correct.
Q And so a mom has to speak for a two-month-old baby?
A That's correct.
Q And were you with the mom during the examination and treatment of the baby?
A Yes, I was.
Q Were you the first of the two chiropractors --
A Yes, I was.
Q -- to treat the baby? And have you often received

referrals from Dr. Elvira Dawis?
A Yes, quite a few.
Q And was Roegan Krukowski the first infant you ever treated?
A No.
Q Is it appropriate for infants to receive the identical type of chiropractic adjustments and manipulation that adults get?
A No, it's not.
Q Is that part of your training as a chiropractor, at school and in your profession?
A Yes, it is.
Q Could you give the jury, first of all, a sense of -- and we're going to get to the specifics of Roegan in a minute -- a sense of how it's different for babies?
A Well, a baby is much more fragile; it's not completely developed. However, during the birthing process some things can happen with the baby, so we do adjust babies. And I've adjusted quite a few infants during my -- my time as a chiropractor in the past 10 years. And an adult has much more tension in the body because we're stressed, and so there's more muscle mass to go through than an infant child; and it's much easier to adjust a child and an infant than it is an adult.
Q And for those who've been to a chiropractor, it can be

quite audible?
A Yes.
Q The adjustments?
A Yes, they're -- that's what we call an audible. And it's the gasses that are being released between the vertebrae; and it's nitrogen gas that's released. And it gives that little popping sound. And that's why people sometimes say we're being cracked.
Q Bones aren't cracking?
A Bones are -- do not crack.
Q They don't fracture?
A A bone can fracture, but --
Q When an adjustment is made?
A But when an adjustment is -- no.
Q All right. And it's predominantly the spine and the head area you work on when you do chiropractic?
A That's correct.
Q So give the jury a visual image of how you would take a two-month-old baby and handle it --
A Okay.
Q -- to do it.
A Because they're kind of floppy, we have to stabilize a child. So what I do is, I put the child between my legs, and then I hold the baby up with my two fingers. These are called chiropractic index fingers. And

they're held, and we palpate the baby on the way up the spine, to look for any malpositioning of the vertebra.
Q Now, let me ask you, how is the baby held by the two -- your two legs?
A I stabilize the baby between my legs.
Q What part of the baby?
A Hips, usually.
Q Okay.
A If this is the baby, it would be like this.
Q Now, pull the chair up.
KRUKOWSKI JUROR NO. 14: Yeah.
BY MR. DUGGAN:
Q So that we can see what you're talking about. As a matter of fact, come right over here, and I'll get you a chair.
MR. DUGGAN: If a juror can't see, please tell us.
BY MR. DUGGAN:
Q Go ahead.
A If this was the baby and this was the hips, I would hold the hips between my legs, like that, while I'm maintaining the baby this way, keeping him upright, and then I'm feeling the baby's spine. And then I go up to the neck and feel the neck. Then I'll take the baby out, and we'll lay the baby this way and feel for the

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1 baby's neck, to see if there's any malpositioning in
2 the neck area for the baby.
3 Q What position is the baby, face down or up?
4 A Its spine would be up.
5 Q It's looking up at the ceiling?
6 A Yes, the second time.
7 Q Okay. Is the baby ever suspended by its feet?
8 A It is. Matter of fact, the way -- the easiest way to
9 adjust a baby, because a child is so easy to manipulate
10 because it is more loose than an adult, we actually
11 hang a baby upside down. Now, it sounds terrible, but
12 all it is is, we grab the feet, we hold the baby upside
13 down, and just give it a little pump, just like that.
14 And what that does is it makes the baby arch its back.
15 And when the baby arches its back when it's suspended,
16 because now it's decompressed -- the spine is
17 decompressed, like those decompression tables. Have
18 you ever seen that, where they -- you can hang upside
19 down; or the boots that you put on? I'm doing that to
20 the baby, and the baby will arch. And when the baby
21 arches, then the baby's spine will align itself. And
22 sometimes it might need a little more help, but that
23 baby will usually go right like this, and you'll hear,
24 sometimes, the audibles of the baby.
25 Q Are they softer or the same volume as an adult?

1 A The audibles?
2 Q Yes.
3 A Much softer. It's more like a little click than it is
4 a pop, with an adult, or the crack. Because a lot of
5 people say that they -- they hear a crack.
6 Q Based on your training and experience, suspending a
7 baby upside down doesn't injure a baby or fracture a
8 bone, does it?
9 A No. The baby is only held upside down for a very short
10 period of time. Naturally, if you hold the baby upside
11 down for long periods of time or if anybody is
12 suspended upside down for long periods of time, can
13 cause a problem. It's only held upside down long
14 enough to move it; to make the baby arch its spine and
15 move its back, and then it's put back down.
16 Q All right. You can put the baby down, anywhere you've
17 got it.
18 Would that be the protocol or the variety of
19 things you do with the baby, what you've just covered
20 here for the jury?
21 A That's standard protocol.
22 Q Okay. And when you saw this baby, Roegan Krukowski,
23 did you go through that process?
24 A I did.
25 Q And was the mother around?

1 A Yes, mother, and the grandmother was there, too.
2 Q All right. And are they in the room when you do all
3 the things you just described?
4 A The first time -- well, the grandmother was invited
5 into the room, she could come into the room, but the
6 mother is always with the child.
7 Q And is that room a room where just you, the patient,
8 and the support people are; the patient's parent or
9 grandparent?
10 A The very first adjustment is usually done in a private
11 room. I have a private room, although the window is
12 still open. The -- we have glass on our doors, so you
13 can see in. They do have a -- Levolor blinds that you
14 can close, but they were open, at the time.
15 Q And --
16 A Subsequent adjustments are done out in the adjusting
17 bays.
18 Q That's what I was going to get to. There are secondary
19 processes that happen, where it's more public. At
20 least, there's more patients that can see what's
21 happening?
22 A My clinic, we're a pretty large-volume clinic. It's an
23 open-bay adjusting, similar to physical therapy, where
24 things are done out in the open, so people can see
25 everything that's going on. And the second and third

1 adjustments to Roegan were done out in the open-bay
2 adjusting areas, with other patients around.
3 Q And when you say second and third, you mean subsequent
4 appointments?
5 A Yes, he had three.
6 Q Not on the 9th; not on the --
7 A Not on the first day.
8 Q And what was the specific complaint the mother and/or
9 grandmother provided to you for why this baby needed
10 your service?
11 A Well, we got a call from Dr. Dawis that said that the
12 baby was coming in, that the baby just wasn't feeling
13 right, which we just took as being colicky. And the
14 mother came in, and according to my notes, the mother
15 said the baby just seems to be uncomfortable and seems
16 to just be sore all over.
17 Q And any secondary -- any other complaints specifically
18 listed there? I'm looking at your July -- well, your
19 report of February 9, 2015.
20 I'll show you an exhibit, it's been received
21 as Exhibit 2. And you can have this. This is the one
22 the jury will ultimately have as the records to review.
23 Does that look familiar to you?
24 A Yes. It says that Ms. -- Mr. Krukowski reported --
25 again, it's the mother -- is experiencing pain in the

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1 area of the cervical spine. This is further described
2 as tightness generalized --
3 Q Slow down just a little.
4 A Oh, I'm sorry. I'm a doctor, I'm used to reading fast
5 and talking fast. On today's visit, Mr. Krukowski
6 reported that he is experiencing pain in the area of
7 the cervical spine. This is further described as
8 tightness generalized in the posterior left cervical
9 area and post -- posterior right cervical area.
10 Q Pause. Show us where.
11 A And I was just going to say that, because this is just
12 how the -- the software writes it, but it's the whole
13 neck; basically, on both sides of the neck the baby was
14 tight.
15 Q Go ahead, or, continue.
16 A Roegan's -- now, on this part it actually says,
17 Roegan's mother also stated that he has been
18 experiencing mid back pain. This is further described
19 as tightness generalized in the left medial upper
20 thoracic region and right medial upper thoracic region.
21 Again, that's the upper back, from here to here, both
22 sides.
23 Q Did you do x-rays?
24 A No, we don't do x-rays on infants.
25 Q Okay. And did it appear, from your experience and

1 training, and going from seeing the baby at the
2 beginning and then after, the baby experienced any
3 relief from the treatment?
4 A The baby seemed to be relieved after the first
5 adjustment. There was no crying. Roegan was not
6 crying, at this time. And sometimes you get an
7 immediate relief and sometimes you don't. It's kind of
8 hard, because you can't ask a two-month-old if they are
9 feeling better. One of the things that we say in
10 chiropractic, it's not to make you instantly feel
11 better, it's to make you instantly heal better; so it's
12 meant for the baby, after several visits, to start
13 feeling better. So it would be a guess to say if
14 Roegan was actually feeling better at that specific
15 moment, but there was no distress, at the time.
16 Q And when you observed the baby, did you see it in its
17 diaper or was it clothed?
18 A The baby was clothed. If -- if I don't have any reason
19 to suspect anything other than that, I can palpate
20 through clothes. We're taught how to be able to do
21 that and feel for abnormalities of the body. And my
22 expertise is limited to the spine, which is the neck,
23 the upper back and the lower back, and then sometimes
24 extremities. But there was not an extremity issue, at
25 the time.

1 Q Do you, in addition to the records in front of you,
2 have a natural memory of dealing with Roegan?
3 A Briefly. I remember Roegan coming in on subsequent
4 visits, which I didn't see him. But at one occasion
5 the mother brought the baby by the office, which is at
6 the front of the -- in the front of the office; the
7 office staff, I'm saying -- and said, look, see how
8 much better he is. And after every adjustment, he
9 seemed to get better. As a matter of fact, she
10 expressed that on her next visit, that the baby seemed
11 to be doing better.
12 Q And you're now going into Dr. Barrigar's notes?
13 A Dr. Barrigar's notes, correct.
14 Q Were you provided some handwritten notes to review,
15 purportedly made by the grandmother, as to this baby?
16 A I just got some.
17 Q Okay. Did you have a chance to read them?
18 A I looked them over, yes.
19 Q Okay. I want you to comment on what I have here, in
20 front of me, what purports to be those notes; that you,
21 as the chiropractor, put the baby between your knees,
22 and with your hands on the baby's torso, gave him a
23 jerk, and Reagan -- Roegan cracked.
24 A I don't recall that, but I do palpate and move it up;
25 and there could have been some cavitation. And -- and

1 I would have told them, if the baby did make the noise,
2 that that would show that he was out.
3 Q He was out of adjustment?
4 A Out of adjustment.
5 Q So, just like an adult spine can be adjusted back into
6 proper alignment, a baby's can, too?
7 A Yes, correct. The most traumatic experience a person
8 has in life can be birth, and that's why we take care
9 of babies.
10 Q All right. And then the hanging upside down, it's --
11 it was claimed, in this note, that the baby was hung
12 upside down. Gave the baby two jerks?
13 A As I showed you with the Kleenex box as the baby, it's
14 not a jerk, it's a twist. Just like this, with my
15 hands.
16 Q And then the claim is made that he was laid on the
17 table, and his neck was cracked from side to side?
18 A Again, the neck is not cracked, it's adjusted; it's a
19 manipulation. And it makes a little audible. And
20 Roegan did have an audible on his cervical. If we --
21 when we adjust a baby, we only use our two fingers, and
22 we hold the baby. We put the neck in tension, and we
23 just move, like this. And the baby --
24 Q You're moving your index fingers, each one in sequence?
25 A I'm moving them -- I'm palpating first, to find where

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the bone is out of place, and then I just move it, just like that. And that's all that is.
Q The kind of force that would not leave a bruise?
A It should not leave a bruise.
Q But it would be the kind of force that would hurt, just -- if I touch my hand it doesn't hurt, but if I splick my hand with my finger, like that, it might sting. At which end of that spectrum is it?
A Could be somewhere in between.
Q Did the baby cry in response to these; if it was out, it hurts?
A No. Matter of fact, we don't get a lot of babies that cry when they get an adjustment. It's when they get a little bit older and they hear the audible, and they realize that something is happening. But it's usually not from hurting, it's usually from fear, because they heard this noise or the doctor is touching them. They don't -- a lot of babies and -- don't like to be touched. When we're done adjusting the baby, we always hold the baby and then give it back to the mother.
Q Based on your treatment of Roegan, did you develop a plan for future appointments?
A Yes, we wanted to see baby several times a week for a couple of weeks. The mother didn't bring the baby in for a couple of visits. And, actually, it was --

missed the 12th and the 16th appointments, and was scheduled back on the 18th, and came in on the 18th. And Dr. --
Q Was there one more appointment after the 18th scheduled?
A There was on the 20th, and it was a no-show. Left message. That's what the secretary wrote.
Q From the notes both you and Dr. Barrigar prepared and filed, in this case, did you have any indication that the baby had additional health problems that couldn't be addressed by what you were doing?
A Not that I noticed.
MR. DUGGAN: No further questions.
THE COURT: Mr. Bush?
C R O S S - E X A M I N A T I O N
BY MR. BUSH:
Q You have the exhibit in front of you? Could I just see what you have?
Thank you.
What is -- what your file shows -- and correct me if I'm wrong, but we're dealing with a -- looks like a two-page report on Shields Chiropractic stationery, dated July the 6th, 2015. That's one document. Am I right?
A I have the -- when we print these up, it tells us what

date it's printed up. The date of the exam was 2-9 of 2015.
Q I understand.
A Okay.
Q But the document is dated July 6th, 2015, am I right?
A The one I have here says June 30th, 2015. This one says July 6th on the top, on the exhibit. That's what day this one was printed.
Q Okay. There's another one dated June?
A Whenever you print it up, it comes up with the date that you print it. It still says the date of the examination, but the date that I print the -- that we print it off.
Q Okay.
A If we print it right from the electronic health records.
Q Right. So the July 6th document deals with a -- first of all, February 9th, 2015 exam?
A Yes.
Q And then there's a -- another document, consisting -- looks like six pages, on Preferred Chiropractic of Shields stationery.
A That's our intake.
Q All right. I'm looking at this one for Roegan Krukowski, dated February the 9th. And, apparently,

over your name, on page three --
A I don't understand where you're -- are you getting to the question of what is Preferred Chiropractic and what is Shields Chiropractic; is that what you're asking?
Q Well, I've got documents on the stationery of Preferred Chiropractic.
A That's correct, because we used to be known as Preferred Chiropractic of Shields. I purchased Preferred Chiropractic of Shields, and all our letterhead was changed to Shields Chiropractic. We've always been known as Shields Chiropractic, doing business as Preferred Chiropractic of Shields. I changed it to just Shields Chiropractic, and when we -- naturally, I don't have any old stationery that's left over, so when we -- when we printed these, it was up on the new stationery. It's still the same company, the same d/b/a.
Q All right. Do you have both documents in what's in front of you; do you have the Preferred Chiropractic of Shields?
A Yes.
Q And that's about six pages?
A Yes.
Q All right. And looks like the first two pages are over your -- your name, signature, I assume. I don't have a

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1 signature, but I've got your name. Michael J. Dense,
2 D.C.?
3 A I don't see what you're talking about, sir.
4 Q Looks like it was faxed. This was faxed or something.
5 A And what is the date?
6 Q Well, looks like it was faxed on February the 24th.
7 A We still would have been known as Chiropractic of
8 Shields then.
9 Q Yeah, and the -- but this is dealing with the February
10 9th.
11 A Right, which is this, right here.
12 Q First two pages, right; February 9th physical?
13 A Uh-huh.
14 Q And that's two pages. And at the bottom is your name?
15 A Yes.
16 Q On page two, right?
17 A Yup.
18 Q Okay. And then, at least on the one you have,
19 apparently, there's the addendum that was put on there
20 to straighten out whatever confusion there might arise
21 when it looks like Roegan Krukowski was telling you all
22 about his problems?
23 A Yes.
24 Q That it was essentially his mother that was telling
25 you?

1 A That's correct.
2 Q Okay. Then I've got two other pages to this, dated
3 February 18th, 2015; at least, regarding an office
4 visit on that day, right?
5 A That's correct.
6 Q And you -- that's over Jason C. Barrigar, D.C.
7 A Yeah, that's his name, yes.
8 Q Apparently, on yours, again, you've got -- well, yeah,
9 the addendum straightening out the language about who
10 was the source of the information?
11 A Yes.
12 Q Then you have -- the last page I have a copy of, looks
13 like notations of missed appointments?
14 A The 2-20?
15 Q Two -- looks like there was a visit on 2-12,
16 February 12th; and then a missed appointment on
17 February 16th?
18 A Correct.
19 Q And February 20?
20 A And then the 20th.
21 Q Now, this was ultimately put on Shields Chiropractic
22 stationery, right?
23 A Because we don't print -- because they're electronic
24 health records; they get printed up at the time
25 somebody requests the records. And at one time we were

1 Preferred Chiropractic of Shields, the next time we
2 were Shields Chiropractic.
3 Q Okay. So at the time of the request, apparently,
4 that's when Shields came into the picture?
5 A Yes.
6 Q Chiropractic?
7 A Yes, same address on the bottom.
8 Q But they basically contain the same rendition of
9 events, right?
10 A Yes.
11 Q I'm referring now to the February 9th physical exam.
12 And the -- it's detailed on both of these documents,
13 here. This indicates that, apparently, the mother told
14 you that the symptoms were caused by a gradual onset
15 since birth. And the mother was unsure of the exact
16 date, but indicated that it was several months ago, is
17 that right?
18 A Yes.
19 Q And that the complaints started, she said, at that
20 time, that he seems uncomfortable and sore all over, as
21 a -- prime -- primarily demonstrates neck pain, and a
22 secondary complaint of mid back pain.
23 A That's because they -- the patient presented with that,
24 yes.
25 Q Okay. The mother told you about the child being

1 uncomfortable and sore all over, apparently; and then
2 you say, when the patient presents with it, you're
3 talking about that's during your exam or you --
4 A Well, that's --
5 Q -- detected it or --
6 A That's still subjective. The mother said that with --
7 the baby seemed to be sore all over. This area.
8 Q Then mother apparently indicated there was apparent
9 pain in the area of the cervical spine, described as
10 tightness, generalized in the posterior left cervical
11 area and posterior right cervical area. That would be
12 the neck?
13 A It's the neck. The way the EHR system breaks it down,
14 you just can't say the whole neck, you have to say the
15 right posterior and the left posterior.
16 Q Then the mother goes on to tell you that he's
17 apparently experiencing mid back pain, and described as
18 tightness, generalized in the left medial upper
19 thoracic region and right medial upper thoracic region,
20 being the back?
21 A Being the back.
22 Q So we're talking back pain and neck pain, apparently?
23 A (Witness nodding.)
24 Q Go to the next page. You, under the heading of
25 objective, you describe an examination, right?

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A That's correct.
Q For altered spinal motion?
A Yes.
Q What did that consist of?
A That's what I showed on here. When I do the motion palpation, I'm looking for fixation of the spine. And I found it at C1-C2, that's the top two vertebrae in your neck; at C6 and C7, which are right down in here, towards the bottom of the neck, the top of the back; and then the upper portion of the back is C-4 and -- or, excuse me, T4 and T5. That's thoracic. T means thoracic.
Q So, and your examination was the one you talked about with the child between your knees or something?
A Yes, and on the table.
Q Okay. And palpation is what?
A Palpating the body means that you're feeling for hypertonicity, which means tight muscles.
Q Okay.
A And bones being out of place.
Q You indicate here that that revealed a slight degree of hypertonicity?
A That's correct.
Q Of the suboccipital muscles. Being where?
A That's right here.

Q In the head?
A In the head, right -- well, it's right below the -- your occipital bone is right here. Suboccipital would be right underneath it. It's where the muscles kind of attach into the -- into the head.
Q Okay. Cervical paraspinal muscles?
A If this was the spine, paraspinal means it's -- it runs along the spine. So it would be right next to the bones.
Q And the cervical area, be in the neck?
A And that would be the neck.
Q Now, you talk, in your next paragraph, ortho neuro; labeled ortho neuro. First of all, you indicated, reflexes were -- tested were normal?
A When I had the baby on me I tapped the baby, and the baby had slight movement on -- on the knees and in the elbow region. The baby will move.
Q Okay. And then you cite a Jackson compression test --
A Yes.
Q -- being positive bilaterally, you said. What is that?
A When the baby --
Q What did you do?
A -- was on the table -- this would be the baby, again. When the baby is on the table I push the head to one side, then push the head to the other side, while my

fingers are underneath, feeling for tonicity and feeling for tightness in the -- in the spine, the cervical spine, which is the neck.
Q All right. You indicate here you're behind the patient, who's -- you've got here seated. Is the patient seated?
A Again, it's EHR records. I'm -- the baby is on the table, and I'm sitting next to the baby. And --
Q So the baby is not sitting anywhere?
A No.
Q The baby is on -- laying on the table?
A Nope.
Q Right, laying on the table?
A Well, lay -- the baby was laying down.
Q You indicate, patient laterally flexed the head.
A I would flex the head with my hands, this way.
Q And move -- that means move it --
A A baby can't -- you can't tell the baby to flex his head, so I have to.
Q I understand. But when you flex it, you mean you moved it?
A I moved it.
Q And you indicate then, that while the examiner -- being you -- is in clasped hands over the patient's head, and pushed down?

A Very gentle. All I'm doing is looking for tonicity when I'm doing that with the baby. And I can feel tension in the neck muscles when I push both sides.
Q All right. Well, and you reported an increased amount of pain was elicited with this maneuver?
A Right, because that's how the EHR system does it. The baby can't tell me, yeah, that hurts, so I have to do it by touch.
Q Then we go to the shoulder depression test, which you said was negative.
A Uh-huh.
Q And that -- that's what?
A The baby is laying down, and I move the baby's head this way, and then this way.
Q And you indicate the patient is lying supine. What does that mean?
A That's face up.
Q And you stood at the head of the patient on the affected side. What side was that that's --
A Actually, I was on this -- I would be on the baby's right side, and moving the baby.
Q Okay. And you say, with one hand the examiner pushed the shoulder caudally. I don't -- C A U D --
A It's away from the head.
Q Huh?

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A Away from the head.
Q And with the other hand, laterally flexed the patient's head toward the opposite shoulder?
A Yes, like this. And, again, it's the way it's worded in the EHR. It's a very -- just gentle maneuver, like this.
Q Then you said, at the same time the patient rotated the head. I take it you mean you rotated the head?
A Well, during --
Q Not the patient or --
A During the exam for the shoulder depression, if there's a significant amount of tension there will be a response elicited like that. And the human -- or, I mean, an adult human would probably say, ouch, that hurts. But a baby would flex. The baby didn't flex and squeeze up like that.
Q You end up -- you note, then, the patient's radicular pain did not significantly change?
A That's what I just explained. Yes, he didn't -- he didn't jerk.
Q All right. Then you've got a section called assessment. Patient is suffering acute symptoms. Chiropractic adjustment of the spinal vertebrae revealed very good movement at -- and you've got C1, C2, C6, C7, T4 and T5. I take it those are cervical

and thoracic --
A Segments.
Q -- segments of the spine?
A Correct.
Q Appeared to handle the adjustment well?
A He did, yes, that's correct. There was no crying or any adverse reaction after the adjustment.
Q Then you -- then you've got a diagnosis, looks like four sections. Nonallopathic lesions of cervical reason -- region, not elsewhere classified. What does that mean?
A A nonallopathic lesion means that it's not dislocated, it's just a -- a bone is -- what is known as a subluxation. Subluxation means less than a dislocation, and the bones are just slightly out of place. And that's what subluxation would be. And we call it -- or the medical billing community calls it a nonallopathic lesion of the cervical region.
Q Okay. Cervicalgia?
A Cervicalgia.
Q That's number two on the diagnosis?
A That's correct.
Q What is that?
A That's neck pain and tightness.
Q Then you've got a nonallopathic lesions of the thoracic

region, not elsewhere classified. I take it --
A That's with T4 and T5. That's where I found the subluxations.
Q And, finally, pain in thoracic spine?
A Correct.
Q Apparently, now Jason Barrigar is in your office?
A That's correct.
Q He's your associate or --
A He is now a partner, but he was an associate, at this time.
Q Okay. And he did, basically -- there was another office visit February the 10th?
A Yes.
Q From the record?
MR. DUGGAN: Mr. Bush, if I may offer, Barrigar will testify this afternoon, if you wanted to get a directive from him.
MR. BUSH: All right. Fine.
BY MR. BUSH:
Q Well, just -- and another one February the 18th, 2015, with his name --
A Yes.
Q -- at the bottom.
MR. BUSH: Okay. All right. That's all I have, at this time.

THE COURT: All right. Mr. Sturtz, how long are you going to be?
MR. STURTZ: Well, at least 15 minutes, Judge. Maybe more.
THE COURT: Counsel, why don't you approach.
(Bench conference.)
THE COURT: All right. Ladies and gentlemen, we are going to try and finish with this witness before we break for lunch.
Go ahead, Mr. Sturtz.
C R O S S - E X A M I N A T I O N
BY MR. STURTZ:
Q Witness, you have practiced chiropractic medicine for, what, 17 years?
A No, I -- I got my license in 2009.
Q And you've been practicing continually since then?
A I have.
Q Is there something like a board certification of chiropractic medicine?
A There is.
Q Have you been board-certified?
A I have.
Q You described to the ladies and gentlemen of the jury, here, what you did to this baby in the chair; you held it upside down, you maneuvered its head, and you

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1 cracked its back, correct?
2 A I did not crack its back, I adjusted its back.
3 Q You adjusted its back. In adjusting its back you held
4 it by its feet; and how many times did you raise him up
5 and down?
6 A I didn't raise him up and down at all, I showed the
7 jury -- what I did was, it's -- the maneuver that we're
8 taught is, you go like this. It's a movement of the
9 wrists. And that's all it is. The baby will
10 automatically flex its back.
11 Q Where are your fingers when you're doing this flexing
12 back and forth?
13 A I'm holding the feet of the baby. Now, I will say one
14 thing. I explain to the mother or the father; who's
15 ever in the room at the time, exactly what I'm doing
16 beforehand, so the mother or whoever is in the room
17 knows exactly what I'm going to do before I do it. I
18 explain that to all my patients, whether they're
19 infants or whether they're a -- an adult. I'd explain
20 that I was going to be holding the baby upside down, so
21 the parents knew -- the mother knew that I was
22 holding -- going to hold the baby upside down.
23 Q This flexion back and forth is what, three times?
24 A Twice.
25 Q Twice. And then you lay the child down, and then you

1 move its head from left to right on the examining
2 table, is that correct?
3 A Now, this time I was ready to adjust the baby. The
4 baby had already been examined. I put the baby on my
5 lap, and I adjusted the baby on my lap for his cervical
6 spine.
7 Q So this movement of the wrists that -- by holding it
8 upside down, doesn't adjust anything?
9 A It will move the back; it would -- forces the baby to
10 move its back, and then the body will self-align
11 itself. It should self-align itself.
12 Q Did Roegan jerk when you did that?
13 A He stretched his back out.
14 Q He stretched his back out. And how many times did he
15 do that stretching-back motion?
16 A Maybe once or twice. I do it two, so he probably did
17 it twice. I don't recall that, I just know that he
18 jerked his back. Excuse me, he did not jerk his back,
19 he stretched his back.
20 Q Did the child respond by crying or any type of yelling
21 or --
22 A Not at all.
23 Q -- response? Nothing at all. And then you laid him on
24 the table?
25 A He was on my lap.

1 Q He's on your lap. And then you do the adjustment?
2 A On the neck.
3 Q On the neck. And is that the extent of your on-hands
4 touching of the baby?
5 A That's correct.
6 Q Now, the grandmother was in the room, along with the
7 mother, correct?
8 A That's correct.
9 Q And that was for the visit on 2-9. Was the grandmother
10 there for other subsequent visits?
11 A Not that I'm aware. I didn't see the baby the other
12 two times.
13 Q You didn't see the baby. So if the grandmother was
14 there with Barrigar, and Barrigar did the other two
15 adjustments, you wouldn't know that?
16 A I'm sorry, what was the question?
17 Q You wouldn't know if the grandmother was there with the
18 mother on the --
19 A I have a very busy clinic. I wouldn't -- I wouldn't
20 know.
21 Q Very good. Your association with Dawis is what, she
22 sends you all her babies?
23 A No, she sends me a few. We -- we probably have about
24 20, 25 patients that have been referred to us from
25 Dr. Dawis, and they're not all babies.

1 Q As part of this referral system, do you pay her any
2 money for the referral?
3 A I do not.
4 Q And you prescribed no drugs for the child, at that
5 time?
6 A No, chiropractic is drug-free.
7 MR. STURTZ: That's all the questions I have.
8 THE COURT: All right.
9 MR. DUGGAN: Nothing further.
10 THE COURT: Any questions from the jury for
11 this witness.
12 Okay. We have a couple. If you could get
13 them, Mr. Duggan?
14 MR. DUGGAN: I will.
15 THE COURT: Counsel, would you approach,
16 please?
17 You have two?
18 MR. DUGGAN: Yes.
19 THE COURT: Okay.
20 (Bench conference.)
21 THE COURT: All right. We'll do the short
22 one first. Can we get all the dates of the
23 chiropractor visits?
24 THE WITNESS: Yes.
25 THE COURT: If they're in your record.

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THE WITNESS: February 9th, February 10th, and then February 18th.

THE COURT: Would you characterize it as a common or a typical reaction for parents or grandparents of infants to be surprised, apprehensive or even disturbed by the manipulation performed during the adjustment?

THE WITNESS: Is that a question?

THE COURT: Yeah.

THE WITNESS: That's a very good question, and that's why I stated that I explain what I'm doing when I'm going through my manipulation, because it's scary. And it's not the first time that I've had a mother and a grandmother in the same room with me, and I've actually -- one time I had a baby in my arms, that the grandmother was going like this, and the mother was just sitting there, smiling. And the baby was having bowel problems, hadn't gone to the bathroom, hadn't gone number two in seven days, and did the same thing; the two flicks like this, I adjusted the neck, I put the baby in my lap, and within 30 seconds he pooped all over me. So -- and I explained everything.

And that's why I tell people exactly what's going on. And so that way they -- they understand what's happening, at the time; especially when you hold

an infant upside down. I can understand how this, you know, disconcerting that can be. I have five children, they've all been under chiropractic care; Dr. Barrigar has two children, they've been under chiropractic care, along with all his nieces and nephews. And we do see a lot of chiropractic infant adjustments.

THE COURT: Okay.

MR. DUGGAN: Was there more?

THE COURT: Any follow-up?

The rest of it was really not a question.

MR. DUGGAN: All right.

THE COURT: But I can --

MR. DUGGAN: No problem.

THE COURT: -- pose it as a question, if you think that it should be.

I'll pose it as a question, just so everybody is clear. The juror is wondering if the characterization of the adjustment as jerking or cracking could simply be a perception, based on a lack of understanding of the procedure.

THE WITNESS: That's absolutely correct. As you noticed, I corrected the attorney that I don't crack anybody; your bones aren't getting cracked. But it's a misconception. And I have people come into my practice all the time. As I said, I have a very busy

practice, and a lot of patients come in, and they're -- they almost like to become friends with them, because we -- we're hands-on. We're not like a medical doctor, where we're not touching you and just looking down at the computer and typing in your notes; we're actually touching you. So I have patients come in all the time and say, okay, doc, give me a good crack. And then I'll sit there and say, look, I crack eggs, but I -- I'll adjust your back, you know, jokingly.

So, yes, it is a -- it's a perception and misperception, whatever you want to call it. And, again, that's why I try to educate my patients while they're in there, that they're going to hear this noise. And they usually understand.

THE COURT: All right. Any follow-up, Counsel?

MR. DUGGAN: No, Your Honor.

THE COURT: All right. Thank you, Doctor. You're excused.

THE WITNESS: Thank you.

(At 12:16 p.m. the witness is excused.)

THE COURT: Ladies and gentlemen, at this time, we'll break for lunch. So please return back to your respective jury rooms by 1:30 this afternoon; we'll resume, at that time. We expect to go until

about four o'clock this afternoon. Maybe we'll get done a little earlier, I don't know, but we -- we will be done by four.

And please don't talk about the case with anyone during lunch, don't read anything about the case, don't do any kind of independent research about the case.

Have a good lunch.

THE LAW CLERK: All rise, please, for the jury. Juries.

(At 12:17 p.m. juries are excused.)

THE COURT: Okay. Counsel, we'll break until 1:30.

Let me also advise you, I need jury instruction -- your final jury instruction requests by tomorrow at noon. You should have a pretty good idea. And I don't think there's anything real unusual or complicated. So just give me a list, and if there's something additional that needs to be added at the end, we can do that. But we need to get moving on those. And we have a busy Monday, so I can't wait until then.

We'll be in recess.

MR. STURTZ: Judge, I'm supposed to have a violation of probation with you at 3:30. I hope that's been adjourned.

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THE COURT: No. That's why we're stopping at four, for my probation violations.
MR. STURTZ: Well, I don't want to -- I'm not prepared, because I've been in two trials.
THE COURT: Well, what are you -- has your client been arraigned?
MR. STURTZ: Yes, they're arraigned, we're just waiting --
THE COURT: Okay.
MR. STURTZ: -- for the hearing.
THE COURT: Okay. So if you're requesting an adjournment I'll give you one on that basis, but I'm not just adjourning it outright.
MR. STURTZ: No, I'm asking for an adjournment.
THE COURT: All right.
MR. STURTZ: Thank you.
THE COURT: Have you let your client know?
MR. STURTZ: He's in the jail.
THE COURT: All right. And what's his name?
MR. STURTZ: Harrison.
THE COURT: Harris?
MR. STURTZ: Harrison.
THE COURT: Harrison? All right. Because I need to tell them that, before they bring him over.

(At 12:19 p.m. break is taken.)
(At 1:38 p.m. proceedings resumed.)
THE LAW CLERK: All rise, please. Court is again in session.
THE COURT: Please be seated.
All right. Counsel, you ready to proceed?
MR. DUGGAN: Yes, Your Honor.
THE COURT: All right. We'll bring the jury in. Juries.
THE LAW CLERK: Please rise for the jury.
THE CLERK: All rise for the jury, please.
(At 1:40 p.m. juries are present.)
THE COURT: Please be seated.
All right. Mr. Duggan, you may call your next witness.
MR. DUGGAN: Just a matter of housekeeping, Your Honor. I have shown, as a graphic demonstration of the head, what I have marked as Proposed 20; and I would ask for it to be admitted now, because it was referred to earlier. And I wanted to identify what it was.
MR. STURTZ: I have no objection.
MR. BUSH: No objection.
THE COURT: All right. Exhibit 20 will be admitted.

MR. DUGGAN: We call Jason Barrigar.
THE COURT: Sir, if you'd step forward and raise your right hand, please.
Do you solemnly swear to tell the truth, the whole truth and nothing but the truth?
DR. BARRIGAR: I do.
THE COURT: Please have a seat in the witness box.

DR. JASON CHARLES BARRIGAR,
being first duly sworn at 1:42 p.m., testified under oath as follows:

D I R E C T E X A M I N A T I O N

BY MR. DUGGAN:
Q Good afternoon.
A Good afternoon.
Q Please state your name.
A Jason Charles Barrigar, D.C.
Q What is your profession?
A I'm a chiropractor.
Q And how long have you been a licensed chiropractor in the State of Michigan?
A Five years.
Q What -- do you have board-certification?
A I am not certified in any specialty beyond chiropractic, no.

Q Okay. And have you practiced exclusively as a chiropractor for the last five years?
A Yes, I have.
Q That, by the way, comes from a degree -- a postgraduate degree program after graduating from college?
A That's true, I have a four-year degree from Ferris State University, followed by a four-year graduate degree from Palmer College of Chiropractic.
Q How long have you work at Shields Chiropractic?
A Since January of 2011.
Q Did you work anywhere else before that?
A That was my first job out of college.
Q Out of chiropractic?
A Out of chiropractic college, yes.
Q Thank you.
MR. DUGGAN: I would be offering Dr. Barrigar as an expert witness in the area of chiropractic medicine. And because I may ask for opinions, I'm tendering him to the defense, at this time.
THE COURT: Any questions or objections by counsel, defense counsel?
MR. BUSH: No questions.
MR. STURTZ: I have no questions.
THE COURT: All right. Dr. Barrigar will be qualified as an expert in the area of chiropractic

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1 medicine.
2 MR. DUGGAN: Thank you, Your Honor.
3 BY MR. DUGGAN:
4 Q Did your practice receive a patient named Roegan
5 Krukowski on February 9th, 2015, according to your
6 records?
7 A Yes, we did.
8 Q First time?
9 A First time.
10 Q On that date, did you have any interaction with Roegan?
11 A A very small interaction. Dr. Dense was the treating
12 chiropractor on this first visit; did the initial exam
13 and the stuff that he did in a private room. After
14 treatment he came and got me to introduce me to the
15 mother and grandmother, who were also in the room, in
16 case, that if he wasn't there, I knew the case, in case
17 I had to treat him.
18 Q And did that, in fact, happen?
19 A Yes, it did. He invited me into the room, I said hello
20 to both the mother and grandmother, he explained what
21 was going on with the infant. And I was probably in
22 there one, two minutes.
23 Q So you weren't there during the time he was providing
24 treatment?
25 A No, I was not in there during treatment.

1 Q Did you have occasion to treat Roegan on the next day,
2 February 10th; and once again on February 18th of 2015?
3 A I was the treating chiropractor on those dates, yes.
4 Q Is that often the situation, that even though a patient
5 is first seen by one of you, the other of you will do
6 services for the patient?
7 A Yes. We both go over all the files that come into the
8 office, so that if one of us is out of the office, the
9 patient can still receive treatment.
10 Q And you have, in front of you, an exhibit that has a
11 packet of papers with a red sticker on it?
12 A Yes.
13 Q And that number is what, the red sticker?
14 A Two.
15 Q Okay. On Exhibit 2, do you see the pages that refer to
16 the dates you treated Roegan; 2-10 and 2-18 of '15?
17 A I do, yes.
18 Q We've already had Dr. Dense explain the various steps
19 of the procedures of how you do your work. Could you
20 just tell us, in summary form, what you did on the
21 10th, and then we'll talk about the 18th in a moment?
22 A The first thing I do -- or, I did in this case -- is I
23 asked mother how Roegan was doing. She stated that he
24 was doing better. When I treat infants in our open-bay
25 adjustment area, I do it while I'm standing over the

1 top of our soft beds. I feel that I have more control
2 of the infant while I'm standing than if I'm sitting,
3 which is why I choose to do it that way.
4 I used an inversion technique, which is where
5 the infant is held upside down. We do a slight lift of
6 the heels, which helps straighten the spine. And then
7 I lowered Roegan into mother's arms, took Roegan back
8 from the mother, held him, and then layed him down on
9 his back, on the adjustment table, at which point I
10 checked his cervical spine with the tips of my fingers.
11 We move the cervical spine. And that's how I adjusted
12 his neck.
13 Q Did the mother indicate how Roegan was doing since the
14 visit there, the day before?
15 A Yes, she said that he was doing slightly better; he
16 seemed less irritable.
17 Q From your examination and touching of the spine of this
18 infant, did you make an assessment that he had some
19 issues?
20 A He did. I could feel soft-tissue swelling; some mild
21 hypertonicity, which is common with the subluxation
22 process. So I did feel that he did have some vertebrae
23 that were misaligned, yes.
24 Q Which can be realigned by you?
25 A Yes, I do --

1 Q Through the various procedures you just described?
2 A Correct.
3 Q Did you feel that they were successful in giving him
4 some realignment remedying of the subluxation?
5 A I believe it did. Post-treatment, we would hold the
6 infant and see how he responded. And he also always
7 appeared to be more relaxed when he was done with his
8 treatments.
9 Q And do you remember crying, at any time during this?
10 A Not during or immediately after treatment, no.
11 Q I should ask you, I know you treat hundreds of
12 patients, probably, but do you remember this particular
13 baby?
14 A I do.
15 Q Okay.
16 A Really, the only reason I have a mental picture of the
17 visits in this far out is because of the records
18 requested within a week after that visit. I was able
19 to, I guess, block the way in memory, because I've been
20 dealing with it since then.
21 Q So something unusual happened, which is a detective or
22 a hospital or a CPS worker saying, we have a possible
23 case of child abuse, we need to talk to you?
24 A Yes, someone with CPS had contacted our office, asking
25 for records; and at that point it put the memory in

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1 there that something was going on.
2 Q And you still had the memory of Roegan from the next
3 time you treated him, on the 18th?
4 A That is true. I mean, we treat infants, but we don't
5 see hundreds of infants, so it's a lot easier to
6 remember an infant encounter than it is an adult
7 encounter, which we see so many of.
8 Q On the 18th, tell the jury what that appointment went
9 like.
10 A Again, asked the mother how infant -- how Roegan was
11 doing after his last treatment. Again, she stated that
12 he seemed to be improving. Again, less irritable. I
13 believe one of her complaints, when he first came in,
14 was that he was uncomfortable being held a lot, and
15 that she said that that was improving.
16 And then, treatment-wise, occurred the same
17 as it did on the 10th; inversion, lowered into mother's
18 arms, layed on back, checked the cervicales, and then
19 held him afterwards. And on that date I remembered his
20 reaction really well. He was very happy on that day.
21 He was looking around our room, which, again, we have
22 an open-bay adjusting room with about six tables. And
23 he was watching people move about the room in a very
24 good mood, so --
25 Q Did it seem that his eyes could follow and focus on

1 things?
2 A Oh, very much so. He was watching everybody move
3 around the room, yeah.
4 Q So they weren't gazing off to the upper right and --
5 A No.
6 Q -- fixed in that position?
7 A No, he watched somebody walk from one side of the room
8 to the other, and then if somebody else got up and
9 moved he would follow them; and it was distinct with
10 everybody moving about the room, yes.
11 Q Do you remember crying on this visit, on the 18th?
12 A No, not during treatment or -- or immediately after.
13 Q Now, there was an interruption in treatment planned
14 between the 10th and the 18th. What happened with the
15 scheduled appointments for the 12th and 16th?
16 A It looks like the 12th we got ahold of mother. She
17 stated that she did not have transportation on that
18 day, so she, I believe, rescheduled for the 16th.
19 Q And you called her?
20 A Yes, if a patient misses an appointment we call to
21 check, make sure she's not -- there's not something
22 wrong, or maybe they just forgot about their
23 appointment. So we want to remind them of it.
24 Q What about the 16th?
25 A On that date it looks like a voicemail was left on her

1 phone, since they did not show up for their
2 appointment.
3 Q And the 18th was one of the original scheduled
4 appointments?
5 A I believe so. It looks like --
6 Q Or makeup? I just want to know if you recall.
7 A I believe he was scheduled for three treatments a week,
8 for two weeks. And so that may have been an original
9 scheduled one. That would have been in that timeframe.
10 We know that from missing the previous ones, they would
11 have had some to make up, still, but it appears that it
12 was an original.
13 Q As of the 18th, when you were done with treatment that
14 day, were you convinced that there was more treatment
15 in order to help this baby, at the chiropractic?
16 A I believe he was making progress, but I do not believe
17 that he was quite 100 percent yet. He was definitely
18 decreasing in irritability over time, and there was
19 still a little bit of work to be done, at that time.
20 Q So you scheduled some more appointments?
21 A I believe he was on the schedule, yes, because he has
22 not yet completed his treatment protocol.
23 Q And there was a scheduled appointment on the 20th, two
24 days later; did he make that?
25 A He did not. And, again, we called mother and left a

1 voice mail.
2 Q Is that the last time your office dealt with Roegan
3 Krukowski as a patient?
4 A As a patient, yes.
5 MR. DUGGAN: No further questions.
6 THE COURT: All right. Mr. Bush, cross-exam?
7 C R O S S - E X A M I N A T I O N
8 BY MR. BUSH:
9 Q So you do two inversion techniques on Roegan?
10 A Two -- you mean two separate --
11 Q Yeah.
12 A -- visits?
13 Q Yeah.
14 A Yes.
15 Q And you did the same technique each time?
16 A Correct.
17 Q What is a subluxation?
18 A A subluxation is a misalignment in the vertebral
19 column, where one of the vertebrae is shifted slightly
20 off, out of position.
21 Q Okay. Roegan have that?
22 A Yes, he did.
23 MR. BUSH: All right. Thank you.
24 THE COURT: Mr. Sturtz, cross-exam?
25

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CROSS-EXAMINATION

BY MR. STURTZ:

Q Doctor, this is a report your office provided to us as a result of your performance on this child, is that correct?
A Yes, that looks like our note.
Q Indicates here that -- and the subjective part of this, was that taken from you or is this by an office member?
A We take notes on the hard travel card, and then it is entered from that into an electronic health record, like you see here, by an office staff.
Q It says here, Roegan's mom says he's feeling slightly better in the neck area?
A Correct.
Q You had no way of knowing what the child was actually feeling; this is what the mother is interpreting, is that correct?
A Correct.
Q His mom also stated he is experiencing slight decreasing -- decrease of pain and discomfort in the mid back. Did she say how she experienced or how she realized he was having less pain in the mid back?
A She mentioned that he was less irritable.
Q And from that his mid back was better?
A That was where that came from, yes.

Q Okay. Now, when you held the child upside down and did the manipulations that you did, was that to the C1, 2, 6, 7, T4, T5?
A Typically, on an inversion you're looking at the thoracics, which would be the T4, T5. Cervical would have been done when he was laying on his back.
Q Your diagnosis on the 10th, you read that for us; what does that say, non --
A Nonallopathic lesion of the cervical region.
Q What is nonpatholotic [isc]?
A Nonallopathic? That means it's not related to something like a fracture dislocation; it's self-contained.
Q So it just happens?
A That's not what that means, it just means it's not severe. It's not a full dislocation, a full fracture. It's -- just means it's within itself; just slight.
Q And you were able to feel that with your fingers?
A Yes.
Q The next word down here is cervicalagia [sic]?
A Cervicalgia.
Q What is that?
A That is neck pain.
Q And did the baby wince or do something when you touched its neck?

A This is diagnosis, which is carried over from the first visit; and so if that was felt at that time, that would have been Dr. Dense's experience with that, yes.
Q But you never experienced that?
A No, but he would have already been treated previously, so it seemed he was improving.
Q But, apparently, you did some adjustments in the C1, C2, C6 and C7 by palpating it, is that right?
A That is correct.
Q And the baby didn't do anything, as far as when you touched that area?
A He did not seem to be overly uncomfortable with it, no.
Q Did he seem to like it?
A I cannot recall if he enjoyed the experience, no.
Q Now, you've got down, here, nonnatalphalitic [sic] lesions of the thoracic region, not elsewhere classified. What does that mean?
A With the way that ICD-9 -- which these numbers come from -- that pretty much just means that it's in the thoracic region; it's not specific to T1, T2, T9, T10. ICD-9 does not allow that type of classification.
Q Did you just put that in there as kind of a filler language?
A I didn't create that; I would not come up with that terminology. That is the people who come up with the

ICD coding systems, so there's --
Q Really, that issue, 739.2, you didn't see that in the child when you were there that day?
A We did, which is why we chose that diagnosis code for that situation.
Q This pain in the thoracic area, how did you determine that?
A Once again, during the palpation Dr. Dense may have felt the infant wince or --
Q All right. This --
A -- seize.
Q This is not Wince's [sic] program here, on the 10th; this is your program.
A Did he --
Q Did you -- listen to my question. What did you feel or see that led you to the interpretation that the baby was having thoracic spine problems?
A The infant still presented with the subluxations, as he had on the first day. He may have been improved, but they were there. And, again, these diagnosis codes are carried over from the previous treatment.
Q You were not in there when Dense examined the baby?
A That is correct.
Q What did you feel or what did you see, as a doctor, that revealed this diagnosis?

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A Again, we would have felt for the subluxations or the nonallopathic lesions, which is the bone being slightly out of position; which includes hypertonicity in the muscles, swelling, misalignment.
Q On 2-18, you see the baby again?
A Correct.
Q Is this in one of your open manipulation rooms?
A Open-bay adjusting area, correct.
Q And your diagnosis is the same thing on the 18th as it was on the 10th?
A Correct.
Q Now, when we look at the assessment from the 10th, it says, patient is determined to be in acute phase. On the 18th patient is in an acute-care program. What is the difference?
A The acute phase and the acute-care program is the same meaning, just worded differently.
Q I see. So acute means a baby is having really bad problems?
A Typically, a person is in the acute phase the first one to two weeks, and remains in that for that first one to two weeks.
Q Now, the adjustment of the vertebra revealed very good movement at C1, so apparently you -- something you were doing was improving it, is that right?

A Correct, it was improving.
Q But your diagnosis remains the same in both cases?
A Yup. Just because he's improving does not mean that the problem has completely went away.
Q How long do you think the baby would have to have -- come back to your office before it felt better?
A Well, we see that he was feeling better even after one visit, but we do look at about a two-week cycle with an infant of that age, to help them reach maximum improvement.
Q So at least two weeks?
A Yes.
MR. STURTZ: That's all. Thank you.
THE COURT: Any redirect?
MR. DUGGAN: Yes.
R E D I R E C T E X A M I N A T I O N
BY MR. DUGGAN:
Q Just tell the jury what ICD-9 was about.
A ICD-9, medicare, the government insurance agency, they help choose how we, as practitioners, diagnose people. So, like, if you come in, if you have a subluxation, they tell us what the number is; we have to look it up, find it. We find the number, and then they put the words. So those words are from them. And then ICD-9 was the old version. In October we just switched to

ICD-10. But it's the government's -- the government sets a standard on how to diagnose, so that when we bill medicare, when we bill Blue Cross or any other insurance agency out there, they know what we're saying is wrong with the person.
Q And you're satisfied, in looking at your own records, that the word part of that -- as opposed to the numbering system, which you don't deal with -- the words accurately describe what you're observing in the patient?
A Well, they do create the words, too, but the closest thing to a vertebral -- what we consider a vertebral subluxation is a nonallopathic lesion. Why they would call it not elsewhere classified, I'm not really sure, because in their own system they don't classify anything more specific. So it's kind of a catch 22 when you use it.
Q You're satisfied, nonallopathic lesion is close enough for government work, as far as a subluxation?
A Correct, that is what the government considers a subluxation, so that's what we use.
Q In your own profession, subluxation is the word?
A That's the word we use, correct.
Q Okay. That's for a bone or joint slightly out of --
A Alignment.

Q -- position?
A Correct.
Q Chiropractors, do they treat fractured bones?
A No.
Q Where do you send people for things that are fractured?
A The ER.
MR. DUGGAN: No further questions.
THE COURT: All right. Any questions from the jury for this witness?
There's one question.
Counsel?
Counsel, would you all approach?
MR. DUGGAN: Oh, I'm sorry, I was making a note.
KRUKOWSKI JUROR NO. 11: Right here. Just a quick question.
MR. STURTZ: May I see it, please?
(Bench conference.)
THE COURT: All right. Doctor, in the inversion technique, is the baby facing the doctor or away from the doctor?
THE WITNESS: I typically have the baby facing the doctor, so I can see the baby's reaction while the treatment is proceeding.
THE COURT: Okay. But some people -- do

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1 people do it differently or --
2 THE WITNESS: All of the doctors I have
3 experienced do the procedure have always had the baby
4 facing them.
5 THE COURT: Okay.
6 All right. Any follow-up?
7 MR. DUGGAN: Yes.
8 BY MR. DUGGAN:
9 Q Insomuch as you are the second chiropractor to see this
10 baby, and Dr. Dense has done a thorough first time, do
11 you do your own look over the entire baby?
12 A There is always a brief -- what we would call an exam,
13 when we initially see -- we're getting the history of
14 how the baby has done since the last visit. And then
15 we always start with palpation, seeing how the baby is
16 doing before we proceed with treatment, yes.
17 Q And I'm sorry I didn't ask this earlier: If the mother
18 told you the baby had experienced a fall recently,
19 sufficient to cause a bump on its head, a fall to the
20 bathtub edge, would that have been significant enough
21 to note in your reports?
22 A Oh, yeah. Any falls or anything that could dictate
23 mechanism of injury, we would put in our notes, yes.
24 Q If the mother had advised you there had been a fall
25 that led to that type of injury, would you have wanted

1 to proceed with the care that you do before the medical
2 doctors saw the baby?
3 A We would have done a thorough exam, to see -- a more
4 thorough exam. We already do a thorough exam, but more
5 thorough; me taking more time, maybe looking for
6 something, like a fracture or something, that would
7 indicate we need to refer the infant out. But without
8 having that mechanism, I mean, that's like searching
9 for a needle in a haystack. I mean, what are we
10 supposed to be looking for to begin with? So --
11 Q Did you personally observe any bumps on the head of the
12 baby?
13 A I did not.
14 Q Any bruises anywhere on the baby's head or body?
15 A Nothing that was visible, no.
16 MR. DUGGAN: Thank you.
17 THE COURT: Defense counsel, any questions?
18 R E C R O S S - E X A M I N A T I O N
19 BY MR. BUSH:
20 Q Were you aware this was a referral from Dr. Dawis?
21 A Yes, I was.
22 Q And did you receive any information from Dr. Dawis?
23 A She --
24 Q In that regard?
25 A I'm sorry?

1 Q Regarding this baby?
2 A When she sent the infant over, she called on the phone;
3 she did say that the baby seemed irritable, and she
4 would like him -- us to check him out, to see if we
5 could help.
6 Q That's it?
7 A That was it.
8 MR. BUSH: That's all.
9 MR. STURTZ: I have no questions.
10 THE COURT: All right. Anything else from
11 the juries?
12 You can step down, sir. You're excused.
13 THE WITNESS: Thank you.
14 (At 2:08 p.m. witness is excused.)
15 MR. DUGGAN: We call Kristin Constantino.
16 Judge?
17 THE COURT: Ma'am, if you'd raise your right
18 hand, please?
19 Do you solemnly swear to tell the truth, the
20 whole truth and nothing but the truth?
21 DR. CONSTANTINO: I do.
22 THE COURT: Please have a seat in the witness
23 box.
24 DR. KRISTIN CONSTANTINO,
25 being first duly sworn at 2:08 p.m., testified under

1 oath as follows:
2 D I R E C T E X A M I N A T I O N
3 BY MR. DUGGAN:
4 Q Good afternoon. Please state your name.
5 A Kristin Constantino.
6 Q And the position you're in right now is fine; you don't
7 have to lean into the microphone. I'm sorry, it's
8 sensitive.
9 What is your profession?
10 A I'm a radiologist.
11 Q Is that a doctor who practices in radiology?
12 A Correct.
13 Q How long have you been a licensed physician in the
14 State of Michigan?
15 A I received my medical degree in 2008, and then my
16 board-certification in radiology in 2013.
17 Q Have you practiced that at Covenant, here in Saginaw?
18 A I have been practicing at Covenant since November of
19 2014.
20 Q And what other hospitals have you worked in?
21 A I did my residency training at William Beaumont
22 Hospital in Royal Oak, and I did a one-year fellowship
23 in Phoenix, Arizona, at Phoenix Children's Hospital.
24 Q Are you, by your training and experience, qualified to
25 do images of the entire body, from head to toe?

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A Yes.
Q And do you use a variety of imaging equipment to do that?
A Correct.
Q What types?
A I interpret plain radiographs, CT, ultrasound, fluoroscopy.
Q The last one?
A Oh, fluoroscopy.
Q Is a radiograph an x-ray, Doctor?
A Yes.
Q Do you do MRIs?
A Limited.
Q So pretty much everything that creates images, other than MRIs, is what you do in your day-to-day work?
A Uh-huh, yes.
MR. DUGGAN: At this point, I tender the witness as an expert in the area of radiology, and would do so because I expect she might offer expert opinions during the course of her testimony.
THE COURT: All right. Any questions or objection by defense counsel?
MR. BUSH: No questions.
MR. STURTZ: I think she should be limited to the machines that she's described, and not an MRI.

MR. DUGGAN: I don't believe I'm going to be asking her questions about the MRI, so I'm comfortable proceeding. If I, for some reason, I want to, then I'll ask permission of the Court, based on her answer.
THE COURT: Well, okay, but you're -- you offered her as an expert in the area of radiology, so --
MR. DUGGAN: And those apparently use a lot of different machines, and one she said she doesn't do much with. And that what he's objecting to, I guess.
THE COURT: All right. I'm going to qualify the witness as an expert in the area of radiology. If there's some clarification that needs to be made about a specific machine that she does or doesn't use, I think that goes to the weight of the evidence, and not to the expertise.
So, go ahead.
MR. DUGGAN: Thank you.
BY MR. DUGGAN:
Q Do you work in the intensive-care unit or are you in a broader setting at the hospital?
A I do not work in the intensive-care unit.
Q But as the radiologist at Covenant, might you provide radiological services and diagnosis or so forth to people in the pediatric ICU?

A Yes.
Q To the neonatal ICU?
A Yes.
Q To the regular old ICU, whatever that is?
A Yes.
Q To the regular hospital?
A Uh-huh, yes.
Q Okay. And you work in a hospital setting?
A Yes.
Q There's no private-office work you do somewhere else?
A I do not.
Q All right. Did you have occasion to do some radiological studies and findings with respect to an infant named Roegan Krukowski during his stay at Covenant, beginning February 22nd, 2015?
A Yes.
Q And could you describe for the jury what you did?
A I interpreted a skeletal survey.
Q Why is it called a skeletal survey?
A It's a skeletal survey because it consists of a series of radiographs or x-rays of the child from head to toe.
Q And fingertip to fingertip?
A Yes.
Q Every bit of the body?
A Yes.

Q And do you know when you did that or when those series of x-rays and the skeletal study were done?
A I signed my report on March 2nd, 2015.
Q And were you aware that the infant had, for a while, been at the PICU?
A Yes.
Q And was that the first time -- March 2nd, you said?
A Yes.
Q Was that the first time that you're aware of, according to the records you have reviewed, that a full skeletal survey was done?
A Yes.
Q Were you aware, from records, that a variety of other imaging had been done for MRI, CT and the like?
A Yes.
Q Did you happen to study those or do any comparisons or have any use for those other things?
A No.
Q And why was a, if you know, a skeletal survey done, head to toe, tip -- fingertip to fingertip?
A So, these are typically done in suspected cases of non-accidental trauma; and that was the indication I was provided, as to why that study was ordered and performed.
Q We have an Exhibit 13 here, a DVD provided by the

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1 hospital; a variety of these images. They're going to
2 be up here. And you have a loud enough voice.
3 Remember, when you come down here, there won't be a
4 microphone. Could you step down and -- you can bring
5 the records, if you like. And step to the side of
6 that, so we don't -- see all where the jurors are?
7 They're going to need to see the screen. Step a little
8 further back. And you can take that pointer that's
9 right there, so that if you want to refer to something
10 in answering, you can do so.
11 Detective Worden will advance these images or
12 scroll through them, at your direction. We'll wait
13 until everybody gets in a better position to see.
14 I'm going to move.
15 Doctor, what is the jury seeing here? There
16 is a left image and a right image. First of all, I
17 want to say -- and I've been told that you have a
18 numbering system that has a series, and then an image
19 stamped on each one. And make reference to the series
20 number.
21 A Okay. Okay. So -- yeah?
22 Q And then the image number, so that later, if the jury
23 wants to know exactly what you're talking about, they
24 won't have to memorize this as they go along.
25 A Sure. Okay. So what we're looking at here, this is

1 the -- looks like series labeled 2 of 14 images. This
2 is a head-on or frontal view of the child's skull, and
3 then this is a lateral view or a view from the side of
4 the skull.
5 Q And you just held your right hand up to the right side
6 of your head. Is the image on the right, which is
7 series 3 of 14, image 1 of 1?
8 A Uh-huh.
9 Q The right side of the head?
10 A You're -- no, they're imaging the -- they're imaging
11 the left side and --
12 Q Okay.
13 A On this one.
14 Q How can they do that? Because we -- as we look at it,
15 because we think in this three dimensions, that looks
16 like the right side of the head. Is that because it's
17 going past part of the right side of the head, over to
18 the other side?
19 A Yeah, you're -- I mean, you're seeing -- the x-rays are
20 going through the entire skull, so you're sort of
21 seeing, you know, both sides. I mean, they have to --
22 you know, they have one side of the skull up to the
23 image plate, and then the other side, the x-ray beam
24 comes through. So you're getting both sides --
25 Q Okay.

1 A -- sort of superimposed.
2 Q And what's the meaning of the large L positioned on the
3 images?
4 A That means left. So all radiologic images are
5 backwards to us. So when we're facing this, this is
6 actually the child's left side of the body, this is his
7 right side.
8 Q And when you just said, on the left image, we're
9 looking face-on; we can see what looks like eye sockets
10 and the nose opening?
11 A Correct.
12 Q All right. And on the right, an image on the right,
13 we're looking all the way through the head?
14 A Yeah.
15 Q Is the kind of x-ray technology you're using -- or,
16 radiographic -- doing it in slices, like the MRI or the
17 CT?
18 A No, no, this is just a single projection, where the
19 x-ray beam passes through from front to back or side to
20 side, as the case may be.
21 Q Is there significance to what you see in these images,
22 in terms of why you were doing this?
23 A Yes. So there is a one pertinent finding, here. I'm
24 not sure how well it's projecting on this screen, but
25 there is a lucency, sort of right here, in the left

1 portion of the skull, that we don't see on the right
2 side. If you can see my pointer, it's about this wide.
3 Q What does lucency mean?
4 A So, lucency means a line or a break in the bone;
5 something fractured.
6 Q Of the baby's skull?
7 A Correct.
8 Q On the left side, demonstrating on your own left
9 side -- so you have to turn -- on your head, show where
10 you're talking about.
11 A I'm talking about this area of the skull, right here.
12 Q So, for the record, you're starting at the -- about
13 the -- just about the top of the ear, and going
14 backwards, and down slightly?
15 A Correct, yes. And, again, trying to point it out on
16 this view, again, it's not projecting real well, but
17 it's running, roughly, right here.
18 Q Was it a little easier to see when you examined these
19 images the first time?
20 A It was. I'm able to manipulate the contrast on my
21 screen as I interpret them, so I can --
22 Q All right.
23 A I can make them appear better.
24 Q Now, we have had, previously, an Exhibit No. 20 -- I'm
25 not going to try to project it now, because we have

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1 to -- well, I think I will, because we can change this
2 pretty quickly. You can stay there.
3 KRUKOWSKI JUROR NO. 14: I can't --
4 MR. DUGGAN: I'll get out of the way.
5 BY MR. DUGGAN:
6 Q We have Exhibit 20, which shows sutures. Are those
7 structures in the skull of a baby?
8 A Yes.
9 Q Are they different than in an adult?
10 A They are. In an -- adults, they'll -- they'll fuse to
11 form a -- more of a solid bone; but in infants --
12 Q A baby's head grows, like its body, correct?
13 A Correct.
14 Q And as those open up, does bone material fill in where
15 it's opening up?
16 A Yeah, it allows for growth of the brain during early
17 childhood. And then once, you know, the more adult
18 sizes reach -- those sutures will -- will close and
19 fuse.
20 Q So we sometimes think of sutures as the ones you get
21 when you go to the emergency room and you cut your arm
22 and they stitch it up. This is a different meaning of
23 the word suture?
24 A Correct.
25 Q It's an opening?

1 A Yes.
2 Q Okay. Can you distinguish, when you're looking at the
3 x-rays, when you try to manipulate them and -- with
4 contrast, and see that, what you were calling a
5 fracture a moment ago, was not just a suture?
6 A I can.
7 Q Why is it that you can distinguish them in those
8 images?
9 A So it's both in appearance and location. Sutures
10 are -- we have three main sutures. All humans have
11 three main sutures in the skull that we see. And those
12 are in a, you know, characterization location. And the
13 appearance is also different than a fracture line, in
14 terms of the margins. They're a little more irregular.
15 Q The fracture is?
16 A No, no, the sutures are a little more irregular. A
17 fracture line is typically smoother, a smoother line or
18 smoother break in the skull. So --
19 Q Do the sutures fall into a symmetric pattern?
20 A Yes.
21 Q Fractures aren't symmetric, usually?
22 A No, not usually.
23 Q Did you look to see if there was something on the other
24 side of the skull of Roegan Krukowski in the images to
25 match that line that you called a fracture?

1 A I did, right.
2 Q And was there one?
3 A No.
4 Q And that was part of your reason for concluding that's
5 a fracture?
6 A Correct.
7 Q All right. We're going to go back to the images. Is
8 there anything else of significance in these images you
9 can relate for the jury about damage or abnormality?
10 A Nothing further.
11 Q All right. How long was the -- was the fracture line,
12 approximately?
13 A I did not measure the length.
14 Q Well, was it -- can you go, like, less than an inch or
15 more than an inch; can you do --
16 A More than an inch.
17 Q All right. And just using the tip of that pointer --
18 and I know we're looking through the baby, so that the
19 left side is on the other side, but try to trace the
20 path on that image on the right, where the fracture
21 was.
22 A Yeah. So, again, we're sort of -- we're seeing that,
23 that lucency, right along here.
24 Q Okay. You just traced a couple of inches. Would that
25 be approximate?

1 A Probably.
2 Q All right. Actually, in your report --
3 MR. DUGGAN: On page 71 of the second packet,
4 Counsel.
5 BY MR. DUGGAN:
6 Q Do you have that with you, in your hand?
7 A I do.
8 Q Do you -- you have that?
9 A I do.
10 Q In the findings, at the very first paragraph --
11 A Uh-huh.
12 Q -- why don't you read exactly what you have there, and
13 I'll have you explain that a little more.
14 A Sure. I said there is a lucency measuring
15 approximately 12 millimeters in diameter within the
16 left parietal bone, that appears to extend from the
17 left coronal suture into the left lambdoid suture on
18 the lateral view.
19 Q All right. So you were making an approximation without
20 measuring. That would be about 12 millimeters?
21 A Correct. And that measurement is the -- the width, not
22 the length.
23 Q Well, it wasn't wide open that much, was it?
24 A It was.
25 Q Oh.

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A Separate -- the two bone fragments were separated by approximately 12 millimeters. So that measurement is, again, roughly, in this plain. Not the length of the fracture.
Q So what's in that space, where the fracture was?
A It's just open.
Q It's open. Was it -- in the normal anatomy of the skull of an infant, it wouldn't have been there, correct?
A No.
Q And the fracture caused it to open 12 millimeters?
A Correct.
Q And then the length of it was something longer than that?
A Correct. Okay.
Q What's 12 millimeters in English, approximately?
A Half inch.
Q The condition that you observed, is the imagery sufficient to see any brain matter which protrudes into the opening?
A No.
Q Is there a reason why brain matter wouldn't protrude into that opening; is there any structure there that would contain the brain?
A There are membranes overlying the brain.

Q Okay. And they weren't similarly fractured or severed or open?
A I can't say.
Q Because the imagery isn't sufficient for that?
A Correct.
Q Okay. In your next finding you said the spine is unremarkable. That's a doctor-type word. What does that mean?
A Nothing pertinent.
Q So it's normal?
A Correct.
Q And the next, could you tell us what the next finding was?
A Sure.
Q And we have an image up there, if that helps.
A Okay.
Q Do you think we have the correct image?
A Yes.
Q Go ahead.
A There is a fracture of the left distal radial shaft, with bridging callus formation.
Q Okay. And without reading any further, give us, blow by blow, what those things mean.
A Okay. So --
Q And you can point to the image, if that helps.

A Sure. So --
Q For the record, we switched to 4 of 14, image 1, and 5 of 14, image 1 of 1, on the right side.
A So I'm saying there's a fracture of the left distal radial shaft. So the radius is one of the bones in the forearm, which is this bone, here; and this bone, here. Distal means further away from the body; so not here, but further out. So we're seeing it in the distal portion of the bone, here. Radial -- the shaft is just the long portion of the bone. And then bridging callus formation refers to these changes of healing that we see at the site of fracture. So it sort of has a slightly valgus configuration here and here. And that's what the callus formations refer to.
Q Okay. Callus on my hands is not what that means?
A No.
Q That's skin that gets a little tougher, but is it even a different word? I think it's even spelled differently.
A Yeah, I think it is.
Q And callus forms how?
A Callus is the -- an early sign of healing bone. So it's new bone formation that begins to form at a site of fracture.
Q Is the body capable of naturally healing bone breaks in

that way?
A Yes.
Q Left untouched, and the body will just do that?
A Yeah.
Q Doesn't have to be set and put in a cast and the like?
A I mean, if the bone is constantly subject to motion, then it would inhibit that healing process, yeah.
Q What was significant to you about the callus formation beyond what you've already said, in terms of the type of break; like, was it all the way or a partial fracture?
A It doesn't -- the callus formation doesn't really give any information related to that; it basically indicates that the fracture has had some time to heal. So it didn't happen within the last two, three days before these images were taken. Usually, callus formation won't start until at least five days out from injury, and it can last for weeks. So, not very specific, but it does tell us that it's not an acute injury. That didn't happen the preceding day are two.
Q Acute just means how recently?
A Acute means very recently, yeah.
Q You went on to say, there are no definite fractures of the right upper extremity. Would that be the right arm?

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A Correct.
Q Extremity just means either arms or legs?
A Yes.
Q Is any other part of the body called an extremity?
A No.
Q How confident, from the images you read in doing a skeletal survey, that you're seeing a fractured radius?
A Very confident.
Q Did it require further treatment, at that point, based on your experience; would that be something you advise the doctors who work with the bones and repair, you have to go do something, based on what you're seeing?
A My area, we typically don't advise treatment, we interpret what we see, but --
Q Somebody else makes the decision if there's treatment to be done?
A Correct.
Q Help us out on fractures. What are the various types of fractures of a bone?
A I mean, there's many types of fractures. I guess, two main -- two main types, you know, again, that -- depending on what you're asking; you can have pathologic and traumatic. So fractures can occur from trauma; they can also occur if there's an underlying abnormality in the bone itself, and then sometimes a

fracture can occur because of that.
Q So a trauma could break a bone?
A Yes.
Q And sometimes the bone is just defective for whatever reason, and it could break on its own. That's not really what I was asking, though.
A In -- okay.
Q I was asking, what types of fractures have -- do you observe when you look at x-rays? And to give you an example, what I'm asking about, if a bone is completely broken, if you took that pointer and snapped it over your knee --
A Uh-huh.
Q -- that's completely fractured, right?
A Correct.
Q It might not break all the way?
A Uh-huh.
Q And that's what I was asking.
A Okay.
Q What are those types of --
A Sure. So there are -- there are complete breaks; displaced fractures, where the two fragments of bone are actually separated from one another. There are non-displaced fractures, where there might be a small break in the bone, but the actual bony fragments aren't

separated, they're still in normal alignment.
Q Could you see that in an x-ray? Not in this one, but --
A Oh.
Q -- could you see that?
A Yeah.
Q It would show up as something -- different color or contrast?
A Not a different color, just the position of the bone would be --
Q Go on. What are type of fracture?
A I mean, again, just talking about visually, you can have angulated fractures, where the bone isn't separated, but it forms an angle. There are incomplete-type fractures, where only one side of the bone has a fracture, the other side remains intact.
Q And if we're talking about fractures caused by trauma, trauma can cause any one of the ones you've just described?
A Yeah.
Q And I think the last one that I was -- in my head I was thinking of is, what about when it pops through the skin; is that a different kind of fracture?
A That's an open fracture.
Q Okay. Is there also such a thing as a spiral fracture?

A Yes, there is.
Q Does that look different on x-ray than all the other ones you just described?
A It does.
Q What is the difference?
A The difference is that the break we see in the bone has a spiral configuration.
Q Of all the ones you have just discussed or I've asked about, can you classify this fracture in any of these?
A This I would describe as a slightly angulated fracture. The native bone is -- we can see, has a slight angle to it. Typically, the radius is straight. So there's a slight angle here.
Q Are there other images we need to show to make the point or is this okay?
A No, these are the only images of the left arm.
Q Okay. Skipping the next one, which has to do with things being normal, going down to the one which says there is callus formation, could you tell the jury what -- and tell Detective Worden if she needs to go to a different image.
A Okay.
Q Tell her to stop, because she's pretty fast.
A You can stop here. So this says there is callus formation involving the posterior left sixth rib and

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1 right lateral fourth and fifth ribs.
2 Q Okay. We can figure out that posterior probably means
3 in the rear, correct?
4 A Correct.
5 Q Lateral means on the side?
6 A Correct.
7 Q And left and right means the left and right side of
8 this child's body?
9 A Yes.
10 Q Could you, with the pointer, point out where these rib
11 fractures were that callus formation was observed?
12 A Yes. So this is a series 9 of 14, image 1 of 1. So
13 callus formation involving the posterior left sixth
14 rib; so, again, this is the left side of the child.
15 And if we count the ribs -- one, two, three, four,
16 five, six -- right here. Again, I'm not sure how well
17 it's projecting, but there's a very slight valgus
18 configuration right here, where the rib -- the straight
19 line of the rib almost has a slight convexity to it on
20 both sides.
21 And then, referring to the right lateral
22 fourth and fifth ribs, that's these two here; lateral
23 being towards the side. And, again, we sort of see
24 this valgus configuration here, that we don't see on
25 the sides of the ribs on -- of the remainder.

1 Q The remainder were normal?
2 A Yes.
3 Q Unremarkable?
4 A Correct.
5 Q Should there be callus formation on rib bones in a
6 baby?
7 A No.
8 Q Is there any condition other than a fracture that leads
9 to that?
10 A No.
11 Q Is that an unusual type of thing to come across in a
12 child, to see broken ribs?
13 A It is.
14 Q Can you age the two -- well, there's actually four ribs
15 involved, but let's say the left side and the right
16 side. Can you age which one is newer and which one is
17 older?
18 A Not really. They all demonstrate callus formation,
19 which, again, indicates healing. So, again, it -- they
20 weren't there -- they didn't happen that day or the day
21 before; but, you know, much beyond that, can't say too
22 much.
23 Q So they're not acute?
24 A Not acute.
25 Q On the classification method before, you were able to

1 say, callus on the radial shaft of the arm, it wasn't
2 in the last two to three days; could have been
3 somewhere between five days and weeks before. What
4 would you say with respect to the ribs, are they in
5 that category?
6 A Same.
7 Q And between the two, there isn't enough information for
8 you on the radiograms to say one was definitely older
9 or -- or newer?
10 A Right.
11 Q So are there any other images you need to show the
12 jury; any -- anything abnormal, with respect to Roegan
13 Krukowski and the skeletal survey you did?
14 A No.
15 Q You can resume the stand.
16 Are the skeletal survey images done by a
17 technologist?
18 A They are.
19 Q Someone trained as an assistant in the radiology
20 department to create the images that you will later
21 read?
22 A Correct.
23 Q You don't, hands-on, manipulate the baby into a
24 position to get things done?
25 A No.

1 Q Did you read or interpret any other images for this
2 baby, other than your own skeletal survey?
3 A No.
4 Q Is it possible these images were done on the 1st, but
5 you didn't read them until the 2nd, when you created
6 your report?
7 A That is possible.
8 Q Because I'm looking at the top of your record, it's at
9 page 71?
10 A Correct, yes; performed on March 1st, 2015.
11 Q Okay. And then you believe you did your reading
12 sometime into the next day, the 2nd?
13 A Correct.
14 Q Have you ever seen a baby with skull, ribs, arm
15 fractures before, all in that constellation or
16 collection like that before, that you had to look at
17 skeletal surveys for?
18 A I have -- I have read skeletal surveys before; I -- I
19 have seen cases of multiple fractures; but specifically
20 skull, left arm and those specific ribs, no, not
21 necessarily. But multiple fractures, yes.
22 Q But a car accident could result in a baby having
23 multiple fractures, correct?
24 A Correct.
25 Q And you'd expect the little external injuries to show,

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too, wouldn't you?
A I would expect.
MR. DUGGAN: Okay. Thank you, Doctor.
THE COURT: Mr. Bush, cross-exam?
C R O S S - E X A M I N A T I O N
BY MR. BUSH:
Q Doctor, this was performed on the 1st of March?
A Correct, according to that record.
Q And you signed it on the 2nd?
A Correct.
Q This was on order of Dr. Salman, is that right?
A Ordering provider, Dr. Salman, yes.
Q And do you have -- or, did you have or do you now have any information about treatment of this individual before you did your work?
A I don't.
Q Probably doesn't matter in your -- to do your job?
A Correct.
Q All right. So you wouldn't find out, necessarily, who treated him, and if so, for what?
A No.
MR. BUSH: All right. Thank you.
THE COURT: Mr. Sturtz?

C R O S S - E X A M I N A T I O N
BY MR. STURTZ:
Q Doctor, what we have seen here on the board, is what I think I heard you testify to; is that this -- this is an x-ray-type operation, it's not an MRI?
A Correct.
Q It's not a CAT scan?
A Correct.
Q The camera is on one side, the slide is on the other side, and you shoot the beam, and it catches it all on one side?
A Correct, in that particular view, yes.
Q On the head, you say there was a separation of 12 millimeters?
A Yes.
Q So there was a hole of a half inch or somewhere close to a half inch wide, open into the brain?
A The type of fracture that we saw, again, it just means that the two bones separated as a result of the break.
Q Okay. Could you determine, from what you saw there, in that half-inch opening, was it done as a result of being hit, like a two-by-four, running into a door or dropping the kid on the corner of a desk?
A I can't speak to any specific mechanism of -- of injury, other than trauma.

Q And you can't tell us how much trauma was used?
A No.
Q Whether it was a baseball bat or whether it was a cuff alongside the head or whatever?
A I can't be specific about -- other than saying that type of injury results from blunt trauma to the head.
Q Why didn't this 12-millimeter hole in the head show up on a CAT scan or an MRI?
A It's very circumstantial. Radiographs are the best imaging modality for skull fractures. CT and MRI, which are also called cross-sectional type of imaging, those things don't always show up.
Q So you can't tell us how long that 12-millimeter hole existed in the head?
A No.
Q According to your expertise in your area, non-accidental trauma means what?
A It means child abuse.
Q Means child abuse.
A Inflicted trauma.
Q Somebody had to put a hole in that kid's head?
A It means it was non-accidental.
Q Non-accidental. Now, you talked about the right arm; it had this fracture. Could you put that up, please?
A If I could just clarify that? Left, left arm.

Q Okay. Left arm. Right arm is okay?
A Right arm is okay.
Q What I'm pointing at is the left side of the screen, 414. Is that correct?
A Can't see from here, but I believe so.
MR. DUGGAN: Mr. Sturtz, you're blocking some of us.
THE COURT: If you would like to step down, it might be easier.
THE WITNESS: Yeah. Thank you.
THE COURT: And then you guys need to --
MR. STURTZ: Cuddle together?
THE COURT: Well, step to the side, anyway.
MR. DUGGAN: Could she stand by the reporter, so she doesn't block the screen, too? If there's room.
THE COURT: If she can. Or you could pull the screen over a little bit.
THE WITNESS: Okay.
THE COURT: All right. Good.
BY MR. STURTZ:
Q Hi, how are you?
A Good, thank you.
Q 4 of 14, this is the same left arm?
A It is.
Q What is all this stuff?

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A That looks like an IV tubing, other external things that they have hooked up to the patient.
Q All right. So the bone is what, this item right here, that I'm drawing a line on?
A Correct, that would be ulna.
Q And what -- this is some other external --
A That, no, that's -- that right there is the radius, right there. That's the other bone in the forearm.
Q Where is it broken?
A So we're seeing slight bulging of the contour of the bone right here. You can actually see it much better on this image. The bone is actually angled. So rather than being straight, we see an angle right there.
Q It's the angle of this white line that you see that's the break?
A Yeah. Again, there's --
Q It's not -- it's not this thing? This is the other --
A That's external, right. This is all external tubing. So the bone is -- we see the shaft of the bone here, and then there's an angle, where it bends that way.
Q To get this break, this arm had to be pushed up?
A I can't be real specific, in terms of how it got broken.
Q How it happened?
A Right.

Q But, anyways, that's the break line we see right here, is that correct?
A Yes, it's -- I mean, more specifically, to the exact area, right there. That's the point of angulation, so that is actually where the fracture is. And then this is the callus formation, here.
Q And that's on the left -- left arm?
A Left arm.
Q Right arm is A-okay?
A It is.
Q And you can't tell us, so there -- when I was in the boy scouts, they talked about a simple break and a compound fracture. A compound, with the bones in it. A simple fracture -- in fact, you don't even have a simple fracture, it's all healed?
A I would -- healing. Callus means that it's -- it's in the process of healing.
Q And that bone, how big around is that bone; like a chicken leg?
A It's hard to say.
Q These little things here can't tell us the dimensions, huh?
A Well, they could if it had a scale on it, but --
Q All right. You may resume the stand. Thank you. Again, the calcification of the left arm, you

don't know how long that's been calcified; it could be five days or you said it could even be weeks, correct?
A Correct.
Q The amount of force that was used to break that bone in the left arm, you have no idea?
A Can't -- can't be specific, no.
Q The ribs --
MR. STURTZ: Would you go to the ribs, please? The other one, where you could see the pelvic area. Right there.
BY MR. STURTZ:
Q Doctor, by looking at these two diagrams that are on the board, are the images being taken from the belly to the back?
A May I?
THE COURT: Yes.
THE WITNESS: Well, in an infant they -- the x-ray beam would be coming from the front, going through the back.
BY MR. STURTZ:
Q Going through the back?
A Because the baby would be laying --
Q So these --
A -- on their back.
Q -- would be the ribs that we see right here, on the --

A Well, actually, the -- so, as we're seeing, so the ribs sort of curve. They're attached to the spine, and then they curve around and attach to our sternum in the front. So these are posterior ribs, and then they curve around. And so the most anterior ribs, the front portion of the ribs, were sort of seen through the lung, here. So this is posterior, coming around to the side; and then anterior, as they curve along that way.
Q All right. The ones you were talking about on this side, this is the pelvic area?
A Yes.
Q And the sixth rib, you counted down, and was somewhere in this area?
A Left sixth rib. So, this side.
Q Okay. So, six -- this is one?
A This is one, two --
Q Two.
A -- three, four, five six.
Q So, six?
A Yes.
Q This is right in front of the heart?
A It's projecting over the heart. But, again, this is the back; this is posterior.
Q Where is it broken?
MR. DUGGAN: Counsel, please move to the left

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1 a little.
2 Thank you.
3 THE WITNESS: So we're seeing that callus
4 formation right here. Slight convexity. Again, if we
5 trace the contour of the bone, it's smooth, and then
6 it -- there's a slight convexity on both sides. So
7 we're getting a valgus configuration right there.
8 BY MR. STURTZ:
9 Q All right. And you have no idea, based upon what we
10 see here, when that was done?
11 A When that was done? Again, we usually don't see callus
12 before five days, but it can be present for weeks. So
13 that's about as specific as I can be.
14 Q But that would be the bone, on my chest here, would be
15 closest to my shirt; right here?
16 A Well, this part of the bone that's broken is in the
17 back.
18 Q Oh, is in the back?
19 A Yes, it's posterior.
20 Q Posterior?
21 A Yes.
22 Q All right. Very good. Thank you.
23 How much force would cause that little bone
24 to break?
25 A I mean, again, I can't be specific about how much

1 force, but rib fractures in a child under one year are
2 very unusual.
3 Q How about if you went to catch him in the tub?
4 A I mean --
5 Q You don't know?
6 A I -- I can't say.
7 Q So it was just the sixth rib, it wasn't the fifth and
8 the fourth or whatever; it was just the one rib?
9 A Well, the sixth rib on the left, but there were
10 fractures on the right; the fourth and fifth rib on the
11 right, and the sixth on the left.
12 Q I'm sorry, fourth and fifth on the --
13 A On the right.
14 Q On the right side?
15 A Yes.
16 Q And the sixth on the left side?
17 A Yes.
18 Q As far as fixing that bone in the arm, there was
19 nothing that could be done or should be done at the
20 time when you saw it?
21 A Again, I'm not responsible for management.
22 Q That's right, you look at it, and they -- somebody else
23 determines it. But the child didn't have a cast on its
24 hand?
25 A On the image, no.

1 Q From your notes from the hospital, do you know if they
2 cast that hand?
3 A I don't know.
4 Q Did they do anything to close that hole in the head?
5 A I -- I have no knowledge of what -- how they managed.
6 Q They could have just left it go?
7 MR. DUGGAN: Objection, speculation.
8 BY MR. STURTZ:
9 Q Do you know?
10 THE COURT: Well, wait. Wait a minute.
11 Respond to the objection.
12 MR. STURTZ: Well, I just have.
13 MR. DUGGAN: I thought it was a request to
14 have her guess.
15 MR. STURTZ: No.
16 THE COURT: Pardon me? Wait a minute. What?
17 MR. DUGGAN: I thought it was a request to
18 have her guess when she said she doesn't know how that
19 things were managed.
20 THE COURT: So that would be speculative,
21 wouldn't it?
22 BY MR. STURTZ:
23 Q I'll accept your answer. Thank you.
24 Any other injuries as a result of your
25 skeletal survey?

1 A Nothing further on the skeletal survey.
2 Q Feet, hands?
3 A Not that I could identify.
4 MR. STURTZ: Thank you, Doctor.
5 THE COURT: All right. Any redirect,
6 Mr. Duggan?
7 MR. DUGGAN: Just one follow-up.
8 R E D I R E C T E X A M I N A T I O N
9 BY MR. DUGGAN:
10 Q We had talked about the callus being something you
11 don't look for until sometime after a couple days to
12 around five days, in when it begins to form?
13 A That's usually the earliest.
14 Q Does it stop forming, at some point?
15 A More -- I would describe it more as an evolution. So
16 it begins early on as almost a fluffy cloud-like type
17 of process as the new bone is forming, and then it will
18 progressively become more dense, and eventually resorb
19 with the native bone, until the bone is completely
20 healed.
21 Q And when you say completely healed, will there be a
22 time in this child's life, everything else being stable
23 and normal, where those rib fractures won't be visible
24 to a radiologist?
25 A Yeah, potentially.

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Q The healing process internally, is that complete without any medical intervention?
A It -- it could. It could be. Again, motion can inhibit healing or, you know, things like that. But they could heal without physical evidence in the future.
Q Based on your training and experience, since you're seeing callus formation on a two-and-a-half-month-old child, when is the period of time that you would expect it to go on and to resolve and to heal, where you, as the radiologist, can't see it anymore?
A Can't see it at all? At least, I'd probably say, months, at the earliest. You know, certainly, years down the road I wouldn't expect to see it.
MR. DUGGAN: Thank you.

R E C R O S S - E X A M I N A T I O N

BY MR. STURTZ:
Q Doctor, this callus business, this formation of calcium to put the bones together, I thought I heard your testimony was is, you could see it around two or three days, and then it would continue for weeks thereafter?
A Usually, not earlier than five days.
Q Not earlier than five days.
A Not really.
Q But as long as weeks?

A Weeks, yeah. I mean, and, again, that's -- it's very variable, just depending on the circumstances.
MR. STURTZ: Thank you. No further questions.
THE COURT: Any questions from the jury for this witness?
We got a couple, so if you can grab those, Mr. Duggan?
Counsel, you want to approach, please?
(Bench conference.)
THE COURT: All right. Several questions, here.
THE WITNESS: Okay.
THE COURT: Can you tell if the ribs and arm were broke at the same time?
THE WITNESS: I cannot, no.
THE COURT: Okay. Were ribs four and five also broken on the back of the baby or were those broken in the front of the chest?
THE WITNESS: Ribs four and five on the right were broken on the side. They were lateral fractures.
THE COURT: Okay. Could the fracture of the head be caused from dropping the baby on the bathtub?
THE WITNESS: Potentially.
THE COURT: Or, in the bathtub? Okay.

All right. Any follow up, Counsel?
MR. DUGGAN: None, Your Honor.
MR. STURTZ: No questions.
MR. BUSH: No.
THE COURT: All right. You can step down, Doctor.
THE WITNESS: Thank you.
MR. DUGGAN: May she be excused?
THE COURT: Yes.
MR. DUGGAN: Doctor, you're excused.
THE WITNESS: Thank you.
(At 2:55 p.m. witness is excused.)
THE COURT: Counsel, would you approach?
(Bench Conference.)
THE COURT: All right. Ladies and gentlemen, we'll take a break, at this time, for about 10 or 15 minutes. So you can go back to your respective jury rooms. I expect Ms. Maddox and Mr. Allen will meet you in the hallway and escort you back, but you can head on out.
KRUKOWSKI JUROR NO. 12: Thank you.
(At 2:56 p.m. juries are excused.)
THE COURT: Okay. Counsel, about 10 or 15 minutes, and then we'll resume, and see how far we get.
Court will be in recess.

(At 2:57 p.m. break is taken.)
(At 3:14 p.m. proceedings resumed.)
THE LAW CLERK: All rise, please. Circuit Court is again in session.
THE COURT: Please be seated.
All right. Counsel, you ready for the jury?
MR. DUGGAN: Yes, Your Honor.
MR. STURTZ: Yes, Judge.
THE COURT: Anybody who is here on probation violations, we're just going to be a little bit delayed. We'll take them up yet this afternoon; maybe just not quite at 3:30.
THE LAW CLERK: All rise, please, for the jury.
(At 3:16 p.m. Stevens jury is present.)
THE COURT: Please be seated.
THE CLERK: All rise for the jury, please.
(At 3:17 p.m. Krukowski jury is present.)
THE COURT: Please be seated.
Mr. Duggan, you may call your next witness.
MR. DUGGAN: We call Shawn Stevens.
THE COURT: Ma'am, if you'd step forward and raise your right hand, please?
Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth?

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MS. SHAWN STEVENS: I do.
THE COURT: Please have a seat in the witness box.

SHAWN STEVENS,
being first duly sworn at 3:18 p.m., testified under oath, as follows:

D I R E C T E X A M I N A T I O N

BY MR. DUGGAN:
Q Good afternoon.
A Good --
Q Please state your name.
A Shawn Stevens.
Q Spell the -- both?
A S-H-A-W-N S-T-E-V-E-N-S.
Q Is Codie Stevens your daughter?
A Yes.
Q Is Dane Krukowski the father of Codie's children?
A Yes.
Q Are they both in the courtroom?
A Yes.
Q Please identify them for the jury.
A They're sitting right over there, to my right.
MR. DUGGAN: May the record show us she referred to both defendants, Your Honor?
THE COURT: It will.

BY MR. DUGGAN:
Q Are they married?
A No.
Q Does their relationship go back quite a few years?
A A few, yes.
Q They have a first child together named Ella?
A Yes.
Q That baby is Ella Krukowski?
A Yes.
Q And there came a time, in December of '14, when Roegan Krukowski, their son, was born, correct?
A Yes.
Q Is your daughter, Codie, a person who looks to you as mom, as her mom, to give her some suggestions or help, or answers to questions when she confronts a difficult situation in child-raising issues?
A Yes.
Q Is there anyone else that plays that role, other than you, as far as you know?
A As a mother?
Q You're the only mother. I mean, plays the role; like, she goes to a step-mom or Dane's mom or people like that?
A She goes to John Browning.
Q All right. And he's in the courtroom?

A Yes.
Q He's your ex-husband?
A Yes.
Q He is not Codie's father, is he?
A Correct, he's not.
Q Would that be it, as far as people she feels comfortable going to with help on tough issues?
A As far as I know of, yes.
Q At the beginning of February, 2015, did Codie Stevens come to you, contact you about an incident that occurred at their house -- their apartment on Colony, in Saginaw Township, involving a fall?
A And what date was that?
Q Sometime in February of 2015.
A The 7th.
Q Oh, you were going to tell me it's the 7th?
A Yes.
Q All right. And with regard to the specificity of that date -- because you said the 7th, and I just asked for the month -- how is it that you arrived at that being the date?
A I looked on my calendar, and I had it written down.
Q A calendar you still have?
A Yes.
Q Does it have a note?

A I think I had written, where it says, Roegan bumped his -- nope, Roegan's first set of shots. And then I have where Roegan had a bump on his head.
Q What dates on that calendar?
A The 9th is on his shots, and the 7th was when the accident happened.
Q So the shots would have been a scheduled pediatric office visit?
A Correct.
Q That was something that had been planned and booked on your calendar before the fall and the -- where he hurt his head?
A Yes. Yes.
Q And so, when the fall happened, do you know if you immediately noted on your calendar, on the 7th, that's the day he bumped his head; or did you, working backward from a later time, arrive at pegging it on the 7th?
A When she had called me I had noted it.
Q Okay. So that very day?
A Yes, on the 7th, yes.
Q What are the words that you wrote?
A It says, baby bumped his head, bath time.
Q Okay. What did you do? And I'm not talking about what people said, I'm talking about what you did in response

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to Codie notifying you that the baby bumped his head.
A I had asked her if it was broken open, how hard did he fall, is it -- you know, how raised is it, and --
Q So you asked questions?
A Yes.
Q Over the phone?
A Yes.
Q And did you go over there and see, in person, that day --
A Yes.
Q -- the baby? Did you get answers to questions -- and this is just yes or no right now -- did you get answers to questions you were asking on the phone from Codie?
A Yes.
Q And based on that, you felt the need to go over there?
A Yes.
Q And when you got there, what did you see on Roegan's head?
A It was just about a dime-sized bump on his head.
Q And when you say a bump, did you touch it?
A Yes.
Q Could you see it without touching it?
A Yeah, yeah, slightly, yes.
Q Did it have any discoloration?
A Just -- just a slight shadowing.

Q He had very little hair, at that time?
A Correct.
Q So, mostly, you could see the skin of his head?
A Yes.
Q Did you, on the phone, in response to some of these questions --
A Uh-huh.
Q -- what you heard from her or in person, when you went over there that day, suggest to Codie what she and Dane should do with the baby as a result of the fall?
A I suggested I'd -- personally, I'd take him in.
Q What does take him in -- did you say take him in or did you --
A To be checked over.
Q Okay. Was it on a Saturday?
A Yes.
Q Okay. There's no doctor's office usually open on a Saturday, so what were you saying when you said take him in?
A ER, ambulatory, MedExpress.
Q Did you clarify with her that you meant those things?
A No.
Q Do you think you just used the words, I would take him in?
A Yes.

Q All right. Between the two of you, do you believe there's enough communication and understanding that she didn't think you meant go to the gas station to pick up a gallon of milk, right?
A She understood.
Q Did you interact with Dane that day, as well?
A Uh-huh, yes.
Q You have to answer --
A Yes. I'm sorry.
Q Just for her sake, to type it all. So when you say ER or MedExpress, those are things in your own mind, not what you said with words; you just said, take him in?
A Correct.
Q All right. And what did she say back?
A She said, well, I will keep an eye on him. And I said, okay. And I said, my suggestion is I would -- just to be safe than sorry, I would take him in.
Q In the process of those conversations between you and Codie, was Dane present?
A Yes.
Q Did any of the conversation concern itself with, well, what's going to happen if we take him in and CPS gets involved?
A Repeat that, I didn't --
Q Was there any express concern by Codie or Dane, or both

of them, about, if we take him in, CPS is going to be involved?
A No.
Q Did you say something about CPS --
A Yes.
Q -- in the conversation?
A Yes.
Q What did you say?
A I said, more than likely, CPS will be called.
Q Did your daughter have some medical training, at that point in her life?
A She had medical knowledge from Ross.
Q That's Ross Medical, in Saginaw?
A Yes.
Q Had she completed her course of study there?
A No, she did not.
Q She was partway through it?
A More than partway.
Q Was she doing any work in the medical profession?
A No, not at that time.
Q Was she employed at Rite Aid, at the time?
A Yes.
Q Had she been off for a time for the birth of Roegan?
A Yes.
Q Was she about to resume?

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A Yes.
Q Do you know when her start date was back to Rite Aid?
A I want to say between the 15th and 17th, if I'm not mistaken. Somewhere in that area. That week.
Q You worked at Rite Aid, as well?
A I did, yes.
Q Were you working at Rite Aid, at that time?
A Yes. Well, no, I'm sorry, I wasn't.
Q All right.
A I was on disability.
Q So far as you know, did Codie Stevens, that day, Sunday, the next day, take him into the ER?
A No.
Q Did you plan to go to the doctor appointment with her for the shots on Monday?
A Yes.
Q The 9th, with Dr. Dawis?
A Yes.
Q Are you aware that Dr. Dawis' report talks about presenting there because the baby was irritable and fussy?
A Presenting? I -- repeat that, I --
Q That that's -- that's how Codie described why she was there for, to see Dr. Dawis?
A Yes.

Q Because the baby was irritable and fussy?
A Yes.
Q Did shots happen that day?
A No.
Q Have there been some uncertainties in your mind, as you've reflected back to this time more than a year ago, or when you were talking to officers doing their investigation, about whether the fall in the tub was before or after the visit to Dr. Dawis on the 9th?
A There was my discrepancy, yes, for -- because I couldn't remember
Q Is part of the reason that you're now testifying that the fall was on the 7th, a Saturday, is because you made a note contemporaneously with that event?
A This was done way before. When this happened, I had written it down.
Q That's what I mean, contemporaneously with the fall on the 7th --
A Yes.
Q -- you wrote --
A Yes.
Q -- baby fell in tub?
A Yeah. Yes.
Q And you then got back to that, at some point, and corrected the discrepancy in your memory of, well, I

know I said it might have -- the fall might have happened after the visit with Dr. Dawis, but I now say it's the 7th?
A It was the 7th.
Q Do you remember telling Codie and Dane they need to have the baby seen by Dr. Dawis for this goose egg?
A I told Codie that we need to make sure that we mention about the bump on the head.
Q When you go into Dr. Dawis' office, were you there when she recommended chiropractic care?
A Yes.
Q Did you ever have a conversation with Codie that there was no way she should go to the chiropractor's office with the baby having a bump on his head?
A No, I did not.
Q When you went to the pediatrician's office on Monday, the 9th, Dr. Dawis, could you visualize the bump?
A There was nothing there.
Q Were you around when Codie and Dane provided some remedy to that at their house, at their apartment?
A Yes.
Q What did you see them do?
A I had suggested to her, you know, what I know of is, if it's not cut open and it's not bulging, then put a bag of peas on it. Frozen -- anything frozen to try to

bring that, you know, that little bump down.
Q But it was bumped; there was a bump.
A It was just -- not even really raised up high.
Q Between her Ross Medical partial completion of coursework and your own experiences or training, did you feel comfortable not having the baby seen by a doctor about, it could be a possible concussion? Did you feel comfortable, at that date?
A At this time, no.
Q Were any other people other than you a regular sitter for the two children?
A No.
Q Are you aware of whether Dan Krukowski watched the children -- and before Roegan was born, the child Ella -- for lengthy periods of time while Codie worked?
A Of course he did.
Q He was the only caregiver in -- for many occasions while she worked?
A Well, of course he did.
Q And there would be times when they would ask you to help, because they were both unavailable to watch the children or the child?
A Correct.
Q I've been given, by Codie's attorney, several handwritten packets of notes that purport to be your

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1 notes?
2 A Yes.
3 Q The largest one says, December 6th, 2014, the day
4 Roegan was born, and goes on for eight pages?
5 A Yes.
6 Q You're aware of that?
7 A Yes.
8 Q Do you have one up there?
9 A Yes, I do.
10 Q There's one which is entitled, call log on Roegan from
11 being in the hospital?
12 A Yes.
13 Q That's several pages?
14 A Yup. Yes, I do.
15 Q And then one, Ella's ER visit, 2-22-15; one-page deal.
16 Well, that's not too pertinent, it's Ella. I'll go
17 back to the other two. The notes that are from being
18 in the hospital, this call log?
19 A Yes.
20 Q Were you noting dates and times each time you had a
21 contact with somebody at the pediatric intensive-care
22 unit?
23 A Yes.
24 Q As it happened? You had a pad of paper?
25 A Yes.

1 Q That's why it's -- it's specific down to even the
2 minute --
3 A Correct.
4 Q -- on the clock. You felt you were the only person, as
5 you were advised by the PICU and the police, who
6 could -- and the CPS -- who could interact with the
7 hospital to get updates?
8 A Yes.
9 Q You were aware that Roegan [sic] and Codie were told
10 not to visit and not to contact the hospital?
11 A Dane and Codie?
12 Q I'm sorry, Dane and Codie.
13 A Yes.
14 Q This longer eight-page document, when was that written?
15 A This was written when I started the call log, on the
16 24th.
17 Q Okay. And when was it finished?
18 A That day.
19 Q And somewhere in this week of April, beginning on the
20 22nd, when Roegan had gone to the emergency room and
21 you started interacting with the CPS, the police,
22 Detective Worden interviewed you on tape, correct?
23 A Uh-huh, yes.
24 Q You had a chance to see that interview?
25 A Yes.

1 Q It's both a video and an audiotaped interview?
2 A Yes, and I didn't know I was being videoed.
3 Q Okay. And did you know you were being recorded?
4 A No.
5 Q Okay. And that happened at the Saginaw Township Police
6 Department?
7 A Yes.
8 Q There's a note, page 45 of the hospital record, Exhibit
9 3, regarding an interaction between you and Lisa Brown,
10 one of the RNs in the PICU, I believe; February 24th,
11 at 10:15 a.m. And I want to read this
12 sentence-by-sentence, and see if you know whether it's
13 accurate or not. You were a -- because you were the
14 person who was allowed to call and get updates.
15 Grandmother Shawn Stevens called for update.
16 Had PIN number.
17 Do you know what that's about, the PIN
18 number?
19 A That I called about? Yes. I had to have a PIN number
20 to go directly to the nurses' station.
21 Q To prove who you were, and that you could get
22 information?
23 A Correct.
24 Q The nurse says, explained to her that patient was
25 stable, but still on ventilator. Her and her husband

1 both talking into the phone, stating they should be
2 allowed to come up and visit.
3 When that note was made, she didn't realize
4 he wasn't your husband; he was your ex-husband, at that
5 point, right?
6 A Correct.
7 Q And -- but that would be referring to Mr. Browning?
8 A I'm a little confused on that, because I never --
9 Q You don't remember him talking on the phone the same
10 time as you?
11 A John talking --
12 Q Yes.
13 A -- on the phone with me?
14 Q You and -- you and him talking at the same time, such
15 that the ER nurse could hear two people talking on the
16 other end?
17 A I don't recall that.
18 Q Okay. And the next statement says, explains this was
19 not my decision, that they would need to talk to CPS
20 and police; that this was a case under investigation.
21 Do you remember being told that?
22 A No.
23 Q Okay. They stated that they thought the baby was
24 injured during birth or when he saw a chiropractor. Do
25 you remember saying that?

A No.
Q Okay. Explained that I didn't know who hurt the baby, but that somebody non-accidentally hurt this baby. Do you remember hearing the PICU nurse saying, this is a non-accidental injury?
A I don't recall.
Q Do you recall you and/or John speaking and saying, so you are saying 100 percent that the mom or dad hurt him? Do you remember accusing the hospital nurse of that?
A No, I don't.
Q The nurse writes, I replied that somebody hurt him; it was up to CPS and police to investigate. And then it goes on to say -- referring to you and John, assuming that was you two talking -- they were angry and said, well, then we're going to call an attorney, and ended the phone call. Do you remember telling the hospital staff you'd be contacting an attorney?
A No.
Q Do you remember being angry at the hospital during this period of time that Roegan was being treated?
A The way Roegan was being treated --
Q The way you were being --
A -- while he --
Q The way you were being treated.

A We were being treated. I had simply -- when I had asked, you know, could we come up and see them, and I heard Carrie Blohm in the background, I heard her voice; and she said, absolutely not. Okay.
Q Is Carrie Blohm the CPS worker?
A Yes.
Q You've had some interactions with her, face-to-face?
A Yes.
Q And on the phone?
A She has contacted me on the phone, but no disputes or anything, sort of like . . .
MR. DUGGAN: No further questions.
THE COURT: Mr. Bush, cross-exam?
C R O S S - E X A M I N A T I O N
BY MR. BUSH:
Q Do you recall the day Roegan was born?
A Yes.
Q Do you recall the date?
A The 6th of December.
Q Of?
A '14.
Q 2014?
A Yes.
Q And Roegan was born where?
A At Covenant.

Q And by what?
A C-section.
Q Was that a prescheduled procedure?
A Not at that time, it was for the following week. And she went into labor early.
Q Okay. And went into labor on the 6th or earlier?
A I think it was on the -- part of the 5th, through the night.
Q Through the night? How long was she in labor, if you recall?
A 19 hours.
Q And who was her physician, at that time?
A Dr. Oravitz was her gynecologist.
Q Okay.
A I don't know who delivered.
Q Her original due date was what?
A Was supposed to be for the following week. She was supposed to have a -- she had a prescheduled C-section.
Q All right. Were you there during the -- at the hospital, during the time of the birth?
A Yes.
Q And where were you, exactly, then?
A We were waiting in the waiting room.
Q All right. And who informed you of the birth?
A Dane had come out and said, we had a boy.

MR. DUGGAN: Objection, I -- I want to limit the questions in such a way that -- I'm objecting because of hearsay here. I want to make sure the questions elicit only the answers to those specific questions. It sounded like she was going to narrate.
THE COURT: All right. Well, continue on, Mr. Bush.
BY MR. BUSH:
Q Dane told you about the birth?
A Yes.
Q What was his demeanor, at the time he came?
A Overwhelmed.
Q And how did he seem emotionally?
A Worried, distraught.
Q Did you see Roegan that day?
A Yes.
Q Where?
A In the -- her room that she was put in after he was born.
Q Okay. And who was there, at that time that you observed Roegan for the first time?
A It was John and I, John Browning and I, Codie and Dane.
Q And can you describe Roegan's appearance?
A His head was huge. I'm sorry.
THE COURT: You okay?

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THE WITNESS: Yeah.
THE COURT: You want a drink of water?
THE WITNESS: Yes, please.
THE COURT: There you go.
THE WITNESS: Thank you.
THE COURT: Take a breath.
THE WITNESS: His head was very big.
BY MR. BUSH:
Q All right. And what, if anything else, about his physical condition did you notice, at that time?
A When I tried to change him, he screamed; when I tried to lift his little legs and I unwrapped him.
Q You were in Codie's room, at the time?
A Yes.
Q And what time of day are we talking, if you recall?
A I don't remember
Q All right. Do you remember how long you were there in the aftermath of the birth?
A We stayed until about 9:00, 9:30, and we came back the next day.
Q Okay. 9:00, 9:30 in the evening?
A P.M., yes.
Q Do you know what -- what your time of arrival would have been then or --
A I know we spent most of the late afternoon there.

Q All right. Now, you tried -- you changed him or tried to change him, at one point?
A Yes.
Q More than once or once?
A Oh, more than once, yes, because Codie couldn't do it; she was stapled up. She couldn't get up, out of bed, and attend to him.
Q And he reacted with a scream, at the time?
A Yeah, he cried. He just whallered [sic], he -- and I didn't know what was wrong with him. And I -- I said, something is not right.
Q Other than this, his enlarged -- abnormally large head --
A Yes.
Q -- at least in your opinion, did you notice anything else about his physical condition?
A Not until the next day.
Q Okay. So you told us you left the hospital at 9:00 or 9:30 in the evening. It would have been the 6th of December, 2014?
A Yes.
Q And you returned in the morning?
A Yes.
Q Alone, or with John or --
A With John and Ella.

Q All right. And Ella is the three-year-old, or was your --
A My granddaughter.
Q -- three-year-old --
A Yes.
Q -- granddaughter? And when -- what time would you come back to the hospital the next morning, if you can give us a time?
A I think we were up there by 11:30 in the morning.
Q All right.
A Because Dane had to leave for work.
Q Before you went to the hospital?
A He was up there, at the hospital; and we came up, and then he left.
Q Okay. So he had been there before you got there?
A Yes.
Q And what -- what did you notice about Roegan's condition then?
A Bruised.
Q Pardon?
A Bruised.
Q Bruised?
A His face.
Q Where --
A His face, his shoulders, his chest.

Q Okay. And anything else, other than bruising and an enlarged head, that you can recall, to inform the jury?
A Just that he cried every time I tried to burp him and hold him and set him on my lap.
Q All right.
A Vomited. As long as I held him up here, compressed, he felt -- he didn't cry.
Q All right.
A And if I swallowed [sic] him -- swaddled him really tightly, he didn't cry.
Q Did you seek any assistance from any of the personnel at the hospital?
A Yes, I asked the nurse that was working on Codie, and I said -- oh, and I also did notice his eyes. He started shifting his eyes to the right. And I thought, okay, baby's eyes are not focusing. I had asked the nurse if we could get x-rays done, and she says, well, he is newborn.
Q Yeah?
A And she walked out. And then she came back again, and I said, can we please get some x-rays done? And she says, well, I'll get the house pediatrician to look them over. I says, I don't want him looked over, I want x-rays. None. They looked him over.
Q Who looked him over?

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A The house pediatrician.
Q Do you know who that was?
A No, I do not.
Q Do you know Dr. Dawis?
A Yes.
Q And how long have you known Dr. Dawis?
A Just a short period of time, as Roegan and Ella's pediatrician.
Q Okay. Did you, at some time or another, or maybe more than once, have contact with that doctor?
A I didn't, just the -- well, yeah, a couple times with Ella, taking her.
Q Did you have contact with her when -- after Roegan was born?
A Yes.
Q All right. At her office?
A Yes.
Q Up until his birth, the birth of Roegan, at any rate?
A Uh-huh.
Q Other than visits, did you visit his [sic] office with Ella?
A Her office? No. With Ella?
Q Or, her office, I mean. Excuse me.
A Ella was with us on the 9th, when -- that we took her. And, yes, we did -- you mean Ella has had colds or --

Q Right. So Dr. Dawis was her doctor?
A Yes.
Q All right. You asked the nurse about x-rays, and the nurse looked -- examined or looked at Roegan?
A The nurse didn't look at Roegan.
Q Well, who did?
A The house pediatrician.
Q All right. But you don't --
A That's what she told me.
Q -- know the name?
A No, I do not.
Q After that, what, if anything, happened on this particular time?
A I -- I guess I don't understand your question.
Q Well, what -- did you stay there after the pediatrician looked at Roegan, at the hospital? Were you there during that time?
A I did not see the pediatrician at all, when he looked at Roegan.
Q Okay. You were told --
A In the hospital.
Q All right. You were told that, that he'd looked at him?
A She told me she would get the house pediatrician to look him over. I was not there.

Q Okay. So weren't present for any of it?
A No.
Q Well, what was the next thing you recall happening with regard to this birth?
A When she brought him home, he -- he -- even when I was burping him in the hospital, I noticed, sitting on the couch, that he kept doing the jerking. And I -- I've never seen an infant newborn do that. Not by my kids or any of my grandkids.
Q What date did he come home?
A I think it was on the -- I don't --
Q Well, how long --
A I don't know.
Q How long was that?
A I would say three days.
Q Okay. Were you there, at the hospital, each of those three days?
A Just the two.
Q Just two?
A Uh-huh.
Q Okay. And that would be the 6th, the day he was born. And when, the next day?
A Uh-huh. Yes.
Q And then you didn't go back to the hospital?
A No.

Q He was -- he came home; Roegan was --
A I don't recall what day that she was released.
Q Okay. Do you recall Roegan's condition after the release?
A Yes.
Q What was that?
A He kept shifting his eyes to the right. And I -- I said, how could they have released him like this? And he kept jerking. Everything startled him. And constant throwing up.
Q So what, if anything --
A And bad body odor. He kept having a bad body odor.
Q Okay.
A And it wasn't a baby pukey smell, like babies get; it was a pungent -- ugh, like, you haven't bathed for weeks.
Q Okay. Did you or Codie or anybody take any action with regard to Roegan, after he came home?
A No, because we thought it was what Dane had when he was born, was the pyloric stenosis; that's why he was throwing up. But they apparently checked him out for that.
Q Checked Roegan out?
A That's what Codie had told me.
Q Okay. Because Dane had it when he was a child?

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A Yes, when he was newborn.
Q And there was -- some symptoms that Roegan displayed that were just -- made somebody suspicious of that?
A Yes, made all of -- all of our family, all of our friends that seen him.
Q All right.
A That something is not right, that -- what do we do? You know, we were trying to chalk it up to colic, and --
Q Right.
A -- never would have thought that there was anything --
Q All right. I want to take you to February the 7th. You indicated you marked that on the calendar?
A Yes.
Q And that was the day you learned of this fall --
A The bump on the head?
Q -- with Roegan?
A Yes.
Q And did you go to Dr. Dawis' office --
A Yes.
Q -- with your daughter and Roegan --
A Yes.
Q -- thereafter?
A Yes.
Q Do you know when you -- when you went, what day?

A It was on the 9th.
Q Okay. That would have been --
A February 9th.
Q -- a Monday?
A Yes.
Q You -- I think the 7th was a Saturday?
A Correct.
Q Yeah.
THE COURT: Is this a good place to break, Mr. Bush? Because we need to wrap it up, continue tomorrow.
MR. BUSH: Sure.
THE COURT: All right. We will break for today, ladies and gentlemen. So please come back tomorrow, at 9:00 a.m., and report back to the jury room that you're assigned to. We'll have a full day tomorrow.
And don't talk about the case with anyone tonight, don't listen to anything about the case, don't read anything about the case, don't do any kind of independent research about the case.
Have a good evening. We'll see you tomorrow morning. And you can follow Dawn or Bob out. And have a good evening.
THE LAW CLERK: All rise, please, for the

jury.
THE COURT: Everybody, take your notebooks, if you don't have them right now. Because we're going to have some other people in here this afternoon, so -- your notebooks or note pads.
STEVENS JUROR NO. 14: Is it alright to leave them?
THE COURT: Huh?
STEVENS JUROR NO. 14: If there's nothing in them, is it alright to leave them?
THE COURT: Yeah. Yes.
STEVENS JUROR NO. 1: Take the whole thing or just our notebooks?
THE COURT: Well, why don't you just take the whole thing. Then you'll have it.
The folks on the floor, looks like they kept all their stuff, so --
MR. DUGGAN: May we approach the bench, Your Honor?
THE COURT: No, wait until the jury is gone, please.
MR. DUGGAN: Oh.
THE COURT: All right. We'll take care of any other notebooks that are there, folks. Thanks, I appreciate that.

STEVENS JUROR NO. 3: The only ones that are left are blank.
THE COURT: Okay.
Thanks.
STEVENS JUROR NO. 14: You're welcome.
(At 3:58 p.m. juries are excused.)
THE COURT: Ma'am, you can go out.
UNIDENTIFIED JUROR: Oh, I thought you wanted me to --
MR. DUGGAN: I want you to tell her what you told me when I asked about the schedule.
THE COURT: All right. Why don't you have a seat over there.
MR. DUGGAN: She is uncomfortable sitting, because of her back.
THE COURT: Oh.
MR. DUGGAN: Just stand somewhere.
THE COURT: All right.
MR. DUGGAN: We can go off the record for this.
(Off-the-record discussion.)
THE COURT: Counsel, I'm going to remind you, for the third time, I need jury instructions for the final by tomorrow at noon. So, again, I don't think there should be anything unusual.

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1 MR. DUGGAN: Okay. Thank you.
2 THE COURT: We'll take a quick recess and see
3 where we are at on the probation violations.
4 (At 4:00 p.m. proceedings adjourned.)
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1 STATE OF MICHIGAN)
2) SS
3 COUNTY OF SAGINAW)
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7
8 I certify that this transcript is a complete, true
9 and correct transcript of the proceedings and testimony
10 taken in this case before the Honorable Janet M. Boes,
11 Circuit Judge, in Saginaw, Michigan.
12
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17 Ursula Wegert, RPR, CSR-4553
18 Official Court Reporter
19 111 South Michigan Avenue
Saginaw, MI 48602
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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW

PEOPLE OF THE STATE OF MICHIGAN

vs. File No. 15-041274-FH-3
Volume III
DANE RICHARD KRUKOWSKI,
Defendant.
_____/

PEOPLE OF THE STATE OF MICHIGAN

vs. File No. 15-041275-FH-3
Volume IV
CODIE LYNN STEVENS,
Defendant.
_____/

JURY TRIAL
BEFORE THE HONORABLE JANET M. BOES, CIRCUIT JUDGE
Saginaw, Michigan - April 29, 2016

APPEARANCES:

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Reported by: URSULA WEGERT, RPR, CSR-4553
Official Court Reporter

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KRUKOWSKI PX CKrukowski CD 126
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Saginaw, Michigan
April 29, 2016
THE LAW CLERK: All rise, please. Circuit Court for the County of Saginaw is now in session.
THE COURT: Please be seated.
Anyone seen Mr. Duggan?
MR. BUSH: He was in here. He stepped out in the hall, I think.
(Off the record.)
THE COURT: All right. Counsel, are we ready for the jury?
MR. DUGGAN: Yes, Your Honor.
THE COURT: All right. Let's bring them in.
THE LAW CLERK: Please rise for the jury.
(At 9:13 a.m. juries are present.)
THE COURT: Please be seated.
Good morning, ladies and gentlemen.
THE JURIES: Good morning.
THE COURT: We are prepared to proceed with another witness today. We have a doctor, who is coming in to testify and had some other things scheduled, so I think -- as Mr. Duggan explained to you at the beginning of trial, sometimes we can't get everything to go in a nice flowing order, because of -- we're dealing with the schedules of witnesses and attorneys

and the Court, and a variety of other things. So the witness that we had yesterday, Ms. Stevens -- I believe that was who we ended with -- yes. And she has to continue, but we'll take the witness who's available now out of order, and then we'll be having her called back at another time, just so you understand what's going on.

And with that, then, Mr. Duggan, you may call your next witness.

MR. DUGGAN: Thank you, Your Honor. We call Michael Fiore.

THE COURT: All right.

MR. DUGGAN: Carefully work your way through the maze, so --

THE COURT: Sir, if you'd step forward and raise your right hand, please?

Do you solemnly swear to tell the truth, the whole truth and nothing but the truth?

DR. FIORE: I do.

THE COURT: Please have a seat in the witness box.

DR. MICHAEL FIORE,

Being first duly sworn at 9:15 a.m., testified under oath, as follows:

D I R E C T E X A M I N A T I O N

BY MR. DUGGAN:

Q Good morning. Please state your name.

A Michael Fiore.

Q Please spell the last.

A F-I-O-R-E.

Q Are you a doctor licensed to practice in the State of Michigan?

A Yes, I am.

Q How long have you been a physician?

A I graduated medical school in 1996, so I have been a physician since then.

Q About 20 years?

A Yes.

Q Do you have a specialty in which you practice?

A Pediatric critical-care medicine.

Q And how long, of your 20 years, have you devoted to that?

A Thirteen years.

Q Are you board-certified?

A I'm board-certified in both pediatrics and pediatric critical-care medicine.

Q Could you give a simple distinction between the two for the jury, so they know why there's two separate certifications?

A Sure. Pediatrics is general pediatric medicine, taking care of the health of children. It's often outpatient or inpatient, well children.

Q What you call a pediatrician?

A A pediatrician, exactly. And then I did further subspecialty training; an additional four years beyond that, in pediatric critical-care medicine, which is taking care of critically ill children, basically, children in the intensive-care unit. So I only practice in the hospital, in the ICU, taking care of critical -- critically ill children, as my practice.

Q And when you just said ICU, do you mean the pediatric intensive-care unit?

A Yes, the pediatric intensive-care unit.

Q And do you call it the PICU or the peds ICU or what do you call it?

A All of the above.

Q Okay. Everybody use a different term?

A Yes. Interchangeable.

Q All that has been at Covenant, those years of specializing in pediatric critical care?

A All my training in pediatric critical care was at the Children's Hospital, in Michigan, in Detroit, and -- but the last 13 years, since I completed my training, had been at Covenant Healthcare.

Q You have been referred to in some of the medical records we have seen, and by some of the witnesses, as an intensivist. Is that a term that you understand applies to what you do at Covenant?

A Yes, an intensivist is one who practices intensive-care medicine.

Q Okay. And so there might be people who do cardiac intensive care and just normal adult intensive care, neonatal intensive care; there might be a lot of others who are called intensivists, but you are a pediatric intensivist?

A That's correct. I only take care of pediatric patients.

Q What is the age group; I realize, starting at zero, at newborn, but how far do you go up?

A Zero to 18 years of age.

MR. DUGGAN: To the extent that this doctor may give expert opinions, I would offer him to the defense for voir dire, as I intend to ask some questions that will possibly call for those opinions.

THE COURT: An expert in pediatric critical-care medicine?

MR. DUGGAN: Yes, Your Honor.

MR. STURTZ: I have no objection to the doctor's qualifications.

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MR. BUSH: No questions, Judge.
THE COURT: All right. Mr. Fiore will -- Dr. Fiore will be qualified as an expert in pediatric critical-care medicine.
MR. DUGGAN: Thank you.
BY MR. DUGGAN:
Q While on the job at Covenant, did you become aware, on February 22, 2015, or shortly thereafter, that Covenant had a baby, a two-month-old-plus baby, named Roegan Krukowski, that was getting treated there?
A The following morning, actually. My partner was present during the child's first day in hospitalization, and I assumed care the following morning.
Q You've had a chance, before coming to court today, to review records pertaining to that hospitalization of Roegan?
A Yes, I have.
Q You realize we have, up in front of you, about 150 pages, Exhibit 3; and about a 70-some page Exhibit 4, which it's cover -- purportedly, that hospitalization. Those are the types of records you reviewed?
A Yes.
Q And who is your partner that you referred to?
A Dr. Michael Stargardt.

Q Stargardt?
A Yes.
Q Did -- because of the need to sleep and leave the job occasionally to eat food, would there be times when he was in charge of the baby and you were gone, and vice versa?
A Yes, we -- we cover the ICU in, basically, shift work; 20, 24-hour-shift coverage.
Q So many of the records the jury might see, if they cared to read them later during deliberations, would be notes from Dr. Stargardt?
A Yes, Dr. Stargardt. And we have one additional partner, Dr. Salman, Nathan Salman. There's three of us that cover the pediatric ICU.
Q And could you spell Salman?
A S-A-L-M-A-N.
Q All right. Before I start asking you specific questions -- and you and I have talked prior to you coming in to testify, correct?
A Yes.
Q On the phone and in person, briefly?
A Yes.
Q You've seen some photographs to refresh your memory, what the baby looked like?
A Yes.

Q I'd ask, now that you've seen those photographs that I'll be showing to the jury in a moment, do you remember this case and this patient?
A Yes, I do.
Q Exhibit 7 will be shortly on the screen, there.
MR. DUGGAN: This is going to be brief, Counsel, just -- I'm only showing a couple.
BY MR. DUGGAN:
Q Can you see that okay?
A Yes.
Q If you can't, you can get down from the stand.
A Okay.
Q I'll zoom in a little bit. This picture purports to be on February 22nd, 2015. You came into the picture the next morning, February 23rd?
A Yes.
Q Is this how the baby looked when you saw the baby the first time?
A Yes.
Q And do you have any reaction to just the general appearance of the baby's head, at this point?
A Well, the baby is obviously not awake. The head size looks disproportionately large without -- without a measurement; the right eye is more closed than the left. So there's asymmetry.

Q And here's another view, Exhibit 16, of 20 -- 22nd of February. Does this also demonstrate to you, in your eye, the baby's head being larger than it should be?
A Yes. You can see the frontal part of the forehead, and as it rounds about the top, protrudes, it's quite round and large.
Q Would you say that was -- again, on first blush, without doing any medical work on the baby, to your eyes, did this look abnormal?
A Yes.
Q And we've had other witnesses comment. I'd like your comment, too. On the left side, above the ear, does there appear to be any injury to the surface, that you can see?
A Not that I can appreciate on this photograph.
Q And so if there is any slight discoloration, we're not seeing a bruise or the yellowing of a bruise after the fact, nothing like that?
A I don't see that.
Q Okay.
MR. STURTZ: Objection. What exhibit is this, please?
MR. DUGGAN: The one I was looking at is 16.
BY MR. DUGGAN:
Q And since we're on this subject, I put up Exhibit 8,

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1 purporting to be from February 25th. The PICU has had
2 the baby now for three days. Do you see any
3 improvement in the head situation, in this picture?
4 A It looks like it's smaller, proportionally.
5 Q And these are just rough, looking at pictures?
6 A Yes, sir.
7 Q I'm not using tape measures?
8 A Absolutely.
9 Q Is there something about that picture that immediately
10 you recognize as your work?
11 A The baby has, obviously, tubes in the mouth and nose.
12 Q Did you have to do with that?
13 A Yes, I placed those. One is an endotracheal tube to
14 support the baby's breathing, put him on a ventilator
15 to -- breathing; and the other one is a feeding tube in
16 the nose.
17 Q And then there's the one on the top of the head?
18 A The top of the head.
19 Q Another doctor did that?
20 A That is a subdural drain, to drain the fluid from the
21 brain. The pediatric neurosurgery placed that.
22 MR. BUSH: Which exhibit was that?
23 MR. STURTZ: 8.
24 MR. DUGGAN: The one I just showed was 8.
25 MR. BUSH: Yeah.

1 BY MR. DUGGAN:
2 Q Turn to page eight, which would be Exhibit 3, the
3 larger packet, looking at the bottom right-hand corner
4 of the page.
5 MR. STURTZ: You said what page, now?
6 MR. DUGGAN: Page eight, at the bottom of the
7 larger.
8 THE WITNESS: Yes, page eight.
9 BY MR. DUGGAN:
10 Q And this is a -- purports to be a note by a resident,
11 cosigned by your partner, Dr. Stargardt, at this point
12 in the record-keeping process, which is indicated as
13 1:51 p.m. on February 22nd; the baby is in the PICU or
14 is --
15 A Or is --
16 Q -- about to be admitted?
17 A About to be.
18 Q Okay.
19 A In the process, then.
20 Q All right. And by that time, according to this, to the
21 notes, the parents had shared with the medical staff
22 that there had been a type of fall; that -- where the
23 baby's head was struck, leaving a hematoma?
24 A Correct. That's -- that's --
25 Q And --

1 A -- reflected in the --
2 Q -- that's basically history information provided by the
3 parents?
4 A Correct.
5 Q Okay. And that's significant to you, as a treating
6 pediatric critical-care doctor, to know what led to the
7 reason for the baby being in the emergency room?
8 A Certainly.
9 Q And at that point, down at the bottom of the page,
10 under HEENT, there is a note of slight macrocephaly.
11 What does that term mean?
12 A Macrocephaly is a large head.
13 Q Okay. And by this time some x-rays had been done of
14 the baby? I'm looking at the bottom of the -- of the
15 note.
16 A Yes.
17 Q There's a reference to a chest radiograph being done,
18 remarkable for healing fractures?
19 A Yes.
20 Q Prior to that note, had a CT also been performed,
21 looking back to page three?
22 A Yes.
23 Q Who was brought in from the staff or on call to assist
24 on or to discuss with the staff the neuro --
25 neurological situation?

1 A So this would have been a multidisciplinary team of
2 physicians involved in this baby's care. The pediatric
3 neurosurgeon, Dr. --
4 Q Who was that?
5 A Dr. Schinco, Frank Schinco, would have been involved in
6 his care.
7 Q All right.
8 A Dr. -- I don't know, at this time, yet, but
9 Dr. Marianne Majkowski is a child neurologist that was
10 involved with seizure management; medical management of
11 the seizures.
12 Q And that would mean providing medications?
13 A Medications to stop the seizures, as well as the
14 radiologists.
15 Q Are the drugs given to an infant, a two-month-old, for
16 seizure activity comparable to what an adult gets; at
17 least the type of drug?
18 A Some -- many of the types are similar to what an adult
19 would get. There are some medications we would use in
20 adults that we may not use in infants.
21 Q Was powerful medication used in the case of this infant
22 to relieve the seizures?
23 A Multiple powerful medications.
24 Q What would be the outcome of a failure to provide
25 relieve from the seizures in an infant?

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A Be an ongoing seizure activity that doesn't -- doesn't stop. And the longer seizures go, there's risk of brain injury, as a result of that.
Q Okay. On page nine, what, at that point, on February 22nd, around 1:51 p.m., had the assessment shown, as far as the various injuries this baby had?
A This is the assessment of Dr. Stargardt, I believe. Non-accidental trauma.
Q And what injuries were included in the assessment?
A So, an intracranial hemorrhage -- which is a bleed -- consistent of both subacute and acute; which means different ages of bleeding in the brain, some new and some old. Rib fractures, multiple rib fractures that were healing already; so there was a callus formation, we call it, which is the healing of the ribs. Ongoing seizure activity, and bilateral retinal hemorrhages, which is bleeding in the back of the eye.
Q So Dr. Sahouri would have already performed his RetCam examination?
A He may not have, at this point, done a formal exam. Oftentimes, we can do a very cursory exam to look at the retina and see that there's bleeding, and then full consult with Dr. Sahouri to do a much more sophisticated exam with a retinal camera, we call it, to take the photos and look into the brain and do a

much more sophisticated exam.
Q Dr. Kirby shared with the jury that she wouldn't have all the necessary equipment she would like to have just at ER stage to do the retinal examination, so this is after --
MR. STURTZ: Judge, I'm going to object to what Dr. Kirby said. She was here to testify, and I don't see anything that has to do with as to what Dr. Kirby had to say.
MR. DUGGAN: I'll rephrase the question, Your Honor.
THE COURT: All right.
BY MR. DUGGAN:
Q Before Dr. Sahouri uses the RetCam, are there instruments you or others like your partners use to examine the eye and try to get a look at the retina?
A Well, we can use a fundoscope, which is a simple ophthalmoscope, to look in the back of the eye. It's not ideal, but -- but looking at the retinal hemorrhage is not a life-saving maneuver, so that often will wait a day or two, until we get the ophthalmologist to evaluate.
Q And are you looking without taking photographs?
A Yes, we don't take photographs.
Q And to go back to your first comment, when I asked you

about the assessment, it's perceived by the physicians as non-accidental traumatic injury?
A Yes.
Q And were you aware, at that point, that CPS had been contacted by the ER?
A Well, I was not involved yet, at this point.
Q All right. Then I won't ask you that. But on this date and time, was a decision made to admit him to the PICU?
A Yes.
Q All right. Was there a plan to give him further imaging testing, beyond what you know had already happened, at that point; beyond the CT and the chest x-ray?
A An MRI was scheduled to further look at these -- the subdural blood.
Q Any further radiological work?
A A skeletal survey would have been done electively. Again, it's not a life-saving, urgent matter, not our priority; but a skeletal survey would have been planned.
Q As you looked at the baby, when you first saw the baby on the 23rd, did it have any apparent -- to the eye, without a radiological test -- broken bones, such as things out of joint and --

A No.
Q Okay.
A No.
Q Did -- I'm looking at page 10, under HPI. What does that stand for?
A HPI is the history of present illness. This is the history provided by caretaker or somebody --
Q Parents?
A Parents. Whoever is present that can tell you what -- what happened.
Q And at that point, details were being provided, were they not, by the father, as to the fall in the bathtub from a couple weeks before?
A The details are there. I don't know who provided that. I didn't obtain his history.
Q But this history was obtained for the sake of treatment, correct?
A Yes.
Q And on page 12 there is a note. This might be a continuation of the note started by Tyler Dickey, the resident, with the assistance of Michael Stargardt; in the middle, there: CT head impression. In addition to saying, MRI is recommended for further evaluation, it says, non-accidental trauma is to be excluded, and the results were discussed with Dr. Kirby. What does it

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1 mean when a doctor says non-accidental trauma is to be
2 excluded?
3 A It means that's the most likely explanation, so that
4 that is the -- based on everything that they've seen,
5 that has to be at the top of the list; and unless
6 there's another explanation for it, this is the
7 diagnosis made by the imaging.
8 Q I see. So when it says, to be excluded, it doesn't
9 mean it's being excluded as the explanation?
10 A No.
11 Q It's the main explanation, which you're trying to see
12 if you're wrong?
13 A Correct.
14 Q Okay. So all the efforts and the -- and the diagnostic
15 part of this along the way are seeing if your
16 hypothesis is right or wrong?
17 A Correct.
18 Q Are you aware, as the pediatric intensivist, that there
19 are parents waiting to -- not particularly at this
20 point, if you're not involved on the 22nd, but when you
21 become involved -- that there are parents hanging on
22 your decisions and your conclusions, because that's
23 going to impact what protective services does?
24 A Sure.
25 Q In the case of an accidental injury, would you, as the

1 intensivist, be working pretty closely with the
2 parents, in terms of support; giving them explanations
3 and updates?
4 A Sure.
5 Q At the bottom of that page, under plan, does it
6 indicate that CPS has been officially notified?
7 A Yes.
8 Q And have you heard that terminology, Form 3200?
9 A Yes.
10 Q And that's what it indicates; that even on the 22nd,
11 CPS has been notified officially?
12 A This would be right from the emergency department. The
13 3200 is what we would file if we have a suspicion of
14 child neglect or abuse.
15 Q Now, when you say, we, do you mean Covenant in general
16 or do you mean a specific department?
17 A No, we, the community. Anybody who takes care of
18 children. Social workers, teachers.
19 Q Doctors?
20 A Doctors. Anybody who has suspicion for abuse, this is
21 the form they would file with CPS.
22 Q Let me jump ahead to the end of your involvement. It
23 goes over many days, up to the first few days in March
24 that this baby is there. Did you ever arrive at a
25 conclusion that non-accidental injury had been excluded

1 as the explanation for this child's injuries? In other
2 words, did you ever come to the conclusion that it was
3 all just an accident?
4 A No.
5 Q Would you have felt under an obligation to so inform
6 the police or CPS if you had, at the PICU, come to that
7 conclusion?
8 A Absolutely.
9 Q At page 22 of the record -- pardon me -- at the bottom,
10 it says, 8:41 a.m., an entry by the resident, Tyler
11 Dickey. And he is a PICU resident?
12 A At that month and time.
13 Q He was?
14 A Yes.
15 Q He's now in his practice; moved to another hospital,
16 out of state?
17 A That's correct.
18 Q Are you involved by this point; 8:41 a.m., on the 23rd;
19 have you come into the case?
20 A Yes.
21 Q And has the baby been intubated yet?
22 A Not at this moment.
23 Q Okay. At the bottom of that page, 22, although it's
24 Tyler Dickey's note, it says, cosigner, Michael Fiore,
25 R. Is that, you believe, your first contact with this

1 situation?
2 A Yes.
3 Q The consultation? Are you actually in the room, seeing
4 the patient, or are you just talking with him over the
5 phone, with Dr. Dickey?
6 A With Dr. Dickey?
7 Q Yes.
8 A No, I would have seen the patient with Dr. Dickey.
9 Q Okay. Is that sort of the way you manage patients;
10 there's a resident, but there's also you, the
11 supervising person?
12 A Yes, we're a teaching hospital, so we have residents
13 which -- who are physicians, and still in training,
14 though, that will be working with us. But we round
15 together, so we see patients together, we discuss the
16 patients' care. They often will write a note, and we
17 will addend it or add to the note, but -- but the care
18 is directly supervised by us.
19 Q Okay. On the next page, under impression, there are
20 several things indicated. And these tend to go along
21 all the way through this packet of records, but it
22 lists six items. You see that, at the top of page 23?
23 A Yes, I do.
24 Q Intracranial hemorrhage, status epilepticus, acute
25 respiratory failure, non-accidental traumatic injury,

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1 retinal hemorrhages, and rib fractures. I want to talk
2 first about what I don't see there, which I think we
3 see later in the records. Specifically, a skull
4 fracture is not listed there, which Dr. Constantino
5 talked about yesterday.
6 A Okay.
7 Q Is -- is there a reason why the skull fracture wouldn't
8 be listed there, from CT or MRI?
9 A Maybe, maybe just from pure documentation --
10 Q Okay.
11 A -- issues.
12 Q Are MRIs and CTs most concerned with what's inside the
13 skull?
14 A Oh, absolutely. So many times we don't appreciate a
15 skull fracture on a CT scan; it's easy to miss with the
16 way they obtain the images in slices.
17 Q And assuming this baby had a skull fracture some
18 length -- well, millimeters wide; that can be survived,
19 apparently?
20 A Yes.
21 Q What about swelling inside the brain, unchecked?
22 A Un -- unchecked?
23 Q Untreated?
24 A Untreated, especially to this degree, would not be
25 survivable.

1 Q What is the mechanism that -- or, not the mechanism,
2 the time during which -- based on what you're seeing on
3 February 23rd, of this baby's condition, if you don't
4 get this pressure relieved, what is the time this baby
5 has to live?
6 A This baby would have died that day, in ICU, if we
7 hadn't intervened.
8 Q And that day, being the 22nd or 23rd?
9 A 23rd.
10 Q Also from that list of six items that I spoke about a
11 minute ago, we don't -- I don't know what the term
12 status epilepticus means.
13 A Status epilepticus is seizure activity that continues.
14 It's refractory to treatment. It usually means, in --
15 in general terms, it just means prolonged seizure. So,
16 typically, that means greater than five minutes.
17 Q Greater than five minutes?
18 A That's -- that's where we would use the term status
19 epilepticus.
20 Q And we probably all heard the term epilepsy. If the
21 baby is having seizures, does that mean it has epilepsy
22 or that's just -- it's got this symptom that looks like
23 epilepsy?
24 A No, this isn't necessarily epilepsy. Epilepsy is
25 recurring seizure disorder. Usually, it's a diagnosis

1 of exclusion. For example, there are many things that
2 can cause refractory seizures, some of them treatable.
3 For example, meningitis, bleeding in the head,
4 overdosing, things like that, that can cause prolonged
5 seizures in patients who don't have epilepsy.
6 Q Okay. And one other item that's not listed here is a
7 fracture of the radius, a healing fracture of the
8 radius. Does that have to do with the fact that a
9 skeletal survey had not yet been completed?
10 A That's correct. Again, the skeletal survey is a -- a
11 study that we would do more electively after these
12 life-saving procedures.
13 Q Because a healing arm fracture, a healing skull
14 fracture, isn't killing the baby that day?
15 A That's right, and there's -- that's exactly it.
16 Q All right. On page 29, in the middle, under the
17 assessment/plan, one of the items appears to be a new
18 one. It's beyond what was already in the head; the
19 subdural hematomas. Now we see chronic subdural
20 hygroma. This appears to be an addition. Is that
21 something that neurosurgeon could comment on
22 effectively, when he testifies today?
23 A Yes.
24 Q Okay. Then I'll have him do that. At the bottom of
25 page 29, again, resident Tyler Dickey does the note,

1 but he has his note cosigned by you. You are providing
2 treatment with him?
3 A Yes.
4 Q Describe for the jury what you did, according to this
5 note, around 9:33 a.m. on February 23rd.
6 A This is where --
7 Q The baby is there less than 24 hours at the hospital,
8 at this point, correct?
9 A Yes. This is where we intubated the patient. So baby
10 is having ongoing seizure activity; when that was
11 refractory to treatment, multiple different medications
12 were given.
13 Q And I heard you say it, and now I'm going to admit I
14 don't know what it means. What does refractory mean?
15 A It's not responding --
16 Q Okay.
17 A -- to the medication alone.
18 Q All right.
19 A So in spite being given medications, multiple different
20 classifications of seizure medications, the baby had
21 ongoing seizure activity. So our concern was to make
22 sure the baby was getting good oxygen and breathing
23 effectively. The baby was not conscious during all
24 this, so we decided to put the baby on the ventilator
25 and do the breathing for the baby. So we gave the baby

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1 some sleeping medicine, put a tube down into the mouth,
2 into the trachea, and hooked the baby to the
3 ventilator.
4 Q Would you call that a significant or serious
5 intervention?
6 A Yes.
7 Q With any patient, any baby?
8 A Absolutely. This is what, you know, some people would
9 refer to as life support. It's, basically, you're on a
10 machine that's doing the breathing for you.
11 Q What was, mechanically, with his body, keeping him from
12 breathing properly, such that a breathing system was
13 installed?
14 A Your brain regulates your -- your breathing center. So
15 without any conscious thought about it, we have a
16 regular pattern to make us take a breath and exhale in
17 and out, even when we're sleeping. But when you have
18 blood in the brain and swelling and seizures, that
19 coordination and effort becomes irregular, and you
20 can't count on that, so -- so we had to intervene.
21 Q Is this something that you see when you look at the
22 baby, are all those instruments that we saw on one of
23 the pictures beeping or going off or telling you to do
24 it?
25 A I'm not sure of your question.

1 Q Is a PICU nurse coming in and seeing the baby is not
2 breathing or is an alarm going off that the baby is not
3 breathing that caused you to take your action?
4 A It could -- it could be either way. With this
5 scenario, it was watching the baby having refractory
6 seizures, regardless of what the numbers were like.
7 This is an indication to help the baby breathe.
8 Q Is some person, medical person, in the room all the
9 time with the baby while in the PICU?
10 A Oftentimes, multiple people; but there's always at
11 least one person in the room.
12 Q Twenty-four hours a day?
13 A Yes.
14 Q A couple of hours later from what we just spoke
15 about -- and I'm looking at page 32, and, actually,
16 beginning on page 31, at -- just after noon, on
17 February 23rd. It starts, patient found to be seizing
18 by Dr. Fiore during EEG. Who's performing an EEG?
19 A The EEG techs.
20 Q Okay.
21 A They're technologists trained in --
22 Q And you were in the room when this happened?
23 A They called me into the room. I was --
24 Q Okay.
25 A -- outside the room, and they -- they brought me right

1 into the room to see it.
2 Q And did you simply give more medications, to try to
3 stop the seizures?
4 A We -- that was one of the things we did. We gave more
5 medication, but we also prepared for the intubation we
6 talked about, at that time.
7 Q All right. At the bottom of page 34, we -- and then on
8 to 35, are notes from later that evening, 8:00 p.m.,
9 from the PICU nurse, noting that you and Dr. Schinco
10 are both there in the room.
11 A Yes.
12 Q What was noted about the baby's head, at that point?
13 A Informed that the patient's head circumference had
14 increased by half a centimeter since the day before.
15 So the baby's head was growing.
16 Q And so all the efforts you were using weren't yet
17 bringing this head swelling down?
18 A That's -- that's correct.
19 Q Would you say just about every effort, medically, you
20 can think of, was being used to assist to get that head
21 size to stop swelling?
22 A Yes.
23 Q The note also references Dr. Sahouri in an eye exam
24 completed. Is that when he did his RetCam, if you
25 know?

1 A I would assume.
2 Q You assume so?
3 A Yes.
4 Q Okay.
5 A If that's the timing of it.
6 Q In the middle of that page, 35, is a reference to a
7 Robert Koch, chaplain, in to see the baby. Is that
8 something done at family's request or does the hospital
9 provide the chaplain service for patients in PICU?
10 A All the above.
11 Q Okay. Turn to page 53, please. We're now, at least at
12 this stage of the record, into February 25th. It's
13 about 4:30 in the morning. There's a note that an RRT,
14 Jeremy Jeter, is in. Is he doing the supervision of
15 what you have installed with the intubation, the
16 breathing stuff?
17 A The respiratory therapist, under our direction, managed
18 the mechanical ventilator, so if we want a setting
19 change, they -- they do the -- they touch the
20 ventilator; they'll change the rate, move the nobs. So
21 they will do that. They're also, you know, they're the
22 specialists in breathing, so they provide support,
23 suctioning the baby's endotracheal tube, providing
24 breathing treatments, supporting any baby with
25 breathing trouble, under our direction.

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Q Okay. Did you have anything to do with checking the status of a neural drain tube, that bag of discolored liquid we saw in one of the pictures; did you have anything to do with that, supervising that?
A I would have been involved in it. Ultimately, the neurosurgeon is going to be responsible for the drain that he put in.
Q And when he comes --
A But I would have been involved.
Q He comes back and checks regularly?
A Yes.
Q Okay. So it's not just, do the surgery and never see the guy again?
A He'll be rounding regularly.
Q All right.
A The baby.
Q All right. On page 62 -- actually, the note starts on 61. It's a note with Stargardt, and signed by Marianne Majkowski, your partner, about an EEG. What is the EEG's -- what is that test for?
A An EEG looks -- is a diagnostic tool. Electrodes are placed on the scalp, and it looks for seizure activity, basically. Looks at your brainwave activity, and sees if there's any asymmetry or seizure activity.
Q Can you be having seizures and it not be apparent to

the nurse or doctor, just looking at the patient?
A Yes, yes, especially someone who is pharmacologically or -- comatose. You know, they may not be able to move. So we look for ongoing -- what we call subclinical seizures. So you don't see them, but they still occur in the brain.
Q Okay.
A And they still need to be treated.
Q So they can be harmful, if not treated?
A Yes.
Q And when you said comatose or pharmacologically, are you saying you could be in a coma just on your own or you could be induced by medicines --
A Sure.
Q -- into such a coma?
A Sure.
Q What is the status of the baby then; is he induced into a coma or is he just in one?
A The combination, frankly.
Q Okay.
A He's not fully awake, but yet we had provided medication to make sure he was comfortable. So he was getting medicine from us, but he was also not awake on his own, which is why we had to put the tube in, in the first place.

Q He doesn't have to eat by mouth because he's getting gastro, through the nose?
A That's right, we're tube-feeding him.
Q And he's eliminating, so nurses have to, for hygiene purposes, clean diapers and so forth?
A Clean diapers. I don't remember with this infant, but, typically, a foley catheter is placed in the bladder, to keep the bladder empty.
Q Okay. Going back to the epilepsy issue, did you ever reach a diagnosis, before discharging this patient from the PICU, that he had epilepsy?
A No, he did not have epilepsy.
Q So you got him -- and, again, jumping ahead to when he's discharged, got him to the point where he's healthy enough that you can say whatever those seizures were caused by; that's done, that's resolved?
A No, I should --
Q Okay. Go ahead.
A I should clarify that. We were confident that he didn't have epilepsy prior to coming; he may have epilepsy moving forward, as a result of the injury. I, since leaving the intensive care unit, I am not involved in the child's care, I only take care of it -- but he's at high risk for developing epilepsy now, with -- meaning, ongoing seizure activity, and

requiring anti-convulsants and neurology follow-up.
Q Could that be a life-long condition for this baby?
A Oh, absolutely.
Q On page 71, this would be under a note started on the previous page by Stargardt, there is an impression from the EEG. Could you comment on that, on page 71?
A 71. This is an abnormal EEG, containing multifocal spike and sharp wave discharges seen primarily in the bilateral posterior quadrants, also extending anteriorly. This activity can be seen in complex partial epilepsy, with or without secondary generalization. So --
Q Could you translate that a little for us?
A So it's -- so it's not a normal EEG. The baby was still having some spike activity that would be consistent with a concern for future seizures.
Q On the next page, towards the top, an x-ray, chest frontal -- I think, X -- XR stands for x-ray, doesn't it?
A Yes.
Q Indicates, under the narrative, an indication of pneumonia. What's that reference to?
A That's a -- that happens when we place infants on mechanical ventilators. It's one of the complications of it. The babies aren't breathing spontaneously on

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1 their own, they don't have the cough mechanism; so
2 while you're on the ventilator you can have the
3 pneumonia that develops. Not necessarily a primary
4 problem, but a complication of being in the
5 intensive-care unit.
6 Q Is pneumonia a serious health concern?
7 A Certainly has a potential to be.
8 Q Okay. Page 117, there is somewhat of an update to an
9 EEG. This is from the note which, according to the
10 prior page, 116, is Tyler Dickey's residence note,
11 signed by Marianne Majkowski, your partner. At the top
12 of page 117, has the EEG shown a change since the last
13 one?
14 A Abnormal EEG, containing multifocal spike and spike
15 wave discharges. They are not synchronous, they are
16 not associated with any clinical activity. This is
17 somewhat improved, compared to his prior EEG earlier in
18 the morning, so --
19 Q So explain that to us, please.
20 A So the first EEG was on the morning we intubated the
21 patient. He was having seizure activity. So this one,
22 he's still having some, but not as much. This is a --
23 later on that afternoon, after the medication, putting
24 him on the ventilator, and after the neurosurgery --
25 the neurosurgeon did the procedure to drain the blood

1 out of his head.
2 Q What does the sentence, they are not associated with
3 any clinical seizure activity mean?
4 A This would be, as we talked about before, the
5 subclinical seizures; being, he's still having spike
6 activity, but we don't see any during that time. We
7 don't see any tremors or jerking of the baby. But it's
8 still an abnormal EEG.
9 Q I'll be looking at the second packet, Exhibit 4. This
10 is somewhat of a progress note by you, in the middle of
11 the page. You're at February 25th, at 3:38 p.m., so
12 the patient has been there about three days?
13 A I'm sorry, which page?
14 Q Oh, are you in packet four?
15 A Yes.
16 Q Page 10?
17 A Page 10.
18 Q This is February 25th, at 3:38 p.m. The patient has
19 been there about three days, total, at the hospital?
20 A Yes.
21 Q What progress happened in the PICU for this patient, at
22 that point?
23 A So my note says, no seizure since the drain was placed.
24 He's now moving his extremities spontaneously. He
25 seems purposeful. He's not opening his eyes yet, but

1 he was at least moving around in a symmetric fashion.
2 That was a little more reassuring. His intracranial
3 pressures were stable, at this point, with the draining
4 of the subdural fluid; and his breathing status was
5 stable.
6 Q Would it be significant to you -- and we heard this a
7 little bit from Dr. Dawis, the baby just moves one arm,
8 rather than both. Would that be an asymmetrical
9 movement?
10 A That would be asymmetric.
11 Q Would that be a concern to you, in light of the brain
12 situation of this baby?
13 A Yes.
14 Q What would be the reason?
15 A It would be what we would call a focal neurological
16 episode, meaning there's some injury to one half of the
17 brain, where you're moving one part, but not the other.
18 So we generally like to see symmetrical movement;
19 meaning, if you -- you can pull both arms up, you can
20 withdraw both legs, you don't see any change from the
21 left to the right, that would be -- it would be normal
22 to see the same on both sides. If we saw something on
23 one side that we didn't see on the other, then we'd
24 worry about a focal brain injury.
25 Q Would that be something like a stroke in an adult?

1 A Analogous to the stroke.
2 Q Analogous?
3 A Not the same mechanism, but analogous.
4 Q All right. The bottom of page 20, about a day later;
5 February 26, 10:38 a.m. Dr. Stargardt's note indicates
6 he spoke with you.
7 Pardon me.
8 A Yes.
9 Q Is the patient progressing beyond what it was the day
10 before; some improvement?
11 THE COURT: Could you repeat the day again,
12 Mr. Duggan?
13 MR. DUGGAN: February 26, at 10:38 a.m., on
14 page 20.
15 THE WITNESS: Looks like a pretty consistent
16 exam. Patient examined; no seizures since the drain
17 was placed. He's moving spontaneously, symmetric. Now
18 he's -- now it's stated he's purposeful, which is a
19 step up in neurologic recovery, so --
20 BY MR. DUGGAN:
21 Q Explain what purposeful would be to you.
22 A So if you're coming out of a coma, initially, you know,
23 if I pinch your finger, you might withdraw a little
24 bit. That would be some movement that you would see.
25 Or withdraw both arms, but now doing something

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1 purposeful. And a normal baby would be reaching up at
2 the tube and trying to pull it out or trying to grasp
3 at something. That would be a purposeful movement.
4 Q This is a good sign?
5 A That's a good sign. This is recovery.
6 Q Turning to page 39; in other words, February 27th, in
7 the morning, the notes by -- at the top, the two notes
8 by Cynthia Southern. Could you comment on what she is
9 observing?
10 A Cynthia Southern is a pediatric critical-care nurse.
11 Patient opening eyes, starting to turn the head back
12 and forth, arching, grimacing, getting on endotracheal
13 tube, coughing. Calm after medication. So the baby is
14 starting to lighten up, wake up more, and to the point
15 where we had to sedate the baby to keep him comfortable
16 on the ventilator.
17 Q In other words, the more the baby comes awake, the more
18 difficult it is to manage with those tubes --
19 A Yes.
20 Q -- into its --
21 A Yes.
22 Q And the next note suggests that you were considering
23 consulting with Dr. Schinco; what would -- to do with
24 the head drain, at that point?
25 A Yes.

1 Q So the head drain has been in now for -- is it five
2 days or four days?
3 A Since the 23rd.
4 Q Okay.
5 A This is now the 27th.
6 Q Fourth day?
7 A Fourth day. So as the baby is more awake, we need to
8 make a mutual decision about when to remove these
9 drains. These are complicated decisions, and a lot of
10 thought process has to go into them, so we would have
11 conferred.
12 Q On page 41, we're almost done with my review, here.
13 We're at February 28th, at 3:20 a.m. Again, Nurse
14 Southern is dealing with issues and speaking to you, I
15 presume, by phone; you're home by this time, 2:40 in
16 the morning?
17 A Not necessarily, I do my house call often, so, I mean,
18 it doesn't reflect; I may have been there, I may have
19 been at home.
20 Q Go ahead, what was she experiencing with that child?
21 A The note that says, at 2:40?
22 Q Yes.
23 A Okay. At 2:40 the patient was given Versed for
24 agitation. Then he vomited some watery emesis. He
25 continued to be restless. Fentanyl was given. That's

1 another sedative. Endotracheal tube was starting to
2 slide as he's moving around, so I gave him -- or, I
3 basically had to give him further medication. He was
4 breathing more on his own, so we had to escalate his,
5 you know, his sedative.
6 MR. STURTZ: What page are you on, Counsel?
7 MR. DUGGAN: 41 of the second packet.
8 MR. STURTZ: Okay.
9 BY MR. DUGGAN:
10 Q And there's a comment about -- and you just spoke to
11 it -- vent rate to be increased until patient is
12 breathing again. Is there a transitional time where
13 the respiratory therapist working with you changes the
14 settings?
15 A This is --
16 Q As the baby gets closer to breathing on his own?
17 A Well, this is an ongoing -- adjustments. Ventilators
18 are being adjusted continuously throughout the day. If
19 we had to medicate the baby, then the baby would not be
20 breathing on his own as much; then we'd have to turn
21 the rate up until he wakes up, and then turn it back
22 down.
23 Q And the next note says, patient breathing and moving
24 toes within 20 minutes. What is that; why is that
25 significant?

1 A Means he's becoming hard to keep sedated. So 20
2 minutes after we gave a sedative, he's already starting
3 to move around and wiggle. So this baby is -- I don't
4 know the timeframe, but, clearly, waking up and getting
5 ready to have the tube come out, so --
6 Q So -- and I may not be able to point you to a
7 particular page. Can you tell us when the breathing
8 apparatus is removed?
9 A On the 28th he was weaned and extubated.
10 Q What page are you looking at, if that's --
11 A Page 44. There's a note from the respiratory
12 therapist, at the bottom.
13 Q Page what?
14 A Forty-four. A note from the respiratory therapist that
15 he was extubated, which means the opposite of
16 intubated.
17 Q And that's something the respiratory therapist does
18 without you ordering it?
19 A No, we would -- we would be there.
20 Q Okay. You're approving --
21 A She's documenting it. It's a -- kind of a
22 multidisciplinary decision that we don't take lightly.
23 We review the x-rays, we look at the ventilator
24 perimeters, discuss with the respiratory therapist,
25 examining the baby; the nurse has input, and we make a

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1 decision as a team, to pull the tube. Usually the
2 therapist is the one who physically takes the tube out,
3 with us in the room.
4 Q So that note is at the bottom of the page, 44. It's
5 February 28th, at 11:35 a.m. And I presume the baby
6 breathed on his own, thereafter?
7 A Yes.
8 Q Never had to be reintubated?
9 A No.
10 Q But the baby couldn't breathe adequately on his own
11 from the 23rd to the 28th?
12 A That's correct.
13 Q Ultimately, when was the baby discharged? I'm looking
14 at page 68, if that speeds things up.
15 A Six-eight?
16 Q Page 68, yeah.
17 A March 3rd, 2015.
18 Q So from the 22nd to March 3rd. Nine days?
19 A Sounds reasonable.
20 Q Nine days, all of which, except for the brief time in
21 the ER, it was inten -- pediatric intensive care?
22 A That's correct.
23 Q And it's just a feeling I have, it's not any legal or
24 medical conclusion, but this baby went from an
25 intensive-care unit, out the door, to the car, and

1 home. Or, to --
2 A I --
3 Q There isn't a time when it's in the regular hospital?
4 A There may have been a transition to a general pediatric
5 bed for the last day or so. I don't -- I do not know
6 that.
7 Q Well, the progress note on that page 68 says Lauramae
8 Parson. What -- do you know if she's in the regular
9 hospital or in the PICU?
10 A She would -- our nurses are shared, so --
11 Q Okay.
12 A -- she may be either. And the same thing, if I had
13 been taking care of this baby all along; I would have
14 continued taking care of the baby, even after leaving
15 the ICU. So my notes may not reflect it.
16 Q All right. And so the records just are continuous
17 records?
18 A That's correct, they wouldn't change.
19 Q Based on the fact that the tubes came out of the nose,
20 mouth and head about five days in, would that have been
21 a signal that the baby is now okay to be out of the
22 intensive care unit, and possibly could be watched in a
23 regular setting?
24 A Not immediately, at that time; usually a day or two
25 after.

1 Q Okay. Did you have a chance to see the birth record,
2 and review those records, too --
3 A I did.
4 Q -- for Roegan? I believe it's up there. It might be
5 numbered 1. Does that have a red tag that says 1 on
6 it?
7 A Yes, it does.
8 Q Okay. And you had the chance to review those before
9 coming to court to testify?
10 A Yes, I have.
11 Q The issue has been raised about the head circumference.
12 Was there anything remarkably large or small or just
13 average about the head circumference at birth for this
14 baby?
15 A So I did not see the baby at birth, but I've
16 documented, as a head circumference, of 34.5
17 centimeters.
18 Q Is there a page on that record that shows that
19 measurement?
20 A Page 10.
21 Q Okay. Once again, the number of centimeters?
22 A 34.5 centimeters is the circumference of the head.
23 Q That's at birth, on December 6th, 2014?
24 A Yes, that's correct.
25 Q And have you, based on your training, experience,

1 pediatrician, pediatric intensive-care medicine, do you
2 have an opinion as to whether that is above normal,
3 normal, below normal?
4 A This is normal. There's a range, and every baby is
5 different size and shapes, but in pediatric medicine
6 there are growth charts by both the CDC and World
7 Health Organization that plots out babies' length,
8 weight, head circumference. And they have standard
9 deviations. So we would plot a baby out, see where
10 they align within and -- relative to other babies the
11 same age. We would consider large to be above the 95th
12 or the 97th percentile; so they're -- it's graphed out.
13 And small would be below the third or fifth percentile.
14 This baby is, frankly, right in the middle, even a
15 little below the 50th percentile; so not -- not at all
16 large.
17 Q The records you're holding, Exhibit 1, they are the
18 birth records, among other things, of the baby. Are
19 those the mother's medical records, too?
20 A No, this is the --
21 Q Okay.
22 A -- the record of the baby after the baby is born.
23 Q And you don't have access to -- proper access to the
24 mother's birth records; what she did when she went into
25 the hospital to have the baby and so forth?

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A No, I would have no access, nor any reason to access those records.
Q Okay. When you're doing what you have to do to comply with mandatory reporting of child abuse, you do get access to and can provide additional access to law enforcement, CPS, to assist on their investigation when it's the child who is the injured party?
A Yes.
Q Okay. To go beyond that, to others, like even the mother that delivered the child, that's beyond the scope of what you're allowed to dive into?
A Right, yeah.
MR. DUGGAN: Probably should have said delve into, not dive.
Thank you.
THE WITNESS: Yup.
THE COURT: All right. Why don't we take a break, at this point.
And, ladies and gentlemen of the jury, we'll just take a break. You can meet Mr. Allen and Ms. Maddox in the hallway and head to your respective jury rooms. Take about a 10-or-15-minute break.
(At 10:19 a.m. juries are excused.)
THE COURT: You can step down, sir.
We'll take about a 15-minute break, Counsel,

and resume.
(At 10:20 a.m. break is taken.)
(At 10:46 a.m. proceedings resumed.)
THE LAW CLERK: All rise. Circuit Court is back in session.
THE COURT: Please be seated.
With that, are we ready for the jury?
MR. DUGGAN: I'm ready.
(Off-the-record discussion.)
THE COURT: All right. We'll bring the jury in.
THE LAW CLERK: Please rise for the jury.
(At 10:48 a.m. Stevens jury is present.)
THE COURT: Please be seated.
THE CLERK: All rise for the jury, please.
(At 10:49 a.m. Krukowski jury is present.)
THE COURT: Please be seated.
All right. Mr. Bush, cross-exam?
MR. BUSH: Yeah.

C R O S S - E X A M I N A T I O N

BY MR. BUSH:
Q Doctor, you reviewed the records that have to do with the birth of the child and what went on while you were on the team examining it, in February of 2015?
A Can you rephrase it? Did I review the records --

Q Yeah.
A -- on the -- yes, I did.
Q All right. Did you have any contact with the family?
A No, I did not.
Q The records contain some reference to family contacts, am I right?
A Yes.
Q And I'm referring to, I believe, the Packet No. 4, page 39.
A Yes, I'm there.
Q All right. And there's an entry, is there not, regarding grandmother Shawn Stevens with a PIN number?
A Yes, there is.
Q All right. February 27th, at --
A Nine p.m.
Q -- nine p.m. An entry by one of the RNs?
A That's correct.
Q And the grandmother apparently quit -- was checking up on what was happening, and she was informed, basically, nothing new?
A That's -- that's what it stated.
Q All right. That would have been the nurse's response?
A That's correct.
Q Yeah. Would water, intake of water, have an affect on a seizure of the kind that this child was undergoing?

A Drinking large quantities of water can cause seizures; not of the type this baby had, but, right, the large volumes of water can, right.
Q Would it have -- well, a baby that was -- what about periodic intake of water?
A Typically, it's large quantities of water, and it causes very low sodium, which will trigger a seizure in babies. That's a common cause of seizures in babies.
Q All right.
A If a baby had low sodium. But this baby did not have a low sodium.
Q Okay. Have you had experience -- in your experience, have you -- have any of your patients been referred, the kids, referred for chiropractic adjustments following a critical-care situation of the type we're dealing with here?
A They may or may not have. It's not within the scope of my practice, but there's not much crossover between critical care and chiropractic medicine; that would be outpatient. My practice is confined to just intensive care, and that's it.
Q All right. But have you made any kind of referral of that kind?
A No, no.
Q Refer a patient to a --

A No.
Q -- chiropractor?
A Nor -- nor would it be within the scope of my practice to do so. I --
Q All right.
A I don't do any outpatient referrals.
MR. BUSH: Okay. I think that's all I have, at this time.
THE COURT: Mr. Sturtz?
C R O S S - E X A M I N A T I O N
BY MR. STURTZ:
Q Good morning, Doctor.
A Good morning.
Q Doctor, this form we hear about, that everybody is concerned about in your profession -- nurses and doctors -- this 3200, did you ever see this 3200 form that was prepared, in this case?
A In this case, no.
Q You had nothing to do with signing it; it apparently was prepared or done without your input?
A It was done a day prior to my taking over the care.
Q Okay. This non-accidental and accidental-type trauma that a child gets, what -- why are we so concerned about that?
A Well, why are we concerned whether it's accidental or

non-accidental?
Q Yes.
A For the safety of the child.
Q It's for the --
A And --
Q It's for a criminal prosecution?
MR. DUGGAN: Objection, argumentative. He just answered. Counsel can't tell him he doesn't have the right to answer it the way he answered it.
THE WITNESS: I --
THE COURT: Wait a minute. Do you want to respond to the objection?
MR. STURTZ: Well, I think the objection is -- I think the doctor has every right to answer it, if he knows how. If he doesn't, then I'll re --
THE COURT: I know. Well, that's not the objection. The objection was that you were suggesting that -- an answer, I think. Is that it, Mr. Duggan?
MR. STURTZ: No, I'm not suggesting any of --
THE COURT: Well, wait a minute, wait a minute.
Mr. Duggan --
MR. DUGGAN: My objection --
THE COURT: -- please clarify.
MR. DUGGAN: -- was argumentive. The doctor

answered his question, and then counsel shot back at him, no, it's for criminal prosecution. I think that's arguing with the witness. He didn't like the answer. He could lead because it's cross.
THE COURT: So what is your response?
MR. STURTZ: I'll rephrase the question.
THE COURT: All right. Thank you.
BY MR. STURTZ:
Q The 3200 form is prepared to give notice to the legal authorities, is that correct?
A Yes, that's correct.
Q And whatever is done with the legal authorities from that point on, after you've notified them, that's up to them, is that correct?
A That's correct.
Q This accidental or non-accidental has nothing to do with your determination as to what's going to be done with this child, as far as the treatment, is it?
A As far as treatment it may.
Q Yes.
A As far as disposition, where the baby goes at the end of the hospitalization, it doesn't.
Q All right.
A But as far as treatment, accidental injuries and non-accidental injuries have different mechanisms; so

if we're concerned about non-accidental injuries, we would look for different -- different things with the baby that needs to be treated.
Q Well, in this child's case, somehow there was some trauma put into this baby to cause these problems that you see, is that correct?
A Correct.
Q It had problems with its wrists, it had problems with its rib, it had problems with a hole in its head, the fracture. That fracture in his head was 12 centimeters, is that correct?
A I'd have to defer to the radiologist. That --
Q Okay.
A -- is what I was told.
Q Were you concerned, at that point in time, about how that hole was going to be closed up in the head, 12 centimeters?
MR. DUGGAN: Well, I'm going to object, Counsel; you're assuming facts not in evidence. The testimony and the exhibits is 12 millimeters. To say 12 centimeters, even in America, we might know that's a big difference. I'd ask you to reflect the evidence correctly if you're going to include it in the question.
THE COURT: All right. You can --

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1 MR. STURTZ: I thought I did.
2 MR. DUGGAN: You said centimeters, and that's
3 not what's in the record.
4 THE COURT: All right. You can ask the
5 doctor if he knows what the measurement is and ask him
6 about that, or go to the records and see what the
7 correct measurement is.
8 BY MR. STURTZ:
9 Q Doctor, do you know the size of the fracture, the
10 child's head?
11 A I do not know off the top of my head.
12 Q If I suggested that the hole was 12 millimeters, would
13 I be wrong?
14 A If it was -- if that's what's measured by the
15 radiologist, that would be correct.
16 Q That's what I understand her testimony to be yesterday;
17 Dr. Constantino?
18 A I would defer to Dr. Constantino.
19 Q Very good. Thank you. Did you do anything about
20 closing the hole, this 12 millimeters?
21 A No, we would not close that hole.
22 Q Do you know if Dr. Schinco did?
23 A No, we wouldn't -- that -- the skull gets fractured,
24 and it's like a crack, and the swelling of the brain
25 causes that crack to split open. So when the swelling

1 goes down, that will --
2 Q Close itself?
3 A -- close back up and heal.
4 Q And form the callus?
5 A Yes.
6 Q Did you ever see or examine the child's head before it
7 was discharged, as to how that hole was doing?
8 A The -- you don't necessarily feel a hole on a baby's
9 head, this is -- a lot of this is done with imaging.
10 Q Okay.
11 A So this would have been done with serial outpatient
12 exams, long after discharge.
13 Q You had nothing to do after the child was discharged.
14 I think it was -- you told us the date?
15 A That's correct.
16 Q So the child --
17 A March 3rd of -- after discharge.
18 Q Do you know -- do you know if the child went to any
19 follow-up care afterwards?
20 A I don't know if he did or not. I can presume, but I
21 don't know.
22 Q As far as your recommendation to parents, if there's
23 trauma exerted to a youngster of this age and he gets
24 hit in the head, what do you do; come into the hospital
25 right away or do you sit and watch? What's your

1 recommendation, as a pediatrician?
2 A Well, there's, you know, trauma as a grading to
3 severity; so a brush, you know, something very light or
4 minor, you would observe at home. Look for signs and
5 symptoms of irritability, fussiness, vomiting,
6 swelling, things like that. If it's a significant
7 trauma, such as a fall or hard injury, something
8 that -- or if the baby has any symptoms, then they need
9 to be promptly evaluated.
10 Q Okay. In this case, were you aware the child had a
11 fall in the bathtub?
12 A This is what I was told, yes.
13 Q And when the child came to the -- to the hospital, the
14 child was examined?
15 A Yes.
16 Q And were you aware, also, that the child went to a
17 pediatrician two days after the fall, and the
18 pediatrician examined the child?
19 A I was told this, yes.
20 Q And as a result of her examination, she said the child
21 should go to a chiropractor. Are you aware of that?
22 A I'm aware, yeah. I reviewed that note from the
23 pediatrician, at the time, and -- which is provided
24 here, the -- I believe the -- there was no comment to
25 the -- Dr. Dawis, that the child had had an injury.

1 Q I understand, that's what the doctor's notes reveals.
2 A Yes.
3 Q If the doctor was told about an injury, I guess that's
4 something -- we'll cross the bridge when we come to it?
5 A That would have changed the record.
6 Q If the child develops no goose egg on its head, is that
7 of some concern?
8 A No, you don't necessarily see a goose egg with every
9 injury. You typically do, but not always.
10 Q And there was no bruise or abrasion. Is that of any
11 concern?
12 A You may or may not get a bruise or abrasion.
13 Obviously, if there is a bruise, you worry about
14 somebody being struck in the head; but the absence of a
15 bruise doesn't rule that out.
16 Q But it's not your recommendation, as a pediatrician,
17 every time a child falls and hits its head it should go
18 to the emergency room, is it?
19 A It, again, it depends on the mechanism and the symptoms
20 that a child is having.
21 Q When I was a young man I'd fall down all the time, hit
22 my head, because I had a brother, and my mother would
23 put a butter knife on my head to calm down the
24 swelling. Did you ever hear of that?
25 A No, I have not.

Q You never heard of that, huh?
A No.
Q How about a bag of peas, frozen peas?
A Perhaps; not in a nine-week-old baby. I've heard of ice to help the swelling.
Q And what does the ice or the coldness do?
A It would help with the scalp swelling.
Q Okay. This is page eight of Covenant Hospital.
A I'm sorry, Exhibit No. 4?
Q I think so, yes.
MR. DUGGAN: Could you enlarge it, Counsel? That's not readable. At least from --
MR. STURTZ: Oh, absolutely. Yeah.
MR. DUGGAN: I think it's Exhibit 3.
THE WITNESS: Exhibit 3?
BY MR. STURTZ:
Q States in here, in the notes, that the parents had been talking to the hospital personnel, and they say, they do not report any recent trauma, though his father is reporting, approximately two weeks ago, accidentally dropping the child in the bathtub from a heighth of two feet. He was bathing the child, at the time; reported Roegan slipped out of his hands. He impacted the left occipital area and had a small hematoma.
The mother reports taking him to Dr. Dawis,

who advised cool packs and observation.
Do you think that's an advisable-type situation, from the reporting here?
MR. DUGGAN: I'm going to object. There is so much information there, I don't know what he's being asked to comment on the advisability of.
THE COURT: Okay. You're going to have to either specify or rephrase that somehow.
BY MR. STURTZ:
Q Doctor, you -- you suspect, from what was reported here as the baby falling, hitting his head from a two-foot-high situation, that it was advisable to -- by the pediatrician, to just advise cold -- cool packs and observation?
A I don't think I can have an opinion. I did not see the baby, at this time; I did not examine the baby, and I did not talk to the family about this injury. That's all.
Q Now, the parents, when they come in with the baby on February 22nd, photographs are taken of the child. This is one of them. You don't see any bumps or abrasions on the left side of the head, there, do you?
A I don't see any in this photograph.
Q Do you see any unusual largeness of the head, compared to his fingers and ears, and even the hand, for

comparison?
A Yes, there's -- as we discussed earlier, that the head size seems relatively large.
Q How would an ordinary person judge that? Now, you're a trained physician.
A Correct.
Q But if you took me, as a lawyer, and I looked at my son or grandson and saw that head, didn't see any abrasions, no bleeding?
A It's just perspective and experience, common knowledge.
Q Of your profession?
A Are you asking me how an ordinary person would --
Q Yeah.
A I don't know how, I'm not -- I'm a professional, so I guess I wouldn't know how a layperson would notice this. To me, it seems fairly -- if you've seen a lot of babies, it seems fairly intuitive.
Q That the head is larger than any --
A That the head looks large for a baby.
Q Okay. Is that true with -- of this picture, as well? There's no abrasions, no discoloration?
A None that I can appreciate.
Q How about when you look at Exhibit 14, here; judging the hand, is the baby's head and his hand?
A This one --

Q Where is the --
A It's fairly unremarkable.
Q -- is unremarkable?
A Based on angle. And it just doesn't add much.
Q When -- when you look at this photograph that we just had up here, what about -- what part of the head is large? I mean, where is it; around the back, on the top and side?
A Seems fairly global.
Q Global, meaning what, round?
A Round. The whole head seems fairly round and distended; not one side sticking out more than the other. The whole head just seems large to me.
Q The soft spot of the baby's head on top, what is that called?
A It's the fontanelle.
Q Is the fontanelle evident, in this case, that it's bulging or --
A Well, you --
Q Can't tell?
A -- really can't tell from a photograph.
Q How about in this photograph; can you tell if the fontanelle is not a problem?
A Not from the photograph. Typically, a fontanelle, you would know by feeling.

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Q By feeling it?
A By feeling it, yes.
Q But you gotta feel it?
A To tell if it's full.
Q If it's full, it's bulging?
A Correct.
Q If it's indented, it's in --
A It's not bulging.
Q All right. Now, when I look at this head, it looks proportionate to me; length-wise, sideways, ear to head. Look at the hand and the fingers. What makes this head so out of proportion, that -- once you recognize it?
A This angle is difficult. The other one, where he was lying on his back and you could see the frontal prominence and large roundness to the top, is a little more impressive.
Q Okay. Again, we see no evidence of any injury to the child?
A I -- I don't.
Q There was a machine you talked about, when the EEG is -- that was used on the child. And this was to help you or help the physicians and nurses to determine brainwaves, is that correct?
A Correct.

Q And the brainwaves in that machine would indicate what kind of seizures the child was having?
A Correct.
Q In many situations, when you look at the child you can't tell they're having a seizure, but the EEG would tell you otherwise, is that correct?
A Not -- not in many situations. And -- you said in many situations. I wouldn't say many. In a few isolated circumstances; when babies are comatose, for example, or they're not awake, then you don't necessarily see the seizure activity.
Q Do you know what type of seizure activity this child was experiencing when they brought him to the hospital?
A The baby was -- I didn't see the baby on admission to the hospital. It was reported as focal seizures, which means one side of the body; and then it became generalized to more the entire body.
Q So what side of the body was jerking?
A The note reflects shaking of the -- I'd have to see, I'd have to refer to the record. I believe the left side, but I -- I did not see the baby at -- on admission, as I mentioned, so --
Q Okay.
A The nursing notation says, right side of the body jerking initially.

Q Does it say how frequently or --
A It was -- the documentation says it was going on at least five minutes before they gave the medication, but this baby had had ongoing seizure activity.
Q When it arrived?
A When it arrived. Since it -- after admission to the hospital, throughout the night, and the following morning was ongoing activity.
Q While at the hospital it was having that seizure activity?
A Yes. This is why we had to keep escalating the care, providing further medication.
Q As far as when the child was at home, was there a history given what the child was doing at home?
A I didn't obtain a history from the family, so I can't comment.
Q I know, but in the hospital records. Did you check on it through the hospital records?
A The records state that the baby was brought in because of shaking episodes.
Q Do you recall the baby coming in because it had some vomiting going on?
A The records state, the mom states Friday patient experienced small amounts of vomiting, was not interested in eating anything.

Q The ribs that were healing, were you able to determine how long they had been broken?
A I think it -- it's difficult to pinpoint exact day. When we see callus formation, though -- and that's new bone being laid down -- you know it's not immediate, meaning not within the last day or two; not -- not that day.
Q We have been told by Dr. Kirby that callusing occurs anywhere from one or two days, up to weeks.
MR. DUGGAN: I'm going to make a technical objection. I think he means Dr. Constantino. But I'm just -- I'm saying that because it assumes facts not in evidence, to say Kirby.
THE COURT: And the jury will leave it to their own recollection, but do you want to clarify that, then, as Dr. Constantino, your understanding of what she said?
MR. STURTZ: Well, I thought it was Dr. Kirby, but I'll stand corrected.
THE COURT: Well, then Dr. Kirby. I don't know who it was, but what were you referring to? Clarify.
BY MR. STURTZ:
Q Callusing is the healing of the bones?
A Yes, and that --

Q And --
A -- process takes times.
Q And it takes time. It doesn't occur instantaneous?
A Right.
Q It can occur, as has been suggested, anywhere from two days up to weeks?
A Correct.
Q How about the wrist? X-rays were taken of the wrist; that also showed callusing, is that correct?
A Right.
Q You had no way of judging when that occurred?
A No, we just know it -- it wasn't acute, and that there's already time for bone growth to lay down.
Q Acute, in your language, means it hadn't occurred recently?
A Right, it didn't happen that day.
Q All right. What word do you use in your legal/medical jargon to indicate that it was several weeks old?
A We would either say subacute, we would say an old injury.
Q Okay.
A Not a new injury. Those are all --
Q Medication. The child, when the child arrived at the emergency room, there was some medication given to him to stop the seizure; Ativan?

A Yes.
Q And what is that medicine designed for?
A It's a sedative designed to stop seizures.
Q Okay. And can that Ativan accentuate seizure activity?
A No.
Q You said there was some powerful seizure medication that was given to the child. Do you know what other kind of medication was given to --
A Throughout the course, the child was given Ativan, Dilantin, Phenobarbital, and Trileptal.
Q Were those all administered while he was intubated?
A No, it could have been from the process of being admitted to the hospital, in the emergency department, admitted to the pediatric ICU, either prior to intubation or after; there -- throughout that whole course of receiving his medication.
Q The decision to intubate the child, that just wasn't yours, it was apparently was a team of doctors, is that correct?
A Correct.
Q Were all the doctors that were putting in their opinions, were they all actively involved in the treatment of the child?
A Yes.
Q And the intubation was for what purpose, because he was

having difficulty breathing?
A Yes, when you're -- when you have those long seizures like that, you just don't have effective control of your breathing, so it was for us to guarantee that he's breathing nicely. It's called controlling the airway, controlling the breathing for him, so we -- that way we can guarantee he's -- throughout this, as we control the seizures, that he's still breathing through all of that.
Q So what does the machine do, contract the diaphragm or does it just push the air into the lungs and take it out?
A It -- it doesn't take it out, it just pushes air into the lungs.
Q And then the body has to somehow get it out?
A Through -- through -- there's no active process; you don't have to squeeze it out. The natural recoil of your chest. The air is pushed in, and then your chest just naturally recoils, and it comes out on its own. So it just cycles and pushes air in; and then lungs adjust, recoil, and then pass out.
Q The intubation has nothing to do with the heart, does it?
A Not -- not per se. I mean, we're -- we're putting the -- the tube into the trachea and breathing in the

lungs.
Q Okay. The child's heart, apparently, was pretty strong; had no -- you had no problems with his heart?
A We had no concerns about cardiac problems.
Q The prosecutor got into the size of the child's head at birth. Apparently, you told us it was 34.5 centimeters. When a lady gets a C-section, the purpose of having a C-section is that somehow she cannot pass the baby through her pelvis, is that correct?
A I don't -- it's not within my scope of practice. I'm not an obstetrician, I couldn't tell you the indications for a C-section.
Q Did you -- were you aware that the mother had problems?
A No.
Q So on the 23rd, had you not intubated the baby, from your opinion, the child would have died?
A That's correct.
MR. STURTZ: That's all I have, Doctor. Thank you.
THE COURT: Mr. Duggan, any redirect?
MR. DUGGAN: Thank you, Your Honor. Nothing.
THE COURT: All right. Jurors have questions, it appears. At least one. Two?
Counsel, you want to approach, please?
(Bench conference.)

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THE COURT: A couple of questions, Doctor.
THE WITNESS: Yes.
THE COURT: Did Roegan seem to have any type of bone disorder that would cause his bones to be broken easily?
THE WITNESS: No, he did not.
THE COURT: In general, are babies' bones easily broken?
THE WITNESS: No. No.
THE COURT: Okay. At the time of an injury causing a fracture, how long, typically, does it take for a bruise to form and then completely disappear?
THE WITNESS: The timing of bruises is not as straightforward as -- as one would think. Everybody has a different healing process. You can see a bruise immediately, it can disappear within days to weeks. I think there's no good signs to support the timing of a bruise. To state that a bruise of this color is of this age or of this color; that -- that's no longer supported by any data.
THE COURT: Okay.
THE WITNESS: So I -- unfortunately, I can't answer that.
THE COURT: Is there necessarily a bruise when there's a fracture?

THE WITNESS: No.
THE COURT: Is it possible to have a fracture -- well, this is another way of saying what I just said. Is it possible to have a fracture without some kind of bruising?
THE WITNESS: Yes.
THE COURT: Yes?
THE WITNESS: Yes.
THE COURT: Okay. Everybody able to hear the doctor?
All right. Any follow-up questions by counsel?
MR. DUGGAN: None, Your Honor.
MR. BUSH: No, Your Honor.
THE COURT: Okay. Anything else from the jury?
All right. You can step down, Doctor. You're excused. Thank you.
(At 11:24 a.m. witness is excused.)
MR. DUGGAN: At this time, we'd be recalling Shawn Stevens. She's in the middle of Mr. Bush's cross-examination of her.
THE COURT: All right.
All right. Ma'am, you can resume the stand. You are still under oath.

THE WITNESS: Okay.
THE COURT: Mr. Bush, you may continue.
MR. BUSH: All right.

SHAWN STEVENS,

Being previously sworn, testified under oath as follows:

C R O S S - E X A M I N A T I O N

BY MR. BUSH: (Continued.)

Q I think when we left off yesterday, we -- I just started to question you about February the 9th, 2015; the visit to Dr. Dawis' office?
A Yes.
Q You were there with Codie?
A Yes.
Q And Roegan?
A Yes.
Q Anybody else, other than --
A Ella. Ella was with us.
Q All right. And Ella was what, three years old --
A Yes.
Q -- approximately? All right. And did you see the doctor?
A Yes.
Q Did the doctor examine Roegan, as far as you could -- could tell?

A She looked him over, measured his head.
Q Okay. And did -- did the doctor measure his head?
A Yes.
Q As opposed to an assistant?
A The assistant did not.
Q And what else, if anything, did the doctor do with regard to Roegan on the -- that visit?
A She was sitting at her desk. She had her measuring tape in her right hand, her pen in her left, and she had her clipboard on her lap. Roegan was set on the medical table; Codie was standing at the head of the medical table, making sure that he, you know, didn't roll.
Q All right.
A Ella and I were sitting down. And Codie had said we had an accident, and he had a bump on the head. Well, by Monday that bump was gone.
Q This was a Monday?
A Yes.
Q The 9th of February was a Monday?
A Correct.
Q All right.
A And she got up, and we just said he's not sleeping on his back unless he's swaddled tight. And she was very frantic about this issue, him not sleeping on his back.

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1 Dr. Dawis was.
2 Q Uh-huh.
3 A So she measured his head, slapped her hands on the
4 table to see his -- because we also mentioned that he
5 was jerky with his -- with his body. And she said to
6 Codie, I need you to call the chiropractor and make an
7 appointment.
8 Q Okay. When she slammed her hands down, what, if
9 anything -- what reaction, if any, did you get with
10 Roegan?
11 A Roegan cried.
12 Q Was -- did she suggest the chiropractor right after
13 that?
14 A Yes, she was more -- she was more concerned and frantic
15 about him not sleeping on his back.
16 Q Okay. So what happened from there?
17 A So Codie used my cell phone, and she gave Codie the
18 number; Codie called and made an appointment.
19 Q All right. Now, did -- to your knowledge, did
20 Dr. Dawis talk to the chiropractor or the
21 chiropractor's --
22 A No, she --
23 Q -- office on the phone?
24 A -- did not. No, she left it up to Codie to do it.
25 Q And Codie did it then and there, in the --

1 A Yup.
2 Q -- office and so forth?
3 A Yup.
4 Q All right.
5 A Yes, she did, which I found was odd, that she didn't
6 leave her staff to do so.
7 Q Okay. What happened after the phone call and the
8 appointment was made?
9 A Well, then we left, and we waited for the appointment
10 at 4:00, 4:30.
11 Q Okay. And the appointment with Dr. Dawis was at what
12 time, if you recall or --
13 A I thought it was -- it was after lunch; maybe -- maybe
14 one. I can't quite recall, but the --
15 Q All right. But the one at the chiropractor, your
16 recollection was four o'clock?
17 A Yeah, 4:00, 4:30.
18 Q Did you accompany your daughter and grandson there?
19 A Yes, I did.
20 Q And what occurred?
21 A We had to wait in the waiting room. Roegan was in his
22 car carrier. And then time came, and we went into a
23 room, and we still had to wait a little bit.
24 Q What --
25 A Roegan still hadn't left his car seat, his car carrier,

1 and --
2 Q Was Ella there, at the chiropractor's?
3 A I don't believe so. I think it was just us three.
4 Q Okay.
5 A So the doctor come in, and I got -- I had Roegan;
6 picked him up out of the car seat. And that time Codie
7 had to go get x-rays, because she was having a visit.
8 Q Where?
9 A At the chiropractor.
10 Q Who?
11 A Codie.
12 Q All right. She had to go get x-rays, where?
13 A There, right in the building.
14 Q Okay. And so she left you and Roegan?
15 A Yup.
16 Q To go do that?
17 A Yes.
18 Q Was the doctor -- was the chiropractor present, at the
19 time, or what?
20 A No, I think -- they were kind of, like, in and out,
21 like they were really busy.
22 Q Okay.
23 A So Codie went and got x-rays, and I held Roegan. And
24 then she came back, and the doctor come in and
25 proceeded to do what he did.

1 Q And what did he do?
2 A He put Roegan in between his knees, in his legs, and
3 his arms rested on his legs, and he cracked him. And
4 it went, kkkk. And I -- I was -- I was shocked. And
5 then he proceeded to take Roegan and lift him upside
6 down, by his feet; and he kept saying, come on, baby,
7 look at me, look at me. And he went, crack. And it
8 cracked. And then he went crack again.
9 Q All right.
10 A Then he proceeded to take him on the medical table, and
11 he twisted his neck, and it cracked.
12 Q Okay. You were in the room, at the time?
13 A Yes.
14 Q Anybody else in the room, at the time, other than you
15 and the doctor and Roegan, when this procedure was --
16 A Well, when the procedure was being done, yes, it was
17 just us.
18 Q Okay. All right. So Roegan is on the table, and the
19 doctor adjusted or manipulated his neck somehow?
20 A Yup, twisted his neck, both sides.
21 Q Okay. And then what?
22 A And that was it. And then Codie had to go back for two
23 more appointments.
24 Q Okay. That -- so they scheduled another --
25 A Correct.

1 Q -- two appointments, and -- and you left?
2 A Yup. Yes, we all left together. And she went with
3 Roegan, and . . .
4 Q Okay. Were you with Roegan, at all, from that point;
5 that is, February the 9th, until the visit to the
6 emergency room, some --
7 A Roegan had spent Monday night with me, because Codie
8 had to go -- I think she had to work. I can't remember
9 if she went to work or had appointments, but he stayed
10 Monday night with me. And if I didn't swaddle him
11 tight, he was up all night long. So he finally -- he
12 woke up at 11:30 p.m., and then he woke up at 4:30 a.m.
13 Q All right. And this is the very --
14 A That day.
15 Q -- morning --
16 A When he had --
17 Q -- when he had seen the chiropractor --
18 A Correct.
19 Q -- and Dr. Dawis?
20 A Right.
21 Q All right. Did you have him with you at any time
22 thereafter, before the trip to Covenant --
23 A I think she might have --
24 Q -- on the 22nd?
25 A -- dropped him off once or twice for me to watch while

1 either she went to work or had appointments.
2 Q Okay. And how did he seem to you, at the time?
3 A Well --
4 Q During that period of time?
5 A He was still kind of fussy. The only time he really
6 seemed to have changed and I actually got a coo out of
7 him and a little bit of a smile is when the formula was
8 changed, the very last time.
9 Q When was that?
10 A It was at one of the -- Dr. Dawis' appointments.
11 She -- she changed him over to soy.
12 Q Okay. Was that after the 9th of February or --
13 A I think so. I'm -- I think so.
14 Q Or at that time?
15 A I -- honestly, I don't recall the dates.
16 Q Okay. But there was change of formula --
17 A Three times.
18 Q -- before -- three times?
19 A Yeah, between WIC and the doctor's office, because he
20 kept vomiting.
21 Q Were you with him on February the 22nd, at the time of
22 the emergency room visit?
23 A No, I wasn't.
24 Q Did you see Codie at any time on that day?
25 A On the 20 --

1 Q The 22nd?
2 A Was it the 22nd? Yup, the 22nd we did end up going to
3 the ER, because we -- CPS wanted us to take -- and the
4 detective -- wanted us to take Ella to the hospital to
5 have her checked over.
6 Q Okay. Now, did you see Roegan on that day?
7 A No.
8 Q Did you see Codie that day, before you went to the
9 hospital?
10 A No.
11 Q Or -- or Dane?
12 A Dane dropped off Ella.
13 Q Okay. When was that? Brought Ella to your house?
14 A Yes. Yes. Apparently, they had taken Ella with them,
15 to the ER. And I think it -- I don't know -- he
16 brought her to us, and so we kept her.
17 Q Okay. And went back to the hospital --
18 A Yes, he did.
19 Q -- apparently? All right. Now, you went to the
20 hospital that day?
21 A Yes.
22 Q The 22nd? And what happened there?
23 A They examined Ella. I was not able to see Roegan, I --
24 we exactly didn't know what was going on.
25 Q Okay. Did you talk to any staff or --

1 A No, we just let CPS and -- do what they -- protocol, I
2 guess, what they were doing.
3 Q Okay. How long did you stay there that night?
4 A It was -- I don't know the exact time, but all I know
5 is that they requested that Ella had to be taken to the
6 CAN Council.
7 Q Okay.
8 A To be questioned.
9 Q All right. When; then and there or what?
10 A That Sunday. My son was -- my son did show up there
11 with us, John and I. And so they -- we said, well,
12 we'll take her, and they said, no, no, no, we have to
13 take her. And we're, like -- we kind of didn't know
14 exactly what was going on.
15 Q Okay. You were where, at home, you're saying, or what?
16 A We were at the hospital, and then they -- one of the
17 detectives informed us that they had to take Ella to
18 the CAN Council.
19 Q Okay.
20 A To be interviewed.
21 Q Do you know what day that was or what date?
22 A It was on Sunday.
23 Q What day?
24 A The 22nd.
25 Q The 22nd?

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A Uh-huh.
Q Okay.
A Yes.
Q So they took her to the CAN Council, presumably?
A And John and I and Johnny sat downstairs. My son, Johnny. We sat downstairs, waiting until they were done with the interview, and then we brought Ella home.
Q All right. And how long did Ella stay there with you --
A Yes.
Q -- thereafter? For how long?
A Oh, well, by the 20 -- the 22nd, they gave us temporary custody of Ella and Roegan. And then the 24th, they came in at 9:00 p.m., and took Ella from us.
Q Okay. They, being who?
A CPS and the police.
Q Okay. Now, Roegan remained in the hospital, thereafter?
A Yes, he did.
Q Is that right? For how long, do you remember or do you --
A I think it was eight or -- eight or nine days.
Q Okay. And were you able to see him?
A No, I was not.
Q Were you able to maintain contact?

A With the nurses' station, yes.
Q Okay. And you had a P --
A A PIN number.
Q A PIN number --
A Yes.
Q -- to do that? And did you do that on -- on occasion?
A Every -- every day, twice a day, sometimes three times a day.
Q By phone?
A Yes.
Q And you inquired on his --
A Absolutely.
Q -- about his condition and so forth?
A Absolutely.
Q All right.
THE WITNESS: Excuse me, Your Honor, may I grab my water?
THE COURT: Did you bring some?
THE WITNESS: Yes.
THE COURT: Okay.
THE WITNESS: Thank you.
MR. BUSH: All right. That's all I have.
THE COURT: All right. Cross-exam, Mr. Sturtz?
MR. STURTZ: No questions.

THE COURT: All right. Any redirect?
MR. DUGGAN: Yes.

R E D I R E C T E X A M I N A T I O N

BY MR. DUGGAN:
Q Ms. Stevens, you made reference to a calendar. That's what you're leafing through up there?
A Yes.
Q And that's some --
A And my notes.
Q Go ahead.
A And my notes.
Q And you had made an entry, you said, on the 22nd. Do you mind if I look at that?
A No, not at all.
Q Thank you.
A And here's my other calendars from months after, and December. Calendars for March, April, May; and one for December, 2014.
Q These are all notes you made, Ms. Stevens?
A Yes.
Q And this is --
A Those are day-by-day.
Q It's like a desk calendar, where you can write things?
A So I can see it, yes.
Q And the kind you could rip off a page and put up with a

magnet on the fridge or leave on the kitchen table; it's just a handy thing you use?
A I've always used calendars.
Q Okay. You have an entry on February 20th, two days before the baby went to the hospital. Talked to Codie, baby still throwing up. What does --
A On what date?
Q 20th.
A Yeah, I had spoken to Codie, and she said he was still throwing up.
Q Okay. Does that suggest that that had been ongoing during the period before the 20th?
A Since birth.
Q When did the formula-change happen that provided some relief, the soy?
A I know she had gone to WIC twice, and then she -- Dr. Dawis gave her the soy. And the dates, I don't recall.
Q Did the baby, when you were around -- so I'm talking about your personal knowledge now -- have different types of vomiting process; like, some just a little spit-up, some more volume, some violent, in the whole range of types of vomiting?
A It was -- it was kind of like the in-between, until the -- one day I was feeding him, and he just profusely

1 vomited all over me. And I --
2 Q Can you peg that date or approximate date?
3 A No, I cannot.
4 Q Can you peg it before or after when they called you on
5 the 7th, to talk about the fall in the bathtub; was it
6 before that or after that?
7 A It was after.
8 Q Approximately soon after or a week later or --
9 A I would have to say, to my knowledge of what I can
10 recall, it was an in-between of the change of the
11 formula.
12 Q Okay. Because the 7th is the fall in the bathtub, the
13 22nd is the visit to the hospital, so that's 15 days
14 apart. So you know it was sometime after the 7th?
15 A Yes.
16 Q Is it closer to the middle of that period, the
17 beginning or the end?
18 A That's all I know, is when there was a formula change,
19 after the doctor visit.
20 Q The doctor visit being February --
21 A The 9th.
22 Q -- 9th, Monday. And the kind of vomiting that just
23 drenched you?
24 A It did.
25 Q And did you ever personally witness that type between

1 those two dates; between the 7th and the 22nd of
2 February?
3 A Up in the hospital.
4 Q Okay.
5 A When I was trying to feed him up there.
6 Q On the 22nd?
7 A No, up at the hospital birth.
8 Q Oh. I'm talking about between February 7th and --
9 A Oh, sorry.
10 Q -- February 22nd. You said that that large amount of
11 vomit, where you were drenched, happened somewhere in
12 that period?
13 A Correct.
14 Q Do you know of any other times; personal knowledge?
15 A No.
16 Q Now, with respect to what Codie told you about what
17 happened on the 22nd, or the night before, did she
18 relate to you that he had just drenched the bed and
19 himself with vomit?
20 A I don't recall.
21 Q Had either Codie or Dane ever told you about a fall,
22 other than the one in the bathtub with the baby, on the
23 7th; a natural fall, fall down, where the baby would
24 impact the floor?
25 A No.

1 Q There were two Dawis appointments that we're aware of,
2 and you tell us if you know of more: The one on the
3 11th, five days after the baby was born, it had been
4 discharged a couple days before; and then the one on
5 the 9th of February. Do you know of any other dates
6 the baby went to Dr. Dawis to talk about formula
7 changes or that Codie got information from Dr. Dawis?
8 A I think she had gotten some information, because Codie
9 said that she was grateful that she had gave her the
10 samples. The dates, I don't remember.
11 Q All right. Codie might not have had an actual
12 appointment, but she just would have gone and maybe
13 gotten some stuff?
14 A Correct.
15 Q I understand. There are some notations -- it's not
16 necessarily you talking, it may be Codie or Dane
17 talking -- about on the 21st of February, which would
18 be a Saturday, the day before he went to the hospital,
19 that Codie had laid him down, and came back in after
20 giving him his bottle and laying him down, and found
21 him covered, head to toe, in vomit. Do you remember
22 her telling you about that happening the day before he
23 went to the hospital?
24 A No.
25 Q Relying on and referring to hospital records that are

1 included in Exhibit 1, the birth records --
2 MR. DUGGAN: Counselor, I'm at page 10.
3 BY MR. DUGGAN:
4 Q -- birth head circumference is measured at 34.5
5 centimeters or one foot, 1.58 inches. Five days later,
6 at the doctor's office, there's a measurement -- and
7 I'm looking at the Dawis record of December 11th -- a
8 head measurement, 33 centimeters, which is 12.99 inches
9 or what looks like one foot, one inch. So there's
10 about six-tenths of an inch difference between the
11 baby's circumference of the head at birth versus five
12 days later, at Dr. Dawis' office, for the first
13 well-child visit. Did you see any change in the baby's
14 head circumference, personally or as you just visualize
15 it -- which caused you to be very tearful yesterday,
16 talking about it -- from day one of birth to five days
17 later?
18 A I didn't notice any -- I guess you get, you know, you
19 get used to it, thinking, because the hospital let us
20 go, thinking it's okay. But he had lost some weight
21 because he was doing so much vomiting.
22 Q Again, referring to the same records, there's a weight
23 noted of --
24 MR. STURTZ: What page?
25 MR. DUGGAN: I'm at page 10 of the hospital

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records, Exhibit 1.
BY MR. DUGGAN:
Q On December 7th, the day after he was born, a weight of seven pounds, 6.2 ounces; and on December 11th, four days later, seven pounds, five ounces. So it's a 1.2-ounce difference. If they measured him, weighed him right --
A Uh-huh.
Q -- are you seeing it with your eyes, drastic differences between the time of birth and when he's going to Dr. Dawis for the first well-child visit, five days later?
A He looked a little thinner.
MR. DUGGAN: One moment, please.
BY MR. DUGGAN:
Q Have you ever seen anything Codie has prepared, or Dane, that would be a log of vomiting episodes, on a calendar or in a diary or anything?
A No, I don't -- I don't look at their personal --
Q All right. Well --
A -- stuff at home.
Q But you're pretty close to her?
A Yes.
Q And --
A But I don't read her calendar.

Q No, I'm talking about if you've seen her in the act of doing it, even if you didn't read it. Did she ever talk to you about the fact that Dr. Dawis told her to log the episodes?
A I don't recall Dr. Dawis even saying anything like that.
MR. DUGGAN: I don't have any further questions, at this time.
THE COURT: Okay. Any questions from the jury?
Quite a few of them.
Come on up, Counsel.
(Bench conference.)
THE COURT: Okay. Ladies and gentlemen, some of the -- some of the questions are duplications, so I'll ask the one that -- for example, a number of questions asked about photographs, so I'm just going to ask that in one kind of combined question.
And then, also, there's other ones about CPS. That's not relevant, at this time, to this case, so we're not going to go into that.
And the rest of them, I think, we're pretty much covering. So just understand, we're covering what we can and what we think is relevant to this case and the decision that you have to make.

Ms. Stevens, can you tell the jury, what -- what is WIC?
THE WITNESS: WIC is a governmental program for mothers who can't afford formula, and other -- to see that -- over at the health department they have it. They, you know, weigh your child, make sure that they're, you know, depending on their age, their motor skills. And if you have issues, you know, problems with your child, as far as I know, is, they try to help you.
THE COURT: Okay. And so that's -- that's a distinct place, difference, program than anything that --
THE WITNESS: Correct.
THE COURT: -- goes on with Dr. Dawis?
THE WITNESS: It's through the Health Department.
THE COURT: Okay. This question is, basically, why did you keep the records, the detailed records, for Roegan's history of vomiting, falling, visits to the doctor, that sort of thing?
THE WITNESS: Why didn't I?
THE COURT: Why did you?
THE WITNESS: Because I felt it was important, anything that happens to my grandchildren.

THE COURT: All right. Did you feel that you needed to assume a guiding role for Dane and Codie in the care of Roegan?
THE WITNESS: Did I assume that I should be?
THE COURT: Did you feel that you needed to?
THE WITNESS: I did with both my children.
THE COURT: Why would you note that the baby had an accidental fall or bump?
THE WITNESS: Just to be safe than sorry. I've done it with my other grandchildren when I've been informed that something has happened to them.
THE COURT: Okay. I think your answer covered the next part of that question.
Why wouldn't you document a phone call to the emergency room when you spoke to the nurse?
THE WITNESS: Why didn't I document it?
THE COURT: And -- and you were denied a visit, is that accurate?
THE WITNESS: I thought I had written down the time and date that I had contacted them.
THE COURT: Okay. Well, I think yesterday you talked about a time when you called, and they said that you could not come and visit.
THE WITNESS: Right, and that's over the -- there was supposedly an argument. I --

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THE COURT: All right. Well --
THE WITNESS: -- don't recall the arguing.
THE COURT: -- that's not really the question. It's just, did you document that or didn't you?
THE WITNESS: I've documented every time I called.
THE COURT: Okay. Did you document the fact that you were denied a visit?
THE WITNESS: I would have to come -- go back in my notes.
THE COURT: Or did you just document the call?
THE WITNESS: I probably just documented the call.
THE COURT: All right. So that's it?
THE WITNESS: You know, I -- all the documentation that I have, there is no negativity on here, stating anything other than giving me a description that Roegan is doing well, and they were quite amazed at his recovery.
THE COURT: Okay.
THE WITNESS: Yeah, I don't have anything that says any negative --
THE COURT: All right. If the first

procedure at the chiropractor bothered you, why didn't you say it bothered you at or after the time of the chiropractic adjustment?
THE WITNESS: I -- I've always seen a chiropractor, since I've been in eighth grade. I've never -- ever have seen infants or newborns, even young children; I've never seen them in a chiropractic -- and I thought, well, maybe -- maybe this could work. But after I heard him cracked and -- I guess it did upset me when they lifted him upside down and jerked him twice. And not only for that visit, but for, as Codie says, two more. That did bother me. And I -- I even kind of, uhhh, in front of the doctor. And he's, like, oh, it's okay, we do this to our kids and -- okay. You know, because we had -- didn't actually know what was wrong with Roegan.
THE COURT: Okay. I think you already testified to this, but maybe somebody didn't hear it or maybe they had this before. What date or dates were the children removed from you?
THE WITNESS: That evening, on the 22nd.
THE COURT: All right. Why did you feel the need to write on the calendar the date of the fall?
THE WITNESS: Again, I -- I'm a grandmother who sincerely loves her grandchildren. And I not only

do it for Ella and Roegan, I do things for my son's children, as well.
THE COURT: Okay. Did the chiropractor use or refer to the word manipulation at any time during the baby's initial visit to the chiropractor?
THE WITNESS: Being as, again, I've -- I've gone to chiropractors since I've been in eighth grade, I know what manipulation is. This was severely cracking. And to be --
THE COURT: The question is, did the chiropractor --
THE WITNESS: I don't recall.
THE COURT: -- use the word? Okay.
THE WITNESS: I don't recall.
THE COURT: Okay. Did you take photos of Roegan at birth and in the day after?
THE WITNESS: The day after, at the hospital, we -- we noticed he was bruising on his face and his shoulders, so we took -- I said, we need to get a picture of this, because I've never seen a child bruised from birth.
THE COURT: So you have pictures of the bruising of the face and shoulder area that you had referred to?
THE WITNESS: Yes.

THE COURT: Okay. Do you have them with you?
THE WITNESS: I don't have them personally. I'm thinking that family division --
THE COURT: All right. Somebody has them?
THE WITNESS: Yeah, somebody has them.
THE COURT: All right. Does that show the large head, also?
THE WITNESS: It does. His --
THE COURT: Okay.
THE WITNESS: Yeah.
THE COURT: That's all.
Any follow-up from counsel?
MR. DUGGAN: Yes, Your Honor.

R E D I R E C T E X A M I N A T I O N

BY MR. DUGGAN:

Q Did you ever offer those pictures to the police as they were doing their investigation, as a possible explanation for what you thought might have been these injuries that were seen on February 22nd?
A We gave them to the attorneys.
Q The attorneys handling the other matter?
A Correct.
Q Okay. So I guess my question would be, did you ever give the police or tell the police about the existence of the pictures from birth, that you say showed

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1 bruises --
2 A I don't --
3 Q -- in the neck; in the neck or head or shoulders?
4 A I don't remember the interview.
5 Q All right. You know the kind of pins, the head pins,
6 stick pins that come in shirts when you buy them new
7 from the store?
8 A Yes.
9 Q Did you ever take a pin and shove it in Roegan, as a
10 new baby?
11 A Oh, my God, no.
12 Q But you would take a baby to the doctor for shots, at
13 that time, because it would be appropriate for the
14 doctor to administer shots with a needle, correct?
15 A She does, yes.
16 Q And so that's something you're used to, seeing babies
17 get shots; you've had babies, and your daughter has had
18 babies. So that's just something you're okay with,
19 because you're used to it?
20 A Yes.
21 Q But you weren't used to seeing a baby get chiropractic,
22 even though you're familiar with chiropractic for an
23 adult?
24 A Never.
25 Q So it sort of was overwhelming, to see that for the

1 first time?
2 A Absolutely.
3 Q So I'm trying to understand some of your reactions,
4 here. And I'm not arguing they're genuine, I'm saying
5 you tend to see -- see them based on your own relative
6 experience is -- would be the thing you're dealing
7 with, correct?
8 A Yes.
9 Q All right. And when you say that you're a grandmother
10 that loves your grandchildren, would it be fair to say
11 that on February 22nd you were in a horrible conflict
12 situation because your daughter, the mother of your
13 grandson who was two months old, said the baby had a
14 fall, hit his head. This is on February 7th. And it
15 was your instinct to say, take the baby in; and she
16 didn't do --
17 A Suggested.
18 Q -- what you would have done. And you had to decide
19 then, because you said you were aware, if you take him
20 in, CPS is going to get involved?
21 A That's protocol.
22 Q You had to make a terribly difficult decision, which is
23 to stand back and accept your daughter's decision and
24 not do what you would have done, as to your grandson?
25 A I suggested to her. But to me, you know, to be safe

1 than sorry; not that I felt he was in danger, because
2 the bump on the head was not hardly there. It was so
3 minuscule. Parental discretion.
4 Q You're not under a mandatory duty to report child abuse
5 as a grandmother, are you?
6 A I did not feel that was abuse.
7 Q I -- that was not the question. You're not under a
8 mandatory duty, under law, just as a grandmother, to
9 report child abuse or possible child abuse?
10 A I think anybody needs to report child abuse.
11 Q Well, then maybe you don't know the law, because what I
12 was asking is, are you specifically, as a grandmother,
13 under a mandatory duty to report?
14 A I would think I am.
15 Q All right. Well, perhaps you should check the law.
16 Did you feel, when you saw your daughter and your
17 son -- well, the father of the baby -- fail to heed
18 your advice, that you were not going to be the one to
19 pick up the phone and call CPS or the police and tell
20 on them?
21 A And, again, I didn't feel that the bump on the head was
22 going -- was or was going to be a life-threatening --
23 Q You ever heard the term projectile vomiting?
24 A Yes.
25 Q And you've testified to this jury that not too many

1 days after the bump on the head you were the receiver
2 of what sounds like projectile vomiting. You were
3 covered in it, you were drenched in it.
4 A Because we thought he had what Dane had, was the
5 pyloric stenosis.
6 Q But you said that was a different kind of vomiting than
7 he was used to doing?
8 A I've never experienced pyloric stenosis.
9 Q I'm talking about Roegan.
10 A My kids --
11 Q With him, the vomiting that happened after the bump on
12 the head, that you told her to take him in for, was
13 different than the vomiting he had done before?
14 A It was more. And I felt it was -- could have been from
15 the formula change.
16 MR. DUGGAN: Thank you very much.
17 THE COURT: Mr. Bush or Mr. Sturtz, any
18 questions?
19 MR. STURTZ: I have no questions.
20 MR. BUSH: No questions.
21 THE COURT: All right. You can step down,
22 ma'am. You're excused.
23 MR. DUGGAN: Did you want to inquire if the
24 jury has follow-up from me?
25 THE COURT: Well, any follow-up from the

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jury; questions?

MR. DUGGAN: I ask that she not be excused because you were might -- maybe going to say that. And she might be recalled later.

THE COURT: All right. So you may be recalled later, so you're not technically excused. And counsel will let you know if they want to have you come back.

THE WITNESS: Okay.

THE COURT: So you can step down now.

(At 12:18 p.m. witness is excused.)

THE COURT: And with that, we'll take our lunch break, ladies and gentlemen. So I'll ask you to come back by 1:30.

Please don't talk about the case with anyone during your lunch break, don't read anything about the case, don't listen to anything about the case, don't do any kind of independent research about the case.

Have a nice break. We'll see you about 1:30. Report to your respective jury rooms.

(At 12:19 p.m. juries are excused.)

THE COURT: Is there something else, Counsel?

MR. DUGGAN: Yes. Now that the jury is gone, I -- as I said at the beginning, I had no objection to this being sequestration, a sequestration trial; I

still don't. And I've consulted with the last witness, who is still here. If she wishes to stay, even though I might recall her, I have no objection if they want to make an exception to the sequestration rule. I just want to let that be known, that I have no objection. If that's something she wants to do, she'd be free to do it. I am not keeping her. I'm paying her her witness fees for the last three days, and if I recall her, I will be able to get her, through the detective.

We have the number, right?

THE COURT: All right. Counsel, do you have any objection to this witness staying, if she wants?

MR. STURTZ: No, I have no objection.

MR. BUSH: No.

THE COURT: All right. So if you -- if you want to be here, ma'am, you can; if you don't, that's fine, too.

THE WITNESS: Thank you.

THE COURT: All right. We'll be in recess. We'll see you at 1:30.

MR. DUGGAN: Thank you.

(At 12:20 p.m. break is taken.)

(At 1:49 p.m. proceedings resumed.)

THE LAW CLERK: All rise, please. Court is again in session.

THE COURT: All right. Please be seated.

Okay. We're back on the record in People V Krukowski and Stevens.

One of the jurors reported to the bailiff/clerk that someone had made a statement to them as they were cashing their voucher yesterday, to the effect of, hope you're not on the Krukowski case. I've talked with counsel about that in chambers, and how they want to address it. This is particularly pertinent, obviously, to the Krukowski jury. Apparently, there was another juror standing next to the juror -- the juror to whom the statement was made, and the juror standing next to her said something to the effect of, you handled that appropriately, because the person to whom the statement was made said, I'm not supposed to tell you that, or something to that effect. And that was about it.

However, we're going to bring that juror in to whom the statement was made. And that would be -- has been identified as the juror in the front row; obviously, on the Krukowski jury. So it would be Seat No. 14 for that jury. That's 28 on your chart for -- is that right?

THE CLERK: No, it's -- that's not ours.

THE COURT: Oh, wait a minute.

All right. I'm looking at the wrong sheet. That's Krukowski. All right. This is it. Severs?

MR. DUGGAN: That was --

THE COURT: Oh.

THE CLERK: Yanca.

THE COURT: Yanca. Okay.

THE CLERK: Yes, Caroline.

THE COURT: So if you have a separate sheet on the Krukowski jury, Seat No. 14 is at the end, on the left. Front row, very end. Caroline Yanca, Juror No. 447. So we'll bring her in, and we can ask her about that.

MR. DUGGAN: While we're waiting for the juror to come in, if we learn from this juror that they've all been chattering about this in the jury room, I would ask that we convert to the whole group getting told, 28 people at once -- or, 27; because, otherwise, we'll be going through a lot of individual interviews.

THE COURT: Well, I -- we'll get to that when we find out what's happened, here.

MR. DUGGAN: Thank you.

THE CLERK: Go ahead and take your seat.

KRUKOWSKI JUROR NO. 14: Take my seat?

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THE COURT: Okay. Ms. Yanca?
KRUKOWSKI JUROR NO. 14: Yeah.
THE COURT: You can have a seat.
I understood that you reported to the clerk -- as you should -- that somebody had --
KRUKOWSKI JUROR NO. 14: Yeah.
THE COURT: -- made a comment to you about being on the jury.
KRUKOWSKI JUROR NO. 14: Yes.
THE COURT: For Mr. Krukowski?
KRUKOWSKI JUROR NO. 14: Uh-huh.
THE COURT: Can you tell us what --
KRUKOWSKI JUROR NO. 14: And they mentioned both names.
THE COURT: Oh, did they?
KRUKOWSKI JUROR NO. 14: Yeah.
THE COURT: Well, tell us what was said.
KRUKOWSKI JUROR NO. 14: I was downstairs, waiting to -- for the pay thing. It was, like, the day that it went a little later. And one of the jurors from this one knew somebody that just -- she -- I heard them say that they -- she had just started a month ago. And they said -- they said, oh, yeah, we're, you know, doing jury duty. And then the clerk called her in to, like, get paid.

And then she turned and looked at me; well, I hope you're not on the Krukowski whatever -- I can't -- I'm sorry -- stevens, I believe, case. And then I -- she looked at me, and I said, we're not supposed to answer anything; like, nobody is supposed to -- we're not, you know, I don't think I'm supposed to answer that. And she's just -- stood there and looked at me. And I just figured she was new. And then I'm, like, is this a test? Like --
THE COURT: Well, it wasn't a test, so --
KRUKOWSKI JUROR NO. 14: And then -- and then she just kind of like moseyed away, but she still kept looking at us; like, waiting for an answer. And I just turned around, so -- and I have no idea who she was.
THE COURT: All right. Where did she go from there, if you know?
KRUKOWSKI JUROR NO. 14: She walked out. She left. She was leaving work.
THE COURT: Okay. Was it a --
KRUKOWSKI JUROR NO. 14: Because she was --
THE COURT: Were you out in the hallway or in the office, there?
KRUKOWSKI JUROR NO. 14: I was out in the hallway, waiting in line to go in.
THE COURT: Okay. All right.

KRUKOWSKI JUROR NO. 14: And one of the other jurors was in front of me and heard it, and turned around and said, if it was a test, you passed, so --
THE COURT: All right. So -- so there was the juror in front of you and you. Did anybody else hear it?
KRUKOWSKI JUROR NO. 14: I'm not sure.
THE COURT: Okay.
KRUKOWSKI JUROR NO. 14: I'm not sure.
THE COURT: As far as you know, just the one other juror --
KRUKOWSKI JUROR NO. 14: Uh-huh.
THE COURT: -- who was in front of you?
KRUKOWSKI JUROR NO. 14: Yeah, and she's in the jury with me, because, like I said, we all came down together to go to the --
THE COURT: Who was that, if you recall?
KRUKOWSKI JUROR NO. 14: I sit next to her. She's with the glasses. Why can't I think of her name?
THE COURT: That's all right. Just show me what seat she's in, if you remember.
KRUKOWSKI JUROR NO. 14: She's got the dark hair. She's, like, right --
THE COURT: McQuiston?
KRUKOWSKI JUROR NO. 14: Right --

THE COURT: Sherry McQuiston?
KRUKOWSKI JUROR NO. 14: It might be Sherry. I think it's Sherry, yeah. So she was in --
THE COURT: With real dark hair, about --
KRUKOWSKI JUROR NO. 14: Yeah, dark -- yeah, dark hair, yeah.
THE COURT: Okay.
KRUKOWSKI JUROR NO. 14: Few little gray strands in her hair.
THE COURT: All right.
KRUKOWSKI JUROR NO. 14: Yeah. So . . .
THE COURT: Okay. Mr. Duggan, any questions?
MR. DUGGAN: No, Your Honor.
THE COURT: Mr. Bush, any questions?
MR. BUSH: No, Your Honor.
THE COURT: Mr. Sturtz, any questions?
MR. STURTZ: Ms. Yanca, you didn't feel intimidated or somebody was trying to frighten you or anything like that, did you?
KRUKOWSKI JUROR NO. 14: Not at all. I really thought it was just a lack of, you know, her new job, and probably not thinking in the right mind; that this is not something I should be asking. And, you know, like I said, I responded in the manner that I did because, as a juror, that's what I think I'm

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1 obligated -- it's nobody's business.
2 MR. STURTZ: I have no further questions,
3 Your Honor.
4 THE COURT: Okay. Having Mr. Duggan's
5 comment earlier, did you want to follow that procedure
6 with the entire jury?
7 MR. STURTZ: Yes.
8 THE COURT: All right. Do you have any --
9 see any need to bring in Ms. McQuiston?
10 MR. DUGGAN: Not for the People.
11 MR. STURTZ: I would think it would be
12 appropriate, since we've gone this far.
13 THE COURT: All right. Well, why don't we
14 bring in Ms. McQuiston, then, and we'll bring everybody
15 in after that.
16 KRUKOWSKI JUROR NO. 14: I hope it's the
17 right one.
18 THE COURT: Well, if it's not, you'll be able
19 to tell us.
20 KRUKOWSKI JUROR NO. 14: Will I be allowed to
21 go get my drink? I didn't know I --
22 THE COURT: Yeah, when she goes back.
23 KRUKOWSKI JUROR NO. 14: Okay.
24 THE COURT: She's going to have to go back a
25 third time to get the rest of your group.

1 KRUKOWSKI JUROR NO. 14: Okay. I'm sorry, I
2 just didn't know where I was going, so --
3 THE COURT: That's fine. You handled
4 everything --
5 KRUKOWSKI JUROR NO. 14: Yeah.
6 THE COURT: -- as you were supposed to. It's
7 no problem. We just have to make sure that everybody
8 is fair and balanced.
9 KRUKOWSKI JUROR NO. 14: Oh.
10 THE COURT: And all of that.
11 KRUKOWSKI JUROR NO. 14: Well, that's why I
12 said something, too, so . . .
13 THE COURT: Okay.
14 JUROR NO. 14: Just don't tell her I don't --
15 forgot her name.
16 THE COURT: I won't tell her that.
17 THE CLERK: All rise, please.
18 THE COURT: Ms. McQuiston, you can have your
19 seat, there.
20 KRUKOWSKI JUROR NO. 4: Anywhere or my own?
21 THE COURT: You're usually in the back,
22 there. You can take the one you're used to, if you
23 want.
24 We understand there was an -- do we have the
25 right person?

1 KRUKOWSKI JUROR NO. 14: Yup, that's the
2 right person.
3 THE COURT: A situation where someone made a
4 statement to Ms. Yanca about being on the jury, and
5 all -- maybe an inquiry, almost?
6 KRUKOWSKI JUROR NO. 4: Uh-huh.
7 THE COURT: And that you had heard that,
8 also?
9 KRUKOWSKI JUROR NO. 4: Uh-huh. Yeah,
10 because it was kind of shocking.
11 KRUKOWSKI JUROR NO. 14: Yeah.
12 THE COURT: Yeah. Well, was there anything
13 about that that would make you think you could not
14 remain fair and impartial --
15 KRUKOWSKI JUROR NO. 4: No.
16 THE COURT: -- in this case?
17 KRUKOWSKI JUROR NO. 4: No.
18 THE COURT: You didn't feel intimidated or
19 anything?
20 KRUKOWSKI JUROR NO. 4: No.
21 THE COURT: And it wasn't a test, so --
22 KRUKOWSKI JUROR NO. 14: That's what we
23 thought it was, really. Like, what?
24 THE COURT: You know, we appreciate your
25 reporting it, and we appreciate your reporting it

1 now --
2 KRUKOWSKI JUROR NO. 14: Yeah.
3 THE COURT: -- because we'll deal with it
4 now.
5 KRUKOWSKI JUROR NO. 14: Yeah.
6 THE COURT: So with that, Mr. Duggan, any
7 questions?
8 MR. DUGGAN: None, Your Honor.
9 THE COURT: Mr. Bush?
10 MR. BUSH: No.
11 THE COURT: Mr. Sturtz?
12 MR. STURTZ: Witness -- Juror, what is your
13 last name?
14 KRUKOWSKI JUROR NO. 4: McQuiston.
15 MR. STURTZ: McQuiston. First name is
16 Sherry?
17 KRUKOWSKI JUROR NO. 4: Uh-huh.
18 MR. STURTZ: I have no questions, Your Honor.
19 THE COURT: All right. So with that, we can
20 bring in the rest of the jury.
21 If you wanted to go get your drink or
22 whatever it was --
23 KRUKOWSKI JUROR NO. 14: Yeah.
24 THE COURT: -- you left.
25 KRUKOWSKI JUROR NO. 14: Okay.

when you had a daughter's college softball game, so I apologize.
A That's okay.
MR. DUGGAN: Maybe you can make it yet, we'll see.
Thank you. No further questions.
THE COURT: Cross-exam, Mr. Bush?
MR. BUSH: No questions, thank you.
THE COURT: Cross, Mr. Sturtz?
C R O S S - E X A M I N A T I O N
BY MR. STURTZ:
Q Was Andy Myers there?
A I'm not 100 percent sure. He may have arrived at some point, but I'm not sure exactly when.
MR. STURTZ: Thank you.
No questions, Judge.
THE COURT: Any redirect?
MR. DUGGAN: Nothing.
THE COURT: Any questions from the jury for this witness?
All right. You can step down, ma'am. You're excused.
THE WITNESS: Thank you.
(At 2:22 p.m. witness is excused.)
MR. DUGGAN: Dr. Frank Schinco?

Step forward.
THE COURT: Sir, if you'd step up here, please, raise your right hand?
Sir, if you'd raise your right hand, please?
Do you solemnly swear to tell the truth, the whole truth and nothing but the truth?
DR. SCHINCO: I do.
THE COURT: Please have a seat in the witness box, there.
DR. FRANK SCHINCO,
Being first duly sworn at 2:23 p.m., testified under oath as follows:
D I R E C T E X A M I N A T I O N
BY MR. DUGGAN:
Q Good afternoon. Please state your name.
A Frank Paul Schinco.
Q What is your profession?
A I'm a physician and neurological surgeon.
Q Do you practice at a particular hospital or hospitals in this area?
A I'm on staff at Covenant Hospital, as well as St. Mary's of Michigan. Most of my practice is at Covenant, though.
Q Do you have an office you also practice out of?
A Yes.

Q How long have you been licensed as a physician in the State of Michigan?
A Approximately, 21 years.
Q How long have you been licensed anywhere as a physician, total?
A Approximately, 30 years.
Q You've indicated neurosurgery is your specialty in practice; has that always been the case?
A Since my residency training, yes.
Q Would that mean you have about 30 years as a neurosurgeon?
A I finished neurosurgeon training in 1983; so, approximately, 32 years.
Q All right. And are you board-certified in that specialty?
A Yes, I am.
Q How long?
A Since 1986.
MR. DUGGAN: At this time, I would tender the witness to the defense, if they have questions, because I will very likely be asking the witness questions that call for an expert opinion.
THE COURT: And do you want to --
MR. DUGGAN: In neurosurgery.
MR. STURTZ: I'm satisfied with the doctor's

qualifications.
MR. BUSH: No questions.
THE COURT: All right. Dr. Schinco will be qualified as an expert in the area of neurosurgery.
BY MR. DUGGAN:
Q As I told you, we have a lot of records up there; and for convenience, at the bottom right-hand corner of pages are numbers. And I might refer to certain numbers and ask you to make reference to them. Have you had the chance to review the medical records, in this matter?
A I have.
Q Okay. And my first question would be, having reviewed them and knowing what we're here to have you testify about, do you have an actual memory of dealing with this patient or is it only on the records that you can bring up the memory?
A No, I do have a recollection of treating the patient.
Q Roegan Krukowski?
A Yes.
Q Okay. Do you do neurosurgery, generally, or just in intensive-care units?
A I have a general practice with neurological surgery, and we do -- do very many patients with pediatric neurosurgery, so -- the kids that we take care of.

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1 Q On page 15 -- and there are labels, red labels, on the
2 piles in front of you. Look at the packet that has the
3 number three, and then turn to the 15th page in. There
4 appears to be a record of progress; February 22, 2015,
5 at 3:50 p.m., by you. Do you recognize that note?
6 A Yes.
7 Q Would that be your first contact with Roegan Krukowski
8 at the PICU?
9 A Yes, it was.
10 Q At that point, you were noting that pertinent imaging
11 studies and lab values are reviewed. At that point, a
12 CT had already been performed?
13 A Yes.
14 Q Had the MRI been performed yet?
15 A I think the MRI was going to be performed subsequently.
16 Q And --
17 A To that particular time.
18 Q -- had you arrived at, from review of whatever the
19 reports were that were provided to you -- I'm thinking,
20 predominantly, the CT -- an impression as to what type
21 of injuries this child had, so you could figure out a
22 course of treating the child?
23 A Yes, I have.
24 Q What was that?
25 A That the child is -- excuse me -- the child had

1 sustained a subdural hematoma bilaterally; in other
2 words, on both sides. That there was evidence on the
3 CT scan of an old area of hemorrhage, as well as a much
4 more recent area of bleeding.
5 Q Can you age those as of February 22nd, backward in
6 time, or not?
7 A As of the -- the newer and more recent hemorrhage would
8 be within 36 to 48 hours old. The older one is very
9 difficult to gage; would have been more -- at least
10 more than a week old.
11 Q Under any circumstances, would you expect the more
12 recent brain hemorrhage you saw -- if I'm using the
13 correct term -- to be 15 days old?
14 A That would not -- not the more recent one, no, sir.
15 Q So you -- based on your training and experience, that's
16 just way too far back for a trauma to have caused that
17 observed subdural hematoma?
18 A The newer -- what I call the more recent bleeding,
19 absolutely correct, yes.
20 Q Okay. Also, in the impression, is subdural hygroma.
21 We have had discussion with Dr. Farrar here, the
22 neuroradiologist, but you're the neurosurgeon, so I'd
23 like to ask you to distinguish for us subdural hematoma
24 versus hygroma.
25 A Hygroma indicates just fluid. That could be spinal

1 fluid, it could be old bloody fluid. The hematoma is a
2 blood clot; either a fresh or acute hemorrhage, within,
3 you know, 24 hours or so, or a subacute hemorrhage,
4 which would be the 10-to-14-day range. So one is just
5 fluid, one is blood.
6 Q And, also, retinal hemorrhage was noted.
7 A That's correct.
8 Q What significance, as the neurosurgeon, was that to
9 you, in light of the fact that you're seeing different
10 aged hematomas in conjunction with retinal hemorrhage?
11 A That is very significant, and it would indicate a very
12 significant probability and likelihood that the child
13 had been shaken in a typical manner. When you see
14 retinal hemorrhages of that type, what we see, subdural
15 hemorrhages or -- that are of different ages, that is
16 highly diagnostic of that shaken baby syndrome.
17 Q And some terminology has been evolving in that area;
18 it's called some other things now, rather than just
19 shaken baby?
20 A Yes.
21 Q Okay. Have you heard the term abusive head trauma?
22 A That is also a term that's been used, yes.
23 Q And based on your training and experience, was it
24 appropriate for the emergency room to be inquiring of
25 the possibility of child abuse?

1 A Absolutely.
2 Q Who is Dr. Marianne Majkowski?
3 A Dr. Majkowski is a pediatric neurologist that is on
4 staff at Covenant.
5 Q It may jump right out at some people, but just so it
6 doesn't -- if, in case, it doesn't, neurosurgeon versus
7 neurologist, both doctors, but what's the big
8 difference?
9 A Well, the -- I mean, obviously, neurosurgery has the
10 training and experience to operate on the brain and the
11 spine and other parts of the neural system, so,
12 therefore, we tend to treat different types of diseases
13 that lend themselves to being treated with surgery; as
14 opposed to neurology does not do surgical intervention,
15 and they tend to treat types of diseases, such as
16 seizures and multiple sclerosis that don't tend,
17 themselves, to require surgery.
18 Q On that very page that we've been talking about, there
19 is a consultation report purportedly by attending
20 Michael Stargardt, and also consultant Marianne
21 Majkowski, that goes on to page 16, and has some
22 history listed under it. Are you seeing that?
23 A Yes.
24 Q Down at the bottom there are some references to mom's
25 history. Would that be important to you, as

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1 physicians, in trying to figure out what to do with the
2 baby, to have mom's medical history, or could it be?
3 A It could; it certainly could be. I mean, certainly,
4 that's part of a general total medical evaluation.
5 And -- and all history can have very significance --
6 very much significance, depending on the problem.
7 Q On page 18, in the middle of the page, there is a
8 progress note by Tammy Nowaczyk, an RN in the PICU;
9 February 22 at 6:40 p.m., that relates to both
10 Dr. Stargardt's involvement, as well as yourself.
11 Where is the patient, at that point, later in the
12 evening -- late afternoon, early evening of the day of
13 his admission, in terms of his physical condition? And
14 you can read as far as you want before or after that.
15 There's a lot on page 19.
16 A Yes. The -- this was the full dictation of our -- of
17 our consultation. The --
18 Q On to page 19?
19 A All the way to 19, and, actually, to the top of -- the
20 very top of page 20.
21 Q Thank you. At the bottom of page 19, the impression
22 indicates, there is no surgical indication, at this
23 time. Which was February 22 -- well, whenever it was.
24 At that point, you had not done what you would
25 ultimately do later. Were you agreeing, at that point,

1 there was no need for surgical intervention?
2 A At that time, yes.
3 Q And what is that assessment based on, in terms of the
4 head injuries that the CT showed?
5 A That, what -- that was based on the fact that the child
6 was stable, neurologically. And the findings on the CT
7 scan, and by that time, the MRI scan, of the brain had
8 been done.
9 Q All right. Did that change for you?
10 A Yes, it did.
11 Q And how so?
12 A The child became further sleepy, lethargic, had a
13 seizure lasting several minutes. He ultimately
14 required to have a tube put in and have -- and be
15 breathed for him by the pediatric intensive-care
16 physicians; and that his fontanelle, the soft spot on
17 the head, became much more tight and tense.
18 Q And what is that significant for?
19 A That indicates multiple things, but certainly it would
20 indicate a greater pressure in the skull that was
21 putting pressure on the brain, requiring some -- many
22 times, requiring a -- some type of treatment with
23 surgery.
24 Q A baby has these sutures in its skull. Putting up
25 Exhibit 20 on the viewer, there, can you see that from

1 there?
2 A Yes, sir.
3 Q Are those places where the sutures are separations in
4 whatever the skull material is or is about to become?
5 A Well, the suture -- we all have sutures in our skull,
6 but in a baby the sutures are not stuck together. As
7 we become adults they stick together and form one bone,
8 but in an infant they are -- they are separate bones.
9 So the suture lines in a child, where the bones haven't
10 stuck together yet, can be moved, can be spred apart.
11 And the soft spot, as we -- as you list the anterior
12 fontanelle, which is typically the soft spot that we
13 know -- that we've all felt in a child, is a place
14 where there isn't any bone covering the brain, covering
15 the -- the coverings of the brain, the dura.
16 Q So the skull can expand a little to accommodate
17 increased pressures if there are fluid buildup?
18 A Yes.
19 Q And where there is no bone at all and where the
20 fontanelles are, is there something that contains
21 what's inside the skull, even though there's no bone
22 there when pressure increases?
23 A Well, it's a stretchy, tough, leathery-type material we
24 call the dura; the dura mater. And, again, that's a
25 thin, leathery-type covering of the brain.

1 Q And that will still feel taut if there's higher
2 pressure in the brain than should be?
3 A Yes.
4 Q You can palpate it with your hand?
5 A Yes.
6 Q Does it ever, under any circumstances, rupture from
7 that pressure?
8 A Only with a penetrate -- like if somebody sticks a
9 knife or something like that; but, no, I mean, not --
10 Q The pressures going from inside to out aren't never --
11 are never enough to rupture or herniate that fontanelle
12 cover of the dura?
13 A Correct.
14 Q Okay. And is the dura also covering the posterior
15 fontanelle area?
16 A Yes.
17 Q If there was no pressure and you palpate the dura or
18 palpate the anterior fontanelle, it's soft and
19 depresses slightly?
20 A It's soft and flat. And depending on what the child is
21 doing, if he's quiet and sleeping, it will be sunken
22 down; if he's crying because he's hungry it will maybe
23 bulge out a little bit, but not to the extent that
24 Roegan had that -- that day.
25 Q And when the pressures do increase, even if they don't

1 have the ability to break through the dura, where the
2 fontanelles are, do they exert pressures on those
3 plates of the developing skull that will move them
4 apart enough for you to feel?
5 A Yes.
6 Q Ultimate skeletal survey showed there was a fracture in
7 the skull -- Dr. Constantino's report -- of a certain
8 position and length, and it had expanded somewhat
9 because of the pressure. Did you feel that yourself?
10 A I did -- I could not feel that, no.
11 Q With your hand, you --
12 A Correct.
13 Q Okay. Are you satisfied that the skeletal survey
14 x-rays accurately depicted what was there, in terms of
15 a fracture?
16 A Yes.
17 Q It didn't require treatment by you, as the
18 neurosurgeon?
19 A That is correct.
20 Q Because why?
21 A Because fractures of the skull that are what we call
22 linear -- in other words, a linear line in the skull
23 will heal very quickly on their own, especially in a
24 child, without any surgical invention, as long as it's
25 not a -- what we call an open fracture; in other words,

1 as long as there's no laceration of the scalp overlying
2 the fracture.
3 Q And that brings up another question. You can get skull
4 fractures without lacerating or cutting the scalp?
5 A Absolutely.
6 Q So the skin might not even show with any marking, or
7 insignificant marking; a blow hard enough to fracture
8 skull won't necessarily leave a cut?
9 A No.
10 Q Okay. What was the surgical intervention you did?
11 A The surgical intervention was a bedside procedure of
12 inserting a drain in the subdural space; in other
13 words, through that opening in the skull, the anterior
14 fontanelle. We put a catheter through the scalp,
15 through the dura, to the fluid that was building up and
16 the bloody fluid that was building up underneath, to
17 relieve the pressure in that subdural space, the space
18 between the dura and the brain. Because what was
19 happening is that that pressure was causing too much
20 pressure on the brain and causing problems, so we had
21 to drain that fluid and relieve the pressure.
22 Q Based on your training and experience in the
23 observation of that child's symptoms and tests and so
24 forth, did you have a choice? By that I mean, could
25 you have not done what you did and expected the baby to

1 survive?
2 A We could have not done what we did, taking a very
3 significant risk of further brain damage. We could
4 have done what we did. We could have done a bigger
5 operation and actually drilled a hole in the skull. At
6 that point, training and experience, I decided to
7 recommend that sort of middle ground of a bedside
8 catheter placement.
9 Q And I think you said it, but once you get through the
10 dura, the next thing is the brain itself. Are there
11 any more membranes?
12 A There is -- there are; there's another membrane, what
13 we call the arachnoid, which is very thin, and
14 literally looks like a spiderweb. So that's very thin.
15 There may be some fluid in there, and there is some
16 fluid, but this fluid is less than -- less than a 32nd
17 of an inch, so --
18 Q All around the globe surface?
19 A Pretty much all around the globe surface.
20 Q Okay. Showing you, on the presenter there, Exhibit 8.
21 Do you recognize that as what you did at the bedside?
22 I can back up a little bit.
23 A Yes.
24 Q That little one-inch-or-so device has a catheter that
25 maybe we can't see, that goes down inside the baby's

1 skull?
2 A That's correct.
3 Q What causes the draining to happen once it's installed?
4 A Once it's installed the drain happens because of the
5 pressure that is inside the dura; forces it's way out
6 through the catheter tube.
7 Q It's not drawn out with any motor or pump system?
8 A No.
9 Q It's not dependent on gravity?
10 A Initially, it is pushed out by the pressure. Sometimes
11 we like to maintain a certain pressure in the brain and
12 not let the pressure get too low, so, actually, we put
13 a little device to have it get to a certain level of
14 pressure before it starts to drain, kind of like a
15 syphon device. But, no, there's no pump, there's no --
16 there's no pump pulling it out.
17 Q Showing you Exhibit 11 on the presenter. This was
18 identified, previous witnesses. It's some type of a
19 bag?
20 A That is the drainage bag on the other end of that
21 device.
22 Q And approximately how much volume are we seeing? I'll
23 zoom into the scale, if that helps you.
24 A Okay. So, at that time, it looks like somewhere
25 between 250 and 300 CCs of what turned out to be very

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1 bloody fluid. As you can see, it's kind of red, so it
2 is bloody fluid out there. So that is -- 30 CCs --
3 would be 10 cups of fluid, at that time.
4 Q Just then?
5 A Just then. And I'm not sure of when that was along the
6 course of the treatment.
7 Q You said 10 cups?
8 A Yeah. A cup is approximately 30 CCs, so 300 CCs was
9 approximately 10 cups.
10 Q Do you have an understanding, from the records here, a
11 memory, approximately how much bloody fluid was taken
12 out of those?
13 A No, I'm sorry, I'm sorry. 10 ounce -- not 10 cups, 10
14 ounces.
15 Q We were wondering.
16 A I misspoke.
17 Q There's some bakers over here.
18 A That's approximately one cup.
19 Q All right.
20 A A little more than one cup.
21 Q Okay.
22 A A little more.
23 Q Darn metric/English thing. But I was asking over time.
24 Over the time of days that the drain was left in place,
25 do you have an idea of how much total fluid was taken

1 out?
2 A I don't have a recollection of --
3 Q Okay.
4 A -- exactly how much was taken out.
5 Q Do you know how quickly that bag might fill and have to
6 be replaced or -- or do they let it just be filling one
7 time and --
8 A I'm sure -- I think, if I remember correctly, it was
9 changed more than once, but I don't remember.
10 Q Okay. And the baby is getting fluids through IV all
11 the time, correct?
12 A Yes.
13 Q Does the baby's body process fluids, and some that's --
14 some of the fluids coming into the IV will work their
15 way to that area?
16 A Yes, absolutely.
17 Q Okay.
18 A So, actually, the fluid has to be -- for every CC, for
19 every milliliter of fluid that comes out of there, we
20 replace that through the IV.
21 Q To keep the baby stable?
22 A To keep the balance, yes.
23 Q And would there be great significance to you, as the
24 neurosurgeon, with that color being so bloody?
25 A That would indicate that there was, you know, what

1 appeared to be fresher blood in there, because it was
2 very red, initially.
3 Q Is the normal baby's brain, if you tap into it to get
4 any amount of fluid in there, whatever that thin amount
5 is, is it going to come up that color in normal
6 circumstances?
7 A No, it should be spinal-fluid color, which is,
8 basically, water.
9 Q This was quite concerning to you, this color?
10 A The -- the color was concerning. I -- I expected it,
11 based on what the CT and the MRI showed, so that wasn't
12 a surprise. But it -- and so I was already concerned
13 prior to looking at that, but, yes.
14 Q We heard, in the medical records and other witnesses
15 talked about, CSF, cerebral spinal fluid. That's the
16 stuff that should be clear, like water?
17 A Yes.
18 Q At every level?
19 A Yes.
20 Q The stuff under the spiderweb thing and above it and so
21 forth, all those should be clear fluids?
22 A Yes.
23 Q And on a healthy baby?
24 A Yes.
25 Q As the child progressed -- and we know it did progress

1 and was ultimately discharged -- are you satisfied, in
2 retrospect, that you selected, at the time, given the
3 facts you had, the appropriate intervention to do the
4 drain in that way?
5 A Yes.
6 Q What period of time did the drain remain in place?
7 A I can't remember, independently. I think it was
8 several -- several days.
9 Q I didn't mean to put you on the spot. Let me, rather
10 than leave you hanging there, with that, you're
11 satisfied it was several days?
12 A Yes.
13 Q Okay. If we need to come back to it or if you find it,
14 you can tell me.
15 At the bottom of page 34, then going on to
16 35, Tammy Nowaczyk, the PICU nurse, makes a note for
17 February 23rd, 2015, 8:06 p.m. The baby has been at
18 the hospital more than a day, and it makes reference,
19 onto page 35, of, you were in to see the baby that day.
20 There's a discussion about increase in head
21 circumference from the day before?
22 A Yes.
23 Q What is that significance?
24 A The significance of that is that there is buildup,
25 continued buildup of pressure, literally pushing the

1 skull apart; pushing those sutures to be more
2 separated, and literally blowing the skull up from the
3 inside, like a balloon.
4 Q And while Dr. Fiore, you, Sahouri are all involved
5 there, at least referred to in this note, there is
6 seizure activity going on. I'm looking at the top of
7 page 35. At least, I'm reading that, Nowaczyk's note,
8 to say Dr. Schinco and Fiore at bedside. While both of
9 them at bedside, patient began seizing?
10 A Yes.
11 Q And medications are referred to, and then it says
12 something about, you performed tap with immediate
13 return of amber-colored fluid.
14 A Yes.
15 Q Could you tell me what the significance of that is; why
16 you were doing that, and what it was?
17 A Well, again, the -- there were signs that the pressure
18 was increased, and the fontanelle was tense. So the
19 initial tap was putting that catheter in with the
20 needle through the soft spot, through the anterior
21 fontanelle, in order to relieve the pressure in the
22 brain or around the brain.
23 Q I guess I needed to know, was this the initial
24 installation of the catheter or was this a secondary
25 one?

1 A No, that was when we -- when we initially put it in.
2 Q All right. All right.
3 A So we put the -- we did the tap, and then sort of put
4 the catheter through that.
5 Q And it says, amber-colored fluid. You characterized
6 what you saw in the bag, at least on the picture, as
7 bloody fluid. Is it your memory that it was bloody
8 fluid?
9 A Later, it certainly did become bloody. Initially, it
10 was amber, which is more the old blood-type fluid.
11 When blood sits in there it mixes with the spinal
12 fluid, and then it becomes a -- an amber sort of color.
13 As the blood continues to drain out, then we get the
14 rest of the more acute blood to ooze out, so to speak,
15 and we force that out.
16 Q And at the top of page 36 I believe I'm seeing your
17 actual note of February 23rd, 2015, 10:58. That is the
18 description of the process of your surgery?
19 A Of the procedure, yeah. Again, since it was at the
20 bedside, it doesn't classify fully as surgery, but it
21 is a procedure, yes, sir.
22 Q All right. Can it be done by someone other than a
23 surgeon, in normal circumstances?
24 A Normally, no.
25 Q Okay. And then it's identified as xanthochromatic --

1 xanthochromic fluid was obtained?
2 A That's correct.
3 Q Is that bloody?
4 A That's the amber --
5 Q That's the amber.
6 A -- slash, bloody -- old bloody fluid.
7 Q Okay. There is a note on page 40 by Laith Alreshaid,
8 M.D.?
9 A Yes.
10 Q What is his doctor status there, at the PICU?
11 A He is a resident physician. Actually, an emergency
12 room residence -- resident physician that was rotating
13 on the neurosurgical service, at the time.
14 Q And it notes that you cosigned this note with him?
15 A Yes.
16 Q And you were, therefore, there seeing what he was
17 doing?
18 A Yes.
19 Q At that point -- we're now at February 24th, 7:03 a.m.,
20 approximately a day and-a-half after the patient has
21 come in. What do you see different about the
22 fontanelle, at this point?
23 A At that time, because we had drained the fluid off, it
24 was more sunken; it was more soft as it cannoned.
25 Q Were there any other signs of improvement --

1 A At this --
2 Q -- noted by the pupils?
3 A At that particular point, pupils had always been
4 reasonable, although sluggish. There had been no more
5 seizures, and he was stable.
6 Q The note says he moved all extremities?
7 A That's correct.
8 Q And this is a baby that, during part of this time, was
9 sedated?
10 A Was sedated, that's correct.
11 Q Do babies move extremities while sedated?
12 A Not when they're fully sedated; and partial sedation
13 may have them move their extremities.
14 Q But the softness and the slight sunk-in-ness of the
15 fontanelle, coupled with a moving of all the
16 extremities, were those improving signs?
17 A Yes.
18 Q And I realize the eyes might not necessarily be your
19 thing, but they are in the head. There's a note there
20 that the retinal hemorrhages, as well as subdural, are
21 quite significant for the possibility of child abuse.
22 You agreed with that note?
23 A Absolutely.
24 Q Is it significant to you, as a neurosurgeon, to see a
25 combination of retinal -- retinal hemorrhages with

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1 hematoma, with hygromas, with skull fracture, based on
2 your training and experience?
3 A Is it significant? It's very significant. That
4 combination is very significant for non-accidental
5 injury.
6 Q And that's a way a doctor might say child abuse, rather
7 than that they say non-accidental?
8 A Correct.
9 Q And this goes a little bit beyond the head, but you are
10 a physician. When you add in a radius fracture that's
11 healing and rib fractures in different sides of the
12 body healing in different times, does that add to or
13 take away from the concern about non-accidental injury?
14 A That is certainly more -- it's very significant to
15 concur with that whole idea of non-accidental injury,
16 in this particular case.
17 Q Is the method of causing injuries that you observed
18 inside the head by review of MRI and CT and so forth,
19 and treated for, is the mechanism of those injuries
20 different than you would expect to have been the
21 mechanism for fracturing rib and radius?
22 A Certainly, radius. The mechanism for the head injuries
23 and the hemorrhages in the brain or outside the brain
24 and the retina is very typical for the shaking-type
25 injury, and that's the -- that's the reason you get

1 those. Sometimes the rib fractures can also be
2 associated with shaking a child. Typically, not a
3 radius injury, in terms of shaking. But, certainly,
4 putting all that together, that is basically diagnostic
5 of a non-accidental injury.
6 Q Based upon your review of all the medical notes done by
7 all, plus your own observations of the baby as it
8 progressed through the PICU over these days, and your
9 own training and experience, was there a risk that,
10 without medical intervention, this baby might have
11 died?
12 A Yes.
13 Q Was it a significant risk?
14 A Yes.
15 Q What is the significance to you of a baby falling due
16 to gravity, two feet through -- through the air, and
17 its head striking a hard surface like a bathtub; what
18 kind of trauma does that constitute, in terms of how
19 much injury can do to a brain of a baby? And I just
20 picked that number. You could tell me, I can't work
21 with a particular number; that was just my question.
22 A Certainly, if a child falls two feet, three feet, hits
23 their head, certainly -- and kids fall all the time.
24 At least, my kids did. When they hit their head, they
25 certainly can injure things. They certainly can have a

1 skull fracture or a scalp laceration or a bruise or a
2 bump, black eye, whatever. But falling two, three --
3 two feet, three feet, does not cause this type of
4 injury; does not cause retinal hemorrhages. And
5 although it may have caused the skull fracture, it does
6 not cause the subdural of different ages. It does not
7 cause retinal hemorrhages.
8 Q Is the term constellation of injuries a term you've
9 ever used?
10 A Yes.
11 Q So you were talking about this constellation of
12 injuries doesn't result from a two-to-three-foot fall
13 to a hard surface?
14 A Correct.
15 Q In your opinion, then, this constellation of injuries
16 suggests non-accidental?
17 A This constellation of injuries is basically diagnostic
18 for non-accidental injury.
19 Q And you've used that term before, and apparently you
20 want to be emphatic about it. Diagnostic is what the
21 doctor writes down, this is what happened; is that what
22 you're saying?
23 A Yes, sir.
24 Q So a doctor with training in this area, finding all
25 these injuries -- or a team of doctors -- can't, in

1 good conscience, based on training and experience, call
2 this baby's condition the result of accidental injury?
3 A Not in my opinion.
4 Q There is a note at the bottom of page 65, going to page
5 66, generated by Dr. Alreshaid on February 24, 2015, at
6 around 9:26 a.m. Then it goes on to the next page, 66,
7 and then it ends with the impression: No
8 hydrocephalus. What does that term mean?
9 A Hydrocephalus is a condition of water on the brain, on
10 the inside of the brain, the -- that's the ventricles.
11 The normal cavities that you have in the brain are
12 blowing up from excess fluid. Hydrocephalus is a
13 condition that can be acquired, can be -- children can
14 be born with, and it's typically not associated with
15 injury, although it can be.
16 Q So it can be from birth, a baby can have what we used
17 to hear just as water on the brain. And that does what
18 to the baby?
19 A That also puts extra pressure on the brain from the
20 inside of the brain, different from this case, where
21 the pressure was from the outside of the brain.
22 Q There's a second packet there, it's called No. 4. It
23 has its own numbers, bottom right. Please turn to page
24 10 of that.
25 Do you have that?

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A Yes, sir.
Q It's a note from Tammy Nowaczyk, a PICU nurse, that you're involved there to see the patient on February 25th, 2015, 12:40 p.m. This is three days after entry into the emergency department. What is the progress, at that point, of Roegan?
A The progress is, you know, the fact that we had drained the -- a lot of the bloody fluid out; that the head circumference had decreased. In other words, the -- the head had shrunk a little bit since we had drained the fluid out. That there was some evidence of the child moving their eyes, lifting their eyebrows slightly, trying to -- what looked like open their eyes. His eyes, excuse me. But he didn't. But that indicated some improvement, in terms of his neurologic function.
Q Okay. Go ahead to page 29, in the middle. There is a note from Dr. Alreshaid from February 27,2015, at 6:39 a.m., which you cosigned or attested, as the attending neurosurgeon. Two days have now passed since the last progress note. What does this progress indicate?
A This -- this indicated that the fontanelle continued to be soft; that the pressure continued to be controlled in the -- in the brain; that he is beginning to wake up with reactive pupils and moving around; and that we had

considered -- and that the pressures that we measured were on the low to normal range, it wasn't -- that the pressures that we measured through the drain weren't elevated, like they had been.
Q With consideration being given to the fairly-soon removal of the catheter and the head?
A Correct.
Q Go ahead to page 44, about halfway down; the note from Lisa Brown, PICU nurse?
A Yes.
Q February 28, 2015?
A Yes.
Q 10:30 a.m. What is the progress there?
A That is the fact that these -- the catheter had been removed; and that although there was a little drainage from the -- the area that we removed the catheter, everything looked good; and that, shortly thereafter, the child was extubated. In other words, the ventilator tube was removed.
Q But the -- is this a reference, angiocatheter, the one you would install?
A Yes.
Q And it's appropriate for you to instruct the RN to remove it?
A Yes.

Q So you don't have to personally be there for its removal?
A I believe that the resident removed it under my direction.
Q All right.
A And the nurse just --
Q Charted it?
A -- charted it.
Q Okay.
A That it had happened.
Q Turn to page 56, the bottom. There's a note from Dr. Lorenzo; March 2nd, 2015, 12:42 p.m. This would appear to be eight days after the patient had come into Covenant. Here you're shown as attesting or cosigning as the attending neurosurgeon. Dr. Lorenzo's note, going on to page 57. Where had Roegan progressed, to that point?
A At that time, he was doing quite well, in terms of his condition; that he's opening his eyes, he's looking around, he's moving arms and legs appropriately, breathing okay, and that there were no further seizures. Seizures had been controlled. We had also followed him with ultrasound scans of the fluid through the fontanelle. An ultrasound can determine how much of that fluid was left, and that that had decreased,

because we had drained it out, so that he was doing well, all things considered.
Q Is the -- this is just a general question now, drawing on your training and experience. After a trauma to the head, a blow to the head, falling and hitting it on a hard surface where that might cause skull fracture or other internal brain injuries, can it be a while before those injuries can lead to higher pressures and increased head size; can there be a period of time go by where the patient doesn't have any appearance of a problem, but it's brewing?
A In a child, that would be unlikely.
Q Explain, please?
A Children are both tougher and -- on one hand, and very dainty on the other. If dainty is the right word.
Q Delicate?
A Delicate, that's a good word. When we have an injury to the brain, they get bad quickly; whereas --
Q When you say we, do you mean everybody?
A Children.
Q Okay.
A Whereas, adults would more likely take a longer time to -- that pressure to brew, as it -- so . . .
Q And I realize every injury can be at a long continuum, from not so severe to very severe and so forth, but

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what can that period be where the trauma can be significant to cause injuries that can brew into a later problem; can it be -- is it hours or days or weeks or what is it? Or minutes?
A In a child, typically?
Q Yes.
A In a child, typically, it would be hours.
Q Okay. And is the fact that old injuries might be there that didn't brew into a problem -- such as a swollen head or a lot of fluid get exacerbated by additional blows or trauma -- can that create a different scenario for when the problem will manifest, such as seizures, terrible projectile vomiting or something that tells the caregiver, we have a problem?
A And, again, although it can be, I don't think that this, in this particular case, that would have happened, given the type of injuries that we saw and --
Q You're back to more, this is a shaking-type injury?
A Yes.
Q Rather than a trauma, which is a single blow? Okay. Then I won't push you to go in the direction you don't feel comfortable. I will -- I would ask you this: Based on your observation of these injuries through the images and the treatment you did and how he progressed, are you saying that you're excluding trauma to the head

as an explanation for those injuries or just saying it's unlikely?
A No, no, not at all.
Q Okay. And by that, I mean the blow-type trauma?
A I'm saying that a blow-type trauma weeks ago is not responsible for two weeks later or three weeks later or four weeks later for this presentation.
MR. DUGGAN: I see.
Thank you. I have nothing further for this witness.
THE COURT: Mr. Bush, cross-exam?
MR. BUSH: I have no questions of the doctor.
THE COURT: All right. Mr. Sturtz, cross-exam?
MR. STURTZ: I'm looking for something on my list, here.
C R O S S - E X A M I N A T I O N
BY MR. STURTZ:
Q Dr. Schinco, how are you today, sir?
A Very well, thanks.
Q You're aware that within the head of this young child there were two -- two hematomas; one located in one part of the brain and one located in another part?
A They were both in the subdural space.
Q Yes.

A One more in the front, older; one more in the back, fresher.
Q Correct. The older one, have you any idea how long that had been, before --
A The MRI scan would have suggested that it would have been more than 10 days, give or take; more than that, we can't get better --
Q Could have been two to three weeks, even?
A Yes.
Q And the other one would have been more than -- more than two weeks?
A The more recent one, no.
Q According to your expertise and the MRI and CAT scan, what would your estimation be?
A I think I've said less than 36 hours; 48 to 36 hours, give or --
Q Now, you got involved with this child, not upon its initial admission to the hospital, but you got involved, according to the notes here, somewhere around on the 23rd or 24th, is that correct?
A I had thought that we had initially seen him -- certainly within, like, 24 hours or so of admission.
Q Okay.
MR. DUGGAN: I'm going to object. The fact -- the question assumes facts not in evidence

because the doctor has already said when he saw him, and it wasn't on the 23rd. It's in the notes, on page 15, but --
MR. STURTZ: Well, what does it say on page 15?
MR. DUGGAN: Right here. Page 15, Schinco, through 22.
MR. STURTZ: That's Schinco?
MR. DUGGAN: Yeah. Patient is seen.
BY MR. STURTZ:
Q Prosecutor talks about page 15.
THE COURT: All right. Is your objection addressed adequately now?
MR. DUGGAN: Now that he's told the doctor where to look, I think it will solve the problem.
THE COURT: Okay.
BY MR. STURTZ:
Q Did you actually see the child or did one of your associates?
A No, that is -- that is my personal note, at 3:50, that -- that was signed at 3:51 p.m. on -- on the 22nd.
Q All right. And your course of treatment, at that time, was to proceed slowly and observe what was going on before you did any drainage?
A My -- my recommendation was to observe him, yes.

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Q The only procedure that was done to this child in the hospital was your bedside drainage insertion, is that correct?
A By me, yes. Certain other procedures -- arterial lines, intubation; there are other -- there are also procedures that the intensivist, the pediatric intensivist, performed.
Q Now, those two hemorrhages that we talked about just earlier, you didn't go inside the brain to correct those; cauterize or do anything to them?
A We went in with a catheter to drain out the bloody fluid.
Q That's correct. But you didn't go in and remove?
A Well, the catheter removed them.
Q Just by drawing the bloody fluid out of the brain?
A That's correct.
Q All right. The child also had broken ribs, and you had nothing to do with that, did you?
A That's correct.
Q And he had a broken arm, and you had nothing to do with that?
A That's correct.
Q And he had a skull fracture which you said was going to heal by itself because of the angle of the breakage?
A Yes.

Q Now, Sahouri, he goes in and he finds the retinal hemorrhages. Did you look at his photography?
A I looked at both -- on the fundus, I examined his eye personally, as well as looked at the photographs that he had taken.
Q From your expertise, how long did it take to get those hemorrhages inside the eye?
A That typically happens early after a shaking injury.
Q How many shakes cause one hemorrhage?
A I don't know, sir; I can't quantify it in that manner.
Q So one shake or two shakes might create quite a few?
A It may, but, again, that's not quantifiable.
Q Sugar diabetes cause any type of retinal hemorrhages?
A Not of this type.
Q Not of -- not of what type?
A Not of the type that he had, sir.
Q I see. What type of hemorrhages occur because of sugar diabetes?
A There are other flame-shaped hemorrhages from hypertension and other type of hemorrhages that we see in adults with diabetes, but, certainly, that's not my area of expertise.
Q Did Sahouri discuss with you the type of trauma that was involved in the production of these hemorrhages in the retina?

A Not personally, no.
Q And there was no information as to when these hemorrhages occurred or how old they were?
A That's correct.
Q You removed the drain on 3-2. And the child, according to the notes that we read on page 56 and 57, he was stable; there were no seizures, and he was okay for discharge?
A Yes.
Q Have you seen that child since then?
A Yes.
Q And when was -- when was the last time you saw the child?
A I believe it was in May or June of last year.
Q And the child, at that point in time, was doing well?
A The child was having some developmental issues.
Q Meaning memory loss?
A Well, it's hard to examine memory loss in a child of that age, but it was having some difficulty with reaching the normal milestones that we normally expect our kids to do as, you know, get to be one year, two years, three years.
Q Do you recall what those milestones or what those goals may have been?
A Not -- not -- not exactly, no.

Q The child was breathing alright, and using his limbs well?
A Yes.
Q You, as a neurosurgeon, with your background, would you make any referrals with a child of this age to a chiropractor?
A No, sir.
MR. STURTZ: That's all for me, Judge.
THE COURT: Any redirect?
MR. DUGGAN: One moment.
I have no questions.
THE COURT: Any questions from the jury for this witness?
Looks like we have a couple.
Counsel, you want to approach, please?
(Bench conference.)
THE COURT: A couple questions, Doctor.
In your opinion, in -- excuse me -- in your opinion, could the ribs getting broke and head injury occur from someone holding a baby under the arms in front of the body, fingers in back, squeezing the baby and shaking him?
THE WITNESS: And that is certainly a distinct possibility.
THE COURT: Okay. How severe of a shake

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1 would that need to be; do you have a way of quantifying
2 that?
3 THE WITNESS: That is difficult to quantify.
4 We've -- actually, there's been some studies,
5 biomechanical studies, using dolls and different
6 accelerometers, like a, you know -- and seeing how much
7 of shaking. It depends too much on the age of the
8 child, it depends too much on how -- how their body is
9 constructed; whether they're -- got a long neck or a
10 short neck or -- and just how big their head is. So
11 it's very difficult to quantify that.
12 THE COURT: Okay. Could seizures possibly
13 cause hemorrhages in the retinas?
14 THE WITNESS: No.
15 THE COURT: How thick is the skull of a
16 two-month-old baby, compared to an adult?
17 THE WITNESS: A two-month-old baby, that
18 typically would have a skull thickness of two to three
19 millimeters. So that is less than a 32nd of an inch.
20 On an adult, is at least a quarter of an inch, and some
21 people much thicker; up to a half an inch.
22 THE COURT: Okay. How hard of a blow can a
23 baby's skull take to fracture, compared to an adult?
24 THE WITNESS: As I mentioned earlier,
25 children are more fragile, but -- and so the -- the

1 force is much less; but once they fracture it, they
2 bounce back quicker, so -- and, again, it's hard to
3 quantify because it depends on exactly the angle of the
4 force and -- and how long the force is applied to the
5 child. Or an adult, for that matter.
6 THE COURT: Thank you.
7 Okay. Any follow-up on those questions from
8 counsel?
9 MR. DUGGAN: Yes.
10 R E D I R E C T E X A M I N A T I O N
11 BY MR. DUGGAN:
12 Q The first questions seemed to be talking about things
13 the jurors have heard regarding the chiropractic
14 adjustment done with Roegan and the persons who
15 testified before you. And I'm going to try to give
16 this as a hypothetical question, so you can respond to
17 it assuming these facts. The chiropractor talks about
18 one process of the entire treatment problem -- program,
19 of holding the child upside down, suspending the -- who
20 would have been a two-month-old by the heels, and then
21 moving the arms about this fast, which causes the baby
22 to arch its back naturally, and then the spinal column
23 tends to realign a little bit. Regardless of whether
24 you have negative or positive feelings about
25 chiropractic, if that's the physical force we're

1 talking about there --
2 A Shaking the legs.
3 Q -- having ahold of the legs and letting the body
4 suspend by gravity, head down -- you've seen how I
5 moved my arms; I think that's about how he did it --
6 would that have caused the type of injuries you saw
7 here?
8 A No.
9 Q Would people playing with their children in an
10 appropriate way -- even that young, two months old --
11 be far more force than what I just demonstrated?
12 A I did that with my kids, yeah.
13 Q The body is pretty resilient?
14 A Yes.
15 Q Even a baby. Okay. Now, going to another portion of
16 the chiropractics adjustment that was talked about --
17 and this is for hypothetical purposes, for you to
18 respond to -- just talking about the physical forces,
19 the baby's head being tipped away from one shoulder to
20 the other, and the spine being manipulated with
21 fingers, such that there are audible sounds of spinal
22 readjustment, whatever that noise is that comes out of
23 us when we crack our knuckles or our back or whatever,
24 does that cause you any concern, that a chiropractor
25 might adjust a baby in that way?

1 A It would cause me concern, but not in terms of any head
2 injury.
3 Q Okay.
4 A Or, certainly not in terms of any retinal hemorrhages.
5 MR. DUGGAN: All right. And -- thank you,
6 Doctor.
7 THE COURT: Mr. Bush, anything?
8 MR. BUSH: No.
9 THE COURT: Mr. Sturtz?
10 MR. BUSH: No, Your Honor.
11 MR. STURTZ: No, Judge.
12 THE COURT: Anything else from the jury?
13 All right. Thank you, Doctor.
14 THE WITNESS: Thank you.
15 THE COURT: You can be excused.
16 (At 3:30 p.m. witness is excused.)
17 THE COURT: All right. We need to take a
18 break, at this point?
19 So, ladies and gentlemen, we'll take our
20 afternoon break, at this point. It will be about 10 or
21 15 minutes. Ms. Maddox and Mr. Allen will meet you in
22 the hallway and get you to your respective jury rooms.
23 (At 3:31 p.m. juries are excused.)
24 THE COURT: Mr. Sturtz, can you get the door
25 for me, please?

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Detective Worden, do you know where Mr. Duggan ran off to?
DETECTIVE WORDEN: I'll go find out. He's just releasing Dr. Schinco.
MR. DUGGAN: Do you need him?
DETECTIVE WORDEN: No, you.
THE COURT: You.
MR. DUGGAN: Oh.
THE COURT: I wanted to talk about our schedule a little bit. I want to -- I'm checking with my staff, but you're saying these -- and I don't even remember how long these tapes were, but I thought you said they were, like, two hours each?
MR. DUGGAN: Codie's. Detective Worden can tell you exactly how long. And she's just checking.
THE COURT: Okay.
DETECTIVE WORDEN: 78 minutes.
MR. DUGGAN: Totally?
DETECTIVE WORDEN: Yes.
MR. DUGGAN: About 78 minutes.
THE COURT: So --
MR. DUGGAN: So it can be played --
THE COURT: It's an hour and --
MR. DUGGAN: -- in the time remaining.
THE COURT: -- 15 minutes. Okay. Good.

Then I -- because I was going to try and readjust Tuesday and -- but if we can do that -- we're doing hers first, right?
MR. DUGGAN: Yes.
THE COURT: Okay.
MR. DUGGAN: For her jury.
THE COURT: Sounds good. See you in about 10 or 15 minutes, then.
MR. DUGGAN: What are you going to do, are you going to bring the Krukowski jury in and tell them anything?
THE COURT: Yeah, I'm going to --
MR. DUGGAN: Okay. We'll see you.
THE COURT: I'll be able to release them, then.
MR. STURTZ: We should stay until you do.
THE COURT: No. Are you -- do you want me to do it right now?
MR. STURTZ: Yes, please.
THE CLERK: All rise for the jury, please.
(At 3:40 p.m. Krukowski jury is present.)
THE COURT: All right. I'm not even going to have you sit down.
KRUKOWSKI JUROR NO. 14: Oh.
THE COURT: We're going to release you for

today. We told you at the beginning that there were times in the trial that we would only have evidence that was pertinent to one defendant, and then at another time we'd have evidence pertinent to another defendant, and we won't keep you in here for all of that.
So, at this point, we're going to release you for today, and you can come back on Tuesday, at nine o'clock. And we'll resume, at that time.
I think, at that time, that we'll probably just have you in here for a couple of hours, and there will be evidence related to Defendant Krukowski. And since the other jury won't be here, we'll put you in the more comfortable seats.
UNIDENTIFIED KRUKOWSKI JUROR: Yes.
KRUKOWSKI JUROR NO. 14: Yeahhh. These have been nice. They've been better. Thank you, Dawn.
THE CLERK: All right. Thank you.
THE COURT: We're glad to hear that.
Have a nice weekend. Don't talk about the case with anybody, don't read anything about the case, don't listen to anything about the case, don't do any kind of independent research about the case. We'll see you on Tuesday.
Report back to the jury room by nine o'clock,

and we'll resume, at that time. We'll see you later.
KRUKOWSKI JUROR NO. 14: Okay. Thank you.
UNIDENTIFIED KRUKOWSKI JUROR: Thank you.
THE COURT: Nobody seems to be upset to have to leave early.
KRUKOWSKI JUROR NO. 14: It's Friday.
THE COURT: I know.
KRUKOWSKI JUROR NO. 13: Have a good weekend.
THE COURT: Yup.
(At 3:41 p.m. Krukowski jury is excused.)
THE COURT: All right. We'll take about five more minutes, and then we'll resume, Counsel.
MR. STURTZ: Thank you, Judge.
THE COURT: Do you want to bring in the jury, Mr. Allen?
For next week we're playing the tapes for the Krukowski jury, right?
MR. DUGGAN: Correct.
THE COURT: Is there anything else that you -- she says there's 72 minutes, so that's an hour and --
MR. DUGGAN: 12 minutes.
THE COURT: -- 12 minutes. I mean, is there -- do you want the other jury to come back, this jury to come back at all on Tuesday, then? Because

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you'll have about an hour that you can fill, if you needed to.

DETECTIVE WORDEN: If I did the math right it's 72 minutes.

MR. DUGGAN: I'll be resting.

THE COURT: Okay. And then --

MR. BUSH: Talking about Tuesday?

THE COURT: Yeah.

MR. BUSH: Oh, yeah.

MR. DUGGAN: That's all I'll have.

THE COURT: All right. And then you could do your opening. And -- I'm just wondering whether we should bring the Sturtz's jury -- or, this jury back.

MR. DUGGAN: Yeah.

THE COURT: Or, actually, next week would -- Sturtz can do his opening, because that's his jury that's going to be here for sure.

Should we bring this jury back for anything? I mean, I don't want to bring them just back for your opening, which is probably --

MR. DUGGAN: I'd suggest --

THE COURT: -- only 20 minutes or less.

MR. DUGGAN: -- we use the time to work with you to get finalized instructions, so whenever their case is done, we can do instructions and go. That's a

suggestion.

THE COURT: That would be fine.

MR. DUGGAN: Let the jury have the day off.

THE COURT: All right.

MR. DUGGAN: Her jury have the day off.

THE COURT: All right. That's fine.

THE LAW CLERK: All rise, please.

(At 3:51 p.m. Stevens jury is present.)

THE COURT: Please be seated.

All right. Ladies and gentlemen, as we told you at the beginning of the trial, there's some points in the trial where the single juries would be here, because there's evidence that is only pertinent to the case that you have to decide, involving Ms. Stevens. So that's the point we're at here, so the other jurors were lucky enough to get to go home early.

But to compensate you, we're going to not have you come in at all on Tuesday. So you don't have to come back until Wednesday. So that's the separate evidence that they have to hear, we'll take care of on Tuesday. You can just come back on Wednesday morning at nine. Okay?

And with that, Mr. Duggan?

MR. DUGGAN: Before I do, could you inquire if the jury needs the fan adjusted? It was turned up

full blast. And if they're uncomfortable, there's other seats they could get in.

THE COURT: Well, or they can turn it down.

MR. DUGGAN: Well, I'd leave it up to them, and you.

THE COURT: Is everybody comfortable? Okay.

THE JURY: It's okay. It's alright.

THE COURT: It's kind of warm in here, actually.

MR. DUGGAN: Well, if he's uncomfortable, could he move?

THE COURT: Certainly. Or they can turn the fan on.

Is anybody uncomfortable?

STEVENS JUROR NO. 11: I'm fine. I'm comfortable.

THE COURT: And if you can just pull the chain, and it will go to a lesser speed.

STEVENS JUROR NO. 10: All right.

THE COURT: If you like. And --

MR. DUGGAN: Yeah, go ahead.

THE COURT: It's not that far that they can move out without --

MR. DUGGAN: For the record, Detective Worden is going to play what was previously received. I'm

going to put the microphone under here. From previous experience, the speaker might be helped. And this will take it to the ones above your head.

And I'll leave it to them to tell Your Honor if they can't hear.

THE COURT: All right. And then the court reporter doesn't need to be taking any of this down, correct?

MR. DUGGAN: Correct.

THE COURT: This is a tape that's playing, and this is Exhibit -- which?

MR. DUGGAN: A.

THE COURT: Okay.

MR. DUGGAN: And does Mr. Bush agree, the court reporter doesn't need to transcribe it?

MR. BUSH: Right, the tape is in evidence.

MR. DUGGAN: The court reporter wanted to make sure, when we do the transfer of A out of the machine and put in B, we're not going to do any talking. That will implicate her making more record.

THE COURT: Okay.

MR. DUGGAN: May we approach?

THE COURT: Yes.

(Bench conference.)

THE COURT: We thought this was all set up.

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DETECTIVE WORDEN: We're good, Judge.
THE COURT: All right. Would you grab Mr. Duggan, please?
DETECTIVE WORDEN: All right.
THE COURT: We're good, Counsel.
MR. DUGGAN: Let's -- why don't you have a seat for a second, in case we need to have your help.
(At 4:00 p.m. tape is played.)
(At 5:21 p.m. playing of tape is completed.)
MR. DUGGAN: We have played all we wish to play.
THE COURT: All right. Then we are concluded for the day, correct?
MR. DUGGAN: Yes.
THE COURT: All right. Ladies and gentlemen, we will conclude for the day today. Again, you don't have to come back on Tuesday at all. Just come back Wednesday morning. Report to your jury room by 9:00 a.m., and we'll resume at that time.
Have a good weekend, and don't talk about the case with anyone -- just a minute -- don't read anything about the case, don't listen to anything about the case, don't do any kind of independent research about the case.
And there's a question.

STEVENS JUROR NO. 14: On our -- well, for lack of a better word, syllabus, it says Wednesday is our last day. Do you still think that or should we plan for Thursday?
THE COURT: Thursday is a definite possibility, so you should plan for Thursday. At least tentatively.
I don't know if counsel want to approach the bench and give me anything further on that, but it's just not clear to me, at this time.
So it's definitely possible, because there is some more evidence that will be presented on Wednesday, and then we have to have closing arguments and instructions. So, I mean, you could be deliberating on Thursday, even if we're done with --
STEVENS JUROR NO. 14: Right, right.
THE COURT: -- the rest of the trial. So you should probably understand that you very well could be here on Thursday.
STEVENS JUROR NO. 14: Would it be at, like, 9:00 a.m. time?
THE COURT: On Thursday?
STEVENS JUROR NO. 14: Yeah.
THE COURT: It would be similar to this past -- it probably would be the full day, so it would

be, like, nine to 12 and 1:30 to five on Thursday.
So have a good weekend. We'll see you next week.
(At 5:22 p.m. Stevens jury is excused.)
THE COURT: Mr. Duggan, can you get the door?
MR. DUGGAN: Oh, I apologize, I was talking to her. I'm sorry.
THE COURT: All right. So Tuesday Krukowski jury is coming in at nine.
Mr. Bush, you need to come back about 10:45, so we can talk about jury instructions.
MR. BUSH: On Tuesday?
THE COURT: Yeah.
MR. BUSH: Okay.
THE COURT: And then -- unless you want to be here for Krukowski's --
MR. BUSH: Yeah.
THE COURT: -- tape-playing.
I will have Mr. -- if you're going to rest after all of the -- after the tape is played -- you don't have anything else, Mr. Duggan?
MR. DUGGAN: I'm consulting with the detective. There may be some brief testimony for her before I rest, even on this case. Then, because she testified -- well, she might have to testify for both

juries, so I might have to wait until the tape is played.
THE COURT: Okay. I was just going to let Mr. Sturtz do his opening, then, on Tuesday, if you were going to rest. But if you're not, then --
MR. DUGGAN: And that's possible, but I haven't decided.
THE COURT: All right. So, in any event, on Wednesday you can do an opening if you choose to do that, and then we'll proceed with the proofs. They probably will have to be here on Thursday. That's how it's looking to me.
MR. BUSH: Yeah.
THE COURT: But, at any rate, that's where we're at.
So be here Tuesday about 10:45, and we'll see what the status is and get the instructions in order, at least. I don't think there's anything too complicated, but --
MR. BUSH: All right.
THE COURT: -- we'll discuss it then.
So have a good weekend.
MR. DUGGAN: Thank you.
(At 5:25 p.m. proceedings adjourned.)

1 STATE OF MICHIGAN)
2) SS
3 COUNTY OF SAGINAW)
4
5
6
7
8 I certify that this transcript is a complete, true
9 and correct transcript of the proceedings and testimony
10 taken in this case before the Honorable Janet M. Boes,
11 Circuit Judge, in Saginaw, Michigan.
12
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1 STATE OF MICHIGAN

2 IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW

3

4 PEOPLE OF THE STATE OF MICHIGAN,

5

vs. File No. 15-041274-FH-3

6 **VOLUME V of VII**

7 DANE RICHARD KRUKOWSKI,

8 Defendant.

_____/

9

10 PEOPLE OF THE STATE OF MICHIGAN,

11

vs. File No. 15-041275-FH-3

12 **VOLUME V of VI**

CODIE LYNN STEVENS,

13

Defendant.

14 _____/

15

JURY TRIAL

16

BEFORE THE HONORABLE JANET M. BOES, CIRCUIT JUDGE

17

Saginaw, Michigan - May 4, 2016

18

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1 Saginaw, Michigan
2 May 4, 2016
3 (At 9:19 a.m., proceedings commenced.)
4 THE BAILIFF: All rise, please. The 10th
5 Circuit Court for the County of Saginaw is now in
6 session, the Honorable Janet M. Boes presiding.
7 THE COURT: Please be seated.
8 Counsel, we're here on People vs. Stevens and
9 Krukowski. I had a meeting with counsel in chambers
10 yesterday afternoon and this morning, first of all,
11 regarding jury instructions, which everyone has received
12 at least a preliminary copy of at this point. There's
13 obviously some tweaking that needs to be done based on
14 how the evidence proceeds and comes in today.
15 In addition, there was an issue about witnesses
16 who were going be to be called regarding character,
17 reputation, opinion, whatever, character evidence under
18 405, primarily, and the prosecutor discussed specific
19 instances of conduct that he would be able to
20 cross-examine in relation to. So, Mr. Bush, did you want
21 to address that further then?
22 MR. BUSH: Yes. Well, based on the anticipated
23 ruling that the court indicated during the discussion,
24 the prosecutor would be allowed to call a witness or
25 witnesses dealing with a domestic violence charge that

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1 JUROR NO. 4: May I have another pen? My pen
2 is dying.
3 THE COURT: Sure. Thanks.
4 (Exhibit Nos. DX 26, DX 27, DX 28 and DX 29
5 marked.)
6 CODIE LYNN STEVENS
7 Being first duly sworn at 10:04 a.m., testified under
8 oath as follows:
9 DIRECT EXAMINATION
10 BY MR. BUSH:
11 Q Would you give us your full name, please?
12 A Codie Lynn Stevens.
13 Q And how old are you, Codie?
14 A I will be 25 on May 23rd of this month.
15 Q All right. Do you live in Saginaw at the present time?
16 A I do.
17 Q And going back to the period of time that we're concerned
18 with here, generally December 2014 through, we'll say,
19 February of last year, 2015, were you living in Saginaw?
20 A Yes.
21 Q Where did you live?
22 A We lived at South Colony Drive, Apartment 205E.
23 Q Throughout that period?
24 A Yes.
25 Q Now you gave birth to Roegan on December 6th of 2014; is

1 that true?
2 A Yes.
3 Q And was that your due date for that pregnancy?
4 A No, my due date was actually December 18th. My C-section
5 was scheduled for December 11th, and I went into labor
6 approximately two to three weeks early.
7 Q Okay. And you went to Covenant Hospital?
8 A Yes.
9 Q You were in labor how long?
10 A 19 hours.
11 Q And can you tell us what do you recall about your labor
12 on that day?
13 A I was extremely nauseous going in. I didn't feel labor
14 pains. Felt like I was going to throw up. So they asked
15 me, one of the nurses had asked me if I had been on
16 anything for nausea while I was pregnant? I said, yes, I
17 had been on Zofran. She came back with a syringe full of
18 Phenergan, it made it a million times worse. I couldn't
19 even -- my contractions were one after another, and it
20 was a constant vomiting.
21 Q What time did you go in, if you recall?
22 A I don't recall. I was --
23 Q All right.
24 A I was way too busy lying on my side throwing up.
25 Q Was it morning or afternoon? Or can't you even?

1 A I believe it was later on in the day, because we arrived
2 at the hospital at about 4:30 in the morning.
3 Q 4:30 in the morning?
4 A Yes.
5 Q Okay. So you were nauseous, you were given medication?
6 A Yes.
7 Q It didn't work?
8 A No.
9 Q And what happened?
10 A I'm sorry? What was the --
11 Q What happened thereafter?
12 A They kept coming, I don't know if it was the nurse or a
13 doctor, but I could hear somebody keep coming in the room
14 saying, all right, well after this C-section you'll be
15 next. After this C-section they'll come back, Oh, we got
16 another one. Sorry. We'll be back.
17 I believe it was later on in the day when they
18 said, all right, you guys ready?
19 Yep. I want it over with.
20 Q Okay. And was the baby delivered at that point?
21 A Yes. I don't know exactly how long it took, but compared
22 to my daughter, it felt like it took a lot longer for
23 them to get him out.
24 Q Okay, so you're talking about Ella?
25 A Correct.

1 Q Ella's birth?
2 A The first birth.
3 Q That was a C-section?
4 A Yes.
5 Q Okay. Also?
6 A Yes.
7 Q So what happened that you can recall today, basically,
8 during this delivery, if anything?
9 A The only part of my body that was strapped down to the
10 surgical bed was my arms. With every movement that the
11 doctors made, I'm guessing they were trying to get him
12 out, I felt from underneath all the way down just
13 shifting back and forth on the table.
14 Q Okay. And so upon delivery of the child, what happened
15 thereafter?
16 A I'm not even sure if I heard him cry or not. I do
17 remember them saying, all right, he's here. And then
18 shortly after they had stitched me up, or whatever they
19 did, we went to a recovery room and --
20 Q Okay?
21 A Looking at him, he was black and blue. Kind of worrying,
22 you know. And I -- this didn't happen with my daughter,
23 so reasoning for this is? I -- nobody answered the
24 question, so.
25 Q And you observed that when?

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1 A Coming into the recovery room, once they had sat me up on
2 the bed, I had asked Dane if I could see him and hold
3 him. And his forehead to mid-chest was bruised.
4 Q You were there until the 9th of December?
5 A I believe so, yes. I don't -- three days was -- yes,
6 nine days, because we did leave after three.
7 Q Okay. And what of note do you remember about Roegan and
8 his condition during those -- that time?
9 A He did not like to have his diaper changed. If you
10 lifted his legs, he screamed. There was points where I
11 believe a nurse come in and was like, Everything okay?
12 Yep, baby's just screaming.
13 I had tried to breastfeed him, and I want to
14 say about five to ten minutes after breastfeeding him, he
15 threw up all 4 ounces that were pumped for him, and he
16 wouldn't -- I mean they gave him -- they gave me samples
17 of formula, he wouldn't keep that down.
18 Q Okay. And that went on?
19 A Until after we got home.
20 Q Okay. They gave you different types of formulas?
21 A They gave me, I don't think it was -- it was Similac, and
22 it was the newborn in the little bottles.
23 Q Okay.
24 A When we got home, I was able to go and purchase the
25 Enfamil Infant. He was not keeping that down. There was

1 Gentlease, we thought, okay, well it's gentle on the
2 tummy. Maybe he's having tummy problems. Did not keep
3 it down.
4 The last one was the ProSobee, and he seemed to
5 show signs of improvement with eating, with keeping it
6 down.
7 Q Okay. And did that maintain until you were discharged?
8 A I'm sorry?
9 Q Did that -- was that his condition until you were
10 discharged -- he was discharged?
11 A His.
12 Q The both of you?
13 A Correct.
14 Q All right.
15 A If I'm understanding you right. That was all that was
16 happening until -- yes.
17 Q Okay. Nothing else of note that you recall?
18 A No.
19 Q All right. Discharged on the 9th, the two of you, and
20 did you see Dr. Dawis two days later on December 11th?
21 A I did.
22 Q Do you recall that?
23 A I do.
24 Q All right.
25 A I got yelled at for it.

1 Q And do you recall what the situation was with Roegan at
2 the time?
3 A I believe it was his well-child checkup.
4 Q Okay. And you took Roegan to the doctor?
5 A Yes.
6 Q Anybody else accompany you?
7 A No. I went by myself. It was, I want to say it was
8 either 8:00 or 9:00 in the morning. Dane had been
9 working all night, so I decided I'll just get up and do
10 it. And then I later got yelled at for walking and
11 lifting heavy stuff after having a C-section.
12 Q Who did the yelling?
13 A Well, not yelling. I got scolded by my mother and by
14 Dane. They were like, What were you thinking? Why
15 didn't you call? Why didn't you wake me up?
16 Q Okay.
17 A I felt I was able to do so.
18 Q All right. Now did you report to Dr. Dawis any problems
19 with Roegan at that time?
20 A I explained to her how he was not keeping formula down.
21 Q Okay.
22 A If he wasn't keeping formula down, he was not a happy
23 baby. He was crying, a very high-pitch ringing noise in
24 your ears. Comforting him was maybe for 15, 20 minutes
25 at a time, and then you'd have to switch what you were

1 doing with him, or set him in his swing or his bouncy and
2 hope that he would calm down.
3 Q Okay. He was vomiting?
4 A Yes.
5 Q You say he wasn't keeping anything down?
6 A Very frequently. We actually, while in the hospital, we
7 asked for somebody to check him out. Nobody did so in
8 the hospital. The house pediatrician said come back in
9 24 hours.
10 With knowing Dane's illness as a six-week-old,
11 that really concerned me, and I was very angry with the
12 pediatrician as to, if something's seriously wrong with
13 my son, you're going to allow 24 hours to go by for me to
14 come in. And if he's not okay, what are we going to do,
15 you know? I want it done now, not in 24 hours.
16 Q Who were you dealing with?
17 A I guess it was the house pediatrician. I do not know her
18 name.
19 Q All right. But, at any rate, you made your feelings
20 known?
21 A Oh, yeah.
22 Q Dr. Dawis's office, you have been there before? You had
23 been there before?
24 A Quite some time ago. She was my daughter's pediatrician
25 before my son was born.

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1 Q All right. And you had made appointments there
2 previously?
3 A Uh-huh.
4 Q And been there?
5 A Absolutely.
6 Q Was it a, would you describe it as a busy office?
7 A No. Maybe that's because I went in there early in the
8 morning.
9 Q Okay.
10 A I think most of the time I went there, there a was maybe
11 one or another person there after -- upon arrival.
12 Q How about at the -- on the 11th of December when you took
13 him in?
14 A Oh, I was the only one in there, and I believe she was
15 actually just opening up the office when we walked in.
16 Her assistant was opening the shades and --
17 Q Okay. You're saying you got there at 8:00, or
18 approximately?
19 A I believe it was eight or nine o'clock. I don't believe
20 she does anything before then.
21 Q Okay. What went on during that appointment, this
22 December 11th well-child appointment?
23 A As far as I can remember, Jackie, her assistant, weighed
24 him, and then when we got into the room she actually lays
25 them on the bed, takes her tape measure and marks out one

1 end of his head, the other end of his feet, to see how
2 long he is.
3 Q Yeah?
4 A Measuring his head, and she just asked me questions, you
5 know, is he feeding okay, what's going, you know, what's
6 the problem, is there any problem. And I don't believe
7 he was getting shots that day, it was just toss see how
8 he was doing after birth.
9 Q Okay. Now these measurements and so forth, who was doing
10 them?
11 A Dawis.
12 Q Okay.
13 A The only thing that her assistant did was weigh him.
14 Q Okay.
15 MR. STURTZ: Judge.
16 JUROR NO. 14: Can you repeat the question?
17 THE COURT: Repeat the question, Mr. Bush.
18 BY MR. BUSH:
19 Q My question was who was doing this? That was my last
20 question.
21 A Would you like me to repeat my answer?
22 JUROR NO. 14: No.
23 A Okay.
24 BY MR. BUSH:
25 Q Now was there any treatment done at that time on the 11th

1 of December for anything?
2 A No, she had given me a couple -- I think she gave me some
3 Gentlease and the ProSobee sample of formulas and she
4 said, you know, try and see if these work and we'll have
5 you, you know, if you want to stop back in on a random
6 time, just let Jackie know how they're doing, she'll
7 write a note for me and it'll get to me.
8 Q Okay. Was there a mention of jaundice at the time?
9 A Yes. I didn't notice it, I thought he was quite normal
10 in color, and she was like, oh, he is a little yellow.
11 I'm like, oh, okay.
12 She's like, if you want to wrap him up in a
13 blanket, if you have a large window that has sunlight,
14 put him near that. It might help. Plenty of food and --
15 so yes.
16 Q Okay. Gave you instructions?
17 A Yes.
18 Q How long were you there, would you say?
19 A Honestly, I cannot remember how long we were there. I
20 want to say the appointments usually last anywhere from
21 15 to 25 minutes.
22 Q All right. Now were you scheduled to return to Dr.
23 Dawis?
24 A Yes, we -- speaking with her assistant Jackie, we had
25 come up with a date which would be best for us or best

1 for her.
2 Q And do you recall when that was?
3 A Yes. That was -- that was February 9th, I believe it
4 was.
5 Q Okay.
6 A Not quite sure about the time, though.
7 Q All right. But you were rescheduled to see --
8 A Yes.
9 Q -- that doctor to go in on February the 9th at 2015?
10 A Yes.
11 Q Between the 11th of December and, we'll say, February the
12 7th, Saturday, February the 7th, was Roegan having any
13 kind of problems that you recall to tell the jury?
14 A He was still slightly fussy, but it wasn't too
15 overbearing as it was. Starting to feel like he was, you
16 know, a normal -- normal newborn baby. He -- I mean I
17 guess I experienced it different with my daughter than I
18 did with him. Complete, total opposite sides of the
19 spectrum.
20 Q Okay. Now were you employed at the time?
21 A Yes.
22 Q Where?
23 A I was employed at Rite Aid pharmacy.
24 Q All right. Were you off work during the period of time
25 that we're --

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1 A Yes, I don't believe I was start -- I was -- oh, my gosh.
2 I believe I had asked for another week or so, and I spoke
3 with my manager and she said, all right, I will send that
4 in. I can't remember exactly when the start date was,
5 though.
6 Q Okay. I'm showing you People's Exhibit 25.
7 A Uh-huh.
8 Q Do you recognize this document?
9 A Yes.
10 Q As what?
11 A Our work schedules.
12 Q Okay. And this particular work schedule -- so we've got
13 two sheets here?
14 A Uh-huh.
15 Q The top sheet with the exhibit sticker on it, it covers a
16 period Sunday, February 8th, through Saturday,
17 February 14th, of 2015; right?
18 A Uh-huh.
19 Q Do you see your name on this?
20 A Yes, I do.
21 Q Do you see a schedule for you on this?
22 A Yes, I do.
23 Q And it shows what schedule for you during that particular
24 week-long period?
25 A I had Sunday, Monday off, Tuesday 8:00 to 3:00,

1 Wednesday, Thursday, Friday off, and it says Saturday
2 8:00 to 3:00. But I don't believe I actually worked on
3 Valentine's Day. I believe I was home with my daughter,
4 my fiance, and our son.
5 Q Okay. So we're talking a seven-hour shift --
6 A Uh-huh.
7 Q -- on Tuesday, February 10th?
8 A Yes.
9 Q And this shows a seven-hour shift for Valentine's Day?
10 A Correct.
11 Q But you don't think you --
12 A I don't. Because we were home with our kids early in the
13 morning. Dane had gone to the store, and I was kind of
14 wondering, why are you going to the store so early? Came
15 back home with Valentine's Day gifts for myself and Ella
16 and Roegan.
17 Q Okay. Second page covers Monday, February 15th, through
18 Saturday, February 21st?
19 A Yes.
20 Q 2015; right?
21 A Uh-huh.
22 Q Okay. Now what does this show as your work schedule that
23 period?
24 A Sunday the 15th started at 8:00 to 3:00. Monday was off.
25 Tuesday was 4:00 to 10:00. I can't honestly tell you if

1 I actually ended up working on Wednesday because it is
2 crossed out. Thursday was off. Friday was 9:00 to 4:00,
3 and Saturday was off.
4 Q Okay. Just skipping ahead a little bit, you visited the
5 Shields Chiropractic Clinic --
6 A Yes.
7 Q -- did you not?
8 And did you visit that clinic on February 10th,
9 that you can recall?
10 A The 9th and the 10th, yes.
11 Q Okay. This indicates that from 8:00 a.m. to 3:00 p.m.,
12 you were working at Rite Aid on Tuesday the 10th?
13 A Uh-huh.
14 Q Did you schedule the appointment at the chiropractic
15 clinic for --
16 A I did not schedule them. They scheduled, picked out the
17 dates and let me know what the dates were.
18 Q Okay. Do you know what time you would have made that
19 appointment that day, or been there that day?
20 A I think it was supposed to be at 3:30.
21 Q Okay?
22 A But I wasn't able to be there prompt -- I would say about
23 five to ten minutes after 33:30.
24 Q So you still worked --
25 A Yes.

1 Q -- and made the --
2 A Yes.
3 Q -- doctor's appointment? Or appeared for it?
4 A Uh-huh. Yeah, didn't make them on time.
5 Q Do you recall on Wednesday, February 18th of 2018, being
6 at the Shields Chiropractic Clinic?
7 A Yes.
8 Q And that's the day that the work schedule's crossed out?
9 A Okay.
10 Q All right. You saw Dr. Barrigar that day?
11 A Yes.
12 Q You saw Dr. Barrigar on the 10th also?
13 A Yes.
14 Q And you saw Dr. Dense on the 9th?
15 A Yes.
16 Q Before those appointments, there has been testimony here
17 about an incident that occurred February the 7th?
18 A Yes.
19 Q And a Saturday?
20 A Yes.
21 Q Do you recall that?
22 A Yes.
23 Q What occurred on that day, that you can recall?
24 A Kind of going through the normal Saturday routine. I'm
25 cleaning downstairs. Dane gave Roegan a bath upstairs.

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1 I had sat down and heard Dane yell for me. It was
2 quite -- I would say in his voice, it was a quite a bit
3 of worry when he yelled for me. I then immediately
4 booked it up the stairs.
5 He was walking out of the bathroom. We walked
6 into the bedroom. I went to go kiss Roegan's head, and
7 he was like, No, stop.
8 What's wrong?
9 He's like, Fell out of my hands. I, you know,
10 had my hands all lathered up, went to pick him up and he
11 jerked and went backwards.
12 I then said, All right, well, I guess we got to
13 dry him off, we gotta get clothes on him. I put white
14 socks on him, I put a Huggies diaper and a white onesie,
15 and not necessarily wrapped him in a blue fleece, but I
16 had, like, folded it over him.
17 Q Okay.
18 A I had checked in between his eyes to see if he would
19 follow. I grabbed my fingers in between his hands to see
20 if he would grip, and he did. And then I checked bottom
21 of his feet for a reaction, and he responded well to
22 everything that I did.
23 Shortly after that, I had Dane make me a
24 bottle. Wasn't taking it, little fussy, so decided not
25 to.

1 We then went downstairs, and on our small, I
2 don't want to call it a love seat, had a middle section
3 to it though. I put him in his Boppy. It's a round, it
4 kind of look likes a balloon but it's filled with a
5 material, I don't know what the material is, but set him
6 in there right next to me the rest of the day.
7 Q Okay.
8 A Yeah.
9 Q Did you spend the day there with him?
10 A Yes.
11 Q At that time, on that day, did you notice any injuries --
12 A He had --
13 Q -- to Roegan?
14 A -- slight swelling, and then a -- I think it was like a
15 tiny little dot, and it was, like, yellow. It wasn't,
16 like, black or blue.
17 Q Where?
18 A On the left side of his head.
19 Q Anything else?
20 A No.
21 Q So you spent the day with Roegan there?
22 A Yes.
23 Q And the next day, February the 8th?
24 A Yes.
25 Q What was his condition, as far as you can recall, on

1 February the 8th?
2 A He was awake, he was smiling. We had TV going, and Dane
3 had built a little tiny -- it wasn't tiny. He had put
4 blankets down for Ella, put her stuffed animals around
5 the blankets, kind of like sleeping bag-type thing except
6 it wasn't, they were just blankets. And he had Roegan
7 placed on her other side watching cartoons most of the
8 day enjoying their selves. He didn't seem to make any
9 out-of-normal sounds, noises. He didn't look to be
10 abnormal.
11 Q All right. The next day, Monday, February 9th?
12 A Yes.
13 Q You had an appointment?
14 A Yes.
15 Q With Dr. Dawis?
16 A Yes.
17 Q What was the -- do you recall, was there a particular
18 purpose for that appointment? That exam?
19 A It was supposed to be for his, I believe it was his
20 six-week vaccinations.
21 Q Did you keep that appointment?
22 A Yes.
23 Q And what time was this? Two o'clock, is that right?
24 A No, it was earlier in the morning, I want to say between
25 9:00 and 11:00.

1 Q Okay. Were there other patients in the office at the
2 time you went?
3 A I believe there were. Shortly after we had come in,
4 another couple with their baby had walked in.
5 Q Okay. You talked to the doctor?
6 A Yes.
7 Q And what did you tell the doctor?
8 A She asked me if there was anything wrong with him? I
9 said he's still kind of colic, but it's not as bad as it
10 was, I believe the formula seems to be working. Still
11 won't sleep on his back. And I did let her know that
12 there was an incident in the bathtub. He had been --
13 fallen out of arms and he had hit his head.
14 Q Okay. What did the doctor do?
15 A Again, she measured him on the table, his length, she
16 measured around his head and said everything looks good.
17 Sat down, had her tape measure and her pen, her book,
18 started writing stuff -- not a book -- clipboard, I
19 believe it is, and started writing. And then shortly
20 after said, okay, I want you to make an appointment with
21 Preferred Chiropractic.
22 Okay.
23 I then used my mother's cell phone, Dr. Dawis
24 read off the cell phone -- or not the cell phone number,
25 the number to Preferred Chiropractic. I then called, I

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1 said my name is Codie Stevens, I am here at Dr. Dawis's
2 office, I have a six-week-old, his name is Roegan
3 Krukowski, can I make an appointment. Appointment was
4 made for 4:00 p.m.
5 Q Okay. You've been here throughout the trial; right?
6 A Yes.
7 Q You've heard the testimony and seen the witnesses?
8 A Uh-huh, I have.
9 Q Do you recall Dr. Dawis testifying to a procedure that
10 she followed with her hands?
11 A Yes.
12 Q Slapping them on the --
13 A Yes.
14 Q -- table?
15 A Yes.
16 Q Did she do that while you were there?
17 A She did do that.
18 Q You saw that?
19 A And Roegan reacted, I guess as any other baby would. He
20 started crying and screaming like it scared him.
21 Q Did she do that on each of the two occasions?
22 A Yes, she did that on the first one and the second one.
23 Q December 11th and February 9th?
24 A Yes.
25 Q Did she indicate to you the reason for her referral of

1 you to this Shields Chiropractic?
2 A Yes, she told me, she said I'm concerned that he's not,
3 you know, he's still fussy, and I, you know, I had told
4 her he's not necessarily sleeping on his back. And she
5 said all right, well, I want it checked out. I want him
6 to eat some more.
7 Okay.
8 Q All right. So did you proceed to the chiropractor?
9 A I did.
10 Q You saw Dr. Dense?
11 A Yes.
12 Q Was that place busy?
13 A Yeah, it was. Very.
14 Q What do you recall, if anything, about the February 9th
15 appointment with Dr. Dense; what did he do?
16 A My personal opinion was not -- even at first hearing it
17 from the doctor, I was kind of skeptical, but she's a
18 doctor, she knows what she's doing, so I put my trust in
19 her. We went there. They did not do X-rays. They do
20 not look at him. When we brought him into the room, he
21 had held him and then proceeded to put him in between his
22 legs, and their words are "adjustment," but it cracked.
23 His -- whatever he was doing, it cracked. When you crack
24 your neck, you hear it. When you crack your fingers,
25 that's a crack.

1 Q Yeah.
2 A He then proceeded to hang him upside down and I see him
3 go like this, and I was again putting my trust, as a
4 mother, into a doctor's hands. That's the doctor knows
5 best. They know what they're doing.
6 And then proceeded to lay him on the medical
7 bed, and his neck went from left to right and it cracked.
8 Q Okay. After that, what if anything did the doctor do?
9 A Handed him to my mother. I believe after that I had
10 walked into a separate room and two, I guess, assistants
11 they did X-rays on myself after Roegan's adjustments were
12 done.
13 Q Okay. Anything else happen on that occasion at the
14 chiropractor place?
15 A No. The doctor did nothing further.
16 Q Now you left after that appointment?
17 A Yes.
18 Q Were there other appointments scheduled?
19 A There was one on the 10th, and then I believe there was,
20 I want to say, the 12th, and the other one I can only
21 remember was the 18th.
22 Q Okay. Did you return there on the 10th?
23 A I did.
24 Q And who did you see there that day?
25 A His last name started with a B. I cannot pronounce it.

1 Q Dr. Barrigar? The witness --
2 A Yes.
3 Q -- who testified?
4 And what, if anything, did he do?
5 A He did the exact same thing, except he was not sitting
6 down when he had Roegan upside down. He was standing.
7 Q Okay?
8 A Which kind of -- I guess if you're going to do that, can
9 you please sit down? You know, that's -- it's cement
10 ground covered with carpet. And again I -- I didn't say
11 anything. Putting my trust into a doctor. Watched it.
12 Afterwards, he was like, okay, are you ready
13 for your adjustment? I'm ready.
14 I was like, well, I don't want to leave him in
15 his car seat. He was given to one of the ladies in the
16 front office, and they had taken him up into the office
17 until I was done.
18 Q Oh, okay. So as far as Roegan was concerned, was that
19 the conclusion of the appointment?
20 A Yes.
21 Q Did you return to that office later in the month?
22 A Yes.
23 Q And that would have been the 18th?
24 A Yes, that's correct.
25 Q What happened on that occasion?

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1 A Same thing.
2 Q Same doctor?
3 A Same -- the same guy that you were just referring to did
4 the exact same things on him, standing up again, and we
5 left. I didn't have an appointment for myself that day,
6 so.
7 Q Okay. Were there any other appointments scheduled after
8 the 18th of February --
9 A No.
10 Q -- with the chiropractic?
11 A I don't believe so.
12 Q All right.
13 A Never discussed.
14 Q You've seen the schedules?
15 A Yes.
16 Q And the 18th shift was -- is scratched out. The
17 February 19th is blank. Apparently you did not work that
18 day?
19 A Correct.
20 Q The 20th indicates you worked from 9:00 to 4:00?
21 A Yes.
22 Q Do you recall that period of time?
23 A A year ago from now?
24 Q Yeah?
25 A No, not with working, I don't.

1 Q All right. Okay. And Saturday, the 21st of February, is
2 blank, so I take it you didn't work that day?
3 A Correct.
4 Q Do you recall anything about Roegan's condition during
5 those days, 19th, 20th and 21st of February?
6 A He was normal throughout the whole entire time. There
7 was nothing to be concerned about in our -- there was
8 nothing that we could see that was wrong with him.
9 On the 21st, he began to puke after I fed him,
10 and it was, I want to say, about half of an eight-ounce
11 bottle. Okay, I work at a pharmacy, people tell me that
12 the flu is going around, and I'm praying, I'm praying
13 that it's not going in my house.
14 So I, after that, I had wiped him off, cleaned
15 him up and laid him back down, and I want to say maybe it
16 was three or four hours later I decided to try another
17 four ounces, and he threw that up. I was like okay.
18 Concerning. Are you sick? You know, what's wrong?
19 After cleaning him all off again, I then laid
20 him in his crib, went downstairs and, you know,
21 periodically going to check on him. About an hour later
22 I went upstairs, and he was just covered in vomit. Which
23 that -- that concerned me. He's -- this is just way too
24 much.
25 Q This was Saturday, the 21st?

1 A Yes.
2 Q And if you can, what time of day are we talking then?
3 A Um.
4 Q If you can recall?
5 A I want to say that had to have been closer to 3:30,
6 four o'clock in the afternoon.
7 Q Okay.
8 A I got him out, cleaned him all up, had to take all the
9 sheets off the bed, put new ones on, put him in new
10 clothes.
11 I had laid him back down while I went
12 downstairs to make a bottle of peppermint water. He took
13 that, I want to say it was probably about 5:30 at the
14 time, 5:30, 6:00. It was the full eight-ounce bottle,
15 and he actually kept that down.
16 Q Okay.
17 A Brought him back downstairs because I wanted to see him,
18 you know, if anything else was happening I wanted to see
19 it. Slept in his swing.
20 Probably around 10:30, eleven o'clock, we
21 decided that we were going to go to bed, so I took him
22 with us. I had gotten him to wake up, so I fed him
23 another four ounces of the peppermint water. Did not get
24 sick again and slept through the night until the morning
25 when the sounds of him whimpering woke me up.

1 Q Okay. Now were you at home on the February 18th?
2 A Yes.
3 Q That's the Wednesday?
4 A Yes.
5 Q And with Roegan?
6 A Uh-huh, yes, I was.
7 Q All day?
8 A Yes.
9 Q Was Dane at home or --
10 A I cannot remember. I know that I was usually with both
11 of the children, whether we were going to my mother's
12 house or to a friend's or back home, I was usually with
13 them.
14 Q Okay. How about Thursday the 19th of February, were you
15 at home?
16 A I believe on the schedule it does say I worked 9:00 to
17 4:00, so I was not home until after.
18 Q No, that --
19 A No?
20 Q The schedule --
21 A Or was that Friday?
22 Q -- says you worked 9:00 to 4:00 on Friday?
23 A Okay.
24 Q The 20th?
25 A I don't really recall. Like I said, usually I'm with the

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1 kids. If we go anywhere, it's me and the kids will go
2 places.
3 Q Okay. Was Dane working at the time?
4 A Yes. Yes, he was.
5 Q During the day, or?
6 A It was between, I want to say he'd leave at about 3:30 to
7 be at work at 4:00, and then he was home like at 11:00,
8 11:30 at night.
9 Q Okay.
10 A Sometimes 12:00.
11 Q Between 9:00 and 4:00 on Friday, would he have been at
12 home with Roegan?
13 A Yes, I believe so.
14 Q While you --
15 A I believe he actually did have the kids while I was
16 working.
17 Q Okay. Okay, so Sunday morning, the 22nd, I think you
18 described Roegan as whimpering?
19 A Yes. I'm a very light sleeper, and usually if he was --
20 he was waking up between 4:30 and 5:00, going back to
21 sleep, waking up about 8:30, 9:00. It was about 8:30,
22 nine o'clock when I heard him, it was like a (sound
23 made), so I immediately got up, went to his crib, and he
24 was lying on his side, his arm was twitching, and I
25 didn't -- I didn't know if he was just moving and he was

1 on his side. I then picked him up, sat on the end of our
2 bed, and he began to do it more.
3 I had moved up further to the back of the bed,
4 woke Dane up and I said, I think something's wrong with
5 him, he's twitching. I said I -- I don't want to say
6 it's a seizure, but it kind of looks like seizure
7 activity.
8 So he's like, all right, well, let me see him.
9 And he sat in his arms and he smiled at him. He's like,
10 he's smiling, there's nothing wrong.
11 And then it happened right after that, he
12 started to do it again. Dane was like, all right, well,
13 I'm going to go run some bath water. And came back and
14 he was like we're not doing this. He keeps doing it.
15 We're going into the hospital. And we went to the
16 hospital from there.
17 Q Okay. You went to Covenant?
18 A Yes.
19 Q And who went?
20 A Myself, Dane, and our daughter, Ella, along with Roegan.
21 Q Okay. What happened when you got there?
22 A Once we got into the door and we showed, I don't know if
23 it was somebody at the station, the register station, or
24 not, they were looking at him, they were like, no, we
25 gotta get him back right now. He needs to get vitals

1 done.
2 Because he -- he was convulsing more and more,
3 and more frequent. Honestly, I don't even remember if
4 they took vitals on him. We got to the back, and he kept
5 shaking. I'm sorry.
6 Q That's all right.
7 A They had, like, four or five nurses trying to get an IV
8 in him, and it literally took the fifth doctor, or nurse,
9 to actually get it in him after poking him four other
10 times.
11 The nurse said, all right, we're giving him
12 Ativan. And I was like -- I asked her, I said, "What do
13 you mean Ativan?" You don't give that to pretty much a
14 newborn. It's a very, very strong drug.
15 They proceeded to give it to him, and it was
16 about 15 minutes after they gave it to him -- his heart
17 rate had to have been normally at 130, 138, and it went
18 down to like 20, and his monitor started going off, and I
19 could see that his heart rate was just dropping. And I
20 started yelling for somebody, and Dane grabbed him and
21 was holding him. And a nurse, one of the nurses ran in
22 and he's like you need to put him back down on the bed.
23 We put him back down on the bed, and the male nurse began
24 to rub his chest, and slowly he started to -- his heart
25 started going back up.

1 Q Were you -- go ahead.
2 A Sorry. Go ahead.
3 Q You said you were in back. Were you in one of the small
4 emergency room --
5 A Yeah.
6 Q -- like cubicles or so?
7 A Yes.
8 Q Who else was there?
9 A Dane, and I can't remember -- Ella was with us, and she
10 was sitting in the chair and she kept asking what's
11 wrong? Brother okay? And I didn't know how to answer
12 her. After that happened, I told Dane, you gotta take
13 her to my mom's. She can't be here.
14 Q Did they then leave? Dane and Ella?
15 A About 20 minutes after that incident happened, he did
16 take her to my mom's.
17 They said they were going to take him for MRIs,
18 and they asked me if I wanted to go with him, and I stood
19 next to him the whole time.
20 Q Through the MRI?
21 A (Witness nodded).
22 THE COURT: Why don't we take a break at this
23 time.
24 Ladies and gentlemen, we're going to take our
25 morning break at this point, so you can go back to your

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1 respective jury rooms, we'll bring you back in about 10
2 or 15 minutes and continue at that time. The clerk
3 should meet you in the hallway.
4 (At 10:53 a.m., juries excused.)
5 THE COURT: We'll be in recess.
6 (At 10:54 a.m., court recessed.)
7 THE BAILIFF: All rise, please. Court is again
8 in session.
9 THE COURT: Please be seated.
10 Are we ready to proceed?
11 MR. DUGGAN: People are ready.
12 MR. BUSH: Ready.
13 THE COURT: Okay, let's bring the juries in.
14 THE BAILIFF: Please rise for the jury.
15 (At 11:18 a.m., jury for Defendant Stevens
16 returned.)
17 THE COURT: You may be seated.
18 THE CLERK: All rise for the jury, please.
19 (At 11:20 a.m., jury for Defendant Krukowski
20 returned.)
21 THE COURT: Please be seated.
22 Mr. Bush, you may continue -- if the jury is a
23 little bit chilled by that fan, you can either slow it
24 down, by pulling the chain, or turn it off, just keep
25 pulling the chain. So, sir, if you'd like -- you're

1 tall. So that's slowing it down. Is that enough, do you
2 think, if we slow it down, or do you want it off? We'll
3 leave it that way. If you're still bothered, then let us
4 know.
5 All right, Mr. Bush, you may continue.
6 MR. BUSH: Thank you.
7 BY MR. BUSH:
8 Q I think we left off with the MRI. You were at the MRI?
9 A Yes.
10 Q And what occurred after the MRI?
11 A We were, Roegan and myself were taken back into the
12 hospital room. Shortly after, I can't tell you how long
13 it was, but after that they said, all right, we're taking
14 him for X-rays. And that was the last time I seen him.
15 Q Pardon?
16 A That was the last time I seen him.
17 Q All right.
18 Detectives arrived at the hospital, did they
19 not?
20 A Yes.
21 Q And you were interviewed?
22 A Yes.
23 Q By two detectives, Detectives Bean and Brooks?
24 A Yes.
25 Q And, as far as you know, Dane was also interviewed?

1 A Yes.
2 Q The police separated the two of you and questioned you
3 separately and so forth?
4 A That's correct.
5 Q I want to show you what's been marked for identification
6 as Defendant's Exhibit 26, a photograph, which can you
7 tell the jury what that is?
8 A That's my son right after being born, in the recovery
9 room.
10 Q Who took the picture?
11 A Dane did.
12 Q All right.
13 MR. BUSH: I'm offering 26.
14 MR. DUGGAN: No objection.
15 MR. BUSH: Thank you.
16 THE COURT: Any objection, Mr. Sturtz?
17 MR. STURTZ: No, Your Honor.
18 THE COURT: Okay. Exhibit 26 will be admitted.
19 MR. BUSH: I think that's all I have at this
20 time.
21 THE COURT: Mr. Sturtz, any questions?
22 MR. STURTZ: Yes.
23 CROSS-EXAMINATION
24 BY MR. STURTZ:
25 Q Good morning, Codie.

1 A Good morning.
2 Q Codie, I want to ask you a little bit about your
3 background, as far as school is concerned. What kind of
4 education do you have beyond high school?
5 A I have some medical education from Ross Medical.
6 Q And what period of time was that?
7 A I think '13 -- or it might have been, I think it was '13
8 to '14. I can't tell you the exact months.
9 Q You're talking about 2013 and 2014?
10 A Correct.
11 Q And have you used that education as part of your work
12 experience at Rite Aid?
13 A A little bit here and there. It depends on the customer
14 and what they're physically able to do.
15 Q Now you've been working for Rite Aid how long?
16 A It was six years in two months.
17 Q And your position currently at Rite Aid is what?
18 A My position was a cashier, stock, cash handler.
19 Q Have you ever held any other type of work experience?
20 A No.
21 Q You indicated to the ladies and gentlemen of the jury
22 that you and your fiance, Dane, were living at a place
23 called colonial drive?
24 A Colony.
25 Q Colony Drive?

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1 A C-o-l-o-n-y.
2 Q And is that -- what kind of complex is that? A
3 single-story house? Is it multiple story? What is it?
4 A They are considered town houses. They have two
5 bedrooms -- between one to three bedrooms upstairs,
6 living room, kitchen, and basement.
7 Q Are these all aligned in one big, long string, or are
8 they in a big building, how are they?
9 A There are sections. I -- they go from A to F on some
10 places, other places go beyond F.
11 Q And in the building complex where your apartment is, how
12 many units are there?
13 A Well, they -- where ours was, they went from A, B, C, D,
14 E, F.
15 Q Do you know a lot of people around there, are you
16 friendly with your neighbors?
17 A I actually was raised over in the apartment complex.
18 Q You indicated to the ladies and gentlemen of the jury
19 that on the day that Dane dropped the baby in the
20 bathtub, you checked the baby after Dane yelled at you,
21 and you had -- you said you checked his eyes. How did
22 you do that?
23 A A lot of different medical physicians go in between the
24 bridge to see if his eyes will come together or separate.
25 They have -- get the baby's finger -- I'm

1 sorry, you stick your finger out, and if the baby
2 attaches and clings on, they have a good -- a reflex to
3 that.
4 Q All right. As far as checking his eyes, what -- how did
5 you do that? Rub his nose? Or go across?
6 A I went up and down.
7 Q And what did the baby's eyes do?
8 A Followed my finger up and down.
9 Q Up and down?
10 A Yes.
11 Q So there was eye movement at the time?
12 A Correct.
13 Q And then you indicated that you held your finger out?
14 A Yes.
15 Q Did you put it in the baby's hand, or how did you -- do
16 you just put it in front of it?
17 A You place them in between -- their hands are usually
18 either like this or they're completely open, and if you
19 touch their palm, they react and most of the time they
20 will close their hands.
21 Q So in this case you put your finger near the palm?
22 A Uh-huh.
23 Q And baby Roegan clamped on?
24 A Correct.
25 Q Did he do that with both hands?

1 A Yes. I had both of my fingers underneath his palms, and
2 he squeezed both fingers.
3 Q You said you did something with his feet?
4 A Correct. If you go up and down the bottom of the feet,
5 you can see with the -- they'll react to it. They'll
6 either pull their feet away or pull their feet up.
7 Q You're tickling them?
8 A Correct.
9 Q They can feel the sensations going on down there?
10 A Correct.
11 Q You indicated that when you looked at the baby's head,
12 you said there was a dot-size or dime-size circle?
13 A Correct. It was a yellowish color.
14 Q Was it a scraping of the skin called an abrasion, or was
15 there a cut?
16 A No.
17 Q So there was just a dime-size or a dot-size yellowish-
18 type thing?
19 A Correct.
20 Q Anything else on the head?
21 A Slight swelling, but not an extraordinary amount.
22 Q From the time of birth, up until the fall in the bathtub
23 on 2/7, you had been experiencing problems as far as
24 changing formula; is that right?
25 A Correct.

1 Q Even right at the hospital, you had some problems with
2 formula?
3 A Yes.
4 Q You talked about some type of Enfamil, general --
5 Gentlease, ProSobee, and apparently the child seemed to
6 keep some ProSobee down; is that right?
7 A Yes.
8 Q On the day of the bathtub incident, is this the first
9 time that Dane had washed the baby?
10 A No, it is not.
11 Q So he had washed the baby before?
12 A Correct.
13 Q The bathtub that we see in the photographs, Exhibit
14 No. 5, is that the way the bathtub was located and
15 positioned on the 7th?
16 A Correct.
17 Q And the infant-type seat that was in the tub itself, was
18 it in this position, if you know?
19 A Yes.
20 Q Had you washed the baby in the tub like this?
21 A I think I did it once, and I didn't feel comfortable with
22 it. So I, myself, if I had to, I'd give him baths in the
23 sink downstairs in the kitchen.
24 Q Okay. So Dane had done this before?
25 A Yes.

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1 Q And he had helped you before with the baby?
2 A Yes.
3 Q He was familiar with dressing the baby?
4 A Yes.
5 Q Did he feed the baby?
6 A Yes.
7 Q Now Dane at this time, he was working full time?
8 A Yes.
9 Q And where was he working, if you know?
10 A At Grand Central Bar and Grill.
11 Q And what was his job duties, or what was he doing there?
12 A He bounced, he cooked. I'm -- I want to say if they
13 needed him to bar-tend, they did -- or he did.
14 Q And he worked full time, 40 hours?
15 A Yes.
16 Q You apparently didn't work a 40-hour shift?
17 A No.
18 Q When the two of you were busy or gone, who would watch
19 after Ella?
20 A My mother.
21 Q And after you had Roegan, between December 6th and the
22 7th, would your mother help you also?
23 A Yes.
24 Q On the 7th, you indicate that you did the stuff to the
25 baby?

1 A Correct.
2 Q You took him downstairs. You were with him all the time?
3 A Correct.
4 Q And did you do anything to the head?
5 A No. We -- I'm sorry. As in what?
6 Q Did you put any cold compress?
7 A Yes.
8 Q What did you do?
9 A At first we took a cool washcloth and set it on his head.
10 Q Okay.
11 A And then shortly after, we wrapped a small bag of peas
12 and put it on his head.
13 Q Did it affect him in any way, cause any screaming,
14 hollering, because of the pressure that was put on his
15 head?
16 A No, he jumped from the -- the cold, but after it was
17 placed he didn't move anymore.
18 Q And his eyes were still tracking well?
19 A Correct.
20 Q Now when you moved downstairs, about what time of day
21 would that have been?
22 A It was between 11:00 and 12:30, I would say.
23 Q So before noon?
24 A Yes.
25 Q And the baby was in your accompaniment that whole day?

1 A Correct.
2 Q You didn't check his vital signs at that point in time,
3 did you?
4 A No.
5 Q When I talk about vital signs, you didn't take his
6 temperature, didn't take his blood pressure, you didn't
7 have a stethoscope to listen to his heart?
8 A Correct.
9 Q Breathing rate, or anything like that?
10 A Correct.
11 Q As far as his breathing was concerned, was it pretty --
12 after 12 o'clock, how was his breathing? Normal?
13 A Absolutely. It was completely normal.
14 Q You notice anything change at that point in time, as far
15 as any twitching, or moving, or anything like that?
16 A No.
17 Q So the baby, up until the time you went to bed, he was
18 with you?
19 A Correct.
20 Q He ate?
21 A Yes.
22 Q Was -- not ate, but he had his bottle. And then around
23 ten o'clock, eleven o'clock, the two of you go to bed?
24 A Correct.
25 Q And you go to see Dr. Dawis for the first time on 2/9?

1 A Yes, second time.
2 Q Second time. Pardon me.
3 A Yes.
4 Q Second time. You were there earlier, in December.
5 So on 2/9 you go to see Dawis. Dawis weighs
6 the baby, measures the baby, and Dawis pounds the table
7 and the baby reacts, cries; is that a yes?
8 A She didn't weigh him. Her assistant did.
9 Q Okay.
10 A But everything else, yes, she did.
11 Q Who measured the baby's head?
12 A Dawis did.
13 Q Dawis did it herself?
14 A Correct.
15 Q So she touched the baby's head?
16 A Yes.
17 Q Did you mention the slip-and-fall in the bathtub to her?
18 A Yes, I did.
19 Q Your mother was there?
20 A Correct.
21 Q I believe I heard your mother testify that she also heard
22 conversation with the doctor that the baby --
23 A Yes.
24 Q -- was measured, and that it was told about the fall?
25 A Yes.

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1 Q Did the doctor check other parts of his body? His legs?
2 A No. She -- I mean if she looked at his legs, she must
3 have done it while measuring him with her tape measure
4 from head to toe. But other than that, no, she did not
5 check his legs or his arms.
6 Q How about the things that you did after the baby fell,
7 rub your finger over his --
8 A No.
9 Q Did she put anything over his face?
10 A No.
11 Q To see if he's tracking.
12 A No.
13 Q What about gripping? Put your fingers in the hand?
14 A I don't believe so.
15 Q What about his feet?
16 A No.
17 Q Put your finger on it, or some type of stick or
18 something, or tongue depressor?
19 A No.
20 Q And then she tells you the baby should go see the
21 chiropractor?
22 A Correct.
23 Q Did she give you any explanation why he should go see the
24 chiropractor?
25 A After we had explained, my mother and I, how fussy he

1 was, how he did not like to lay on his back, that's when
2 she became concerned of his colic and she said, Call the
3 chiropractor. I have the number.
4 Q According to you, what do you believe -- how do you
5 describe a colicky baby?
6 A Fussy. Hard to get to sleep. Hard to comfort. Wakes up
7 extreme -- at -- periodically. That would be all.
8 Q At some point in time you give the baby peppermint water?
9 A Correct.
10 Q And how was -- how did you know to give the baby
11 peppermint water? Did Dawis tell you that?
12 A When my daughter, when she was younger and she had gotten
13 something sick, she said something that can calm their
14 stomach is peppermint water. She's very homeopathic.
15 Instead of --
16 Q Who, Dawis?
17 A Correct. Instead of giving out medication, she offers
18 other ways to treat.
19 Q And you had used it with your daughter?
20 A Correct.
21 Q And that seemed to work?
22 A Yes.
23 Q So on the 8th, baby is fine. You wake up on the 9th, you
24 go see Dawis, you take your mother, and she says call the
25 chiropractor?

1 A Correct.
2 Q Chiropractor sets up an appointment with you for
3 four o'clock?
4 A Yes.
5 Q You get there, and Mr. Dense, he's the chiropractor that
6 you see?
7 A Yes.
8 Q We've seen his reports, we've talked to him here in
9 court, and he describes the method by which he cracks the
10 baby's back?
11 A Correct.
12 Q He does not take any X-rays?
13 A No.
14 Q But he takes X-rays of you?
15 A Correct.
16 Q Did you think that to be unusual?
17 A Slightly, yes. I mean if -- you know, you go to a
18 chiropractor, and I've been to more than one, that is the
19 first thing that they do. They X-ray you to look at your
20 back, to look at your spine, your hips, your neck.
21 Q He takes the baby, turns the baby upside down and jerks,
22 tugs, pushes, pulls, somehow moves the baby up and down?
23 A Correct.
24 Q And during the up-and-down movement, your mother
25 described that you could hear the sounds (sound made)?

1 A Correct.
2 Q Did you hear that?
3 A Yes.
4 Q Was it was loud enough for you to hear that?
5 A Absolutely.
6 Q Do you think a baby's bones are more supple than yours or
7 mine?
8 MR. DUGGAN: I'm going to object, unless he
9 wants to qualify her more than she's been qualified.
10 THE COURT: Counsel?
11 MR. STURTZ: I'll withdraw the question.
12 THE COURT: All right.
13 BY MR. STURTZ:
14 Q So he does that. He then puts the baby, as you
15 described, on the can examining table?
16 A Correct.
17 Q And he moves the baby's head from left to right?
18 A Yes.
19 Q Again you hear cracking noise going left and going
20 left -- right?
21 A Correct.
22 Q Loud enough that you can hear?
23 A Yes.
24 Q The next day, on the 10th of February, you go back to the
25 same chiropractic office, and instead of seeing Dr.

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1 Dense, you see Dr. Barrigar?
2 A Correct.
3 Q And Dr. Barrigar, does he take an X-ray?
4 A Nope.
5 Q Does he look at the chart or examine the chart in your
6 presence?
7 A I don't believe he had a chart. It was a note card.
8 Q He does the same process?
9 A Correct.
10 Q Turns the baby upside down between his legs and jerks the
11 baby?
12 A Not in between his legs. He was standing.
13 Q He was standing? Barrigar?
14 A Correct.
15 Q Jerks the baby how many times up and down?
16 A Twice.
17 Q Twice. Do you hear the baby's back crack again?
18 A Yes.
19 Q Now your mom is not with you?
20 A No, she is not.
21 Q Is the same noise emitted of the same intensity, and the
22 same sound, the same type of sound?
23 A Yes.
24 Q He then puts the baby on an examining table, turns the
25 head left, crack, turns his head right, crack?

1 A Correct.
2 Q You can hear it?
3 A Yes.
4 Q That same day you have a manipulation for yourself?
5 A Yes.
6 Q And they examine your X-ray first?
7 A I believe they examined them from the day before. I was
8 not allowed to have anything done to my body until the
9 X-rays were read.
10 Q I see. So then you have another appointment on the 18th
11 with Barrigar and the same thing occurs?
12 A Correct.
13 Q You hear the cracking noise again --
14 A Yes.
15 Q -- of the back?
16 He jerks the baby how many times this time?
17 A Twice.
18 Q Twice. Cracks each time?
19 A Correct.
20 Q Neck is turned, cracks again?
21 A Yes.
22 Q No more doctor visits with Barrigar?
23 A No.
24 Q That's the last time you see him?
25 A Yes.

1 Q There are now three days that intervene between Barrigar
2 and Covenant Hospital?
3 A Correct.
4 Q 19th, 20th and 21st?
5 A Yes.
6 Q As I recall your testimony with Mr. Bush, those days were
7 spent with the baby. Was the baby able to look and see?
8 A Yes, he was following more. I don't -- I want to say his
9 eye functions were stronger, and he was starting to look
10 around. He would look -- I would guess he was looking at
11 me, or someone else when they would be in his face and
12 talking to him. He was smiling. He was starting to make
13 noises and, yeah, he --
14 Q Vitals? How about his breathing during this period of
15 time; labored in any way?
16 A No.
17 Q When he would -- when he would lay in his crib, or lay in
18 his bed, or whatever he would do, would he always try to
19 sleep on his back?
20 A Still no, not even after the chiropractor. He -- I would
21 find him turned like --
22 Q On his side?
23 A Halfway on the one side of his back, and the other on his
24 side, yes.
25 Q What about any perspiration? Did you see any

1 perspiration from him?
2 A Since the day he had been home from the hospital, we
3 would give him baths and the next day it smelled
4 extremely bad, as if you hadn't given a child a bath in
5 days.
6 Q The pulse of the child, you held the baby, you cuddled it
7 you talked to it; did you notice anything about the
8 heartbeat being unusual?
9 A No, I did not.
10 Q You were in the emergency room when the heart rate went
11 from 135 down to 20; is that right?
12 A Correct.
13 Q You didn't see anything happen during that period of time
14 showing any heart rate decrease or increase?
15 A No.
16 Q Was there any whimpering, moaning, between the 19th and
17 the 20th and the 21st?
18 A No, not until the Sunday morning when he --
19 Q The 22nd?
20 A Correct, when he had woke -- when the sound of him
21 whimpering woke me up.
22 Q The whimpering was what? Kind of like a puppy (sound
23 made)?
24 A (Sound made) like, yes.
25 Q Loud enough that you could hear?

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1 A Yes.
2 Q How was he positioned when you got to the bed?
3 A He was laying, again, halfway on his back and on his
4 side.
5 Q That's the first time you ever heard him whimper?
6 A Yes.
7 Q And at this point in time, this is when the vomiting
8 occurs?
9 A The night before on the 21st, yes.
10 Q The projectile?
11 A Yeah, it -- I had an incident where he was on my chest,
12 and it literally flowed all the way down, like inside of
13 my shirt.
14 Q Now is this when you gave him the peppermint water?
15 A No, that was before.
16 Q So after these vomiting sessions, did he seem to calm
17 down and settle down?
18 A He -- it looked as if he was becoming calm again. Trying
19 to find a way to describe it. It was like after he
20 puked, it -- any normal person, you know, you puke you're
21 like okay.
22 Q You feel really good?
23 A It looked as if he had relief.
24 Q Okay. Like a good hangover going down the toilet?
25 A Yes.

1 Q All right. So does he seem to fall asleep, or nod off or
2 something, at that point in time, to you?
3 A After he had vomited, I cleaned myself up, if he needed
4 to be cleaned up he was cleaned up, and I continued to
5 hold him until he fell asleep, and then I placed him in
6 his swing, which was either right to the side of me
7 against a wall, or it was in front of me, depending on
8 which way our furniture was moved.
9 Q So you hear the whimpering, you pick up the baby, and
10 then you notice this (movement made)?
11 A Yes.
12 Q Was it jerking both ways, the whole body, legs and arms?
13 A As far as I could see with him on his side, I could only
14 see the left side twitching.
15 Q Did it appear to be involuntary?
16 A I want to say yes, because it was just as -- like I said,
17 as far as I could see, it was just one side of the body.
18 Q You take him to bed. Dane says, He's smiling at me. And
19 then he sees it himself?
20 A Correct.
21 Q From the time that happens until you get in the car and
22 drive to Covenant, how much time is it? Fifteen,
23 twenty minutes? Two hours?
24 A No, it had to have been anywhere between seven to
25 ten minutes when we got there.

1 Q You pack up Ella, and away you go?
2 A Correct.
3 Q You take the baby with you?
4 A Yep.
5 Q You don't even take time to drop her off at your mom's
6 house?
7 A No.
8 Q So you all go to the hospital?
9 A Yes.
10 Q You get to the hospital and you go to the triage center,
11 or the greeting steps?
12 A Yes.
13 Q And they hustle you right straight back to the little
14 cubicles?
15 A After they had asked me what was wrong and I told them I
16 believed he's having seizures, somebody, I do not
17 remember if it was male or female, or a name, they had
18 come out and I had lifted his car seat up and they looked
19 at him, he was -- they wanted to get him back there right
20 away, yes.
21 Q Now they take him back there, you have Ella in the chair
22 and Dane is there with you. And several -- was there
23 more than one hospital personnel there?
24 A When we first got there, I believe there was a nurse and
25 a doctor. I cannot remember names or faces. I was

1 focused on Roegan.
2 Q Do you remember the blond doctor in the emergency room
3 that testified in this case being there at the time?
4 A Name?
5 Q Kirby?
6 A I have heard her name, but I don't remember speaking
7 to -- directly to her.
8 Q Okay. Now you described a situation where the nurses
9 were trying to get something with the child's hand?
10 A Correct.
11 Q What part of the hand were they trying to put the
12 intravenous needle in?
13 A Between wrist and quarter way up the arm.
14 Q What did you see done to the wrist?
15 A They completely bent his wrist, like this to keep him
16 still, to get the IV in.
17 Q Was the wrist back to the back of the hand?
18 A Pretty close.
19 Q You'd never seen that in that position before, had you?
20 A Absolutely not. And I've drawn blood from people.
21 Q Had you ever bent the child's hand back?
22 A No.
23 Q So then after they get the intravenous needle in him,
24 they give him this Ativan?
25 A Correct.

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1 Q How did you become aware that it was Ativan; did you hear
2 them say that?
3 A Yeah, they said they were going to give him Ativan in the
4 little, tiny -- it was like a square monitor that the
5 medicine watches and configurates the number of drops
6 that goes into the IV.
7 Q Now you work in a drugstore --
8 A Correct.
9 Q -- right? Rite Aid. And you're familiar with the type
10 of drug it is?
11 A Yes.
12 Q And you described it earlier on that it's a very strong
13 medicine?
14 A Yes.
15 Q And you didn't feel that that was appropriate to be
16 administered to your child?
17 MR. DUGGAN: Well, I'm going to object, that's
18 going to require more than what she has established as
19 far as her expertise.
20 MR. STURTZ: I think she has an opinion as a
21 layman, and her being in the pharmaceutical business, she
22 can offer that as --
23 MR. DUGGAN: She's a cashier and stocker. This
24 is a pharmaceutical science question.
25 THE COURT: I understand. She's already

1 expressed what her impression was. I don't think you
2 need to go into it any further. I don't think she can be
3 any more specific based on any qualification.
4 MR. STURTZ: Thank you, Judge.
5 BY MR. STURTZ:
6 Q As a result of you seeing that, apparently, the
7 medication was administered to your child?
8 A Yes.
9 Q You immediately -- well, you tell me.
10 How long after does the heart rate change?
11 A I want to say within 10 to 15 minutes.
12 Q And the monitor, as you described, goes blank; is that
13 right?
14 A It started beeping very loud.
15 Q Okay. When you get to the hospital on the 22nd, had you
16 noticed anything about the child's eyes?
17 A He wasn't looking at you. He was -- his eyes were just
18 up and away from you.
19 Q The term has been used by some physicians in this case
20 called "glazed."
21 A If that's what they call it, then yes, he --
22 Q So the eyes were not tracking, they were just --
23 A Correct. He was not focused.
24 Q He was not focused?
25 A No.

1 THE COURT: Counsel, do you have a lot more of
2 this witness?
3 MR. STURTZ: I've got probably another 15,
4 20 minutes.
5 THE COURT: All right, well, we're going to
6 break for lunch then at this time.
7 So, ladies and gentlemen, we'll take our lunch
8 break at this time. And the clerks will meet you in the
9 hallway, you can leave from your respective jury rooms.
10 Please don't talk about the case with anyone, don't
11 listen to anything about the case, don't read anything
12 about the case, don't do any kind of independent research
13 about the case. Have a nice lunch. We'll see you at
14 1:30, report back to your jury rooms at that time and
15 we'll resume.
16 (At 11:54 a.m., juries excused.)
17 THE COURT: We'll see you at 1:30. We'll be in
18 recess.
19 (At 11:55 a.m., court recessed until 1:38 p.m.)
20 THE BAILIFF: All rise, please. Court is again
21 in session.
22 THE COURT: Please be seated.
23 Counsel, are you ready to proceed?
24 MR. DUGGAN: People are ready.
25 THE COURT: Since defense isn't saying

1 anything, let's bring in the juries.
2 MR. STURTZ: We always have interesting
3 questions to bring up, Judge.
4 THE COURT: Let's bring them out.
5 MR. STURTZ: We're ready.
6 MR. BUSH: We're ready.
7 MR. DUGGAN: While we're waiting for the jury,
8 also for the record, I'd like to point out something that
9 occurred during the break about some records. Because
10 Codie Stevens is on the stand and testifying she's
11 talking about her birth, the birth she gave to Roegan, we
12 never got her medical records.
13 THE COURT: Oh.
14 MR. DUGGAN: Counsel had them as her attorney,
15 he got them from her attorney in the probate matter, and
16 I thought that was something that was implicated in this
17 case and I wanted the chance to review them because of
18 what she said happened during the birth.
19 He just provided them to me. Went back to his
20 office and got them, and I appreciate that. We're making
21 copies, enough for Mr. Sturtz to have some, me, and
22 everybody, and I'll try to review them literally while
23 she's on the stand under cross by Mr. Sturtz. But I need
24 to quickly look through those.
25 THE COURT: If you need a break after he's

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1 done, just say we need a break and we will do that.
2 MR. DUGGAN: Thank you.
3 THE COURT: We'll go from there.
4 THE BAILIFF: Please rise for the jury.
5 (At 1:40 p.m., jury for Defendant Stevens
6 returned.)
7 THE CLERK: All rise for the jury, please.
8 (At 1:41 p.m., jury for Defendant Krukowski
9 returned.)
10 THE COURT: Please be seated.
11 All right, Mr. Sturtz, you may continue.
12 BY MR. STURTZ:
13 Q Witness, I had asked you about the retinal hemorrhages
14 that you heard that your child had. Did you see anything
15 wrong with the eyes, or were the eyes bloodshot, or was
16 the white part of the eye red or anything?
17 A No.
18 Q So you detected nothing as far as the eyes are concerned?
19 A Correct.
20 Q Everything appeared to be normal?
21 A Yes.
22 Q The doctors, and from the testimony we've heard so far,
23 they say there was a skull fracture, a 12-millimeter hole
24 in the baby's head. When the baby came to the hospital,
25 a number of pictures were taken of the left side of the

1 head and the top of the head, as seen in Exhibits 16 and
2 19. This is Exhibit 19 I'm showing the jury. When you
3 went to the hospital on the 22nd, was there any
4 indenture, any cut, any laceration to the top of the head
5 that you could see?
6 A No, there was not.
7 Q Same way with Exhibit 16. You didn't see any outward
8 sign of any trauma to the head --
9 A No.
10 Q -- where the 12-millimeter hole was?
11 What about they say there was fractured ribs.
12 Did you see anything to the chest of the baby? Showing
13 the jury Exhibit 18, did you see any outward signs of any
14 type of injury to the chest?
15 A No, I did not.
16 Q Or the tummy area?
17 A No.
18 Q There was no abrasions? No bruises?
19 A No.
20 Q No scuffing of the skin?
21 A No.
22 Q The broken arm. Did you see anything to the arm when you
23 came to the hospital on the 22nd?
24 A Other than the several amount of nurses or doctors that
25 were in the room moving his arm and twisting it to get

1 the IV in, other than that, no.
2 Q Then they said there was two acute, more acute brain
3 hemorrhages to the brain, some were old and some were
4 new. Again, no injuries to the top of the head?
5 A No.
6 Q In fact, even to the left side where you had noticed this
7 little dime-size bruise, there was nothing at all evident
8 when you got to the hospital?
9 A No.
10 Q The baby was at your home from sometime after his birth
11 on 12/6/14, up until the time you went to the hospital on
12 February 22nd?
13 A Correct.
14 Q Do you have any pets in the house? A big dog or a cat?
15 A Nope. We did have a dog before giving birth to Roegan,
16 but she had to stay at my mother's.
17 Q Anybody step on him while he was on the floor?
18 A No.
19 Q I remember my father with my youngest, he would throw her
20 up in the air and he'd catch her. Did you see any action
21 like that in the household?
22 A No.
23 Q Throwing Roegan up in the air and catching him?
24 A Absolutely not.
25 Q Besides going to the chiropractors, Dr. Dawis, you also

1 went to a place called WIC?
2 A Yes.
3 Q Was the baby examined at WIC?
4 A They --
5 Q Just yes or no.
6 A No. Sorry.
7 Q Okay. Was -- what is WIC?
8 A It's a -- I don't know if it's a nonprofit, I'm sure it
9 is profitable, but it's an organization for low-income
10 families where they give you nine cans of formula for the
11 month upon which you have already bought yourself.
12 Q Okay. Did you go to WIC?
13 A Yes.
14 Q How many times?
15 A Two or three different times before we finally got a
16 formula that he was okay with.
17 Q When you went there, did they measure the child's head?
18 A They measured his head, they weighed him, and his length.
19 Q So as far as examining him or listening to his heart or
20 vitals, they didn't do any of that?
21 A No, I don't believe so.
22 Q But they examined his head, they measured his head?
23 A Correct.
24 Q Measured how long he was?
25 A Yes.

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1 Q They touched his head, looked at his head?
2 A Yes.
3 Q When was that in relationship to 2/7? Before -- it had
4 to be before that, or was it after?
5 A I don't know if it was that following Wednesday or the
6 Wednesday after, but I do know I went on a Wednesday.
7 Q So it would have been on the Wednesday following the
8 fall?
9 A Correct.
10 Q So you took the baby with you --
11 A Yes.
12 Q -- on a trip at least to the WIC. How far away was that?
13 A It's about ten minutes away from our house.
14 Q You how did you get him into the car?
15 A In his car seat.
16 Q Did he appear to be normal?
17 A Yes.
18 Q He didn't have any problems sitting in the little car
19 seat while you drove there and back?
20 A He was smaller than the car seat, and we had to take a
21 blanket and wrap it around so there wasn't extra room for
22 him to move.
23 Q When you got back from this excursion, did he appear to
24 be okay?
25 A Yes.

1 Q Did you take him on other excursions like that?
2 A I've taken him, you know, him and my daughter to my
3 mother's house. We've gone to friends.
4 Q Did you ever notice any change in the size of your son's
5 head?
6 A Being with him every day, you don't see it unless
7 somebody brings it up. And nobody said anything.
8 Q So when Dr. Dawis examined the child's head, she didn't
9 say anything unusual about the size?
10 A No.
11 MR. STURTZ: Your Honor, I don't have any
12 further questions. Thank you.
13 THE COURT: All right.
14 Mr. Duggan?
15 MR. DUGGAN: One moment.
16 RECROSS-EXAMINATION
17 BY MR. DUGGAN:
18 Q Good afternoon, Miss Stevens.
19 A Good afternoon.
20 Q Just for the record, for the sake of those who might not
21 know here in the jury, this is the first time you and I
22 have really ever had a conversation; correct?
23 A No, we've --
24 Q Well, a conversation where I'm going to ask you about the
25 facts of the case, as opposed to a statement?

1 A Okay, yes.
2 Q Okay. You're recalling a different court hearing about
3 the statement?
4 A Yes.
5 Q All right. But as far as what happened to Roegan, this
6 is the first time we have had a conversation?
7 A Yes.
8 Q And that, there's nothing wrong with that, you have an
9 attorney representing you, and I would only deal with
10 your attorney --
11 A Correct.
12 Q -- about that; correct? All right.
13 And on the day you spoke with the Detectives
14 Bean and Brooks at the emergency room, at Covenant,
15 February 22nd, 2015, you didn't have an attorney with
16 you?
17 A No, I did not.
18 Q You didn't ask for one, did you?
19 A No, I did not.
20 Q You were being cooperative with the police in their
21 effort to figure out what happened?
22 A Correct.
23 Q Okay. So -- and I say that because, until you took the
24 stand here and gave up your right to remain silent, and
25 to be your own witness in your case, I don't really know

1 what you're going to tell the jury; is that correct?
2 A Correct.
3 Q Okay. So if I'm a little disjointed in my questions and
4 I seem to be jumping around, I don't have it exactly in
5 chronological order, please understand I'm not trying to
6 make this more difficult than it is. I'm just furiously
7 writing down a lot of notes; okay?
8 A Can you explain to me what the words you just used was.
9 Q Okay. If I don't get your questions that I'm going to
10 ask you now in a sequence of time, like I move ahead and
11 then I move back.
12 A Okay.
13 Q That's out of chronological order. Please understand I'm
14 not trying to confuse you or make you uncomfortable.
15 A Okay.
16 Q If you think I'm doing that, say "Ask it again," just
17 like you did.
18 A Correct.
19 Q "Explain it," or, "I don't understand." Rather than
20 guess.
21 A Okay.
22 Q Are you familiar with the internet?
23 A Yes.
24 Q Do you have a cell phone?
25 A No.

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1 Q Have you ever had one?
2 A Yes.
3 Q Did you have internet access on your cell phone?
4 A Yes.
5 Q Have you worked at a computer, either a laptop or desktop
6 computer where there's internet access?
7 A I've not had a laptop, no.
8 Q Have you ever been at a desktop computer where there's
9 internet access?
10 A Yes.
11 Q At home?
12 A No.
13 Q At work?
14 A No.
15 Q The library?
16 A Yes.
17 Q There you go. I thought somewhere.
18 So you're of the younger generation, and you
19 feel pretty comfortable with computers and finding
20 things?
21 A Kind of.
22 Q All right. Did you ever Google head injuries for babies
23 when your baby hit his head February 7th, to find out
24 what might be a good idea?
25 A No, I did not.

1 Q Would you be surprised to hear that the first Google I
2 did under head injuries, it says what to look for and
3 what to do, call the doctor if your child is an infant?
4 A I did not know that. We did not have a device to do
5 that.
6 Q Didn't have a cell phone at that time?
7 A No.
8 Q Couldn't go to the library?
9 A Not with two children.
10 Q You couldn't have left them with Dane?
11 A Yeah, if he was home.
12 Q I'm talking about after the baby hits his head?
13 A No, I didn't feel comfortable leaving him.
14 Q What you felt comfortable doing was calling your mom?
15 A Yes.
16 Q She was the absolute top of the list for who to go to
17 when you have a significant event; right?
18 A Yes.
19 Q Was this about as significant an event in Roegan's life,
20 in his 11 weeks of life, to that point?
21 A Yes.
22 Q You heard what your mother testified to here in court,
23 didn't you?
24 A Correct.
25 Q About what she told you do?

1 A Mm-hmm, I did.
2 Q Was Dane around much during Ella's early years?
3 A The first year was in and out. But after that, he seemed
4 to be around a lot more than what he had had.
5 Q What about the first eleven weeks of Ella's life?
6 A He was there for the first two weeks, and then he worked.
7 Q Were there times when he wasn't living with you under the
8 same roof while you raised Ella in those first eleven
9 weeks of her life?
10 A Yes.
11 Q When would you peg it, at about age one year, when he's
12 really much more in her life?
13 A It was before first birthday he started coming around a
14 lot more. So within the first twelve months, yes.
15 Q Was it closer to twelve months, or backing up closer to
16 when she was eleven weeks old?
17 A No, it was after.
18 Q Later in her year?
19 A Yes.
20 Q So he didn't have that much experience being around what
21 a very newborn baby or an infant do for those first
22 eleven weeks?
23 A Well, he was around but not on a constant, daily basis.
24 Q Like you?
25 A Correct.

1 Q You're the mom and the caregiver supreme --
2 A Yes.
3 Q -- for that baby when she was born?
4 A Yes.
5 Q It was a little different for Roegan. Dane was around
6 more?
7 A Yes.
8 Q He was in the home and helping be the -- well, being the
9 father?
10 A Yes.
11 Q Okay. To your knowledge, has he ever raised any other
12 infant other than Ella or Roegan, of his own?
13 A No, not that I know of.
14 Q And a brother's or sister's child where he would be an
15 uncle to the baby? Anything like that where he was
16 regular caregiver?
17 A No.
18 Q So Roegan was, for his own reasons, challenging because
19 of his issues?
20 A Correct.
21 Q But it would have been a really jolting experience to
22 Dane, would it not? Compared to Ella?
23 A I'm not sure.
24 Q Was it tougher for you with Roegan than with Ella?
25 A No.

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1 Q Okay. Didn't Roegan behave differently than Ella?
2 A Yes.
3 Q Screaming a lot?
4 A Yes.
5 Q Throwing up a lot?
6 A Yes.
7 Q The colicky issues?
8 A Correct.
9 Q Fidgety when you tried to pick him up to change a diaper?
10 A Yes.
11 Q Didn't like being withdrawn from warm bath water into
12 cold air?
13 A Correct.
14 Q Those are all distinctly different than the way Ella was;
15 correct?
16 A Yes. But it doesn't mean I can't handle them as a
17 mother. Every child is different.
18 Q You said you went to Ross Medical. Take look at proposed
19 Exhibit 30, it's got a seal on it, see if you can read
20 the seal, the embossed thing?
21 (Exhibit No. PX 30 marked.)
22 A Okay.
23 Q What does it say?
24 A It says Ross Medical Education Center, Saginaw, Michigan.
25 Q Look it over a little more carefully and see if this

1 appears to be a true transcript of your experience, your
2 educational experiences at Ross?
3 A Yes.
4 Q Okay.
5 MR. DUGGAN: I'd move the admission of 30.
6 MR. BUSH: I have a copy of it. No objection.
7 THE COURT: Any objection to Exhibit 30?
8 MR. STURTZ: I have no comment.
9 THE COURT: Mr. Bush?
10 MR. BUSH: No.
11 THE COURT: Okay, Exhibit 30 will be admitted.
12 BY MR. DUGGAN:
13 Q Would it be fair to say you wished you'd done a little
14 bit better academically at Ross?
15 A Absolutely.
16 Q There are some so-so grade and then some poor grades;
17 correct?
18 A Yes.
19 Q And that covers a couple-year period, '13 and '14?
20 A Yes.
21 Q Did you get a certificate?
22 A No, I did not.
23 Q Are you in a position where, if you had more course work,
24 you could get one?
25 A Absolutely.

1 Q And what will the certificate result in? What will you
2 be called?
3 A I will be a medical assistant.
4 Q And will that be a person who does both administrative
5 and secretarial and record keeping things, as well as
6 hands-on patient things?
7 A Yes.
8 Q So at the time Roegan hit his head in the bathtub
9 incident, you didn't have any medical certification of
10 any kind?
11 A No.
12 Q Would it be fair to say you trusted your mom, Shawn
13 Stevens' advice about how to deal with tough situations
14 and crisis situations?
15 A Yes.
16 Q Which is why you went to her; right?
17 A Right. Any child would most likely call their parent.
18 Q Is it true that sometimes Roegan's screaming caused Dane
19 Krukowski just to walk away and leave the room?
20 A Not with Roegan alone. It would be me taking care of
21 Roegan, Dane in the room, Roegan getting loud and he's
22 like, okay, I gotta go outside the room.
23 Q Well, you can tell us, obviously, about how he was when
24 you're there. But you have no idea, other than what Dane
25 might have told you, about how Dane is when you're not

1 there and the screaming happens?
2 A I know -- I've known Dane for over six years.
3 Q All right?
4 A If I haven't judged his character pretty good this far,
5 then, you know, I may not know him the best. But I have
6 judged his character pretty well.
7 Q Okay. And I appreciate that answer, but that's not
8 really what I was asking.
9 Other than him telling you how it was when
10 you're not around and he's with Roegan and no other
11 adult, you really can't tell us how Dane was when he was
12 alone with Roegan; is that correct?
13 A No, I cannot.
14 Q As a matter of fact, during your statement to Detectives
15 Bean and Brooks, you, I believe, said, "I have nothing to
16 hide but if he," referring to Dane, "has something to
17 hide, I don't know. That's for him to say and for you
18 guys to figure out." Do you remember saying that?
19 A Correct.
20 Q At that time, and I think I quoted it as accurately as I
21 could, you didn't tell the detectives, I know his
22 character for six years, and I know the nature he has,
23 and he wouldn't hurt that baby. You didn't say that to
24 the detectives, did you?
25 A I didn't say it in that way, but I do believe a few

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1 minutes later I did say he would never hurt his children.
2 Q Okay. But you do concede that you used the words, "I
3 have nothing to hide, but if he does, I don't know.
4 That's for him to say"?
5 A Yeah.
6 Q According to the schedule at Rite Aid, for the two weeks
7 after the fall in the bathtub, it begins February 8th and
8 goes through February 21st, your first day back to the
9 job, according to this, is February 10th; is that your
10 first day back, period, since your birth --
11 A Yes.
12 Q -- in December?
13 A Yes.
14 Q Okay. And you worked two days that week, the 10th, you
15 were scheduled to work two days that week, the 10th and
16 the 14th, but you testified you think you were off on
17 Valentine's Day?
18 A Correct.
19 Q You arranged to get it off, you believe?
20 A Yes.
21 Q Are you sure of that, or are you just assuming that?
22 A I am pretty positive that it was discussed over the phone
23 with my manager about me wanting the 4th off and she said
24 okay.
25 Q The 14th?

1 A Yes.
2 Q The next week it says you worked the 15th, Sunday, for
3 seven hours; the 17th for six hours; the 18th, Wednesday,
4 is crossed off, which I don't know if you did; and then
5 Friday, the 20th, 9:00 to 4:00. Do you believe you
6 worked those three days that I referred to, Sunday the
7 15th, Tuesday the 17th, and Friday the 20th?
8 A If the schedule says that, I honestly cannot remember the
9 days that I worked a year ago.
10 Q Would it be fair to say then that the best evidence and
11 memory you have is that you were working on Friday, the
12 20th, for the period 9:00 a.m. to 4:00 p.m.?
13 A Yes.
14 Q Would Roegan have been with Dane alone, along with the
15 other child in his care, that day while you worked?
16 A Yes.
17 Q Miss Stevens, you heard all the testimony in this case?
18 A Uh-huh.
19 Q Including the neurosurgeons, the pediatric intensive care
20 unit supervising doctor, Dr. Fiore, and you heard that
21 there were two distinct aged brain bleeds, subdural
22 hematomas, one appeared to be very acute or recent,
23 within the last -- and I can't recall the exact number of
24 hours, there was a discussion of 24 to 48. Did Roegan
25 appear on Friday, the 20th, to be having problems?

1 A No.
2 Q When you got back from work?
3 A Absolutely not.
4 Q You're sure?
5 A I am positive.
6 Q You realize that's a time when, with the exception of
7 Ella, only Dane had access to the baby --
8 A Correct.
9 Q -- other than you?
10 You've testified here to the juries, as well as
11 having told the interviewers --
12 A Uh-huh.
13 Q -- the detectives at the hospital on the 22nd of
14 February, that your memory of what your mother, Shawn
15 Stevens, said about what to do about the baby's bump on
16 the head from the bathtub fall was just to keep an eye on
17 it?
18 A Yes.
19 Q That she didn't say take him in. By the time you were
20 telling anybody in authority, the police, that story, was
21 a couple weeks after the fact on the 22nd when it had
22 happened on the 7th?
23 A Correct.
24 Q And you were aware on the 22nd that there was a concern
25 about CPS referral if they baby is ever taken to the

1 hospital. Isn't it true, Miss Stevens, that on the date
2 he hit his head and hurt his head, that was uppermost in
3 your mind, that the CPS would be getting involved in your
4 life if you took him to the hospital the day of the bump?
5 A Was it a worry of mine?
6 Q Was it on your mind on the day he hit his head?
7 A No.
8 Q Do you agree your mother said something about CPS will be
9 called? Do you remember your mother saying that?
10 A No. Absolutely not.
11 Q You remember your mother's testimony here to the jury to
12 that effect about the CPS concern?
13 A I didn't hear her say that she told me that CPS would be
14 called, no.
15 Q Here in court?
16 A Correct.
17 MR. STURTZ: Oh, no, no, no.
18 I'm sorry.
19 BY MR. DUGGAN:
20 Q From the date Roegan hit his head, according to Dane, and
21 you learned about that, February 7th, until February 22nd
22 when you took him to the ER, did the thought of CPS cross
23 your mind?
24 A No.
25 Q Did it ever come up in discussion with Dane?

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1 A No.
2 Q Did it ever come up in discussion with your mother?
3 A No.
4 Q Some other pictures were marked in addition to the one
5 where the baby looks, apparently, a purple color. Are
6 the other pictures like that?
7 A No. The other pictures are family pictures.
8 Q Is Roegan in them?
9 A Yes.
10 Q Are they from that time or later? Are they from the time
11 he was at the hospital for being born?
12 A I'm not sure if he has the one where we were all
13 sitting -- well, the kids were sitting with me on the
14 hospital bed and Dane was next to me, but I'm not sure if
15 he has that or not. And I'm not sure that was the last
16 day we were in the hospital or not.
17 Q Showing you proposed Exhibit 27, would this be a family
18 picture while you're still at the hospital between
19 December 6th, the date of birth, and December 9th, the
20 date of discharge --
21 A Yes.
22 Q Does that accurately portray how Roegan looked?
23 A Yes.
24 Q He's not like that first picture, Exhibit 26, at all; is
25 he?

1 A No.
2 Q He looks fine, doesn't he?
3 A Yes.
4 MR. DUGGAN: I would move admission of that
5 number.
6 THE COURT: What number?
7 MR. DUGGAN: 27.
8 MR. BUSH: No objection.
9 THE COURT: Any objection, Mr. Sturtz?
10 MR. STURTZ: No, Your Honor.
11 THE COURT: All right, Exhibit 27 will be
12 admitted.
13 BY MR. DUGGAN:
14 Q In the records Exhibit 1, which is -- begins December 6th
15 for Roegan, there's a past medical history on page 4 in
16 this section right in the middle. Take a look down there
17 for a moment, read it to yourself.
18 Did you have a chance to read that?
19 A Yes.
20 Q Is that referring to you?
21 A I believe so.
22 Q Would that be information you provided to the hospital?
23 A Yes.
24 Q You've described for the jury the birth-day bruising was
25 from the chest up?

1 A Mid-chest up, yes.
2 Q Okay. What about extremities? Legs or arms?
3 A Above. Arms, yes. Sorry.
4 Q All right. And by the time three days had passed and
5 he's discharged with you, he's looking more like
6 Exhibit 27?
7 A Correct.
8 Q When you referred to the house pediatrician who sort of
9 made you angry because it would take so long to get help,
10 you were referring to the Covenant pedestrian?
11 A Yes.
12 Q All right. You aren't saying you have a problem with Dr.
13 Dawis as a pediatrician, are you?
14 A I don't. I didn't.
15 Q You heard Dr. Dawis testify that she recommended at the
16 time of the well-child visit on December 11, a
17 five-days-old baby, she had recalled that she instructed
18 you, as she does all new moms, to bring the baby back in
19 a month. Do you remember Dr. Dawis telling you that?
20 A No, I do not.
21 Q Your memory is that you worked with her assistant to get
22 this date in February?
23 A Correct.
24 Q So February was a scheduled date, for shots or whatever,
25 long before the baby hit the head in the bathtub?

1 A Correct.
2 Q And you've testified on direct exam that there was the
3 fall in the bathtub, you hearing Dane or the baby call
4 out; which was it?
5 A Dane called out for me.
6 Q Dane called out. Did you hear the baby yell?
7 A Slightly, yes.
8 Q Okay. And you went up, and that's your memory of your
9 interaction with Dane and the baby?
10 A Yes.
11 Q And you know that -- you heard it from the detectives
12 when they interviewed you, that there appears to be some
13 difference about whether you went up or he came down?
14 A Correct.
15 Q And you've seen the statements, and you're satisfied
16 that's really the only difference as far as you're
17 concerned?
18 A Correct.
19 Q Because you have no personal knowledge, you can't sit
20 here under oath and tell the jury how the baby's head
21 contacted the bathtub, other than what you've been told?
22 A Correct.
23 Q Only one person knows how that happened or if it
24 happened; correct?
25 A Correct.

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1 Q Now you've testified here that there was a slight
2 swelling with a small dot but not any discoloration, as
3 if black and blue or bruising, you observed on Roegan on
4 the date of the fall; correct?
5 A Not --
6 Q Is that --
7 A I did not see the bruise until the day after, and it was
8 dime size and it was, like, yellowish.
9 Q The bruise or the bump?
10 A The bruise.
11 Q Or is that the same thing?
12 A No, the bruise.
13 Q Okay.
14 A I seen the bump the day it happened.
15 Q Would that -- would a bump be the equivalent of the word
16 "slight swelling"?
17 A Yes.
18 Q Or is that a different thing?
19 A No, I would say about the same.
20 Q Okay. Isn't it true you told Detectives Brooks and Bean
21 you didn't see swelling until the next day?
22 A I believe I said bruising till the next day.
23 Q I'm going to play back just a portion of your statement.
24 MR. DUGGAN: Counsel, I'm on Disc A, and I
25 believe it's -- there's a couple of files, but I believe

1 it's the first file.
2 Is our testing working with -- is everybody
3 hearing this? We want to make sure the podium mic is up
4 loud enough for everybody to hear.
5 I'm going to play back, I'm at footage 1419 if
6 that means anything, and the time stamp says 14:03:37,
7 which I believe is military time for 2 hours 3 minutes
8 37 seconds, on February 22nd.
9 (At 2:19 p.m., video played for the jury.)
10 BY MR. DUGGAN:
11 Q Please explain, if I didn't understand correctly, the
12 difference between saying there was no swelling until the
13 next day, which would be the 8th, Sunday, and why you've
14 testified you saw swelling on the date it happened?
15 A I was wrong. I did think -- thought it said that there
16 was swelling that day and bruising the next. I
17 apologize.
18 Q All right. So if there had been swelling on the 7th,
19 that would have raised that level of concern you had as a
20 mom, as a person involved in medical education, as a
21 person who works in the health field, pharmacy, that's a
22 concern --
23 A Correct.
24 Q -- if there's swelling. So, Codie Stevens, why didn't
25 you take the baby in the next day? Why did you wait till

1 Monday, when there was swelling and now you agree that's
2 when you saw it?
3 A I cannot explain to you, other than the pediatrician
4 being up here and saying she told me, always, before
5 going to the ER, come to my office.
6 Q Do you think there's a difference in how you should
7 behave, as the mom, in taking care of an infant's
8 injuries if they are accidental versus intentionally
9 inflicted?
10 A Can you repeat that in a -- I didn't understand the
11 beginning. Sorry.
12 Q I'll rephrase it.
13 Your baby has an apparent injury. Your infant.
14 A Correct.
15 Q Do you think there's a difference in how you should deal
16 with that, if you think it's accidental, versus
17 intentional?
18 A Knowing what I know now, I should have taken him in.
19 Q Either way. Accidental, intentional, it doesn't matter.
20 An injury needs attention; correct?
21 A Correct.
22 Q Ella ever hit her head and get a big bump?
23 A Never her head, no.
24 Q Head's pretty important; right?
25 A Correct.

1 Q You can get a bumped knee or elbow, and it's just not the
2 same; is it?
3 A No.
4 Q You already have made comments about the baby has a big
5 head just because that's the way he was born; right?
6 A Yes.
7 Q His head was getting bigger over that weekend; wasn't it?
8 A Not to my knowledge, no. From birth he had a --
9 Q The weekend of the bump?
10 A And I said no.
11 Q Okay. Well you said from birth, and I want to make sure
12 I'm focusing on the weekend of the fall in bathtub.
13 He hits his head on the 7th in the afternoon
14 sometime?
15 A No, I believe it was between 9:00 and 10:30.
16 Q At night or a.m.?
17 A In the morning.
18 Q Okay. And your testimony now, as well as you can
19 remember, as refreshed by the statement you made on the
20 date of the 22nd, was you didn't see swelling then?
21 A Correct.
22 Q If you had, you would have been more concerned?
23 A Correct.
24 Q You saw it the next day?
25 A Yes.

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1 Q Is the swelling only of the area that go got bumped or
2 his entire head?
3 A Just the area of the bump.
4 Q Is color starting to show in that area as a bruise would
5 show?
6 A It was slightly yellow, but it was not any other color.
7 Q You're telling this jury that you told Dr. Dawis when she
8 asked anything wrong -- you brought your baby in
9 complaining of irritability, fussiness -- anything wrong,
10 and you say, "The baby hit its head"?
11 A I told her from the beginning.
12 Q At that moment what could you, Miss Stevens, see on the
13 baby's head on Monday, the 9th, in Dr. Dawis' office in
14 the afternoon, or whenever you went in, compared to what
15 you saw the day before, Sunday?
16 A The only thing that was left was the small yellow circle.
17 Q How big? A dime size?
18 A Yes.
19 Q No raised area? No bump?
20 A No.
21 Q No swelling?
22 A No.
23 Q So the cold packs brought that down?
24 A Yes.
25 Q And you heard Dr. Dawis testify here?

1 A Correct.
2 Q And you've seen her medical reports that are in evidence
3 here that say "mother denies fall"?
4 A Yes.
5 Q Think hard. And some of these things are long ago and
6 maybe you don't remember, but some things -- you remember
7 the color of the blanket on the floor, and the Boppy or
8 whatever.
9 Did you tell Dr. Dawis the baby had a bump but
10 failed to tell the doctor the baby had a fall?
11 A No. My mother spoke to me before getting into the
12 doctor's office and said, you tell her everything that
13 happened. And I told her he had a fall in the bathtub.
14 Q You said on some date in the baby's life, formula change
15 help aid his digestive problems?
16 A Correct.
17 Q And what date can you best peg that as?
18 A Earlier I said I couldn't remember if we went to the WIC
19 the last -- it was for the last time we went to WIC and
20 he was put on the ProSobee, I can't remember if it was
21 that Wednesday or the following Wednesday. But I do know
22 I remember the appointment being on a Wednesday.
23 Q Well, just to have something to peg it to, Exhibit 25,
24 your Rite Aid schedule, there's a Wednesday the 11th and
25 a Wednesday the 18th of February. Was it either of those

1 days, do you think?
2 A Want to say it was the 11th.
3 Q So it would have been a couple of days after Dawis and
4 the first chiropractor visit?
5 A Yes.
6 Q And the baby is experiencing better digestion because of
7 the change?
8 A Yes.
9 Q Not so much throwing up?
10 A Here and there, but not anywhere near as much as it was.
11 Q And when you say "throw up," you mean different than the
12 spit-up a baby sometimes where they get a little too much
13 formula?
14 A That was covering your whole --
15 Q Vomiting?
16 A -- top of your body.
17 Q As a mom of two children, what is the concern about
18 excessive vomiting with a child?
19 A When Dane was six weeks old, he --
20 Q Stop. I'm talking about you weren't Dane's mom. You're
21 the mom. As a mom of two children what is the concern,
22 based on your training, education, what your mother has
23 told you. Forget about Dane. What do you know that
24 that's a signal of and a problem for?
25 A It could be pyloric stenosis.

1 Q But what can it -- when a baby vomits a lot, what that
2 can that lead to with the baby? Not the diagnosis of
3 what caused it, but what problems can result?
4 A They can die from it.
5 Q So it's serious?
6 A Yes.
7 Q It's dehydrating to a baby to vomit most of its stomach
8 contents?
9 A Yes.
10 Q There's not a lot of baby, so you take all the liquid out
11 and all of the sudden there's no hydration?
12 A Correct.
13 Q And I'm not using fancy words here. You understand what
14 I'm talking about --
15 A Yes.
16 Q -- from your training? Not just a mom, but as a person
17 who attended Ross Medical?
18 A Yes.
19 Q So on the 21st of February, if I wrote this down right,
20 and I'll just use your term, he puked, and then he puked
21 again, and the third time head to toe?
22 A Yes.
23 Q He's not keeping stuff down; correct?
24 A Before --
25 Q At that point?

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1 A Before -- after he had vomited head to toe, he wasn't
2 keep anything down.
3 Q And this is after the formula change has been in effect
4 for about 10 days?
5 A Correct.
6 Q And so that's not explaining it; correct?
7 A Correct.
8 Q Because you were consistently using ProSobee from that
9 Wednesday the 11th, you think, up until the 21st?
10 A Yes.
11 Q So you weren't thinking, perhaps, at all about the fall
12 in the bathtub on the 7th, but now you're concerned about
13 a different issue. He could be dehydrated?
14 A Correct.
15 Q He could die, in your words?
16 A Yes.
17 Q So why didn't you take him to the hospital on the 21st?
18 Why did you wait until the 22nd for that time?
19 A I don't know.
20 Q On the 22nd, you're seeing him in his crib twitching?
21 A Yes.
22 Q His one side twitching?
23 A One side.
24 Q Is he vomiting that day?
25 A No.

1 Q That's something you've never seen either of your
2 children do before that date?
3 A Correct.
4 Q Based on your training and experience, what are you
5 thinking and diagnosing then when you see the twitching?
6 A I believed he had a seizure.
7 Q Okay. Is that something that you thought was serious?
8 A Yes.
9 Q And did you ponder that he might die from that?
10 A No, I didn't know if leading -- I didn't know what the
11 causes or the aftermath of a seizure could be.
12 Q Okay. But you know it's a pretty significant event in
13 your life as a mother because neither child, till
14 February 22nd, had one; correct?
15 A Correct.
16 Q Had Dane ever told you he'd seen the babies have
17 seizures?
18 A No.
19 Q And your decision on the 22nd was to give him a bath, in
20 response to seeing him seizing?
21 A We were going to run a bath. But then after seeing it
22 continue, we took him right in.
23 Q Is that bathtub in your apartment where the fall happened
24 plastic or ceramic?
25 A It's ceramic.

1 Q Like a kitchen counter ceramic? Like a floor tile
2 ceramic?
3 A I actually, I don't know if it's paint that's covering
4 it, but there was a nick in it and it looked to be metal.
5 Q Okay.
6 A So it looks ceramic with the paint.
7 Q Showing you Exhibit --
8 A But it's hard.
9 Q -- 5, I'll let you refresh your memory.
10 A Yes.
11 Q So it's not plastic.
12 A Correct.
13 Q It's real hard?
14 A Yes.
15 Q And if you tap it on your hand, would it make a metal
16 sound, as opposed to a stone or ceramic sound? You know
17 there's a difference, right, in those sounds?
18 A I don't think I've ever tried to see what the noise was
19 coming out of the bathtub, no.
20 Q Okay. But your best estimate is it might be a metal tub
21 painted with something?
22 A Correct.
23 Q So it's hard?
24 A Yes.
25 Q Roegan didn't like cool stuff, right? Such as the air

1 after a bath?
2 A No. Correct.
3 Q And you used a cool, and I notice you said "cool" not
4 "cold," wash cloth; correct?
5 A Yes.
6 Q Wanted to see if it would give him some relief?
7 A Yes.
8 Q How did he react?
9 A He kind of like jerked away. But after it was laid on
10 his head, he didn't make any other motion.
11 Q He had a typical Roegan-type reaction as, hey, that's
12 cool?
13 A Yes.
14 Q Don't like that?
15 A Yes.
16 Q Why would you add peas to it from the freezer if he
17 doesn't like cold or cool if he has his choice?
18 A Well, it wasn't a bag of peas just placed on his head.
19 Q No, had the rag around it. But the peas would have
20 increased the coolness; right?
21 A With a towel around it? I don't think it would make much
22 of a difference. He can't feel how cold it is with
23 something wrapped around it.
24 Q All right. Was your goal to give him relief --
25 A Yes.

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1 Q -- or -- let me finish the question.
2 Was your goal to give him relief or -- from
3 pain, if he had any, or to get rid of the swelling?
4 A Relieve his pain, if he had any.
5 Q Was he expressing, as he might, as you would know him as
6 his mom, pain at that time?
7 A He seemed irritable after the --
8 Q Different than the usual Roegan irritability?
9 A Yes.
10 Q And you interpreted that, as a mom --
11 A Yes.
12 Q -- that he's in pain?
13 And did the cool cloth, with or without the
14 peas, appear to give him some pain relief?
15 A Yes, until the towel dried up. Because it wasn't -- the
16 whole towel wasn't completely wet. It was just a portion
17 of it.
18 Q Do you believe that the chiropractic adjustments Roegan
19 received on the first visit from Dr. Dense made him, from
20 your point of view as a mom, more comfortable or less
21 comfortable in his own skin?
22 A I think it was an in between. Because there were times
23 afterward he was still irritable, and then there were
24 times where he wasn't.
25 Q Well, that's -- I'll break it into two parts. On the

1 date he's at the chiropractor, before he leaves the
2 office, does he appear to be better off, or worse off, or
3 no difference?
4 A Better.
5 Q And then there would be some time that would go by and
6 you'd notice he might be irritable again?
7 A Yes.
8 Q You went again the next day?
9 A Yes.
10 Q Were you alone with him --
11 A Yes.
12 Q -- or was your mom along?
13 What about that day, same question, when you're
14 going out the door, does he appear to be better off,
15 worse off, or the same from the chiropractic?
16 A Better off.
17 Q Okay. And you made one more trip on the 18th, or
18 whatever date it was?
19 A Yes.
20 Q And the other dates of planned treatment were missed
21 because of ride or other schedule difficulties?
22 A Yes.
23 Q Did it have anything to do with the fact that you didn't
24 want the chiropractor to see the baby when the baby had
25 any apparent injures to his body?

1 A Well, the bathtub accident happened before the
2 chiropractor, and I went two times, you know, two times
3 after. No.
4 Q The reason I ask that -- and this is a question -- there
5 is information we've gathered from talking to witnesses,
6 including your mother, that she supposedly said something
7 to you, you can't take the baby to the chiropractor with
8 a bump on his head. Do you remember that statement being
9 made by her to you?
10 A No, because she was in the -- in the room we were at when
11 Dawis said get on the phone and call the chiropractor.
12 Q And she had been with you on the day the baby bumped his
13 head in the bathtub; correct?
14 A My mother?
15 Q Yes?
16 A No.
17 Q She came over?
18 A Yes.
19 Q She came over that day, Saturday, the 7th. Did she come
20 again on 8th?
21 A No.
22 Q So you saw her again the next day. That was the next
23 time you saw her was at the Dr. Dawis appointment?
24 A Yes.
25 Q You've had a chance to see the pictures of Roegan as seen

1 by the emergency room nurses, or the PICU nurses.
2 Showing you Exhibit 7 from February 22nd, Exhibit 8 from
3 February 25th, do you see a difference in the head size
4 of the baby?
5 A Honestly, I can't look --
6 Q I'm sorry?
7 A I can't look at the second one.
8 Q From your memory, did you ever see the head size go down
9 from the time he went in on the 22nd?
10 A No.
11 Q Okay.
12 A I didn't see him after that.
13 Q I'm focusing now on the date Dane has told you that
14 Roegan has fallen in the bathtub. That 7th of February.
15 I want to ask you a couple of questions about
16 the way Dane would have understood Roegan and his
17 behavior. Up until that time, you had seen Dane react
18 negatively to the screaming pitch level of Roegan's
19 voice; correct?
20 A Yes, correct.
21 Q You had seen Dane just push back and say, I gotta get out
22 of here?
23 A Yes.
24 Q And that was often in response to the screaming?
25 A Yes.

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1 Q You had seen Dane try to change the baby and the baby
2 gets fussy because he didn't like his diaper changed?
3 A Yes.
4 Q You -- excuse me.
5 You know Dane was aware at that date that when
6 you pull a baby out of warm water, baby doesn't like it;
7 correct?
8 A Correct.
9 Q The baby wriggles and fidgets and is a problem; correct?
10 A Yes.
11 Q Why didn't you give the baby baths under those
12 circumstances, knowing that's maximum stress for him, to
13 be dealing with a baby that's going to have to be taken
14 out of the bath water into the cold air and have his
15 bottom cleaned, why wouldn't you just give the baths?
16 A Well, first off, when Dane was caring for him, and I'm
17 talking about when I was in the house, when Roegan would
18 cry and Dane was taking care of him, Dane didn't set him
19 down and walk away or -- he dealt with it. He had no
20 other choice to. And as --
21 Q Describe for the jury how he dealt with it. What does
22 that mean?
23 A He would try talking to him. He would try calming him
24 down. You know, "It's okay," and hold him close.
25 Q Ever hear his voice raise to the baby?

1 A No.
2 Q So I interrupted you. Knowing what you know about how he
3 interacted with the baby, and you've described so now for
4 the jury, why wouldn't you have just given him a bath?
5 A Because we're both equally parents and we both have a
6 responsibility to do so. If I'm busy, he's the only
7 other person that's going to give our son a bath.
8 Q Isn't it true, though, that in those moments when Roegan
9 was fidgety and irritable, and pulled away or screamed
10 with that high-pitched, shrill scream, if the two of you
11 are there, Dane's going to head for the door and you, by
12 default, are going to take over; correct?
13 A Correct. But I was not there. I was downstairs with our
14 daughter taking care of her. He was upstairs taking care
15 of his son.
16 Q Did you have any concern as a mom, or hesitation or
17 anxiety, whatever word you might want to put in here,
18 knowing what you have just told the jury about how
19 sometimes he just can't handle it, going to work knowing
20 the baby and Ella are there with Dane for six, seven,
21 eight hours at a time?
22 A No.
23 MR. DUGGAN: One moment, please.
24 BY MR. DUGGAN:
25 Q During Ella's first two years of life, did you make a

1 decision as a mom, for six different various kid
2 conditions, vomiting, constipation, rash, nasal
3 congestion, injured arm, drinking hand sanitizer, having
4 a fever, to go to the emergency room with Ella?
5 A Yes. She's my first child. Everything -- everything and
6 anything that happened, she went to the ER.
7 Q But 11-week-old Roegan gets a bump on the head, on what
8 you said is a hard metal surface, that swells and has
9 discoloration, and you chose not to take him to the ER?
10 A No. Parental discretion in my case was thinking maybe I
11 can take care of this.
12 MR. DUGGAN: Your Honor, I have some records
13 needed to review, which I would have to do before I
14 continue, but I was almost done. If we're near the
15 break?
16 THE COURT: So you think we should take a
17 break; is that what you need?
18 MR. DUGGAN: Yeah. If other counsel or the
19 jury has questions, I just don't want to give up the
20 witness. If you don't want to break this minute, if you
21 want to have some more questioning. It's what we
22 discussed before the jury came in.
23 THE COURT: I understand. We'll take a break.
24 MR. DUGGAN: Okay.
25 THE COURT: Ladies and gentlemen, we'll take

1 our break at this time, so it'll probably be about
2 15 minutes. You can head out to your respective jury
3 rooms, the clerks will meet you in the hallway, and then
4 we will resume.
5 (At 2:45 p.m., juries excused.)
6 THE COURT: All right, we'll be in recess.
7 (At 2:46 p.m., court recessed until 3:07 p.m.)
8 (Exhibit Nos. PX 31 and PX 32 marked.)
9 THE BAILIFF: All rise, please. Court is again
10 in session.
11 THE COURT: Before we conclude today, counsel,
12 we need to have a serious discussion about scheduling.
13 We need to be able to advise the jury what we're doing.
14 MR. DUGGAN: I can give the court and counsel a
15 little bit of comfort in that regard. As it stands right
16 now, I do not intend to do what we discussed in chambers
17 and put on the record about playing the statement of the
18 defendant to the other jury in full. I'm satisfied just
19 to rely on their testimony. I mean I haven't heard
20 whether -- I don't know for sure that Mr. Krukowski will
21 take the stand, as counsel indicated. But if he did,
22 there's a very good chance I won't do that. And that
23 will trim five, six hours off of proofs.
24 THE COURT: All right. Okay, so that'll help
25 some. But we need to think about let's see where we're

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1 at at the end of the day, what witnesses you think you
2 have left, because then we have to have time for closing
3 and instructions. And I am not going to be here on
4 Friday, and I've repeatedly advised you of that before
5 trial, well in advance of trial, and then at the time we
6 started trial, and I even told the jury that when we were
7 in voir dire, so we'll see where we are at. Because I
8 need to, if they're even deliberating, I can have another
9 judge take a verdict. But I don't know that we'll be at
10 that point, but I've got to advise them what the schedule
11 is for the rest of the week.
12 MR. DUGGAN: I can tell the court, thus far, I
13 don't anticipate rebuttal witnesses from her case. If
14 Mr. Bush is resting after her, and Krukowski is the only
15 other witness, I may likely have no rebuttals, and so we
16 may be done with proofs today.
17 THE COURT: All right. We'll see. Okay.
18 Let's bring the jurors in.
19 Mr. Sturtz, I did try to talk to Judge
20 Borchard. He's in court, I talked to his clerk, and
21 we'll have to talk about where we're at in terms of your
22 motion tomorrow and whether it's even going on.
23 MR. STURTZ: Judge, I am having a serious
24 thought. If Mr. Duggan is not going to play this tape, I
25 may request that it be played, that her tape be played to

1 my jury.
2 THE COURT: All right, well.
3 MR. DUGGAN: We'll talk about that at the time,
4 the right time.
5 THE COURT: All right. When you decide, let me
6 know. In any event, we are going to have to talk about
7 that and scheduling, so you should decide today and we'll
8 go from there.
9 What I will try to do tomorrow, in terms of
10 your motion, is take a break at that time, but --
11 MR. STURTZ: Time-wise in my motion, I
12 anticipate 10, 15 minutes.
13 THE COURT: Right. I understand.
14 MR. STURTZ: But it's a serious motion that I
15 need to get heard.
16 THE COURT: All right.
17 MR. STURTZ: Thank you.
18 THE COURT: But we need to be able to juggle
19 around everything that's going on in here too.
20 (At 3:12 p.m., juries returned.)
21 THE COURT: Please be seated.
22 Mr. Duggan?
23 MR. DUGGAN: Thank you, Your Honor.
24 BY MR. DUGGAN:
25 Q We've had an opportunity during some of our breaks here

1 to get copies of your delivery records from Covenant.
2 You're aware of what I'm speaking of?
3 A Yes.
4 Q And a bunch of them were provided. I've had marked as
5 proposed Exhibit 31 and 32 records pertaining to when you
6 went to Covenant in December to deliver Roegan. Have you
7 seen these before?
8 A A little bit, but not --
9 Q Okay.
10 A -- completely.
11 Q All right. I got them from your attorney. That's why I
12 thought maybe you had seen them.
13 MR. DUGGAN: I'd move admission of 31 and 32.
14 THE COURT: Any objection, Mr. Bush?
15 MR. BUSH: I have no objection at this time. I
16 believe a lot of this is already in.
17 THE COURT: All right.
18 Mr. Sturtz, any --
19 MR. BUSH: It's in the other records.
20 THE COURT: Mr. Sturtz, any comment?
21 MR. STURTZ: I have no comment.
22 THE COURT: All right. Exhibits 31 and 32 will
23 be admitted.
24 MR. DUGGAN: Could the record reflect, if
25 Mr. Sturtz has no objection, that he has a copy, he has

1 received a copy for review at the same time I did?
2 MR. STURTZ: Yes, that's correct.
3 THE COURT: All right.
4 MR. DUGGAN: Okay. For the record, Your Honor,
5 too, because we have two juries, I followed the same
6 procedure with the court reporter. 31 and 32 have the
7 red sticker, an identical set of 31 and 32 which
8 consisted of simply running through copy machine with the
9 red sticker, having the same number, so that each jury
10 can have their own packet. Is that acceptable?
11 THE COURT: Yes.
12 BY MR. DUGGAN:
13 Q Miss Stevens, in Exhibit 31, on page 9 -- and at the
14 bottom of the page is where I'm looking, counsel, the
15 bottom right -- it says under the history for your
16 discharge summary at Covenant that the patient presented
17 with signs and symptoms of active labor. She had been
18 considered for Cesarean section. She underwent that
19 procedure without significant complications. Do you have
20 any disagreement with that description of facts?
21 A Honestly, I couldn't see anything so I don't know.
22 Q Okay. And at page 17 of those records on Exhibit 31
23 under Complications, it lists none. Same answer? You
24 just don't know?
25 A I had a screen, a blue screen in front of me.

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Q Okay.
A I'm facing the ceiling.
Q These pages on Exhibit 32 are not marked at the bottom, but I did put a Post-It Note on it and the detective put a blue X at the bottom so we could at least find the page. It's about a quarter of an inch down into the packet. It talks about your interaction with a registered nurse on December 6th, the day Roegan was born, that says Dr. Fettinger is at bedside. Patient states she is vomiting every time she has a contraction. No cervical change. Dr. Fettinger discussed options with patient. Options of doing a Cesarean section now, or waiting and recheck cervix in a couple hours. Patient states she is not ready to have her C-section now. Do you recall that conversation, even though you were in extreme situation, where you opted to postpone having the C-section for a while?
A No, it was prescheduled. There was not supposed to be any postpone to a C-section.
Q My point was, though, you went into the hospital because you went into labor --
A Yes.
Q -- ahead of your scheduled C-section date?
A Correct.
Q And having gone in there early, there was apparently an

interaction with a doctor about whether you would have it by C-section or vaginally?
A No, I had discussed earlier with my ob-gyn, he said it's up to you, and we had already scheduled a C-section day.
Q Okay. And that note, according to the medical records, is about 8:35 a.m. And then it says at 1:30 p.m. that same date, patient's husband came to nurse's station, stated patient would C-section. Do you remember there being a lot of hours at the hospital between when you were asked about how you wanted to have it, and when you and Dane decided to have it?
A Honestly, I don't even remember speaking to Dane about it, because I was not able to speak. I was constantly throwing up.
MR. DUGGAN: Thank you. No further questions.
THE COURT: All right. Mr. Bush, any redirect?
REDIRECT EXAMINATION
BY MR. BUSH:
Q Who took the family photograph; do you remember?
A I don't know if it was my mom, or other family in the room.
Q Okay. Somebody in the family?
A Somebody that was at -- yeah.
Q All right.
MR. BUSH: That's all.

THE COURT: All right. Any questions from the jury for this witness? Looks like we have a couple. Counsel, would you approach, please.
(At 3:20 p.m., bench conference off the record.)
THE COURT: There's a couple questions I'm not going to ask because they've either been asked and answered, or they're just not pertinent to what you have to decide here. So I still have a stack to answer -- or ask and have the witness answer.
Ma'am, do you remember the baby's head size at the last WIC appointment?
THE WITNESS: I do not, no.
THE COURT: Okay.
Did you have any complications during pregnancy?
THE WITNESS: I did. The last time I went in for an ultrasound, my OB said he had some concerns because my placenta was calcifying, which means it's hardening.
THE COURT: Okay. Did you have any other health problems during pregnancy?
THE WITNESS: No.
THE COURT: If the baby was bruised on December 6th after birth, was he still bruised on

December 11th at his doctor's appointment?
THE WITNESS: No.
THE COURT: Did you take the baby in to see staff at the chiropractic office and state, See, he's -- Roegan's doing better?
THE WITNESS: No, I think I personally said to the doctor he seems to be doing better, but I don't recall saying that to anybody in the office, no.
THE COURT: Okay. But so you said it to somebody there?
THE WITNESS: The doctor that was --
THE COURT: Okay.
THE WITNESS: -- dealing with him, yes.
THE COURT: Okay. Were you upstairs or downstairs when the fall in the tub occurred?
THE WITNESS: I was downstairs with our daughter.
THE COURT: Okay. At one point you said she was in her room while this tub incident occurred, but now you're saying you were with her downstairs. So where is her room?
THE WITNESS: Her room is upstairs by the bathroom, but she can come and go up and down as she pleases.
THE COURT: Okay. How did Dane know how to

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1 give Roegan a bath if he's never done it before?
2 THE WITNESS: He has given Roegan multiple
3 baths. Some of them were downstairs in the kitchen sink,
4 and some of them were done upstairs in the bathtub.
5 THE COURT: So I guess I'll just restate this
6 second question. When was the first time he gave him a
7 bath, if you remember?
8 THE WITNESS: Soon after we had come home from
9 the hospital, he gave him his first bath in the kitchen
10 sink.
11 THE COURT: Were you present then?
12 THE WITNESS: I believe I was in the living
13 room.
14 THE COURT: Do you recall what arm, the right
15 or the left, that the IV was put in on the -- this
16 appears to be the time you took him to the hospital?
17 THE WITNESS: It was the right arm.
18 THE COURT: After discharge from the hospital
19 after Roegan's birth, why didn't you go back to the
20 hospital within or after waiting the 24 hours, as
21 suggested by the hospital staff, if you still had
22 concerns about Roegan and not being satisfied with the
23 care and answers given to you by the house pedestrian in
24 regard to Roegan's condition and looks?
25 THE WITNESS: The day after we got home, we

1 actually went up within 24 hours, the pedestrian
2 unclothed him, weighed him. I don't know if she did
3 any -- if she measured anything, but she was looking at
4 his chest and she said, okay, he's fine.
5 THE COURT: Okay.
6 THE WITNESS: And then clothed him.
7 THE COURT: If chiropractic adjustment bothers
8 you, why would you be willing to go in another -- to get
9 your X-rays done and leave your child, whom you said his
10 back was cracked?
11 THE WITNESS: He wasn't left with the
12 chiropractor when I went to take X-rays. He was with my
13 mother.
14 THE COURT: Did you mention to Dr. Dawis
15 excessive vomiting you were worried about?
16 THE WITNESS: Yes. Because we had also brought
17 up before that, when I was pregnant, it's a boy, pyloric
18 stenosis runs genetically in boys.
19 THE COURT: Okay, so she was aware of that?
20 THE WITNESS: Yes.
21 THE COURT: Was Roegan always planned to be
22 delivered by C-section, due to a prior C-section with the
23 first child?
24 THE WITNESS: Yes, he was.
25 THE COURT: Okay, so you had a C-section with

1 your first child?
2 THE WITNESS: Yes.
3 THE COURT: Were all four baby formulas tried
4 out at the hospital during your three-day stay after
5 Roegan's birth, as you stated?
6 THE WITNESS: No. When we were in the
7 hospital, I tried breast-feeding, and then I tried
8 pumping to feed it to him through a bottle and he kept
9 throwing that up. And then a day later they said, well,
10 in your baby carrier underneath, in the drawers, there is
11 Similac, and they're four-pack bottles of formula. Try
12 those, see if they work, and if they do, we'll give you
13 some more.
14 THE COURT: So they were a four-pack of
15 Similac, the same formula?
16 THE WITNESS: Yeah, it was the same one.
17 THE COURT: Okay.
18 And you can answer this if you can. I'm not
19 sure it follows the other question. But were there --
20 were these formula tried over a period of time before
21 Roegan going to the hospital with injuries?
22 THE WITNESS: Yes. The first one was while we
23 were in the hospital, and he wasn't taking well to it.
24 Once we got out of the hospital, the 11th, we
25 had gone to the pedestrian, she gave me two different

1 samples. One was the Gentlease and one was the Prosobee,
2 and she gave me about four sample cans of each kind. She
3 said if you'd like to try them, see how they work. The
4 Gentlease didn't seem to work, so we went on to the
5 ProSobee and it seemed to be okay with him.
6 THE COURT: Okay. Did Roegan ever sleep in the
7 same bed as you and Dane?
8 THE WITNESS: No. He had his crib, which was
9 at the end of our bed in our room.
10 THE COURT: Any follow-up questions, counsel?
11 MR. DUGGAN: None by the People.
12 THE COURT: Mr. Bush?
13 MR. BUSH: None.
14 THE COURT: Mr. Sturtz?
15 MR. STURTZ: No, Your Honor.
16 THE COURT: Anything else from the jury?
17 All right, you can step down.
18 THE WITNESS: All right.
19 THE COURT: All right, Mr. Bush, any other
20 witnesses?
21 MR. BUSH: No other witnesses, Your Honor. The
22 Defendant Stevens rests.
23 THE COURT: All right.
24 MR. DUGGAN: No rebuttal by the People.
25 THE COURT: All right.

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1 Mr. Sturtz, would you like to make an opening
2 statement?
3 MR. STURTZ: Yes, Judge. May it please the
4 court, Mr. Prosecutor, Mr. Bush, ladies and gentlemen of
5 the jury, may name is Phillip Sturtz, and I represent
6 Mr. Krukowski in this case.
7 This case is pretty close to being done, but
8 it's going to be a very difficult case because we are
9 dealing with a very young person, and you've heard some
10 very serious allegations, and you heard some very serious
11 injuries concerning this young person.
12 Prosecutor in this case brings my client to
13 court on an instrument called an information. This
14 information reads that one Dane Krukowski did cause
15 serious physical harm and/or knowingly or intentionally
16 committed an act to cause serious physical or mental harm
17 to a child by failing to seek medical treatment after
18 significant trauma, which resulted in further exacerbated
19 physical injuries or deterioration of child's health
20 and/or intentionally caused physical trauma.
21 The words in the charging document talk about
22 knowingly and intentionally. It talks about it two
23 times. Be mindful, when the court instructs you about
24 this case, the prosecutor not only presents this
25 information, but he also presents some additional

1 theories on top of this. If this one doesn't work, maybe
2 this one will work. He talks about an abandonment
3 theory. He talks about a reckless act theory. He talks
4 about committed an act likely to cause serious physical
5 harm. I guess the situation in this case is, what
6 happens in this particular case from the date of the fall
7 until you go to the hospital? What lights turn on that
8 make these young people understand that they gotta take
9 this child to the hospital? Is it the temperature? Is
10 it the blood pressure? Is it his eyes? Is there a cut?
11 Is there an abrasion? Throwing up? The child was
12 throwing up in the hospital before he left.
13 You are all old enough to understand, and most
14 of you are probably grandparents like myself. Use your
15 common sense when you decide this case and when you
16 listen to all the testimony in this case. Remember the
17 standards that one is presumed innocent throughout the
18 trial. And that innocence has got to be -- now you just
19 don't lift the skirt off or the veil of innocence. The
20 whole thing's got to be taken off beyond a reasonable
21 doubt. That hasn't been done in this case. And I'm
22 sure, after you listen to all the testimony, you'll
23 return a verdict of not guilty. Thank you.
24 THE COURT: Mr. Sturtz, you may call your first
25 witness.

1 MR. STURTZ: Call my client, Mr. Dane
2 Krukowski.
3 THE COURT: Mr. Krukowski, if you'd step
4 forward and raise your right hand, please.
5 Do you solemnly swear to tell the truth, the
6 whole truth, and nothing but the truth?
7 THE WITNESS: Yes, ma'am, I do.
8 THE COURT: Please have seat in the witness
9 box.
10 THE WITNESS: So help me God.
11 DANE RICHARD KRUKOWSKI
12 Being first duly sworn at 3:38 p.m., testified under oath
13 as follows:
14 DIRECT EXAMINATION
15 BY MR. STURTZ:
16 Q Dane, for the record, would you state your name, please?
17 A Dane Richard Krukowski.
18 Q And what is your address, where do you live?
19 A 123 Snow Avenue, Saginaw, Michigan 48602.
20 Q How old are you, sir?
21 A I'm 25 years of age.
22 Q Where were you born?
23 A Saginaw, Michigan.
24 Q How far did you go in school?
25 A I graduated.

1 Q Were you born and raised here in Saginaw?
2 A Yes, sir.
3 Q You attended local schools?
4 A Yes, sir.
5 Q And are you employed at the present time?
6 A I am, but I'm probably not going to be able to return
7 because I've been in trial for the past two weeks.
8 Q All right. What occupation were you holding prior to
9 starting this trial?
10 A A roofer, builder, landscaper.
11 Q All right. How long did you do that?
12 A Since I've been 13 years old.
13 Q All right. Have you held other types of work?
14 A I have. I've worked in restaurants.
15 Q Anything else?
16 A Welder.
17 Q Your mom and dad live here in Saginaw?
18 A They do.
19 Q And your fiance, how long have you known her?
20 A Going on past six, seven years now.
21 Q As a result of your relationship with this lady, you have
22 given birth to two children; is that correct?
23 A Yes, sir, I have.
24 Q One is known as Ella?
25 A Ella May Krukowski.

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1 Q And the other child's name is Roegan; is that correct?
2 A Yes, sir.
3 Q Roegan was born December 6, 2014?
4 A Yes, sir.
5 Q You were present for the birth of the child?
6 A Yes, I was, sir.
7 Q You've heard the testimony of your wife, and what
8 occurred during that pregnancy, and what occurred as a
9 result of the delivery of the baby?
10 A Yes, sir.
11 Q Were you there for it?
12 A Yes, I was in the operating room.
13 Q If I took time to ask you about all the questions of what
14 happened and what you saw, would they be recitation of
15 what your wife just testified to?
16 A Yes, they would.
17 Q The child came home with you and your wife?
18 A Yes.
19 Q And the child remained in the home where you're currently
20 living on Colony Drive?
21 A Yes, sir.
22 Q Colony Drive is your apartment, is an apartment complex?
23 A Yes, sir.
24 Q Are there neighbors next door to you, around you?
25 A Everywhere, yes.

1 Q Are you familiar with these people?
2 A I am, yes.
3 Q Do you see them daily?
4 A Not since we left the Colony, no.
5 Q When did you leave Colony?
6 A I'd say around March, April of last year.
7 Q Last year? That's after you had gone to the hospital
8 and -- and this fall occurred; is that correct?
9 A Yes.
10 Q Were you close to those neighbors on Colony Drive, talk
11 to all of them, visit?
12 A Not all of them, but five, six, seven different ones.
13 Q Ella play with the children there?
14 A They were a little bit older of an age and they kind of
15 roughhoused out there, so I just kind of took her to the
16 park and had play at the park. There was a park just
17 right up the way.
18 Q When Ella was born, did you take an active part in being
19 a father towards her?
20 A Yes, I was -- loved her, but I wasn't there as much as I
21 should have.
22 Q All right. So early on in the coming home of the baby
23 after the birth of Ella, you were not around as much as
24 you should have been?
25 A Yes, sir.

1 Q Did that change?
2 A Yes, sir.
3 Q And did you and Codie, where were you living at that
4 time?
5 A When Ella was a baby?
6 Q No, no, no, where were you and Codie living when Ella was
7 born?
8 A She was living at her mother's house and I was living in
9 my own house.
10 Q Okay. So you would go over and visit at your -- at her
11 mom's house?
12 A At her mother's, yes.
13 Q Did you wash Ella?
14 A Yes.
15 Q Did you provide support for her?
16 A Yes.
17 Q And you worked at that time?
18 A Yes.
19 Q Your wife became pregnant and you had another child on
20 December 6, 2014?
21 A Yes, sir.
22 Q You brought the baby home, Roegan?
23 A Yes, sir.
24 Q And you, Ella, and Codie all lived together?
25 A And Roegan, yes.

1 Q Four of you?
2 A Yes, sir.
3 Q You were a family. We see the pictures here.
4 A Yes, sir.
5 Q Roegan, he was a pretty healthy little guy at the time
6 you brought him home?
7 A Yes.
8 Q He slept well?
9 A At times he woke up in the middle of the morning to be
10 fed, but other than that, yeah, yes, he did.
11 Q He was a little cranky?
12 A I'd say a little bit more than cranky, but yes.
13 Q Apparently, he was a pretty good -- had some good lungs
14 on him?
15 A Absolutely.
16 Q And did that yelling and screaming bother you?
17 A It didn't bother me, but I do have a bad right ear and
18 sometimes high-pitch screams crack it and I had to step
19 out for a minute, just take a break.
20 Q When you walked outside or stepped outside, was that any
21 derogation of your fatherly duties or --
22 A No, sir.
23 Q -- husbandly duties towards your family?
24 A No, sir, I just simply stepped outside and smoke a
25 cigarette because I don't smoke in the house with my

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1 kids.
2 Q All right. On 2/7/15, the day that brings us here today,
3 you were elected and asked to give Roegan a bath?
4 A I wasn't asked to give him a bath. I gave him bath under
5 my own.
6 Q All right. And at that point, up to that point in time,
7 you had given him quite a few baths; is that right?
8 A Yes, sir.
9 Q And you and he got along well?
10 A Yes. Me and my son?
11 Q Yeah?
12 A Yes.
13 Q So he knew when dad was touching him, he knew your voice?
14 A Yes.
15 Q You talk to him?
16 A Yes.
17 Q He was probably a little too young to be punished or
18 anything, but I assume sometimes he would get under your
19 nerves, like any baby would, and how would you talk to
20 him?
21 MR. DUGGAN: I'm going to object to the form of
22 that question. It included a whole lot of preference --
23 a lot of information and it --
24 MR. STURTZ: All right, I'll rephrase the
25 question.

1 MR. DUGGAN: It sounds like he's going to be
2 agreeing to that question, and it's not really a
3 question.
4 THE COURT: All right, he's going to rephrase
5 it. So rephrase your question, please.
6 BY MR. STURTZ:
7 Q When you communicated with your child in changing
8 diapers, what did you talk about?
9 A Didn't really talk. It was of hey, buddy, how you -- you
10 know, trying to make him laugh, and just, you know, rub
11 my nose on his belly, make fart noises on his stomach.
12 And I didn't really talk to him because he is an infant
13 child, you know, but I just tried to --
14 Q Tickle him?
15 A Yeah.
16 Q Touch his ears? Touch his back?
17 A Yeah.
18 Q So you give Roegan a bath, and you give him bath in the
19 upstairs bathroom; is that correct?
20 A Yes, sir.
21 MR. STURTZ: Can I see the photographs of the
22 bathroom?
23 BY MR. STURTZ:
24 Q Dean, I'm showing you which has been marked for
25 identification purposes as People's Exhibit 5. Do you

1 see that photograph?
2 A Yes, sir.
3 Q Is that a fair and accurate layout of the bathroom?
4 A Yes, sir.
5 Q And the bathtub was made of what?
6 A I do believe it was made of porcelain, myself.
7 Q It's hard?
8 A Yes.
9 Q About how high is it?
10 A From a guesstimate, I'd say three feet? Two-and-a-half,
11 three feet.
12 Q From the floor up to the edge --
13 A Yeah.
14 Q -- the bathtub was two, three feet?
15 A Yeah.
16 Q Whatever the picture shows, the picture speaks for
17 itself; right?
18 A Yes.
19 Q Exhibit No. 6 is a picture looking down inside the
20 bathtub. What's located inside on the bottom of the
21 bathtub?
22 A The baby seat that I put Roegan in when I bathe him.
23 Q The dark blue collar that we see on this baby mat, is
24 that elevated?
25 A Yes, it's on an incline.

1 Q On an incline. And that's where his head would rest, or
2 his feet?
3 A His head would rest around the blue collar.
4 Q All right. And you would fill the water up how high?
5 A To right about his mid-chest.
6 Q And how would you test the water for warmth?
7 A I put my hands in there, or put my arm in there sometimes
8 your hand's a little bit tougher than the rest of your
9 body and I know it can be a little bit warmer than the
10 hands feels, so I'll pull my whole arm in there just to
11 see if it's room temperature compared to my body.
12 Q All right. And when you gave him the bath, did you bend
13 over into the tub, or did you put your knees on the
14 floor?
15 A I was on my knees.
16 Q You were on your knees?
17 A Yes.
18 Q So you're right down close to the child?
19 A Yes, sir.
20 Q Did you use a particular kind of soap?
21 A The Johnson's baby soap.
22 Q Johnson's baby soap?
23 A Yes.
24 Q Comes out of a tube?
25 A A bottle.

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1 Q Bottle. It's not a bar of soap where you lather it up.
2 It comes out in a liquid?
3 A (Witness nodded.)
4 Q Before you started the process of washing him, did you
5 play with him in the bathtub a little bit?
6 A I always do, yeah. I usually put -- he's got little
7 rubber duckies, and these floating ABCs and, you know,
8 the squares, the block squares that float in the tub. I
9 usually put them in there and kind of play with him,
10 splash a little bit of water on his chest, and he seemed
11 to like that.
12 Q All right. And then you get to the business of giving
13 him a bath?
14 A Yes, sir.
15 Q How frequently did you or your girlfriend give him a
16 bath?
17 A It was when my girlfriend did state that after, not even
18 a day, he smelled fowl under his neck and his, you know,
19 the little fat rolls in his neck he would just stink
20 really bad, so I --
21 Q So daily he --
22 A Every two days I tried to give him a bath.
23 Q All right. So on this particular day, it's been
24 described that it was sometime in the morning that you
25 were in the bathtub -- not in the bathtub, but in the

1 bathroom giving him a bath; is that correct?
2 A Yes, sir.
3 Q And Codie was where?
4 A She was downstairs, I believe, watching TV, or dishes
5 or --
6 Q Your apartment was located that you had two floors?
7 A Actually had three. We had an upstairs, middle living
8 area, then the basement, a full, furnished basement.
9 Q Okay. So she was on the first floor, more or less?
10 A Yes, sir.
11 Q And you were upstairs with Roegan on the second floor?
12 A Yes, sir.
13 Q On the second floor, what was there? How many bedrooms?
14 A Our bedroom, Ella's bedroom, and the bathroom.
15 Q So you begin to clean, give him a bath?
16 A Yes, sir.
17 Q Describe to the ladies and gentlemen of the jury how this
18 process began? Did you pick him up? Did you lather your
19 hands up? What did you do?
20 A Usually started off when I give him a bath, he's in there
21 and I get my hands lathered and I wash his head first,
22 and I had a little cup and I'd take his back, put my hand
23 behind his back and arch him up a little bit so his head
24 kind of went like that a little bit, and then I'd pour
25 the water in the cup down his head so that it didn't get

1 in his eyes and it'd roll off the back. And then I'd
2 proceed to get my hands soapy while he's still sitting in
3 his chair, I'd get my hands soapy and then hit another
4 squirt of soap in this hand because when I put my hands
5 in the water, it washes the soap off a little bit. So I
6 went to pick him up like this, and then when I did he
7 just jerked and I lost him and he went and hit his head
8 on the back -- the side of the tub --
9 Q Now you --
10 A -- then went in the water --
11 Q You were facing the child. Okay. You picked him up.
12 Which way does he squirt? To the left or to the right?
13 A He goes to my right.
14 Q He goes to your right?
15 A Yes.
16 Q How deep is the water there?
17 A I'd say two feet of water, at least. A foot and a half?
18 Two-foot? Enough where he submerged under when I dropped
19 him.
20 Q Was face down or face up?
21 A When I dropped him?
22 Q When you -- when you dropped him, okay.
23 You picked him up out of the bathtub, I assume
24 you're looking at him?
25 A Yes.

1 Q And you go to, what, transfer him? You tell me.
2 A I just I went and scooped him up in the tub and he was
3 kind of, I'd say sideways, and, you know, he kind of
4 rolled with the tub, it's all wet in there and it is
5 porcelain so he was kind of sideways, I guess, and I went
6 and scooped him up and picked him up, brought him back to
7 my chest.
8 Q All right. When you went down to scoop him up out of the
9 bathtub, was his head in the water or was he looking at
10 you?
11 A His face did submerge, go under water.
12 Q His face did go face down?
13 A Yes.
14 Q And you pick him up with both hands?
15 A Yes.
16 Q When you picked him up with both hands, your thoughts
17 were to do what?
18 A Get a towel for him, make sure he's all right.
19 Q Get him out of the water?
20 A Absolutely, yes.
21 Q And did you check to see at that point in time whether
22 there was any water in his lungs? Did you pat him on the
23 back?
24 A I did, yeah, I burped him when I had him up to my chest.
25 Q You burped him?

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1 A Yeah, on the back.
2 Q Was his head hanging over your shoulder?
3 A No, it was just.
4 Q Right there?
5 A Right there on my shoulder.
6 Q And then what do you do? You're on your knees now?
7 A Oh, when I went to submerge to pick him up, I kind of,
8 I'd say --
9 Q Half knee?
10 A -- kneeled over, and came back up and pulled up.
11 Q So your standing --
12 A Half knee, yeah.
13 Q So as you go down to scoop --
14 A And as I picked him up and put him to my chest, I stood
15 up, grabbed a towel, wrapped around him.
16 Q Were you interested in how much force you were grabbing
17 that child at that point in time?
18 A To be honest with you, sir, I, at the time, everything
19 happened so fast, it was so quick, I couldn't even tell
20 you the force that I did grab him with. I was scared. I
21 knew I had to get him out of there, so I had.
22 Q You weren't intentionally trying to hurt him, were you?
23 A No, sir.
24 Q So you put him up to your chest, and then you exit the
25 bathroom; right?

1 A Yes, sir.
2 Q Do you call for -- do you call for Codie?
3 A Yes, sir.
4 Q And where do you call for her? Right inside the bathroom
5 as you're getting the child up?
6 A When we walk out of the bathroom, there's a stair
7 railing, it goes down the steps, down the stairs. I just
8 screamed for her there, it echoes off the wall, you can
9 hearing everything there.
10 Q So then you take the child right into the --
11 MR. DUGGAN: I'm going to object at this point.
12 I haven't objected to the leading because it wasn't a
13 concern to me now, but I think we're at the point where
14 the story should be what his client says, not what he
15 suggests.
16 THE COURT: Okay. This is direct, Mr. Sturtz.
17 BY MR. STURTZ:
18 Q You call for Codie?
19 A Yes.
20 Q What do you do next?
21 A I -- what I believe, that I walked into the bedroom and
22 put him on the bed and put some clothes on him, and Codie
23 came upstairs and met me in the room.
24 Q And where was Ella?
25 A I believe she was -- she had to be downstairs with her,

1 or in her bedroom. At the time, I believe she was in her
2 bedroom.
3 Q At this point in time when you bring the child out and
4 put him in the bedroom, do you have a chance to look at
5 his body, look at his head?
6 A Yes, he was naked.
7 Q Did you see anything on his temporal area, be it on the
8 left side, or be it on the right side?
9 A Right away it just looked a little red from where, you
10 know, I had dropped him. And then in due time, bruising
11 started and swelling came about.
12 Q What about the top of his head?
13 A I didn't -- no, I didn't notice anything.
14 Q You didn't see anything there?
15 A No, sir.
16 Q Did you see anything on his chest?
17 A Not that the I seen in my eye.
18 Q What about his wrist?
19 A Again, no, I didn't see nothing. His -- his body already
20 is kind of a little bit slighter red, due to the fact of
21 being in the bath water, so you know how your skin
22 transitions from being in the warm water, it's a little
23 bit flush I should say.
24 Q What is the baby's breathing at this point in time when
25 you pick him up and put him to your chest? Is he gasp --

1 A He was fighting, and he did, like I said, cry for, like I
2 said, 15, 20 seconds, and.
3 Q How about his breathing? Hard? Slight? Did you hear
4 him?
5 A I didn't hear no abnormal breathing, no.
6 Q Was any water coming out of his nose or mouth?
7 A No, sir.
8 Q The child gets dressed, and at that point in time where
9 does the child go next?
10 A We took him downstairs and put him in the little bouncy.
11 Q Bouncy-type chair?
12 A Yes.
13 Q Did he like that?
14 A Oh, yeah, it had the vibrating thing on it, music. He
15 really, yeah.
16 Q And where is Codie at this time?
17 A When we went downstairs?
18 Q Yes?
19 A Next to me.
20 Q So --
21 A With me.
22 Q -- she comes down. Who carries the baby downstairs, you
23 or she?
24 A I believe I -- I believe I did.
25 Q All right. And the child is dressed in a what? Did you

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1 call it a onesie?
2 A Yes.
3 Q Describe a onesie. What is that, the one with the bag
4 where you tighten it up at the bottom?
5 A Yeah, it's simply a pullover shirt that you button down.
6 Q Like a flour bag with three holes cut in it, huh?
7 A Yeah. Yes.
8 Q So you go downstairs. Is the baby screaming, or
9 hollering, or doing anything down there at this point in
10 time?
11 A No, sir.
12 Q All right. So from that point on, you guys pretty much
13 hang around the house that day?
14 A Yes, sir.
15 Q And Codie, she stays with the baby all the time?
16 A Yes.
17 Q At this point in time now, while he's in his bouncy, you
18 don't see any marks on his face anywhere?
19 A Not on his face, no.
20 Q All right. How about his left temporal area?
21 A I do believe, in time, that his head started to develop a
22 dime-sized bruise.
23 Q All right. And do you put anything on it?
24 A Yes, we did.
25 Q What did you -- who suggested that?

1 A I do believe it was our mother-in-law that suggested it,
2 but I thought I did. But I do believe my mother-in-law.
3 Q Anyways, within a short period of time, somebody puts
4 these peas with a rag on his head; right?
5 A Yes.
6 Q But there's first a cold cloth, as we heard from your --
7 A Yes, sir.
8 Q From Codie.
9 The child's still breathing all right?
10 A Yes, sir.
11 Q His arms and legs are moving like a little baby should
12 move?
13 A Yes, sir.
14 Q How about the movement of his head? Did he have any
15 difficulty moving from side to side, looking around?
16 A Not that I noticed.
17 Q How about his eyes?
18 A His eyes seemed to be fine.
19 Q They seemed to track individually? He was looking at
20 things?
21 A Yeah, I kind of always played with him with a bottle like
22 that. Come on, he'd sit there and follow, start getting
23 a little fussy about it, then I give him his bottle. So
24 his eyes were functionable.
25 Q Do you recall your wife doing any tests on the child as

1 to his eyes, and grabbing and feet?
2 A I, yes, I do.
3 Q Tell me about those?
4 A I do remember her rubbing his head like that, and doing
5 the finger thing, but the feet thing I might have missed.
6 But I do remember him grasping his fingers and she kind
7 of pulling up a little bit. And rubbing his eyes, in
8 between his eyes.
9 Q That day, did the child ever appear to have any
10 non-movement, or being lethargic? Do you know what I
11 mean by that?
12 A Yes, sir. And no, not that I noticed.
13 Q That day did the child have a bowel movement and urinate?
14 A Yes.
15 Q His eyes, according to what we have seen, they were
16 responsive?
17 A Yes.
18 Q You didn't see any jerking movements in the child?
19 A No, sir.
20 Q You experienced some jerking movements in the child, come
21 February 22nd.
22 A Yes.
23 Q After seeing those, within six, seven minutes, you're out
24 and to the hospital; right?
25 A Yes, sir.

1 Q So the next day is the 8th, which is Sunday. We've heard
2 that day. Everybody slept well --
3 A Yes.
4 Q -- the night of the 7th?
5 A Yes.
6 Q Baby went to bed okay?
7 A Yes.
8 Q Child get up at any point in time during the night
9 screaming and hollering?
10 A No.
11 Q So the child wakes up on the 8th. Do you notice anything
12 unusual about his breathing, or anything about the
13 movement of his body, any jerking?
14 A No.
15 Q Now the following day is 2/9. You don't go to Dr. Dawis,
16 do you?
17 A No, sir.
18 Q Codie and her mother go?
19 A Yes, sir.
20 Q She describes to you what goes on?
21 A Yes, sir.
22 Q And is it consistent, what she told you is what we've
23 heard here today from her?
24 A Yes, sir.
25 Q Now she returns -- strike that.

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1 She returns to the chiropractor on 2/10,
2 another meeting is set up. You don't go to that one?
3 A No, sir.
4 Q She reports to you what happens and what goes on?
5 A Yes, sir.
6 Q Consistent to what she has told us here in the courtroom?
7 A Yes, sir.
8 MR. DUGGAN: I'm going to object to asking him
9 to couch his answers as just agreeing or disagreeing with
10 what somebody else said. I'd ask him to get direct
11 questions and answers. He's asking for an opinion of the
12 witness, whether his testimony would be consistent. How
13 can we --
14 THE COURT: All right, Mr. Sturtz, need to
15 rephrase.
16 MR. STURTZ: Yes, Your Honor.
17 THE COURT: Or move on.
18 BY MR. STURTZ:
19 Q Following the meeting now with Dr. Dense, she takes the
20 child again, a second time, to Dr. Barrigar?
21 A Yes, sir.
22 Q And on 2/18 she goes back to see Dr. Barrigar?
23 A Yes, sir.
24 Q Between those visits with Dense and Barrigar those two
25 times, do you notice anything with the baby that would

1 turn a light on saying, hey, listen, there's something
2 wrong here?
3 A Not noticeable in my eye, no.
4 Q You don't witness anything about jerking?
5 A At the time, no.
6 Q You don't notice anything about this dime size?
7 A No.
8 Q It's not a bump now, is it?
9 A No, it's pretty much faded by the time of the
10 chiropractor visit.
11 Q It's gone?
12 A Yes.
13 Q So the last visit is on the 18th, and then there are
14 three days, the 19th, the 20th and the 21st. During
15 those three days, are you at home with the child?
16 A Can you repeat the dates again, please?
17 Q The 19th, the 20th and the 21st of February 2015, that
18 would be after the last visit with Dr. Barrigar, were you
19 home?
20 A For the days I were. I worked at night.
21 Q All right. But during the daytime, did you take care of
22 the children?
23 A Yes, I did.
24 Q Did you have any difficulty taking care of both kids,
25 Ella and Roegan?

1 A No, we always had a great time.
2 Q Didn't tax your abilities as a football player to take
3 care of those two?
4 A No, sir.
5 Q On the morning of the 22nd of February, how are you
6 awoken? How are you made awake?
7 A My girlfriend woke up and told me that something's wrong
8 with Roegan. And I had to take him and he smiled at me
9 laughed, it seemed like everything was all right. And we
10 were waking up playing a little bit, and I decided to run
11 a bath, and then he started jerking with his arm and that
12 was it. We took him.
13 Q Dane, I want you to describe how this jerking movement
14 was. If you have to stand up and show us, stand up and
15 show us. If you can do it by sitting? I don't know.
16 A He was kind of like that.
17 Q What you have describe for the ladies and gentlemen and
18 the record here is that you've done something with your
19 right arm, you made kind of like a jerking movement up
20 towards your shoulder; is that correct?
21 A Yes, sir.
22 Q Was the arm bent at the elbow towards the shoulder?
23 A Had it up to his chin.
24 Q Up to his chin?
25 A Yes.

1 Q Was the whole arm -- you tell me. How was the arm
2 shaking? Up and down? Quivering? What was it doing?
3 A He just was simply (witness mimicked the behavior).
4 Q What was the rest of his body doing?
5 A Kind of limp at the time of that was going on.
6 Q Had you ever seen this before?
7 A No, I haven't.
8 Q In the bathtub back on 2/7, you lathered him up, you
9 picked him up. Did you drop him, or did he squirm away
10 from you?
11 A He -- he jerked and I dropped him. Yeah, I dropped him.
12 Q You dropped him?
13 A (Indicating.)
14 Q So the baby didn't back away from you, or anything like
15 that?
16 A Yeah, jerked back when I pulled him out of the water and
17 just he went down. I couldn't do nothing to stop him.
18 Q Was this reaction of the child due to any outward thing
19 going on around him?
20 A Just coming out of the warm water into -- that's what I'm
21 thinking. From when he came out of the cold -- or the
22 hot water to the cold air.
23 Q All right, how cold was it in the house? Was it
24 70 degrees?
25 A Oh, I mean have you ever got out of a shower and just

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1 naked and from a hot shower and it's a little cold.
2 Q Little chilly?
3 A Yes.
4 Q It wasn't 30 degrees below zero, or anything like that --
5 A No, sir.
6 Q -- was it?
7 All right, so you see this jerking. You and
8 the wife, and you take Ella, and you all go to the
9 hospital?
10 A Yes, sir.
11 Q Up to that point in time, did you notice anything wrong
12 with his eyes?
13 A No, I did not.
14 Q You know, we look at eyes. I ought to be able to tell
15 you all this myself because I've had six operations on
16 retinas. The white part of your eye, did you see
17 anything wrong with the white part of his eye?
18 A No, sir, I did not.
19 Q How about his pupil?
20 A No, sir.
21 Q You didn't see anything wrong with that pupil in either
22 eye?
23 A No, sir.
24 Q What about the top of his head? Do you know where they
25 have the soft spot, they call that a fontanel? That's a

1 fancy word for "soft spot," I guess.
2 A No, I didn't notice anything abnormal.
3 Q You didn't see a hole up there, did you?
4 A No, I did not, sir.
5 Q The doctors tell us there was a 12-millimeter hole there.
6 You didn't see it. You didn't see any cut in the skin up
7 there?
8 A No, sir.
9 Q Didn't see any indentation up there, did you?
10 A No, sir.
11 Q Did you ever rub your hand over top of the skull and feel
12 that 12-millimeter --
13 A No, sir.
14 Q -- crack?
15 What about his chest? Did you see anything
16 wrong with his chest, any bruises on his chest?
17 A No, I never did.
18 Q And you notice, outside of that little dime-size, round
19 discoloration, you didn't see anything else on his head
20 at any point in time, did you?
21 A No, sir.
22 Q The doctors talk about two brain hemorrhages, one being
23 old, one being new. You didn't see anything on the
24 outside of his skull showing any injuries in those areas,
25 did you?

1 A No, sir.
2 Q So you come to the emergency room on the 22nd at Covenant
3 Hospital, and you go in what emergency room? The new
4 one? Into the new part? There's a walkway?
5 A Yeah. Yes, sir.
6 Q All right. And you go inside. Where do you go after you
7 hit the doors?
8 A To the emergency room.
9 Q Okay. Are you taken back there by a nurse or some
10 escort?
11 A Yes.
12 Q And what happens to your family, Ella, Codie and you? Do
13 you all go back to the same room where the child is?
14 Where Roegan is?
15 A Yes, sir.
16 Q Do the nurses ask you a history of the child?
17 A Yeah.
18 Q Are both you and Codie cooperative and give them all the
19 information that you know at that point in time?
20 A Absolutely.
21 Q Did you see anything done to your son's hands while in
22 the emergency room?
23 A Yes. Yeah, I did.
24 Q Tell us about that? When do you see this?
25 A He was having another seizure, and the nurses were all

1 trying to get an IV in him.
2 Q Now stop right there. Nurses were trying to get an IV in
3 him. You are in the emergency room cubicle, correct?
4 A Yes.
5 Q The walls are made of cloth, canvas, or are you in --
6 A No, it was a room.
7 Q It was a room?
8 A Yes.
9 Q And how many nurses are in there?
10 A Um, at the time that I'm trying to explain, I'd say five?
11 Four or five, six.
12 Q Any doctors?
13 A Doctors, three four different doctors I've talked to
14 already.
15 Q How about Dr. Kirby? Do you see her? The --
16 A Yes.
17 Q -- good looking blond?
18 A Yes.
19 Q She was there. And what do you see happen to your son?
20 A They were trying to find a vein to put the needle in, and
21 they couldn't. After three our four different tries,
22 another male nurse came in and cranked my son's arm back
23 to where, you know, if you do this and you know you see
24 your hands the way they are, and then you go back far
25 enough you start seeing white, far enough, and then he

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took the needle and put it my son's hand, and then everybody praised him, "Good job, Doctor, thank you," and then he walked out.

Q Do you remember who that gentleman was? Did he say who he --

A If I seen his face I could tell you, but I don't know his name.

Q You didn't see him here in this courtroom?

A No, sir.

Q The position, the way the hand was bent, was it normal or un-normal?

A It was a little abnormal for me.

Q Did the child yell and scream?

A No, he was having a seizure.

Q You then, at that point in time, what do you do?

A When I seen him do that? Sat there and wait for doctors to tell me what's going on. The next direction I gotta go in.

Q Does there come a point in time where you leave?

A Yes, I did leave for about 15 minutes, or 10 minutes or so.

Q And your purpose of leaving was what?

A To take my daughter to Shawn Stevens' house. Her grandmother.

Q So you leave with Ella and you take her right directly to

Mrs. Stevens house; correct?

A Yes, sir.

Q You return?

A Yes, sir.

Q When your wife went to WIC, did you accompany her?

A No, sir.

Q Were you and your wife experiencing formula changing for the child?

A Yes, sir, we were.

Q And what was the reason that you were changing formulas? What was going on that you could see in the baby that prompted you to want to change formulas?

A Vomit. He kept vomiting.

Q When the child was having these vomiting sessions, did you see any of this jerking stuff that you saw --

A No, sir.

Q -- on the 22nd?

A No, sir.

Q Did you see any type of difficulty breathing?

A No, sir.

Q Did you notice any difference in his heart rate?

A No, sir.

Q Temperature?

A No.

Q Baby ever have a fever where his onesie or night clothes

were wet from perspiration?

A No, sir.

Q The only thing you notice was this funny smell he had underneath his cheeks or underneath his chin; is that right?

A Yes, sir.

Q Which prompted you to give him a bath once a day?

A Every two days.

MR. STURTZ: No further questions, Judge.

THE COURT: All right, what order do we want to go in here. Mr. Duggan, cross-exam?

CROSS-EXAMINATION

BY MR. DUGGAN:

Q Good afternoon, Mr. Krukowski. Same type of suggestion to you that I made to Codie. If you don't understand my question, or words I use, please tell me and I'll ask it again. I'll try and make myself clear, okay? Do not answer if you're not sure; okay?

A Yes, sir.

Q All right. Do you have any type of medical training?

A No, sir, I do not.

Q Your counsel just mentioned something about you being a football player. Your jury is aware, from what you've said, are they not, that you've told us you were on a state championship football team at Nouvel Catholic

Central; correct?

A Yes, sir.

Q Because of that, you understand the danger of closed head injuries, or concussions; isn't that correct? Even though you don't have any medical training, you know why you wear a helmet on your head?

A Yes, sir.

Q You know that with a football helmet, which is a high-impact plastic with a lot of foam inside, you can still get a concussion on the football field in a game?

A Yes, sir.

Q And those people on varsity football are 16-, 17-, 18-year-old young men, like you were; right?

A Yes, sir.

Q So even without medical training, when your 11-week-old baby contacts a hard ceramic or porcelain surface bathtub, enough that you later learn it's raising a bump or a bruise or a swelling, you didn't think on your own, forget about what Codie and her mother said, you didn't think on your own, from your experience in football, my kid might have a closed head injury? Right then and there that day, the twenty -- excuse me, the 7th of February, you didn't think he might have that kind of injury?

A At the time, no, I didn't.

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1 Q The next day, Sunday, you didn't think he might have one,
2 when it starts to look more obvious, that his head has
3 contacted the bathtub hard enough to swell or to have a
4 bruise?
5 A The way we were monitoring him, the way he was acting,
6 it -- no, I didn't.
7 Q And again to contrast it with football, you're aware that
8 concussions happen on the football field without a mark
9 on the outside of the head; correct?
10 A From what I seen, no.
11 Q Well, doesn't a football helmet often protect it from a
12 surface injury, even though the head got knocked real
13 hard, the person's bell was rung, as they say?
14 A Depends on how hard the hit.
15 Q For the bathtub fall incident, what was your idea of what
16 treatment you could provide as parents at home? Walk
17 through with me what steps you were going to take, the
18 way, I guess since you're acting as the doctor or the
19 nurse, you would do to relieve that circumstance?
20 A You know, we monitor --
21 Q Please keep your voice up.
22 A We monitor -- monitored him to make sure that he was
23 okay. I'm not an expert medical doctor, but from the way
24 he was acting, I really didn't raise a lot of the biggest
25 concern, I should say, because he wasn't passing out, he

1 wasn't having seizures, he wasn't -- and we just decided
2 that we were going to keep warm and cold on it and try to
3 just monitor him the best we can.
4 Q Okay. You've talked about putting the cool cloth on,
5 Codie and you putting the cool cloth on with the bag of
6 peas. You just said warm and cold. Was part of your
7 treatment plan to you use warm?
8 A Room temperature. Let it -- take the ice off, let it
9 relax and then --
10 Q I gotcha.
11 A Right.
12 Q So it wasn't like a heating pad, or actual heated-up
13 cloth, alternating with the cold?
14 A No. No, sir.
15 Q I believe I heard you say on the statement you gave the
16 detectives that you were checking out the fontanel, or
17 the soft spot, and it wasn't squishy or nasty; do you
18 remember using those words on the day they interviewed
19 you, February 22nd?
20 A Not -- not the -- I didn't even know what a fontanel was.
21 Q Do you know what the soft spot was?
22 A Yes.
23 Q And when they were talking about it, I don't know that
24 they ever used the word "fontanel," but I believe they
25 were talking about the soft spot. Is that what you

1 understood when they were asking you, when you gave the
2 answer it wasn't squishy or nasty?
3 A I don't remember talking about the soft spot. I remember
4 talking about the bump that was on his head --
5 Q I'm sorry.
6 A -- wasn't squishy and nasty.
7 Q I may have misunderstood your answer. So you were
8 feeling in the area where he had contacted the tub?
9 A Yeah. Yes.
10 Q Okay. So if it had been firm, that would have been okay
11 with you, medically?
12 A I wouldn't know because I'm not an expert.
13 Q All right. Did you ever have any other fall incident
14 with Roegan?
15 A No, sir.
16 Q Do you remember being talked to by Carrie Blohm, the CPS
17 worker, either at the time of the hospital in February of
18 2015, or thereafter, talking with her?
19 A Yes, I do, sir.
20 Q Do you remember telling Carrie Blohm, approximately
21 two weeks before your birthday on January 24, you were
22 walking while holding the baby on the right side of your
23 body and tripped on a toy and fell down the steps. You
24 demonstrated that you fell on your right side and slid
25 down the steps. You stated the baby was crying, but you

1 and Codie did not take the baby to the doctor because the
2 baby has been colicky. Do you remember making that
3 statement to Carrie Blohm?
4 A Not that statement, sir.
5 Q Did you ever have a fall with the baby like that, falling
6 down the steps sometime a couple weeks before your
7 birthday in January?
8 A There was 12 steps going down the stairs, and then
9 there's a single drywall wall right there. And I'm 307
10 pounds, and if I went tumbling down the stairs I would
11 have ended up in the bathroom. So therefore, no, I did
12 not fall down the stairs.
13 Q My question was do you remember telling her you did when
14 she asked you if there was any other fall?
15 A I told her I literally caught one stair and went to my
16 butt and came back up. Popped back up.
17 Q Do you remember saying you had the baby on your right
18 side and you fell on your right side?
19 A No, I never said that.
20 Q Did that happen, what you just described?
21 A What?
22 Q We're going from talking about what you said to Carrie
23 Blohm, to having you tell us now what happened in that
24 couple weeks before your birthday in January of 2015?
25 A Yeah, I simply slipped on that stair, went down on my

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1 butt, popped back up.
2 Q And the way you're using your hands, for the record,
3 you're suggesting that the baby was against your belly or
4 your chest, not being crushed against the floor or a
5 wall; is that what you're saying?
6 A Yes, sir.
7 Q Okay. Was that fall one that caused the baby to jerk
8 suddenly or violently?
9 A No, he was still asleep.
10 Q When you testified on direct examination a minute ago to
11 Mr. Sturtz about what you told the medical people on
12 February 22nd when you brought Roegan in, you said that's
13 the only thing, only other fall that we had -- or that he
14 had. But when Carrie Blohm asked you a few days after
15 that, you brought this up on your own?
16 A Well, she --
17 Q Did you forget it?
18 A Yeah. She came into the jail and had talked to me and
19 said --
20 Q Well, you're not answering my question. I don't know if
21 I want all the things she talked to you about.
22 Did you forget it when you were there on
23 February 22nd, when the doctors and nurses at the ER were
24 asking you what falls or problems that you might have
25 had, or the baby might have had, did you forget about the

1 one that happened in January?
2 A I just simply didn't see it as a fall. I slipped, I came
3 down on one stair, came back up, and he didn't even wake
4 up. You know what I mean? He was still sleeping.
5 Q I understand --
6 A Yes, sir, I forgot to --
7 Q -- that you didn't tell on the 22nd, but you brought it
8 up when you talked to Carrie Blohm a few days later. Why
9 did you bring it up to Carrie Blohm?
10 A Afterwards I was reminiscing and everything possible that
11 could have happened to my son, because she told me he was
12 going to die.
13 Q Okay.
14 A And if I didn't come up with something better, that I'm
15 going to spend the next ten years in prison of my life.
16 Q When you grabbed Roegan in the bathtub, did his head jerk
17 back when you picked him up?
18 A I don't believe so. It happened so fast, it was within
19 seconds, I -- I don't believe so.
20 Q I understand on February 22nd, being interviewed by
21 police, for the jury that heard the statement in its
22 entirety, you were pretty upset?
23 A Yes, sir.
24 Q You feel that was accurate to say you were upset?
25 A Yes, sir.

1 Q Okay. You even used some language you probably wish you
2 didn't have to hear played back. But you were expressing
3 how you felt at the time; right?
4 A Yes.
5 Q You used the expression, "I scooped the shit out of the
6 baby"?
7 A Yes.
8 Q Was that a description of how quickly or violently you
9 did it to get him out of the water?
10 A Yes.
11 Q And in that process of scooping him that way, because of
12 whatever emotions you were experiencing, his head did
13 jerk back?
14 A Like I said, I -- I didn't, in the seconds that it did
15 happen, I didn't recognize that it did, but it very well
16 could have in the motion of me bringing him back to my
17 chest.
18 Q You've had two babies in your life?
19 A Yes, sir, I have.
20 Q Ella and Roegan. With an infant, is it your
21 understanding, as a father, that when you pick up an
22 infant, you cradle the head in such a way his head just
23 doesn't flop backwards?
24 A Yes, sir.
25 Q Did you do that when you picked him up out of the

1 bathtub?
2 A No, sir, I did not.
3 Q Is that because of the adrenaline and the intensity of
4 the moment that you were scared and you didn't take care
5 to protect his head and his neck?
6 A I just seen it simply my son was -- just hit his head on
7 the tub and was facedown in the water, and I need to get
8 him out before he drowns.
9 Q Okay.
10 A I didn't intentionally not cradle him slowly out of the
11 water. Sorry.
12 Q You believe you reached, like under his armpits to scoop
13 him, around his chest?
14 A Grabbed him like that.
15 Q Is that true?
16 A Yes, sir.
17 Q And had you had another second or two to think of it, you
18 might have grabbed one hand and maybe support his head or
19 neck, but you just didn't think quick enough?
20 A Honestly, I just didn't have the reaction time to think.
21 I just --
22 Q Okay.
23 A -- had to get him.
24 Q Had you ever seen his head go under water before in the
25 bathtub?

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1 A No, sir.
2 Q In the sink, when he's getting a bath there?
3 A Sink isn't big enough for him to go under water.
4 Q Had you seen Ella's head go under water as a baby like
5 him?
6 A No, sir.
7 Q By the tame she was older, two or three when this
8 happened, did she get in little swimming pools, or at the
9 lake or --
10 A Yes.
11 Q You have to speak up.
12 A Yes, sir. Sorry.
13 Q And babies aren't bad, as far as you understand it -- not
14 babies. Children aren't bad, as far as you can see from
15 your experience. They go under water without drowning,
16 don't they?
17 A Yeah, when they probably knew how to hold their noses and
18 their breath.
19 Q Okay. Did you ever tell Codie that you had slipped on
20 that toy back in January and fell?
21 A No, sir, I didn't.
22 Q Did you ever tell Codie, when she came upstairs and you
23 interacted with her about the slip in the bathtub or the
24 dropping in the bathtub, that you had scooped him real
25 hard?

1 A No. No, I didn't.
2 Q You've described holding him for the purpose of giving
3 him the bath by bringing him up out of his bath seat, or
4 bath device, to your body, and he squirted to your right,
5 he jerked to your right; correct?
6 A Yes.
7 Q And was there a soaping up that happened before he jerked
8 out? Had you soaped him up before he jerked out of your
9 arms?
10 A Yeah, I had it on my hands.
11 Q Your voice is -- you're trailing off.
12 A I said, yeah, my hands were soapy. I get them lathered
13 up, and before I go in the water I get another squirt of
14 soap in there. And when I go to pick him up, I kind of
15 coat my hand because it washes off this hand a little
16 bit. And I take this hand and wash his butt, and his
17 back, and the back of his head. But as soon as I went to
18 pick him up, he jerked and, yeah, rolling to the right.
19 Q Had you soaped him up, or not, before he jerked out of
20 your arms?
21 A No, he was wet, and my hands were soapy.
22 Q I'm talking about his whole body, though. Had you gotten
23 to the point where you'd soaped him up to wash him?
24 A Not before I picked him up, no. I did his head, washed
25 his head.

1 Q I'm talking about the point he's up against your body and
2 the plan is hold him with one hand and apply the soap, as
3 you say to his head and his back, his body --
4 A I understand that, sir. But I'm telling you when I went
5 to go pick him up, he jerked out of my hands. And before
6 any motion, went down and hit his head on the tub.
7 Q So the answer to my question is you might have had some
8 soap on your hands, but he wasn't all soaped up, his body
9 hadn't been soaped up yet?
10 A No, but he's soaking wet from being in the water.
11 Q Which you think would make him potentially slippery?
12 A Of course.
13 Q So you're taking extra care to make sure you don't drop
14 this baby that doesn't like to come out of the warm water
15 into the cold and have him get away from you; you're
16 thinking of that at the time?
17 A I don't know what I'd be thinking. I'm just washing my
18 son.
19 Q You weren't thinking of it at the time?
20 A Well, I mean at the time -- I mean I guess not. It was
21 while I'm giving my son a bath, I've given my son a bath
22 quite a few times since he's been home. I mean does that
23 run through -- I guess that's -- never mind.
24 Q Was he squealing or crying the way he does when he gets
25 taken from the warm environment to the cold? On this

1 day, the day he fell, did he squeal or cry?
2 A Just like this, jerked back.
3 Q Arched his back a little?
4 A (Witness nodded.)
5 Q Yes?
6 A Yes. Not a little. Quite a bit.
7 Q Okay. When did you see the goose egg? That day? The
8 next day? Or ever?
9 A I believe it was next day.
10 Q When did you see the swelling? That day or the next day?
11 A Isn't a goose egg and swelling the same thing.
12 Q Well, I want to give you the option of telling me if they
13 are different to you. Are they different?
14 A No.
15 Q Okay. And when did you see bruising, or what could be
16 bruising, to your eyes, that day or the next day?
17 A I believe it was pretty shortly after I had dropped him
18 in the tub.
19 Q Were you okay with the, to your knowledge of it, since
20 you weren't there at the office when it happened, the
21 chiropractic work being done on your son? Do you think
22 he was getting a benefit out of it, based on the way he
23 behaved after his chiropractic adjustments?
24 A I guess I couldn't really tell because we were informed
25 with the chiropractor and still switching, um.

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1 Q Formula?
2 A Yes. Sorry.
3 Q So you're not sure.
4 A No, sir.
5 Q By the time you were talked to by the detectives, had
6 you, on February 22nd at the hospital, had you come to
7 the conclusion in your own mind that you should have
8 taken him, you, Dane, not you and Codie, but you, Dane,
9 should have taken Roegan to the hospital the date of the
10 fall in the bathtub two weeks before? Had you concluded,
11 looking back in hindsight, that's what you should have
12 done?
13 A Knowing what I know now, yes, I should have, absolutely.
14 Q You heard Codie testify here in response to my question
15 that Ella had gone to the ER six times before she was
16 two. Do you remember that testimony?
17 A Yes, I do, sir.
18 Q Were you around when Ella had some of her trips to the
19 hospital, check out her bumps and bruises and so forth?
20 A No, sir.
21 Q Okay. But you were -- were you aware that Ella had been
22 to the emergency room a lot?
23 A Yes, I was.
24 Q Was there any concern about an expense, a monetary cost,
25 to go to the ER on February 7th when the baby hit his

1 head in the bathtub? Were you at all concerned about
2 affording it, or having insurance, or any issues relating
3 to paying for it?
4 A No, sir.
5 Q Would it be fair to say, though, on February 7th, when
6 the bump to the bath -- in the bathtub happened, Shawn
7 comes over and talks to you and Codie, you're seeing the
8 baby developing what appears to be, on the surface, an
9 evidence of injury, whether it's the bump, or the bruise,
10 or what have you over the next day or two. Did you have
11 it in your mind that, if you do take the baby in, CPS is
12 going to get involved?
13 A No.
14 MR. DUGGAN: Counsel and Your Honor, I'm going
15 to go to Exhibit C -- it's going to be Exhibit D.
16 THE COURT: Exhibit what?
17 MR. DUGGAN: It's going to be D.
18 THE COURT: Okay, Exhibit D. Which is a video;
19 correct?
20 MR. DUGGAN: Yes, it will be the second of
21 Mr. Krukowski. And I have footage indicator 8 is my --
22 on the time stamp is 16:15:13 hours.
23 MR. STURTZ: I'm sorry, say that again?
24 MR. DUGGAN: On the time stamp is 16:15:13,
25 which I believe to be 4:15 and 13 seconds, and I'm

1 starting it at about footage indicator 8.
2 Please watch the screen, I think it you should
3 be able to hear it.
4 (At 4:47 p.m. the video was played for the
5 juries.)
6 BY MR. DUGGAN:
7 Q You just heard the officer ask you a question about CPS
8 getting involved, and you said that was going through
9 your head. Is that something that was going through your
10 head back on February 7th?
11 A See, when me and my mom kind of --
12 Q Well, this is going to be a yes or no. It's a yes or no.
13 Your counsel may want to explore it further, but I don't
14 know if I want a narrated answer about other interactions
15 with people.
16 A The fact that my mom wanted to take my kids from me was
17 running through my mind. But the fact of seeking medical
18 attention for my son --
19 Q No, you've answered my question.
20 A -- was never --
21 Q I wanted to know if you were concerned about CPS, which
22 could be accomplished through what your mother was trying
23 to do, you're saying?
24 A No, I wasn't worried about it.
25 MR. DUGGAN: No further questions.

1 THE COURT: All right. Mr. Bush, did you have
2 any questions?
3 MR. BUSH: No, I do not, Your Honor.
4 THE COURT: Mr. Sturtz, redirect?
5 REDIRECT EXAMINATION
6 BY MR. STURTZ:
7 Q Dane just for clarification for this last playing here,
8 CPS was not running through your mind at all at that
9 point in time; is that correct?
10 A No. Just after being told five, six different times a
11 different way, what else do I have to say to the
12 officers? You know what I mean? No. It really,
13 honestly, seeking medical attention for my son never
14 played a factor in, oh, CPS is going to be called,
15 absolutely not.
16 MR. STURTZ: Thank you.
17 THE COURT: All right, any questions from the
18 jury for this witness? Looks like there's a few.
19 Counsel, do you want to approach?
20 MR. DUGGAN: I might have a follow-up to that
21 before we get to the jury questions.
22 THE COURT: All right.
23 MR. DUGGAN: Shall I ask my follow-up, or do
24 you want to do the jury questions?
25 THE COURT: Go ahead and ask your follow-up.

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1 I'll start looking at these.
2 RECROSS-EXAMINATION
3 BY MR. DUGGAN:
4 Q Sir, I'm -- I'm, frankly, going to question your
5 statement now to the jury under oath that CPS, Child
6 Protective Services, and what they do when they intervene
7 in families' lives between parents and kids, wasn't at
8 all on your mind, either on February 7th when Roegan hit
9 his head and you decided not to take him in, or on
10 February 22nd when you did decide to take him in. Are
11 you saying you that was never a concern, or even an issue
12 or question in your mind?
13 A No, sir.
14 Q Had you had encounters before that date with CPS?
15 A Me? No.
16 Q Had Codie had such encounters?
17 MR. STURTZ: Objection, Judge. Objection.
18 MR. BUSH: Objection.
19 MR. STURTZ: May we approach the bench?
20 THE COURT: Yes.
21 (At 4:51 p.m., bench conference off the
22 record.)
23 THE COURT: Anything else, Mr. Duggan?
24 MR. DUGGAN: No further follow-up. I guess we
25 all should have stayed up there to read the questions.

1 THE COURT: That's right.
2 (At 4:52 p.m., bench conference off the
3 record.)
4 THE COURT: All right, let me just say this,
5 ladies and gentlemen. There's a number of questions
6 here. Some of them I am not going to ask because they're
7 either just irrelevant to what you have to decide, or
8 there's already evidence before you and you have to
9 decide it. Really, and you're going to hear this, you're
10 going to get instructions about what you have to decide
11 and how to do that, so that's what you need to focus on,
12 based on whatever evidence you have when we finally get
13 to that point. So as I told you when we started, some of
14 the questions I can ask, some of them I can't, or we
15 don't think that they're appropriate. So I'm going to
16 ask some of these right now. The other ones, we're just
17 not going to.
18 So, Mr. Krukowski, were you with Roegan alone
19 24 to 48 hours before taking him to the hospital
20 emergency room where he displayed the injuries?
21 THE WITNESS: No, I wasn't. Usually when I
22 watched my son, I always had somebody like a friend,
23 usually a friend, my buddy Ryan or my buddy Will, with me
24 there. Which was pretty much an everyday occurrence
25 because my friend Will didn't have a place to live so he

1 was usually with me.
2 THE COURT: How often were you left alone with
3 Roegan?
4 THE WITNESS: Not very. Because I worked
5 various hours from nine o'clock in the morning till
6 four o'clock, either/or 3:45 until 11:00, and then I'd go
7 bounce right after that until 3:30 in the morning.
8 THE COURT: And Ella?
9 THE WITNESS: Left alone?
10 THE COURT: Anything different? I mean these
11 are like two separate questions. How long were you left
12 alone with Ella, or Roegan and Ella?
13 THE WITNESS: Same answer. I've usually always
14 worked.
15 THE COURT: Okay.
16 THE WITNESS: Many, many hours.
17 THE COURT: When you were alone with them, how
18 long would that be, usually?
19 THE WITNESS: Not very -- not very long. It
20 was rarely often I was with my kid alone. I usually had
21 somebody with me.
22 THE COURT: Has anyone besides Codie, Shawn or
23 yourself cared for Roegan without you or Codie or Shawn
24 being present?
25 THE WITNESS: I can't answer on her behalf,

1 with her friends, but I know just the doctors that have
2 had him in their care.
3 THE COURT: Okay.
4 THE WITNESS: All of them.
5 THE COURT: Did you or Codie tell the emergency
6 room staff about the February 7th fall when you first got
7 in the room?
8 THE WITNESS: Absolutely. There was like three
9 our four different doctors that asked me the same
10 question, and I do believe it was Jessica Kirby, or a
11 male doctor, good looking man with slicked back hair came
12 and asked me, and I, right off the bat, had told him what
13 had happened on February 7th.
14 THE COURT: Okay. Why didn't you tell anybody
15 about the second fall that happened in January before
16 February 22nd or at the hospital emergency room?
17 THE WITNESS: I -- I -- to be honest, I know
18 you guys, you know, hear it sounded like a fall, but it
19 wasn't a fall. It was literally one slip on a stair, and
20 I bounced straight back up, got up, he was sleeping, and
21 I just didn't really think nothing of it until CPS came
22 and started talking to me and saying you need to come up
23 with something different because it ain't adding up. And
24 I just reminisced and reminisced on everything that could
25 have possibly happened, and that's when I told them about

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1 that.
2 THE COURT: Okay. Any follow-up, Mr. Duggan?
3 RECROSS-EXAMINATION
4 BY MR. DUGGAN:
5 Q According to Exhibit 25, which was Codie's Rite Aid
6 schedules, she worked 9:00 a.m. to 4:00 p.m. on Friday,
7 February 20th. Do you have any present memory whether
8 you were the sole caregiver during that shift she worked
9 in the morning from 9:00 a.m. to 4:00 p.m.?
10 A I really don't know. I --
11 Q I don't want you to guess. Can you say with certainty
12 that you had one of these buddies with you, or you
13 didn't, when Codie went to work and left the children
14 with you on Friday between 9:00 a.m. and 4:00 p.m., the
15 20th of February?
16 A I really don't think I watched the kid that day. Because
17 I worked at 3:45, and there's no way for her to be home
18 when I have to be to work at 3:45 and she gets home at
19 4:00.
20 Q There's about a half an hour there to give you time to
21 get to work, 15 minutes to get to work, where --
22 A What I remember, I do believe my -- Shawn Stevens
23 watching them, but I -- because that's usually what
24 happened when we had conflicting schedules working, her
25 mother or John Browning watched them.

1 Q Okay. But that's the word "usually" was in your answer.
2 So you're not able to say with any certainty that you
3 were or were not the caregiver alone with the children on
4 February 20th?
5 A I'm not -- no, I do believe I worked, and I can actually
6 go back to Grand Central and get my schedule.
7 Q That's a different issue. Because you say -- well, it's
8 15 minutes before her shift ended you had to be to work.
9 3:45 p.m.; right?
10 A Yeah.
11 Q I'm accepting that. That's fine. Did you work Monday
12 through Friday every week?
13 A On Monday through Sunday, usually.
14 Q Okay. Always the same shift?
15 A No. They bounced back and forth.
16 Q With any consistency?
17 A I usually, Monday I'd work mornings, Tuesday nights,
18 Wednesday mornings. You know, it just bounced off --
19 Q So what did you work Fridays, if you remember?
20 A Usually nights.
21 Q Which would begin at 3:45?
22 A Yeah.
23 Q Okay. And so if Codie says you're watching the babies
24 that day, the only way that could have happened is if
25 somebody -- either you go to work late, she comes home

1 early, or you get some coverage for the transition time;
2 right?
3 A See, it didn't work like that. When we knew we had
4 conflicting schedules like that, her mother was already
5 notified the day before that, hey, you're going to have
6 to watch them probably all day.
7 Q Okay. So what you're trying to tell the jury is, because
8 you have to go into work at 3:45 p.m. on Friday,
9 February 20th, and Codie has a 15-minute overlap with
10 that in 9:00 a.m. to 4:00 p.m., you're saying that you
11 wouldn't watch your kids the whole day. You would have
12 Shawn Stevens watch them the whole day --
13 MR. STURTZ: Judge, objection.
14 BY MR. DUGGAN:
15 Q -- while you did nothing else?
16 A I got an answer for it.
17 MR. STURTZ: Judge, objection. This question's
18 been asked and answered six times already.
19 THE COURT: I don't think that's accurate. I
20 think he's trying to get clarification, so I will allow
21 it.
22 Can you answer the question, sir?
23 A Shawn Stevens is a great grandmother and she loves taking
24 her grandchildren to watch them. And at the time we only
25 had one vehicle, so if I had to run all the way to her

1 house, drop the kids off, go pick her up and have her
2 drop me back off within the 15-minute time span, I'd be
3 late for work. So Shawn Stevens would call the night
4 before to say, hey, drop them off in the morning and I'll
5 take care of them for the day.
6 BY MR. DUGGAN:
7 Q Again, it's got one of those qualifiers. That would
8 happen. Do you know on that date that did happen? Not
9 what usually happened, what could have happened, or what
10 often happened, but did it happen on that day?
11 A I do believe so.
12 Q Okay. You're at a point where you are saying with
13 certainty?
14 A And I can go back to my work and retrieve old schedules
15 and see for a hundred percent sure.
16 I might have worked that morning --
17 THE COURT: Sir, there's no question.
18 THE WITNESS: I'm sorry. All right.
19 BY MR. DUGGAN:
20 Q So there are times, are there not, when, because of the
21 division of responsibility, there's two kids to watch,
22 maybe Ella's with Codie, or in a room on her own, and
23 you're with the baby, where Codie's not in a position,
24 and none of your friends that you mentioned the names of,
25 are in a position to see what you're doing with Roegan?

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A No, usually family time was pretty important to us so we stuck together, pretty much, throughout the house.
Q Not when he hit his head?
A No, sir.
MR. DUGGAN: No further questions.
THE COURT: Anything else, Mr. Bush?
MR. BUSH: No questions.
THE COURT: Mr. Sturtz?
MR. STURTZ: No questions.
THE COURT: You can step down.
THE WITNESS: Thank you, Judge.
THE COURT: Wait a minute, we have another question.
(At 5:09 p.m., bench conference off the record.)
THE COURT: All right, Mr. Krukowski, did you tell anyone, including the detectives, that you always or you usually had a friend with you every time you were caring for the children?
THE WITNESS: No, I didn't. To be honest with you, I don't really remember half the things that I said in that video because I was -- you guys seen it.
THE COURT: All right, you can step down.
THE WITNESS: Thank you, ma'am.
THE COURT: Counsel, would you approach,

please?
(At 5:10 p.m., bench conference off the record.)
THE COURT: All right, ladies and gentlemen, I just wanted to talk to the attorneys about our schedule. Tomorrow you'll be returning and you should expect to be here for the entire day, the usual 9:00 to 12:00, 1:30 to 5:00. And then Friday I had, during voir dire when we first started this whole process, I had said you would not have to be here. Potentially, you could be here if you -- unless somebody has a conflict, so I need to know if anybody has a conflict, or something else scheduled that they cannot be here on Friday if they would need to be? Okay. So potentially then you will need to be here on Friday, so just plan on that. But definitely tomorrow.
So we had quite a long day today, I'll excuse you for the evening. Don't talk about the case with anyone. Don't listen to anything about the case. Don't read anything about the case. Don't do any kind of independent research about the case. Report back to your jury rooms by nine o'clock tomorrow morning and we'll try to get started and conclude here. Have a nice evening.
THE BAILIFF: All rise please for the juries.
(At 5:13 p.m., juries excused.)

THE COURT: Counsel, can you get the door, please? All right, we were talking about the schedule. You wanted to meet again about jury instructions. We can do that in the morning at 8:30 and hopefully finalize those. There's a few that I saw that we need to firm up, and you can look at them tonight, figure out if there's anything else you need or how you want to tweak those. So then we can go the full day tomorrow.
Do you want to address the issue of the tape at this point, or do you want to wait until tomorrow morning and address that?
MR. STURTZ: Let's wait till tomorrow morning.
THE COURT: All right, so we'll do that then right after we get done with jury instructions.
MR. DUGGAN: Before he rests, if that's what happens, I would be moving to admit any exhibits that I offered that weren't yet received, there's only a couple that I don't see checked off.
THE COURT: All right, well do that tomorrow then.
MR. DUGGAN: Okay.
THE COURT: We'll be in recess.

(At 5:14 p.m., court recessed.)

STATE OF MICHIGAN)
) SS
COUNTY OF SAGINAW)

I certify that this transcript is a complete, true and correct transcript of the proceedings and testimony taken in this case before the Honorable Janet M. Boes, Circuit Judge, in Saginaw, Michigan.

_____

JEFFREY D. STUPAK, RPR, CSR 8314
Official Court Reporter
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1 STATE OF MICHIGAN)
2) SS
3 COUNTY OF SAGINAW)
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7
8 I certify that this transcript is a complete, true
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10 in this case before the Honorable Janet M. Boes, Circuit Judge,
11 in Saginaw, Michigan.
12
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1 STATE OF MICHIGAN

2 IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW

3

4 PEOPLE OF THE STATE OF MICHIGAN,

5 vs. File No. 15-041274-FH-3

6 **VOLUME VI of VII**

7 DANE RICHARD KRUKOWSKI,

8 Defendant.

_____/

9

10 PEOPLE OF THE STATE OF MICHIGAN,

11 vs. File No. 15-041275-FH-3

12 **VOLUME VI of VI**

13 CODIE LYNN STEVENS,

14 Defendant.

_____/

15

16 JURY TRIAL

17 BEFORE THE HONORABLE JANET M. BOES, CIRCUIT JUDGE

18 Saginaw, Michigan - May 5, 2016

19 APPEARANCES:

20 For the People: MR. PATRICK O. DUGGAN (P29978)
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* * *

Saginaw, Michigan

May 5, 2016

(At 9:22 a.m., proceedings commenced.)

THE BAILIFF: All rise, please. The 10th Circuit Court for the County of Saginaw is now in session, the Honorable Janet M. Boes presiding.

THE COURT: Please be seated.

Counsel, let me remind you closing arguments are going to be limited to one hour or less, which would be nice. I'll give you a warning at -- do you want it at five or 10?

MR. DUGGAN: I'd prefer it at 10.

THE COURT: Okay.

MR. DUGGAN: Ten and five, actually.

THE COURT: Well, I'll give you at least one. I'll try to give you two. I'll do the 10, and then if I remember I'll do the five.

Everyone is back on People vs. Krukowski. I think there were some things that we need to put on the record. We did go over the jury instructions again this morning so that we have our final version. Counsel, did you want to make any comment on any of that?

MR. DUGGAN: On instructions, I'm satisfied.

THE COURT: On instructions, yes.

MR. DUGGAN: I'm satisfied with what we agreed

1 purpose to alert them to penalty because he did try to
2 obliterate it, but it showed through.
3 THE COURT: All right.
4 MR. DUGGAN: Thank you.
5 THE COURT: I can give them a cautionary
6 instruction if you want. I think there's something
7 actually in here --
8 MR. DUGGAN: I think I'll rely on the general
9 instruction.
10 THE COURT: All right. So we're fine. 1:45.
11 (At 1:17 p.m., court recessed until 2:07 p.m.)
12 THE BAILIFF: All rise please, court is again
13 in session.
14 THE COURT: Ready for the jury, counsel?
15 MR. DUGGAN: Yes.
16 MR. STURTZ: Yes.
17 MR. BUSH: Yes.
18 THE COURT: We have a substitute for 4.52 which
19 will be 4.51. We'll bring the juries in.
20 THE BAILIFF: All rise, please.
21 (At 2:09 p.m., both juries returned.)
22 THE COURT: Please be seated.
23 Welcome back, ladies and gentlemen. We're in
24 the home stretch here. At this point I will be giving
25 you final instructions, and you will get a copy of these

1 to take into the jury room with you.
2 Members of the jury, the evidence and the
3 arguments in this case are finished, and I will now
4 instruct you on the law. That is, I will explain the law
5 that applies to this case.
6 Remember that you have taken an oath to return
7 a true and just verdict based only on the evidence and my
8 instructions on the law. You must not let sympathy or
9 prejudice influence your decision.
10 As jurors, you must decide what the facts of
11 this case are. This is your job and nobody else's. You
12 must think about all the evidence and then decide what
13 each piece of evidence means and how important you think
14 it is. This includes whether you believe what each of
15 the witnesses said. What you decide about any fact in
16 this case is final.
17 It is my duty to instruct you on the law. You
18 must take the law as I give it to you. If a lawyer says
19 something different about the law, follow what I say. At
20 various times, I have already given you some instructions
21 about the law. You must take all my instructions
22 together as the law you are to follow. You should not
23 pay attention to some instructions and ignore others.
24 Some of these instructions may refer to the
25 defendant as he or she. Whichever term is used, it is

1 deemed to include both the feminine and masculine
2 genders, so it applies to each of the defendants.
3 While you should listen carefully as I read
4 these instruction aloud to you, you don't have to worry
5 about trying to memorize them. When you go to the jury
6 room to deliberate, you will have a complete written set
7 of all these instructions.
8 When you see the printed instructions, you may
9 notice that some of them are printed in slightly
10 different formats. Pay no attention to this. Jury
11 instructions are taken from a variety of sources that may
12 be in different formats. You may also notice some pages
13 with numbers and letters in the upper left corner. These
14 are reference numbers which have no significance for you
15 and you should pay no attention to them.
16 You will also have a verdict form that lists
17 the questions you need to answer in order to decide this
18 case.
19 A person accused of a crime is presumed to be
20 innocent. This means that you must start with the
21 presumption that each defendant is innocent. This
22 presumption continues throughout the trial and entitles
23 the defendant to a verdict of not guilty unless you are
24 satisfied beyond a reasonable doubt that he is guilty.
25 Every crime is made up of parts called

1 elements. The prosecutor must prove each element of the
2 crime beyond a reasonable doubt. The defendant is not
3 required to prove his innocence or to do anything. If
4 you find that the prosecutor has not proven every element
5 beyond a reasonable doubt, then you must find the
6 defendant not guilty.
7 A reasonable doubt is a fair, honest doubt
8 growing out of the evidence or lack of evidence. It is
9 not merely an imaginary or possible doubt, but a doubt
10 that is based on reason and common sense. A reasonable
11 doubt is just that: A doubt that is reasonable, after a
12 careful and considered examination of the facts and
13 circumstances of this case.
14 When you discuss the case and decide on your
15 verdict, you may only consider the evidence that has been
16 properly admitted in this case. Therefore, it is
17 important for you to understand what is evidence and what
18 is not evidence.
19 Evidence includes only the sworn testimony of
20 witnesses, the exhibits admitted into evidence, and
21 anything else I told you to consider as evidence.
22 Many things are not evidence, and you must be
23 careful not to consider them as such. I will now
24 describe some of the things that are not evidence.
25 The fact that the defendant is charged with a

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1 crime and is on trial is not evidence. Likewise, the
2 fact that he is being tried in the same trial with a
3 codefendant is not evidence.
4 The lawyers' statements and arguments are not
5 evidence. They are only meant to help you understand the
6 evidence and each side's legal theories. You should only
7 accept things the lawyers say that are supported by the
8 evidence or by your own common sense and general
9 knowledge. The lawyers' questions to the witnesses, your
10 questions to the witnesses, and my questions to the
11 witnesses are also not evidence. You should consider
12 these questions only as they give meaning to the
13 witnesses' answers.
14 My comments, rulings, questions, and
15 instructions are also not evidence. It is my duty to see
16 that the trial is conducted according to the law, and to
17 tell you the law that applies to this case. However,
18 when I make a comment or give an instruction, I am not
19 trying to influence your vote or express a personal
20 opinion about the case. If you believe that I have an
21 opinion about how you should decide this case, you must
22 pay no attention to that opinion. You are the only
23 judges of the facts, and you should decide this case from
24 the evidence.
25 At times during the trial, I have excluded

1 evidence that is offered or stricken testimony that was
2 heard. Do not consider those things in deciding the
3 case. Make your decision only on the evidence that I let
4 in, and nothing else.
5 Your decision should be based on all the
6 evidence, regardless of which party produced it.
7 You should use your own common sense and
8 general knowledge in weighing and judging the evidence,
9 but you should not use any personal knowledge you may
10 have about a place, person, or event. To repeat once
11 more, you must decide this case based only on the
12 evidence admitted during this trial.
13 As I said before, it is your job to decide what
14 the facts of this case are. You must decide which
15 witnesses you believe and how important you think their
16 testimony is. You do not have to accept or reject
17 everything a witness said. You are free to believe all,
18 none, or part of any person's testimony.
19 In deciding which testimony you believe, you
20 should rely on your own common sense and everyday
21 experience. However, in deciding whether you believe a
22 witness' testimony, you must set aside any bias or
23 prejudice you may have based on the race, gender, or
24 national origin of the witness.
25 There is no fixed set of rules for judging

1 whether you believe a witness, but it may help you to
2 think about these questions: Was the witness able to see
3 or hear clearly? How long was the witness watching or
4 listening? Was anything else going on that might have
5 distracted the witness?
6 Did the witness seem to have a good memory?
7 How did the witness look and act while
8 testifying? Did the witness seem to be making an honest
9 effort to tell the truth, or did the witness seem to
10 evade the questions or argue with the lawyers?
11 Does the witness' age and maturity affect how
12 you judge his or her testimony?
13 Does a witness have any bias, prejudice, or
14 personal interest in how this case is decided?
15 Have there been any promises, threats,
16 suggestions or other influences that affected how the
17 witness testified?
18 In general, does the witness have any special
19 reasons to tell the truth, or any special reason to lie?
20 All in all, how reasonable does the witness'
21 testimony seem when you think about all the other
22 evidence in the case?
23 Sometimes the testimony of different witnesses
24 will not agree, and you must decide which testimony you
25 accept. You should think about whether the disagreement

1 involves something important or not, and whether you
2 think someone is lying, or is simply mistaken. People
3 see and hear things differently and witnesses may testify
4 honestly but simply be wrong about what they thought they
5 saw or remembered. It is also a good idea to think about
6 which testimony agrees best with the other evidence in
7 the case.
8 Dane Krukowski and Codie Stevens are both on
9 trial in this case. The fact that they are on trial
10 together is not evidence that they were associated with
11 each other or that either one is guilty.
12 Each defendant is entitled to separate
13 consideration of the case made against him or her, by the
14 jury that was selected and sworn to decide that
15 defendant's case. Each is entitled to have his or her
16 case decided on the evidence and the law that applies to
17 him, or to her.
18 If I instructed you that any evidence was
19 limited to one defendant, you should not consider it as
20 to the other defendant.
21 As you know, there were two separate juries in
22 this trial, one for the defendant Dane Krukowski and the
23 other for defendant Codie Stevens. The two juries sat
24 together in the courtroom for most of the trial,
25 listening to the same evidence which is common to both

1 defendants. There were periods of time where each jury
2 was excused so the other jury could hear evidence that
3 was only to be considered by the other jury. You are not
4 to be considered [sic] with this procedure during your
5 deliberations. You are not to discuss the evidence you
6 heard when the other jury was outside the courtroom with
7 jurors from the other defendant's jury. Now that the
8 evidence is concluded, each jury has heard all of the
9 evidence that it may properly consider in reaching its
10 decision as to the defendant for whom it must render its
11 verdict.
12 The prosecution has introduced evidence of a
13 statement that it claims the defendant made. Before you
14 may consider such an out-of-court statement against the
15 defendant, you must first find that the defendant
16 actually made the statement as given to you.
17 If you find that the defendant did make the
18 statement, you may give the statement whatever weight you
19 think it deserves. In deciding this, you should think
20 about how and when the statement was made, and about all
21 the other evidence in the case. You may consider the
22 statement in deciding the facts of the case.
23 Each defendant's statement has been admitted as
24 evidence against -- only against him or her. It cannot
25 be used against the other defendant, and you must not do

1 so, except as explained below.
2 As you know -- now know, both defendants made
3 separate video-recorded statements to Saginaw Township
4 Police Department Detectives Bean and Brooks on
5 February 22nd, 2015, at Covenant HealthCare. Each
6 defendant's separate jury only heard that defendant's
7 entire statements played here in court. However, to a
8 limited extent, each defendant's jury heard brief
9 segments of the other defendant's statements replayed by
10 the prosecution when both juries were present during the
11 testimonies of both defendants.
12 I instruct you that those brief segments are to
13 only be used by the other jury for the limited purpose of
14 evaluating the credibility of that defendant's testimony
15 when he or she took the stand as a witness in this trial.
16 Remember, however, that the particular jury
17 that heard the entire statements of its defendant may
18 properly give that defendant -- that evidence whatever
19 weight that jury thinks they deserve, as I explained in
20 jury instruction 4.1, which I gave you right before this.
21 And you'll see numbers and headings on each of these
22 instructions that you can refer to.
23 Facts can be proved by direct evidence from a
24 witness or an exhibit. Direct evidence is evidence about
25 what we actually see or hear. For example, if you look

1 outside and see rain falling, that is direct evidence
2 that it is raining.
3 Facts can also be proved by indirect, or
4 circumstantial, evidence. Circumstantial evidence is
5 evidence that normally or reasonably leads to other
6 facts. So, for example, if you see a person come in from
7 outside wearing a raincoat covered with small drops of
8 water, that would be circumstantial evidence that it is
9 raining.
10 You may consider circumstantial evidence.
11 Circumstantial evidence by itself, or a combination of
12 circumstantial evidence and direct evidence, can be used
13 to prove the elements of a crime. In other words, you
14 should consider all the evidence that you believe.
15 If you believe that a witness previously made a
16 statement inconsistent with his or her testimony at this
17 trial, the only purpose for which that earlier statement
18 can be considered by you is in deciding whether the
19 witness testified truthfully in court. The earlier
20 statement is not evidence that what the witness said
21 earlier is true.
22 You may consider whether the defendant had a
23 reason to commit the alleged crime, but a reason by
24 itself is not enough to find a person guilty of a crime.
25 The prosecutor does not have to prove that the

1 defendant had a reason to commit the alleged crime. He
2 only has to show that the defendant actually committed
3 the crime and that he meant to do so.
4 The defendant's intent may be proved by what he
5 or she said, what he did, how he did it, or by any other
6 facts and circumstances in evidence.
7 You should not decide this case based on which
8 side presented more witnesses. Instead, you should think
9 about each witness and each piece of evidence and whether
10 you believe them. Then you must decide whether the
11 testimony and evidence you believe proves beyond a
12 reasonable doubt that the defendant is guilty.
13 You have heard that a lawyer or lawyer's
14 representative talked to one of the witnesses. There is
15 nothing wrong with this. A lawyer or lawyer's
16 representative may talk to a witness to find out what the
17 witness knows about the case and what the witness'
18 testimony will be.
19 During the trial, you heard testimony from
20 several witnesses who gave you their opinions as experts
21 in their fields of expertise. Experts are allowed to
22 give opinions in court about matters in which they have
23 expertise.
24 The names and fields of expertise of the expert
25 witnesses were as follows: Dr. Sahouri, ophthalmology;

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1 Dr. Dawis, pediatric medicine; Dr. Kirby, emergency
2 medicine; Dr. Dense, chiropractic medicine; Dr. Barriger,
3 chiropractic medicine; Dr. Farrar, neuroradiology; Dr.
4 Constantino, radiology; Dr. Schinco, neurosurgery; Dr.
5 Fiore, pediatric critical care medicine.
6 However, you do not have to believe an expert's
7 opinion. Instead, you should decide whether you believe
8 it and how important you think it is. When you decide
9 whether you believe an expert's opinion, think carefully
10 about the reasons and facts she or he gave for the
11 opinion and whether those facts are true. You should
12 also think about the expert's qualifications and whether
13 the opinion makes sense when you think about the other
14 evidence in the case.
15 You have heard testimony from witnesses who are
16 police officers. That testimony is to be judged by the
17 same standards you use to evaluate the testimony of any
18 other witness.
19 At the beginning of the trial, I instructed you
20 concerning the elements of the crime that the defendant
21 is charged with. At that time, I advised you that it was
22 possible that these instructions might change at the end
23 of the trial. In fact, these instruction have been
24 modified. So you must follow the instructions I am
25 giving you now, as they supersede the instructions I gave

1 you at the beginning the trial. Since the preliminary
2 instructions have been modified, I have instructed the
3 bailiff to collect the previous instructions. However,
4 you should keep any notes you have taken during the
5 trial.
6 You may return a verdict of guilty of child
7 abuse second-degree, guilty of the less serious crime of
8 child abuse fourth-degree, or not guilty.
9 You will be provided with a verdict form that
10 has places to mark each of the three possible verdicts.
11 In a moment, I will be instructing you about
12 the elements of the crimes of child abuse in the
13 second degree and child abuse in the fourth degree. Here
14 are some definitions of words or phrases that are used in
15 those instructions.
16 "Abandon" means to withdraw one's support or
17 one's help, especially to do so despite a duty,
18 allegiance, or responsibility.
19 "Child" means a person who is less than
20 18 years of age.
21 "Omission" means a willful failure to provide
22 food, clothing, or shelter necessary for a child's
23 welfare or willful abandonment of a child.
24 "Person" means a child's parent or guardian or
25 any other person who cares for, has custody of, or has

1 authority over a child, regardless of the length of time
2 that a child is cared for, in the custody of, or subject
3 to the authority of that person.
4 "Physical harm" means any injury to a child's
5 physical condition.
6 "Serious physical harm" means any physical
7 injury to a child that seriously impairs the child's
8 health or physical well-being, including, but not limited
9 to, brain damage, a skull or bone fracture, subdural
10 hemorrhage or hematoma, dislocation, sprain, internal
11 injury, poisoning, burn or scald, or severe cut.
12 "Reckless" means having disregard of, or
13 indifference to, consequences, under circumstances
14 involving danger to the life or safety of others,
15 although no harm was intended.
16 The defendant is charged with one count of the
17 crime of second-degree child abuse. The prosecutor has
18 three alternate theories under which he can prove this
19 charge. I will be explaining those theories in a moment.
20 The first alternative is based upon an
21 abandonment theory.
22 The second alternative is based upon a reckless
23 act theory.
24 The third alternative is based upon the theory
25 that defendant committed an act likely to cause serious

1 physical harm.
2 To reach a unanimous verdict of guilty on the
3 charge of second-degree child abuse, all 12 jurors do not
4 have to agree on which of the above three alternatives
5 has been proven beyond a reasonable doubt by the evidence
6 in the trial, so long as every juror has found that the
7 evidence has proven at least one of the prosecution's
8 three theories.
9 To establish the charge of child abuse
10 second-degree under an abandonment theory, the
11 prosecution must prove each of the following elements
12 beyond a reasonable doubt:
13 First, that defendant is the parent of Roegan
14 Krukowski.
15 Second, that the defendant wilfully abandoned
16 Roegan Krukowski.
17 Third, that as a result, Roegan Krukowski
18 suffered serious physical harm. I have already defined
19 that term for you.
20 Fourth, that Roegan Krukowski was at the time
21 under the age of 18.
22 To establish the charge of child abuse
23 second-degree under a reckless act theory, the
24 prosecution must prove each of the following elements
25 beyond a reasonable doubt:

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1 First, that the defendant is a parent of Roegan
2 Krukowski.
3 Second, that the defendant did some reckless
4 act, consisting of treating Roegan Krukowski with
5 inadequate home remedy for an obvious head injury, rather
6 than seeking professional medical treatment.
7 Third, that as a result, Roegan Krukowski
8 suffered serious physical harm.
9 Fourth, that Roegan Krukowski was at the time
10 under the age of 18.
11 To establish the crime of second-degree child
12 abuse under a theory that the defendant committed an act
13 likely to cause serious physical harm, the prosecutor
14 must prove each of the following elements beyond a
15 reasonable doubt:
16 First, that the defendant is the parent of
17 Roegan Krukowski.
18 Second, that the defendant knowingly or
19 intentionally did an act likely to cause serious physical
20 harm to Roegan Krukowski, regardless of whether such harm
21 resulted. The intentional act alleged consists of
22 treating Roegan Krukowski with inadequate home remedy for
23 an obvious head injury, rather than seeking professional
24 medical treatment.
25 Third, that Roegan Krukowski was at the time

1 under the age of 18.
2 You may also consider whether the defendant is
3 guilty of the less serious crime known as child abuse
4 fourth degree. To establish this charge, the prosecution
5 must prove each of the following elements beyond a
6 reasonable doubt:
7 First, that the defendant is the parent of
8 Roegan Krukowski.
9 Second, that the defendant's omission or
10 reckless act caused physical harm to Roegan Krukowski.
11 Third, that Roegan Krukowski was at the time
12 under the age of 18.
13 The prosecutor must also prove beyond a
14 reasonable doubt that the crime occurred on or about
15 February 7, 2015, to February 22, 2015, within Saginaw
16 County, State of Michigan.
17 Possible penalty should not influence your
18 decision. In Michigan it is the duty of the judge to fix
19 the penalty within the limits provided by law.
20 If you want to communicate with me while you
21 are in the jury room, please have your foreperson write a
22 note and give it to the bailiff. It is not proper for
23 you to talk directly with the judge, lawyers, court
24 officers, or other people involved in the case.
25 As you discuss the case, you must not let

1 anyone, even me, know how your voting stands. Therefore,
2 until you return with a unanimous verdict, do not reveal
3 this to anyone outside the jury room.
4 When you go to the jury room to deliberate, you
5 may takes your notes and full instructions.
6 If you want to look at any or all of the
7 exhibits that have been admitted, just ask for them by
8 writing a note and giving it to the bailiff.
9 As I have already indicated, when you go to the
10 jury room, you will be given a written copy of the
11 instructions you have just heard. If you want additional
12 copies of the jury instructions, you can request them by
13 having your foreperson write a note and give it to the
14 bailiff. Please specify how many copies you want.
15 As you discuss the case, you should not think
16 about all my instructions together as the law -- as you
17 discuss the case, you should think about all my
18 instructions together as the law you are to follow.
19 When you go to the jury room, you can take with
20 you the copy of the final instructions and the verdict
21 form which I have provided for you.
22 When you commence your deliberations, you
23 should first choose a foreperson. The foreperson should
24 see so it that your discussions are carried on in a
25 businesslike I would and that everyone has a fair chance

1 to be heard.
2 During your deliberations, please turn off your
3 cell phones or other communications equipment until we
4 recess.
5 A verdict in a criminal case must be unanimous.
6 In order to return a verdict, it is necessary that each
7 of you agrees on that verdict. In the jury room, you
8 will discuss the case among yourselves, but ultimately
9 each of you will have to make up your own mind. Any
10 verdict must represent the individual, considered
11 judgment of each juror.
12 It is your duty as jurors to talk to each other
13 and make every reasonable effort to reach agreement.
14 Express your opinions and the reasons for them, but keep
15 an open mind as you listen to your fellow jurors.
16 Rethink your opinions and do not hesitate to change your
17 mind if you decide you were wrong. Try your best to work
18 out your differences.
19 However, although you should try to reach
20 agreement, none of you should give up your honest opinion
21 about the case just because other jurors disagree with
22 you or just for the sake of reaching a verdict. In the
23 end, your vote must be your own, and you must vote
24 honestly and in good conscience.
25 In this case, there are two different crimes

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1 you may consider: The principal charge of child abuse
2 second-degree and the lesser crime of child abuse fourth-
3 degree. When you discuss the case, you must consider the
4 principal charge first. If you all agree that the
5 defendant is guilty of that crime, you may stop your
6 discussions on that count and return your verdict. If
7 you believe that the defendant is not guilty of the
8 principal charge, or if you cannot agree about that
9 crime, you should consider the less serious crime. You
10 decide how long to spend on the principal charge before
11 discussing the lesser crime. You can go back to the
12 principal charge after discussing the lesser crime, if
13 you want to.
14 If you have any questions about the jury
15 instructions before you begin deliberations, or questions
16 about the instruction that arise during deliberations,
17 you may submit them in writing to the bailiff.
18 The exhibits, as you know we had a number of
19 exhibits admitted during the trial, so we have that
20 original set and then we have had copies made of all the
21 exhibits. So one of you may get a set of exhibits that
22 has -- you'll see little exhibit tags on them that are
23 obviously it's been photocopied. That's just because you
24 have the copies set rather than the original set, but
25 they're all the same. Just so you know that.

1 This is what the verdict form will look like.
2 Just lists Count 1 and gives you the three options of not
3 guilty, or guilty of child abuse second-degree, or guilty
4 of the lesser crime of child abuse fourth-degree. Your
5 foreperson should fill this out, sign their name to it
6 when you've reached a decision, and date it, and then you
7 can turn the light on in your jury room, let the bailiff
8 know that you have a verdict, and we'll bring you back in
9 here then to let us know what that is.
10 So with that, does anybody on the jury have a
11 question at this time? Okay.
12 We do have to dismiss alternate jurors. On our
13 Stevens jury, we had already had to dismiss one of the
14 jurors so we'll dismiss one at this time. We have to
15 have a jury of 12. And then with our Krukowski jury, we
16 will reduce the jury to 12 also, but draw two names for
17 that.
18 Those of you whose named are pulled, you are
19 considered alternate jurors. We will allow you to go
20 back to the jury room and collect your belongings, say
21 your goodbyes, and then you have to leave before the jury
22 deliberations begin. But make sure that we have a phone
23 number on where to reach you today and tomorrow, and then
24 any time after that, because we may need to call you back
25 and bring you in. If somebody should become sick, or

1 they have a family member that becomes seriously ill, or
2 an emergency of some sort, even though they're on the
3 final 12, they would have to leave, and we'll bring you
4 back and let -- then we'd still have a jury of 12 and we
5 don't have to try the whole case again. So that's why we
6 have alternate jurors. And we'll just make sure that we
7 have your names and numbers where to reach you, and then
8 if the jury reaches a verdict before we have to call you
9 and bring you in, we'll give you a call and let you know
10 what the verdict was. And then at that point, after
11 there is a verdict, from both juries, then you will all
12 be able to talk about the case with anyone you want, do
13 any kind of reading or research, whatever else you'd like
14 to do.
15 So with that, I'll have the clerk pick one name
16 from the Stevens jury.
17 THE CLERK: As to the jury for Defendant
18 Stevens, the court would like to thank and excuse juror
19 in seat 4, Paul Smith.
20 THE COURT: Mr. Smith, you can stay right there
21 for right now. You'll leave with the rest of the jury
22 and then leave from the jury room.
23 THE CLERK: As to the jury for Defendant
24 Krukowski, the court would like to thank and excuse juror
25 in seat 9, Donna Harper.

1 THE COURT: All right, Miss Harper, you're
2 alternate No. 1.
3 THE CLERK: And the court would like to thank
4 and excuse the juror in seat 2, Cory Kanuszewski.
5 THE COURT: All right. Miss Kanezewski, Miss
6 Harper, and Mr. Smith, we thank you very much for your
7 service, we appreciate it. Please make sure that the
8 bailiff who takes you back to your jury room has your
9 phone number, and we will be in touch with you, one way
10 or the other, soon. You can leave with the rest of the
11 jury, so just hang on a minute. I have to do one more
12 thing and that is to swear the bailiffs.
13 MR. DUGGAN: Your Honor, did you want us to
14 approach the bench?
15 THE COURT: Well, you can.
16 (At 2:42 p.m., bench conference off the
17 record.)
18 THE COURT: Before I move to the bailiffs, let
19 me ask counsel are there any objections to the
20 instructions as read?
21 MR. DUGGAN: None, Your Honor, on behalf of the
22 People.
23 MR. BUSH: No objections, Your Honor.
24 MR. STURTZ: No objection on behalf of Mr.
25 Krukowski.

1 All right, ladies and gentlemen, it's nearly
2 five o'clock, and my clerk bailiff here has indicated
3 that you're ready to go home for the night. I know it's
4 been a long day. I will excuse you for the day in a
5 moment. I will not be here tomorrow, but Judge Kaczmarek
6 will be filling in for me, so if there's questions that
7 come up, or any issues, he will be here and my staff will
8 be here and the attorneys will be here, and they know
9 what's going on.
10 So if I don't see you again, it's been a
11 pleasure having you here, and we really thank you for
12 your service. I know you've got some additional service
13 to do here, so please return tomorrow morning
14 nine o'clock, and you'll, I expect, be here from 9:00 to
15 12:00 and then you can be here from 1:00 to 5:00 and see
16 how it goes for you tomorrow.
17 Have a nice evening. Don't talk about the case
18 with anyone. Don't read anything about the case. Don't
19 listen to anything about the case. Don't do any kind of
20 independent research. And even among yourselves, once
21 you leave, don't talk about the case, and don't begin
22 your deliberations again tomorrow morning until all of
23 you are present. So once you're all there, you can begin
24 your deliberations again. Just report back to the jury
25 room by nine o'clock and you'll be able to go from there.

1 So have a nice evening.
2 (At 5:01 p.m., jury for Defendant Krukowski
3 excused.)
4 THE COURT: Okay. Anything else, counsel?
5 MR. STURTZ: I have nothing, Judge.
6 MR. DUGGAN: No, Your Honor.
7 THE COURT: Just check in with my staff
8 tomorrow and they'll be in touch with Judge Kaczmarek,
9 and everything is here. And then we'll go from there.
10 MR. DUGGAN: Have a nice day, Your Honor.
11 THE COURT: Court will be in recess.
12 (At 5:02 p.m., court recessed.)
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1 STATE OF MICHIGAN)
2) SS
3 COUNTY OF SAGINAW)
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8 I certify that this transcript is a complete, true
9 and correct transcript of the proceedings and testimony taken
10 in this case before the Honorable Janet M. Boes, Circuit Judge,
11 in Saginaw, Michigan.
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16 _____
17 JEFFREY D. STUPAK, RPR, CSR 8314
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