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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:

For the People: PATRICK O. DUGGAN (P29978)  
ASSISTANT PROSECUTING ATTORNEY  
111 S. Michigan Avenue  
Saginaw, MI 48602-2019  
(989) 790-5330

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APPELLATE DEFENDER OFFICE

1 to decide on your verdict.  
2 A verdict must be unanimous. That means that  
3 every juror must agree on it, and it must reflect the  
4 individual decision of each juror. It is important for  
5 you to keep an open mind and not make a decision about  
6 anything in the case until you go to the jury room to  
7 decide the case.

8 A person accused of a crime is presumed to be  
9 innocent. This means that you must start with the  
10 presumption that the defendant is innocent. This  
11 presumption continues throughout the trial, and  
12 entitles the defendant to a verdict of not guilty,  
13 unless you are satisfied beyond a reasonable doubt that  
14 he is guilty.

15 Every crime is made up of parts called  
16 elements. The prosecutor must prove each element of  
17 the crime beyond a reasonable doubt. The defendant is  
18 not required to prove his innocence or to do anything.  
19 If you find that the prosecutor has not proven every  
20 element beyond a reasonable doubt, then you must find  
21 the defendant not guilty.

22 A reasonable doubt is a fair, honest doubt,  
23 growing out of the evidence or lack of evidence. It is  
24 not merely an imaginary or possible doubt, but a doubt  
25 based on reason and common sense. A reasonable doubt

1 Second, that the defendant did some reckless  
2 act.

3 Third, that as a result, Roegan Krukowski  
4 suffered serious physical harm. By serious physical  
5 harm I mean any physical injury to a child that  
6 seriously impairs the child's health or physical  
7 well-being, including but not limited to brain damage,  
8 a skull or bone fracture, subdural hemorrhage or  
9 hematoma, dislocation, sprain, internal injury,  
10 poisoning, burn or scald or severe cut.

11 Fourth, that Roegan Krukowski was, at the  
12 time, under the age of 18.

13 The prosecutor may also prove defendant's  
14 guilt of the crime of second-degree child abuse under  
15 an alternative theory; that the defendant committed an  
16 act likely to cause serious physical harm. To prove  
17 guilt under this theory, the prosecutor must prove each  
18 of the following elements beyond a reasonable doubt:

19 First, that the defendant is the parent of  
20 Roegan Krukowski.

21 Second, that the defendant knowingly or  
22 intentionally did an act likely to cause serious  
23 physical harm to Roegan Krukowski, regardless of  
24 whether such harm resulted. I have already given you  
25 the definition for the phrase serious physical harm in

1 is just that, a doubt that is reasonable after a  
2 careful and considered examination of the facts and  
3 circumstances of this case.

4 At the beginning of the jury-selection  
5 process I read you the charges that have been brought  
6 against the defendant -- in this case, it's actually  
7 just one charge. I have also instructed you as to the  
8 prosecutor's burden to prove those charges. Now I will  
9 instruct you as to the parts or elements that make up  
10 those offenses.

11 Because no one can predict the course of a  
12 trial, these instructions may change at the end of the  
13 trial. If so, you should follow the instructions given  
14 at the conclusion of the trial. In your final  
15 instructions, I will let you know whether these  
16 instructions have or have not been changed.

17 The defendant is charged with one count of  
18 the crime of second-degree child abuse. The prosecutor  
19 has two alternate theories under which he can prove  
20 this charge.

21 To establish this charge under what is called  
22 a reckless-act theory, the prosecution must prove each  
23 of the following elements beyond a reasonable doubt:

24 First, that defendant is the parent of Roegan  
25 Krukowski.

1 my previous instruction.

2 So that concludes those preliminary  
3 instructions.

4 And at this time, then, Mr. Duggan, you may  
5 proceed with your opening statement.

6 MR. DUGGAN: Thank you, Your Honor.

7 THE LAW CLERK: Pardon me, Your Honor. If --  
8 in case any of the jurors wanted to take notes, I've  
9 got a basket of pens.

10 THE COURT: Oh.

11 UNIDENTIFIED JUROR: Yeah.

12 THE COURT: All right.

13 MR. STURTZ: Judge, can I sit elsewhere?

14 Because Mr. Duggan is blocking --

15 MR. DUGGAN: I'll move.

16 Is that okay?

17 MR. STURTZ: Thank you, yes.

18 THE COURT: All right.

19 MR. DUGGAN: Good afternoon, ladies and  
20 gentlemen. Thank you for your service, in this case.

21 Based on what the judge has already told you  
22 and what you've seen about our logistic issues, we  
23 really appreciate the fact that you're going to put up  
24 with the troubles. You're in the uncomfortable chairs,  
25 in case you didn't know that. But it's better for

1 everyone concerned that we don't have the witnesses  
2 come back repeatedly, or at different times. That's  
3 why we're doing this; it's a matter of convenience to  
4 witnesses. And you'll all hear the same evidence, for  
5 the most part, throughout the case, with some  
6 exceptions.

7 Dane Krukowski -- the defendant on whom you  
8 will render a verdict as a jury, and Codie Stevens, who  
9 is present in court, represented by another attorney,  
10 and for whom another jury will render a verdict -- as  
11 soon as we're done with this opening statement, all of  
12 you will start hearing the evidence -- are the parents  
13 of Roegan Krukowski, born December 6th, 2014, Caesarean  
14 section, at Covenant, here in Saginaw. He went home  
15 after three days, and the very beginning of his life he  
16 had a visit right after release from the hospital with  
17 his pediatrician, Dr. Elvira Dawis, who will testify in  
18 this case, to deal with some problems the parents were  
19 having with a new born. Nothing terribly unusual, but  
20 of concern to them.

21 They are the parents of another child, a  
22 girl, Ella; I believe, three years old, at the time  
23 Roegan Krukowski was born.

24 Dr. Dawis suggested some formula change to  
25 help the baby's digestion, and that was really all that

1 two parents did not heed that advice, and they waited  
2 two days, until Monday, until there was an appointment  
3 at Dr. Dawis' office, the pediatrician; someone who the  
4 baby hadn't seen in a couple of months.

5 Grandmother Shawn Stevens accompanied Codie  
6 Stevens to that appointment with Roegan. And Codie  
7 Stevens and Shawn Stevens may have differing versions  
8 or memories of when the fall in the bathtub that caused  
9 the bump happened; whether it was before that visit to  
10 Dr. Dawis or after. I believe, Codie Stevens -- you  
11 will hear -- has asserted that the bump happened on  
12 Saturday, the 7th, and they saw the doctor on Monday,  
13 the 9th; two days later.

14 Shawn Stevens might say the fall in the  
15 bathtub was afterward, but there's some inconsistency  
16 there. And that's one of the reasons, in jury  
17 selection, I told you, there could be inconsistencies.  
18 And right off the bat, we start with inconsistencies.  
19 And the reason, perhaps, is that -- there may be many,  
20 but one of the significant reasons is, we're backing up  
21 to that date of February 7th from a much more critical  
22 date in that baby's life.

23 Two weeks later, on February 22nd, the baby  
24 is at the emergency room, having seizures, vomiting.  
25 Something dire is going on. And so people are now,

1 Dr. Dawis did in that first week of the baby's life.

2 He was circumcised that same month, so he had  
3 another visit to the hospital for that, a rather  
4 routine procedure.

5 And then February 7th happened; so as far as  
6 we know, something unusual. About two months after he  
7 was born, Dane Krukowski was upstairs or in another  
8 room in the apartment, giving the child a bath, and  
9 dropped him, or he squirted out of his hands. Whatever  
10 the method was, he lost control of the baby's body as  
11 he was soaping him up to give him a bath, and Roegan  
12 hit his head on the edge of the bathtub. That trauma  
13 or that impact of his head against the bathtub rim  
14 caused a bump, a goose-egg-type bump that was visible,  
15 palpable. You could rub your hand on it, apparently,  
16 and touch it, feel it. And they, the two of them,  
17 ultimately, that day -- which is estimated to be  
18 February 7th, a Saturday, 2015, they treated with using  
19 a bag of pees, frozen pees, wrapped in a cloth from  
20 their freezer, to bring the swelling down.

21 Now, supposedly, they immediately told Codie  
22 Stevens' mother, Shawn Stevens, about that fall and the  
23 injury, who told them, perhaps as the more mature  
24 person who had already raised her kids, the baby needs  
25 to get medical attention right now. They didn't. The

1 from that point, reflecting back to that weekend of the  
2 7th and 8th, and Dr. Dawis' visit, Monday the 9th.

3 You'll have to sort that out as best you can from the  
4 witnesses' testimony. That's what jurors do.

5 When that visit happened at the doctor's  
6 office, Dr. Dawis went through a process of, why are  
7 you here; this is a -- is this a well-child visit or is  
8 this a checkup or is it more like you have a problem?  
9 Codie explained there was fussing and irritability.  
10 And as part of the protocol, because of that, Dr. Dawis  
11 inquired, like she does in every case, has there been  
12 any fall or trauma or incident? Codie Stevens said, no  
13 fall. She denied the fall.

14 Deny is something that doctors use in a way  
15 that doesn't have as much emotion attached to it or as  
16 much emphasis. Parents denied fall. It's sort of  
17 matter of fact. Or they use the term eliminate or rule  
18 out. These are doctor-type ways of expressing things  
19 that perhaps you'll get used to by the end of trial.  
20 But when they see a patient that has a symptom, they  
21 want to rule out some more serious cause, so they do a  
22 test, they rule that out, and they ask, in history, did  
23 the baby have this? Well, they denied that. Okay.  
24 It's not like a big deal, just to use the word deny or  
25 rule out. But those are the things you'll hear.

1 Dr. Dawis saw no apparent goose egg or bump,  
 2 and will testify to that. I think you're going to be  
 3 impressed with Dr. Dawis and how many years she's been  
 4 living on this earth, and she's still doing the work of  
 5 a pediatrician. So you're going to have a chance to  
 6 evaluate her testimony. She'll be one of the first  
 7 witnesses you'll hear from tomorrow.

8 Dr. Dawis had to deal with the problem,  
 9 though, on that visit, on February 9th, Monday, that  
 10 the parent was complaining of, and the grandmother; the  
 11 fussiness, irritability. And recommended, as she had  
 12 done with other patients, infants, some chiropractic  
 13 services by Shields Chiropractic, that could be  
 14 arranged for even that day.

15 Dr. Dense and Dr. Barrigar are the  
 16 chiropractors who will be coming in to testify in this  
 17 case, that, yes, they did evaluate the child and did  
 18 appropriate chiropractic adjustments; appropriate for  
 19 an infant. You're going to hear that it's not anything  
 20 like an adult chiropractic visit. You'll be sort of, I  
 21 think, surprised to hear the various techniques they  
 22 use. And, apparently, some relief was provided for  
 23 some of the symptoms the baby was experiencing, at that  
 24 time.

25 There were numerous appointments made. Codie

1 A baby can have a bump or a fall; perhaps,  
 2 can have one or two things go wrong. But there was a  
 3 host of injuries that should not have been all in one  
 4 big constellation in that baby's short life of two  
 5 months.

6 You will hear from the ER nurse, the ER  
 7 doctor, the pediatric-intensive-care-unit nurse, the  
 8 PICU doctor in charge, the PICU neurosurgeon,  
 9 radiologist, neuroradiologist, consulting  
 10 ophthalmologist -- and that person you will hear from  
 11 today; the last one, the ophthalmologist.

12 These professionals performed all these  
 13 examinations, and again concluded the accidental fall  
 14 in the tub could not have caused all this. They were  
 15 separated in time and age by too much; the variety of  
 16 injuries.

17 Now, it would be my preference, if I was in  
 18 charge of those doctors' schedules, you'd hear them in  
 19 some semblance of an order that would be easier to  
 20 follow. I apologize in advance. Their schedules  
 21 permitted only me to get them on certain days, so  
 22 you're going to hear them a bit out of order. We'll  
 23 try to give you something for you to take notes; you  
 24 can keep track that way. But I guess you'll have to  
 25 tough it out. This baby toughed it out. You're going

1 Stevens honored the appointments a couple days later,  
 2 on the 12th, and then after that, on the 16th; but she  
 3 did not bring the baby in on February 18th, as  
 4 scheduled. No, excuse me. She skipped the  
 5 appointments on February 12th and 16th, but she did  
 6 bring the baby in on the 18th, and then didn't come to  
 7 the last appointment, on the 20th. So there were a  
 8 whole series of appointments from the 9th through the  
 9 20th, and she made a couple of them.

10 That takes us up to, really, why you are all  
 11 here. On February 22nd, on the weekend, the baby was  
 12 having shaking episodes, and had vomited violently.  
 13 And the decision was made by Dane Krukowski and Codie  
 14 Stevens to take the baby to the emergency room at  
 15 Covenant. A whole series of examinations and x-rays  
 16 and CTs and MRIs and other types of evaluations,  
 17 followed by necessary surgeries, was performed in that  
 18 following week, from the time of the admission to the  
 19 emergency room, and almost immediately into the  
 20 pediatric intensive care unit or the PICU. And after  
 21 all that was done, the medical professionals who  
 22 evaluated and did the interventions necessary to save  
 23 Roegan concluded -- actually, very early in the  
 24 process, but it became more and more confirmed the more  
 25 tests they did -- these were non-accidental injuries.

1 to have to tough it out.

2 You will hear about injuries that include a  
 3 fractured skull, at least two subdural hematomas.  
 4 Those are brain bleeds. They were separate in time,  
 5 inside of his head, with the accompanying buildup of  
 6 fluid that goes with brain bleeds, which are called  
 7 hygromas. And that's a separate issue and problem that  
 8 succeeds after the hematomas, kind of like bruises  
 9 followed by the fluid that forms in that bruising.

10 There were two places on his chest where ribs  
 11 were fractured at different times. There's a fractured  
 12 radius, which is the larger bone in the arm. And he  
 13 had severe retinal hemorrhaging. The retina of the  
 14 eye, in the back of the eye -- which you really can't  
 15 see too well unless you have equipment to look into the  
 16 eye through the pupil -- showed signs that some trauma  
 17 had happened.

18 Some people in the medical profession  
 19 describe the three symptoms -- three of the symptoms  
 20 I've talked about -- being together, a triad, if you  
 21 will. Think of it like a little triangle of brain  
 22 bleeds, fluid in the head, and retinal hemorrhages, as  
 23 shaken baby syndrome. And you may have heard that  
 24 term. These days, doctors often refer to it as abusive  
 25 head trauma. They don't try to see those three things

1 in conjunction and say the baby was shaken. They don't  
2 necessarily try to get to that conclusion or make that  
3 assumption. But sometimes the injuries that are seen  
4 in a baby beyond those three -- and I mentioned many  
5 others already -- are the result of trauma.  
6 Blunt-force trauma. Something hitting the baby or the  
7 baby being hit over something.

8 Those in the medical field, even with  
9 extensive trauma, don't want to jump to the conclusion  
10 that whoever is the caregiver and had charge of the  
11 baby -- parent or otherwise -- caused those injuries  
12 intentionally. What no medical professional who will  
13 testify in this case will say, though, is that when you  
14 take those three injuries in that triad and put them  
15 together with all the other fractures and other things,  
16 that you can have a -- what you call an accidentally  
17 injured child. It's just too much.

18 The fact that this was recognized almost  
19 immediately in the emergency room, and thereafter in  
20 the PICU, prompted the involvement -- as they're  
21 required to do -- to call protective services. They  
22 are what are called mandatory reports; police officers,  
23 teachers, counselors, doctors. There's no privilege  
24 that the person who is in the professional position has  
25 to protect if there's injury to the child. It's the

1 this opening statement is for me to tell you what I  
2 intend to prove, what evidence you can expect, here.  
3 But I want to tip you off right now, what I will not  
4 prove, in this case, in the People's case, when we are  
5 calling our witnesses, and before we -- evidence, and  
6 before we rest, we will not prove that the skull  
7 fracture or a particular broken arm or rib or a  
8 particular brain bleed or the resulting fluid buildup  
9 from that bleed or a particular retinal hemorrhage in  
10 one or the other of the eyes was specifically caused by  
11 her or him.

12 If the evidence, in this case, could show an  
13 intentional act by one or both of them, the criminal  
14 charge would be a higher degree. It wouldn't be second  
15 degree, it would be first degree; it would be  
16 intentionally-caused child abuse or injury.

17 What will be proven, in this case, however,  
18 is that no matter how these injuries occurred, they --  
19 they, as parents -- failed or omitted to provide the  
20 necessary medical treatment in a timely way that would  
21 alleviate this child's pain and suffering, prevent  
22 worsening of the symptoms in these injuries, and  
23 minimize the very real possibility the baby could have  
24 died of those injuries, imminently, when they finally  
25 took the baby, on the 22nd.

1 other way around; it's, you must tell, you must advance  
2 that information to the department of human services,  
3 child protective services division.

4 And the police were also called, because this  
5 was going to be a pretty extensive investigation. So  
6 detectives are coming in on an off day to meet with the  
7 two parents, and to try to talk with them about what  
8 happens.

9 And it is a difficult situation. It's  
10 difficult for you to hear about it, it was difficult to  
11 investigate it, and for the nurses and doctors to deal  
12 with the injuries and interact with the parents,  
13 because, under most circumstances, common sense would  
14 say doctors would look to the parents to be the most  
15 interested in the child's welfare. That's the natural  
16 first reaction. Until the evidence told them  
17 otherwise, and I submit, will tell you otherwise, in  
18 this case.

19 On February 22nd, Dane Krukowski and Codie  
20 Stevens really had no other options, but to take the  
21 child to the ER. The baby could have died. After that  
22 day, the intervention is done, the professional work.  
23 The miraculous work done prevented that from happening.  
24 This is not a homicide case.

25 What will not be proven, in this case -- and

1 I use the word omitted. There are wrongs of  
2 commission and omission; and in this case you will hear  
3 more about the latter. Omitting to do things.  
4 Abandoning the child. Basically, you have a  
5 two-month-old baby who has severe injuries, and you  
6 know it, and you -- you're the caregivers. You created  
7 the child, and you don't take action. And injuries  
8 that have occurred worsen or injuries further occur, to  
9 the point where the baby doesn't almost make it, is the  
10 essence of what's charged here.

11 They lived at the house referred to by the  
12 Court when the Information was read here, in Saginaw  
13 Township, Saginaw County, Michigan. It happened  
14 sometime during those dates indicated; February 7th  
15 through February 22nd, 2015. And what you will hear  
16 now, when the People start calling witnesses, is the  
17 evidence to prove those allegations.

18 Thank you.

19 THE COURT: All right. Mr. Sturtz, did you  
20 wish to make an opening, at this time, or reserve it?

21 MR. STURTZ: Judge, I'm going to reserve my  
22 opening statement. Thank you.

23 THE COURT: All right. Then with that, we'll  
24 need to bring in our other jury, and we'll be able to  
25 proceed.

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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 VI of VII**

DANE RICHARD KRUKOWSKI,

Defendant.  
\_\_\_\_\_ /

PEOPLE OF THE STATE OF MICHIGAN,

vs.

File No. 15-041275-FH-3  
**VOLUME VI of VI**

CODIE LYNN STEVENS,

Defendant.  
\_\_\_\_\_ /

JURY TRIAL

BEFORE THE HONORABLE JANET M. BOES, CIRCUIT JUDGE

Saginaw, Michigan - May 5, 2016

APPEARANCES:

For the People: MR. PATRICK O. DUGGAN (P29978)  
ASSISTANT PROSECUTING ATTORNEY  
111 South Michigan Avenue  
Saginaw, Michigan 48602  
(989) 790-5330

For the Defendant Krukowski: PHILIP R. STURTZ (P21115)  
STURTZ AND STURTZ, P.C.  
608 South Michigan Avenue  
Saginaw, Michigan 48602  
(989) 799-4701

1 We can bring the jury in, as long as you're  
2 ready.

3 MR. DUGGAN: I'm ready, Your Honor.

4 THE COURT: Okay.

5 THE CLERK: All rise for the jury, please.

6 (At 11:19 a.m., jury for Defendant Krukowski  
7 returned.)

8 THE COURT: Please be seated. Welcome back,  
9 ladies and gentlemen.

10 Mr. Duggan, you may proceed with your closing  
11 argument.

12 MR. DUGGAN: Thank you. Good morning, ladies  
13 and gentlemen. On behalf of the People of the State of  
14 Michigan, thank you again for your very careful attention  
15 to this trial. The attorneys and court probably have  
16 never seen jurors take so much care, and this is not  
17 just, as they say, blowing smoke, but we've just never  
18 seen this many questions asked by jurors, who apparently  
19 get it, that you're the ones with the heaviest duty. We  
20 present the case. The judge tells you the law. You go  
21 out and you figure it out and you make the important  
22 decision. And for that, we have no problem that you  
23 asked all those questions and that's excellent.

24 Because, fortunately for you, those are seats  
25 that have been occupied by Saginaw jurors before you that

1 had to decide about what to do when someone has died as a  
2 result of another's actions. No baby died in this case,  
3 despite how close a call it was, so this is a serious  
4 matter.

5 And you have to go through some processes of  
6 understanding concepts that you sort of understood from  
7 your general experiences in life, how much you studied,  
8 watched TV about trials, followed news accounts of big  
9 trials, but now they're come home to your shoulders.  
10 It's on your shoulders to apply very ancient concepts, we  
11 define them as well as we can, but you're going to get  
12 them more just from your experiences in life, this idea  
13 of presumption of innocence and proof beyond a reasonable  
14 doubt. How it's not defendant's burden to prove  
15 anything, it's the prosecutor's burden to prove the  
16 crime.

17 And you're going to do something like what the  
18 doctors and nurses had to do when that baby was first  
19 presented to the emergency room because it was in such  
20 distress. Parents walk in. Doctors presume these are  
21 the people that care about the baby. They brought it to  
22 the emergency room. Doesn't appear to have,  
23 superficially, any issues, no bruises and bumps and  
24 broken -- obvious broken arms, legs. But it's seizing,  
25 it's twitching, it's doing something that would suggest

1 we need to do more, and they quickly do what they should  
2 do.

3 The nurses, as you heard from the triage part  
4 of this, quickly got this baby to be looked at by the  
5 emergency room physician. And she's interacting with the  
6 parents, you know, and what's the problem. Okay, it's  
7 just doing this. Parents not really telling the doctor,  
8 Dr. Kirby, what's going on. But a CT scan is ordered  
9 because they have to rule out the potential that there's  
10 head injuries, because they don't see any bruises or  
11 bumps, and there are explanations that, the chemical  
12 processes of a child a or human being, if it gets the  
13 wrong amount of water, or too much, too little, its  
14 electrolytes and all the rest that the doctors talk  
15 about, they want to eliminate those as explanations.

16 And the CT scan is to rule out that there is  
17 head injuries, and lo and behold, no, there is head  
18 injuries. We're not ruling them out. That's the  
19 problem.

20 Now the doctors start to move from the  
21 presumption of innocence, and they have a legal  
22 obligation, as they were called on the record in the  
23 examination here in this court, mandatory reporters.  
24 They don't have a choice. If they think there's child  
25 abuse, they have to report. So CPS Form 3200, whether

1 it's over the phone or a handwritten form. Police  
2 investigation. Because the people they presumed were  
3 innocent, who were looking out for the baby, might be the  
4 ones that hurt the baby. And, oh, and now you're telling  
5 me the baby had a fall a couple weeks ago and it had a  
6 bump. You didn't come in? Oh. And you know the process  
7 from there.

8 You have the next important duty, which is to  
9 determine has the evidence in the case proved the charge  
10 made in the Information, as the judge will read the  
11 charges to you, beyond a reasonable doubt. Because  
12 you're not going to return with a verdict of guilty of  
13 anything unless 12 of you, as individual persons, say as  
14 you go around the table, voting, or however process you  
15 use, on paper, or raise your hand. That's for you and  
16 your foreperson to work out. Now that you're in the  
17 deliberation room, we've gotta decide this. If 12 of you  
18 agree the defendant is guilty, Dane Krukowski, you're  
19 going to vote guilty and you're going to come out and  
20 report that verdict.

21 And the burden of proof is always on the  
22 People, never on the defendant, but that doesn't mean the  
23 defendant can't present evidence. And in this case, he  
24 did. So did Codie. Now you're not the jury that's  
25 deciding Codie Stevens' fate, they'll be back in here for

1 the afternoon when the instructions are given in common  
2 to everybody, just like most of the case was presented to  
3 you, in-common evidence from doctors and nurses. You  
4 even got to hear from both defendants. One jury wasn't  
5 asked to leave when you're hearing from the other  
6 defendant -- or in the other defendant's testimony, and  
7 vice-versa, because they chose to be witnesses. They  
8 didn't have to. Dane Krukowski made a conscious choice,  
9 with an attorney assisting him, I want to tell the jury  
10 my story.

11 Now you are the jury, and the only jury that  
12 heard what he said outside of court to Detectives Bean  
13 and Brooks, and you can put all that information  
14 together. Because what he said outside of court is not  
15 hearsay. It's good evidence. It can be used by you for  
16 whatever purpose, give it whatever weight you want.  
17 That's what the judge will tell you. Because when a  
18 defendant speaks, you know why that's in the Miranda  
19 warning, "everything you say can and will be used against  
20 you in a court of law"?

21 Guess what? This is a court of law. Guess  
22 what? It's being used. We offered it. You are allowed  
23 to hear what he said to the detectives. Plus, he decided  
24 I want you to hear what I have to say under oath. Both  
25 of them are usable. And when you figure out, after

1 hearing all the evidence, you don't say, well, the  
2 defendant Dane Krukowski gave us special evidence. No,  
3 it's just his testimony as a witness once he was here.  
4 What he said out of court to the detectives, that's  
5 admissible. That's usable.

6 And that will become a little clearer later on  
7 in my argument when I contrast using evidence for any  
8 purpose, versus using it for a limited purpose, which is  
9 they said something different at a different time.  
10 That's called impeachment evidence. I'll talk about that  
11 in a minute.

12 Are you now, or during this trial as you heard  
13 evidence from the doctors and nurses, or anyone else,  
14 trying to visualize did Dane grab that baby and shake  
15 that baby? Did Dane cuff that baby? Instead of it  
16 slipping out of his arms, did he get angry because that  
17 baby squealed like it did all the time when it came from  
18 the warm water into the cold and he just had enough? You  
19 know, the guy had to walk away and have a cigarette  
20 because he couldn't handle the screaming. Did he,  
21 "Stop." Did he do something in one or two seconds, or a  
22 half a second? You can visualize till the cows come  
23 home. There's no evidence of that.

24 You can maybe visualize in the same way with  
25 respect to Codie because moms can get frustrated and lash

1 out and harm a child too, intentionally.

2 But that's not the burden of proof in this  
3 case. We don't have to prove beyond a reasonable doubt  
4 that either of them, and for your benefit, Dane, because  
5 you're his jury, did he do that? Even though the doctors  
6 said this is not accidental. This baby was abused. This  
7 is nonaccidental. This is child abuse.

8 Whether it happens intentionally, thoughtfully,  
9 in a premeditated way: If that kid yells one more time,  
10 he's gonna get it; or just in a moment, in a fit of  
11 frustration: Enough. Stop it. You don't have to decide  
12 that. That's first-degree child abuse. That's not  
13 before you. That's intentionally hurting a child. That  
14 that's what you intend to do and you do it.

15 Second-degree is short of that. It's serious  
16 injuries that happen, and as we've articulated in the  
17 jury instructions you're going to be read, it could have  
18 happened in a number of different ways. And we'll get  
19 into the those.

20 This has been challenging to manage, having two  
21 juries in a courtroom at one time. Please understand we  
22 appreciate you putting up with the shuffling in and out,  
23 and the delays, because -- ever had to wait in a doctor's  
24 office? The prosecution had to assemble 11 nurses and  
25 doctors and get them here at your convenience. They had

1 to wait. Don't think that was a pleasant scene out in  
2 the hallway for the detective managing this. We did our  
3 best but, even so, it had come in somewhat disjointed.  
4 And I warned you of that, and I asked you to please  
5 understand, and it appears you did. But if we didn't do  
6 it with two juries, we would have had to make them do  
7 that twice. Like I'm doing my argument twice. But  
8 that's okay.

9 You know that the other jury heard my argument  
10 before. You're hearing my argument because there's a  
11 little bit different evidence in this case. The common  
12 evidence: Nurses, doctors, Shawn Stevens, even when the  
13 defendants themselves took the stand, both juries heard  
14 Cody Stevens and Dane Krukowski. But you heard something  
15 the other jury didn't hear, for the most part, and that  
16 is that 72 minutes, 75 minutes of statements to Detective  
17 Brooks and Dean that Dane Krukowski provided. You heard  
18 it here. You can hear it again in the jury room. Play  
19 it back as many times as you need. We'll get you a  
20 laptop in there, get you the discs, and you'll do that.

21 And there's a reason in our system that's  
22 critical why we did it this way and why we put you to the  
23 trouble and managed this difficult situation. Our system  
24 is an ancient system that is based on people testifying  
25 in court with personal knowledge and not with the

1 hearsay. Goes back a long ways.

2 I think Henry VIII's wife, Anne Boleyn, got her  
3 head cut off, along with a few other of his wives,  
4 because they brought somebody into court to say, I heard  
5 outside of court that she did something. That's hearsay.

6 No, if you're going to charge someone with a  
7 crime and try to prove it, make the witness sit there.  
8 Make them be confronted by the person that they are  
9 accusing. That's your right of confrontation. And since  
10 Dane Krukowski and Codie Stevens made their statements  
11 outside of court, we had to separate you out into two  
12 juries. So but before I rested my case, since I got the  
13 opportunity to put on those statements, the same jury  
14 couldn't hear both people because, as to Codie, it would  
15 be -- excuse me. As to Dane Krukowski, what Codie said  
16 would be hearsay.

17 Now she and he made the problem go away, sort  
18 of, by deciding to testify when it was their turn to put  
19 on a case. And that's fine. But we kept it separate for  
20 that reason.

21 Now the only snippet that you heard of Codie  
22 Stevens' prerecorded statement at the hospital from  
23 February 2nd to the same detectives -- and they did them  
24 in sort of an alternating form. You figured that out  
25 from the questions you heard -- is when Codie testified

1 under oath to you, both juries, about the way things  
2 happened, I have the right to bring up that she said  
3 something different, because that's not using her  
4 statement to prove a fact. It's just to show she said  
5 something different. So if she's going to take the stand  
6 and say, I'm a witness, believe me, trust me, and she  
7 says something different, I'm going to impeach her. I'm  
8 going to bring up the fact that she said something  
9 different.

10 That's the extent to which you get to use what  
11 you heard of Codie's statement. And the judge will  
12 explain that very well in our instructions, so I won't  
13 repeat what the judge is going to say.

14 Thanks to our legislature, a person can commit,  
15 or be charged with committing a child abuse second degree  
16 in several ways, in this case three ways, and the court  
17 will explain those. In the alternate theories the  
18 prosecution has presented, we haven't charged, like I  
19 told you before, of being first-degree, that either Codie  
20 Stevens or Dane Krukowski intentionally set out to injure  
21 the child. It's second-degree. It's doing acts which  
22 show they are abandoning their responsibility as parents,  
23 or they're doing things recklessly. Not maybe setting  
24 out to hurt the baby, but what their acts did caused  
25 harm, and they did them recklessly. They had a duty to

1 protect against it and they didn't.

2 Or they did an intentional act, perhaps without  
3 intending to hurt the baby, but that intentional act can  
4 likely cause consequences. It won't matter when you  
5 deliberate -- and there will only be 12 of you then and  
6 not 14 -- if six of the jurors in the deliberation room  
7 say, We think, Mr. Prosecutor, Judge, we can find the  
8 defendant Dane Krukowski abandoned his responsibility as  
9 a parent. He had a duty to provide help to that baby, at  
10 least from February 7th when the baby hit his head and  
11 started to grow a lump, have a bruise or swelling, and  
12 that's our theory. We agree on that.

13 Three of the 12 might say, no, we think it's  
14 more like it was a reckless act, to doctor the baby and  
15 to put the cold cloth on him and the ice bag or pea bag,  
16 and we think that's a reckless act.

17 And then the other three might say, no, they  
18 did something intentionally. They decided to use their  
19 medical knowledge and procedures at home and play doctor,  
20 and the heck with what Shawn Stevens said, who said take  
21 him in, right then, when she came to visit, Codie and  
22 Dane called. No, they did a -- and by virtue of that,  
23 they might not have been setting out to hurt the baby,  
24 but they did hurt the baby, and seriously.

25 It wouldn't matter that there were six, three

1 and three voting on different theories, as long as you  
2 all agree that at least one of those theories was  
3 established by the facts beyond a reasonable doubt, that  
4 would be enough to say guilty of child abuse  
5 second-degree, because they all fall under that one  
6 umbrella. Same thing for fourth-degree.

7 And I'm telling you now about fourth-degree,  
8 even though you haven't been told up till now, because  
9 the judge will instruct you, you have the option of  
10 considering a lesser included offense. Fourth degree, as  
11 far as I can see, and you can be the judge after you hear  
12 the judge's instructions, is second-degree with just  
13 injuries. All the same state of mind on the part of the  
14 parents, but the injuries were not severe. And the court  
15 will explain what severe injuries are, I mean with  
16 medical explanations that will now make sense to you in  
17 light of the doctors who testified.

18 The People contend there's no evidence in this  
19 case the baby was just injured. The evidence solely  
20 proves that the defendants' actions caused serious  
21 injuries, which I'll speak about in a minute when I speak  
22 of the doctors' and nurses' testimony. But for reasons  
23 that don't have to concern you, you're going to have the  
24 option.

25 The People contend you should not go in the

1 jury room and say, you know, I feel sympathy for Dane  
2 Krukowski and Codie Stevens. This is so harsh, to call  
3 them child abusers. Going to wreck their life. We don't  
4 know what happened to the baby, the prosecutor and the  
5 defense and court hasn't really told us. Codie testified  
6 it's the last time she saw the baby. That's about the  
7 only evidence you have. We just don't -- we just feel  
8 bad. We feel sympathy as parents. They're young  
9 parents. So even though we know they're serious  
10 injuries, we'll just reach a compromise. We'll have a  
11 plea bargain in the jury room. We'll reduce the charge.  
12 Maybe it won't be so harsh.

13 Remember, at the beginning in jury selection I  
14 said you cannot be concerned with penalty. That is not  
15 the job of the jury. If the verdict is guilty, the judge  
16 decides the penalty and figures out all those  
17 things. There's another day held for sentencing if the  
18 verdict is guilty. The judge reviews things you don't  
19 know about and factors in all that. So don't try to be  
20 the judge. Don't try to worry about the penalty. Don't  
21 be worried about the sympathy factor. That's another  
22 day. You just decide facts. Was child abuse  
23 second-degree proven? Yes. Vote guilty. You're done.

24 If you want to come back here, I mean if you do  
25 vote guilty, if that's your verdict, when the sentencing

1 happens, you're citizens, it's a public courtroom, you  
2 can pay attention to the court's docket. I think you can  
3 get it online, and you can come in and see what happens.  
4 But that's not what jurors do. They don't decide things  
5 other than facts. They don't decide things based on  
6 sympathy.

7 Now in the process of hearing the little bit of  
8 Codie Stevens' statement played to the detectives, and it  
9 was the same way for the other jury, the Krukowski  
10 jury -- excuse me, you're the Krukowski jury. I'll get  
11 that straight. You heard a little bit of Codie Stevens'  
12 statement played when I wanted to bring out that she said  
13 something different about did the swelling show up the  
14 day the fall of the bathtub or the next day, and she  
15 corrected herself. Okay, we explained the difference.  
16 That was perhaps better memory back when she was asked on  
17 February 22nd. Okay.

18 And the Stevens jury heard a little bit of the  
19 Krukowski statement played back. Those little snippets,  
20 you heard them, the judge will explain where you're to go  
21 with those and how you're to use them. Don't go beyond  
22 that. Don't try to figure out that they mean anything  
23 other than evaluating credibility of witnesses.

24 While I am commenting on that, perhaps the  
25 biggest issue in this case is what do we do with Shawn

1 Stevens' version of events versus Codie and Dane's? The  
2 evidence in this case is that Codie and Dane both say  
3 that Shawn came over when they reported the baby had a  
4 fall in the bathtub, and what do we do. They feel like  
5 they can go to Codie's mom. Not his mom, not her  
6 step-mom, but Codie's mom. And they testified the baby  
7 had a fall, called Shawn, because I rely on Shawn because  
8 she's my mom, and I go to her in an emergency or a  
9 critical situation like this, need help deciding, and she  
10 said keep an eye on him. That's what they say.

11 What did Shawn say? In a nutshell, Shawn said,  
12 I came and I told them take him in. That's not unclear.  
13 That's not the same as keep an eye on him. No, take him  
14 in, she explained, that means take him to the doctor --  
15 the ER. It's the weekend. It's a head injury. It's an  
16 infant.

17 And then explained that she told them also, I  
18 know, as sure as I told you that, protective services is  
19 going to get involved because an injury to a baby. And  
20 there is, in the statements of Dane at the hospital,  
21 despite his testimony at trial before you under oath,  
22 there is -- and you can play this back in his  
23 statement -- there is the awareness that protective  
24 services will be in their business.

25 I know there were plenty of questions by

1 jurors, well, we want to know about whatever had happened  
2 before. How many other -- well, you got the evidence you  
3 got. That is what's been ruled to be the admissible  
4 evidence. What you have, you can use in its entirety.  
5 You can go off trying to speculate, but that's all it  
6 would be is trying to figure out, well, what other times  
7 were there, if there were other times. Don't go down  
8 that road. What you can focus on is what you heard in  
9 the statement that Dane made to the detectives at the  
10 hospital. And there was an awareness protective services  
11 could be involved.

12 I am not going to laboriously go through  
13 everything the doctors said. We have six exhibits of  
14 medical records. Each jury will get it. You get the one  
15 with the copied stickers. For some reason, we decided  
16 Codie Stevens gets the jury with the red stickers, but  
17 it's all the same stuff. And you heard those doctors,  
18 and I'm only going to try and create a thread in the way  
19 the doctors, as they treated this baby, develop a thread  
20 that shows why they took the action they did.

21 Dr. Kirby, the ER doctor, is interviewing and  
22 reacting with the patient's parents, Dane and Codie,  
23 about history here, and there is seizure behavior, an arm  
24 is moving asymmetrically, not both arms but one arm.  
25 There are explanations. Electrolytes could be off. Too

1 much water. There's a variety of explanations for  
2 seizures. They do what doctors do. Well, let's do a  
3 test to rule out brain injury, or head injury, which is  
4 one of the explanations for the observed behavior. And  
5 that's the way doctors talk. We rule it out.

6 But the CT from Dr. Ludka comes back, the  
7 person who does the radiological exam of the baby's head  
8 focusing on the brain. There are different aged brain  
9 bleeds, or subdural hematomas and the accompanying  
10 buildup of fluid that goes with those, the hygromas.  
11 That's bad.

12 And you saw the pictures, and the ER nurse and  
13 the PICU nurse both said this baby's head was bulbous, it  
14 was like a globe, it was swollen, it was big. Fluid's  
15 building up.

16 The baby has the sutures that are the natural  
17 divisions between the skull so it can grow apart, get  
18 bigger and form bone in there, form a callus, whatever.  
19 But it also has a fracture, which they don't know quite  
20 yet because they haven't done the skeletal survey that  
21 will come a few days later.

22 But focusing on the brain, they see different  
23 aged bleeds. And now Dr. Kirby has to do, kind of like  
24 the hard job you have to do, we have to go from presumed  
25 innocent to, oh, we can't presume this is an innocent

1 accident anymore. This different aged brain bleed  
2 suggests intentional actions, nonaccidental trauma. Even  
3 when the parents are reporting, just seizing up today,  
4 here it's February 22nd. And when they hear about the CT  
5 results and the different -- oh, he did have a fall a  
6 couple weeks before.

7 Now more sophisticated tests have to be done  
8 because the CT is reliable, but they think an MRI, which  
9 is better images of slices of the brain, through the  
10 radiological process will tell them more, and Dr. Farrar,  
11 the neuroradiologist, said he has now confirmed there is  
12 spinal fluid, or the hygromas, which by their nature, as  
13 he views the images, are a couple to few weeks old. But  
14 there is also one other subdural hematoma, one more  
15 acute, more recent, with new blood, that he would age at  
16 a few days. Now those are two different injuries. He  
17 testified those would not be a result of birth trauma.  
18 The process of being born.

19 There's medical records, Exhibits 31 and 32,  
20 please take the time to read them, if you'd like, which  
21 indicate normal birth or normal C-section. No  
22 complications. A long labor for the mom, it was  
23 difficult for Codie Stevens, but the baby's okay.

24 There's a picture which showed the baby's head  
25 was purple. Mr. Bush provided that on behalf of Codie

1 Stevens, and that's evidence you can look at too. And I  
2 said, do you have any other pictures? Oh, yeah, we have.  
3 Here's one where the baby looks fine a couple of days  
4 later. Apparently, the one that showed the purplish  
5 color either was that the purplish, or the lighting was  
6 bad, or both. But the point is that didn't cause,  
7 according to Dr. Farrar, the neuroradiologist, the brain  
8 bleeds aged the way he has aged them. Because this is an  
9 11-week-old baby, and he says a couple to a few weeks for  
10 the older ones, a few days for the newer ones. And he  
11 testified, based on his training and experience, you can  
12 get these trauma in the head from shaking a baby. The  
13 deceleration acceleration. That would be acceleration.  
14 Stopping would be deceleration. Or by trauma. And, more  
15 importantly, they were not connected to the same event in  
16 the baby's life.

17 Dr. Schinco, the neurosurgeon of some 25-plus  
18 years experience, aged the brain injuries somewhat  
19 similarly. He thought the old one was definitely more  
20 than a week old, but the new hemorrhage subdural hematoma  
21 was between 36 and 48 hours. I realize he's looking at  
22 images. He's looking at behavior. He's seeing how much  
23 fluid is building up. He is the one who installed the  
24 drain in the head, the catheter, to take out the  
25 cup-fulls of fluid, the bloody fluid from the baby's

1 head. And based on his training and experience, he said  
2 that's about where these injuries are. So there's a  
3 slight difference between him and Dr. Farrar, the  
4 neuroradiologist. And Dr. Schinco, with that experience,  
5 says these injuries alone could have killed the baby.

6 I then asked him let's look at beyond those  
7 injuries you observed in the MRI and CT studies,  
8 Dr. Schinco. As a neurosurgeon, let's say we've got, not  
9 just those, but the different subdural hematomas with the  
10 accompanying building up of fluid, or hygromas, but you  
11 have severe retinal hemorrhages of both eyes, a fractured  
12 skull, and I know he was treating the baby before  
13 Dr. Constantino did the skeletal survey at the end, to  
14 find -- confirm the fractured skull, but we know about it  
15 now so I'm asking about it now. The fractured skull, the  
16 fractured radius in the arm, and the two separate areas  
17 of fractured ribs that are healing, his answer was, that  
18 constellation of injuries, or that collection of  
19 injuries, is diagnostic of child abuse. Nonaccidental.  
20 What is that, diagnostic? They've gotta write diagnoses  
21 on paper and make records and figure out how to further  
22 treat. They could write, if they wanted to woodenly  
23 adhere to the presumption that no parent would ever harm  
24 their child, their baby, their infant, they could say,  
25 parents say it's accidental. Okay.

1           He diagnosed this is nonaccidental. This is  
2 child abuse.

3           Dr. Schinco consulted with or reviewed the  
4 findings of the ophthalmologist, the doctor who  
5 specializes in eyes, Dr. Sahouri, and they agreed that  
6 the seizures that the baby was experiencing could not  
7 have caused the retinal hemorrhages. That has to be more  
8 from the shaking that happens in child abuse. For a time  
9 called "shaken baby syndrome," more recently called  
10 "abusive head trauma." Because the head is not just the  
11 surface where, if you cuff some child in the head, leave  
12 a bruise, or you actually break the skin and cause a  
13 laceration and bleeding, that's one type of trauma. That  
14 shows it may or may not lead to the head getting so  
15 harmed that inside the brain has bleeding in a subdural  
16 area. But head trauma can occur where there's nothing  
17 that shows on the outside.

18           Remember, though he's not medically trained,  
19 Dane Krukowski understands concussions and head injuries.  
20 He's a star football player, state championship team.  
21 16-, 17-, 18-year-old young men get to wear helmets with  
22 thick padding and plastic covers, and they sometimes  
23 don't get anything that shows on the outside, but they've  
24 got to come out because they're injured on the inside of  
25 their head from concussions. Even the head of that kind

1 of age young man on a football field can be subjected to  
2 trauma with all that protection. What about an infant's  
3 skull with no protection?

4 Hit hard enough, if you believe Dane, since  
5 he's the only one there giving that bath in that room  
6 February 7th, hit hard enough on that hard metal bathtub,  
7 with the porcelain coating, he said, falling from a  
8 couple feet to cause, either that day or the next day,  
9 depending on who you believe, but between the two of them  
10 absolutely caused sometime that weekend, Saturday or  
11 Sunday, apparent bump, swelling and discoloration.  
12 Dr. Schinco also told you that he examined the baby a  
13 couple of months later in May of '15. The baby's not  
14 hitting developmental milestones but is otherwise doing  
15 okay. So that baby, apparently from the extent of the  
16 injuries, brain damage.

17 The radiologist, Dr. Constantino, did get to  
18 the full skeletal survey once they had stabilized the  
19 baby. The baby who Dr. Schinco and other doctors said  
20 could have died. They got to the point where he was on  
21 his own, extubated, breathing tube out, feeding tube out  
22 of his nose, taking nourishment, getting better, and  
23 Dr. Constantino's X-ray, now that they could look at the  
24 extremities, because they weren't things that could kill  
25 the baby, confirmed fractured skull, few inches long,

1 12-millimeters wide at the place. That's a powerful blow  
2 that caused that. Could have been the bathtub. But  
3 whatever impacted that baby's skull, two separate  
4 interior injuries to the brain, the subdural hematomas  
5 and the accompanying fluid buildup. Different times.  
6 Different incidents.

7 Based on her training and experience,  
8 Dr. Constantino, the radiologist, said this is  
9 nonaccidental trauma. Child abuse. She also offered her  
10 expert opinion that the rib fractures she observed, which  
11 had been seen earlier in the chest X-rays but now she's  
12 seeing them in the full skeletal survey, they would be  
13 very unusual in an infant. Two different rib fractures,  
14 or areas of rib fracture.

15 Dr. Fiori was the PICU intensivist who had  
16 supervision responsibility for all these doctors and  
17 nurses over the course of time, and he testified to you,  
18 in his training and experience, his 20-plus years, the  
19 baby could have died, would have died that day, without  
20 intervention when he saw the baby.

21 And that was a series of balancing acts like I  
22 would never want to have the responsibility to do. I'm  
23 griping because I've gotta balance getting two juries in  
24 and out of a courtroom on a criminal case. They had to  
25 figure out breath to breath, heartbeat to heartbeat, what

1 do they do to keep him breathing because he's not  
2 breathing at times. He can't take nourishment through  
3 his mouth; they have to keep him -- give him food or  
4 nourishment. They have to give him, a baby who's  
5 swelling with fluid, fluid to prevent him from being  
6 dehydrated. That's about as many as I want to talk about  
7 now because it's unpleasant to talk about. They had a  
8 balancing act that I hope none of you ever have to go  
9 through. And in that high wire act of walking exactly  
10 along the wire to get the baby just right, the baby  
11 lived, with, hopefully, minimal damage.

12 Dr. Fiori said the baby had epileptic-type  
13 seizures, but the baby did not have epilepsy when it came  
14 in. It had seizures like it was epileptic, so they call  
15 them epileptic. But, unfortunately, Dr. Fiori said this  
16 baby may have epilepsy in the future.

17 Everybody on the defendant's side, including  
18 Shawn Stevens, seemed to suggest this baby had such a big  
19 head. That doesn't come from any medical person.  
20 Dr. Dawis, the pediatrician, no. The nursing staff on  
21 February 22nd, yes, it had a big head, but the swelling  
22 went down when they got that under control. And  
23 Dr. Fiori's asked, based on his training and experience  
24 as a pediatric critical care medicine specialist of over  
25 20 years experience, what's this baby's head like, when

1 it had a chance to be normal size? He said that the head  
2 circumference was below the 50th percentile. A little  
3 less than average size. The parents might think it's a  
4 big head. Babies have big heads. All babies tend to  
5 have big heads. We're now seeing what a small head looks  
6 like, with this horrible Zika virus with the mosquitos  
7 coming from the southern hemisphere causing microcephaly,  
8 or small heads. But babies just naturally have big  
9 heads. The bodies catch up to them.

10 Like Dr. Constantino, Dr. Fiori testified that  
11 a baby's bones are not easily broken, and fractures can  
12 happen of bones without there being an apparent surface  
13 injury. Shaking or trauma can break bones if it's  
14 vicious enough and violent enough. It may not leave a  
15 bruise on the surface.

16 Dr. Dawis was a wonderful person, apparently,  
17 who has seen probably thousands, tens of thousands of  
18 patients, over 52 years as a pediatrician. You had the  
19 chance to weigh and evaluate her credibility as a witness  
20 because she was somewhat on trial because you know,  
21 eventually, both defendants -- well, at least Codie, who  
22 was there, said I told Dr. Dawis about the head injury,  
23 Shawn Stevens said she was told about the head injury.  
24 That's not really something that comes through from what  
25 she otherwise said. But she told you, Dr. Dawis, yeah,

1 Codie told her about the head injury. The bump. What  
2 does Dr. Dawis say? They're presenting a baby who's  
3 having difficulty, being fussy, irritable. She's gotta  
4 figure out what to do. Doctor says I would have liked to  
5 have seen this baby in one month. Baby born December  
6 6th, should have been sometime in January. They're  
7 seeing Dr. Dawis in February at two months.

8 Codie Stevens says this was sort of what I  
9 worked out with her staff for six weeks, shots and  
10 well-baby check. But, actually, they're going, Codie's  
11 point of view, to see the doctor because we waited all  
12 weekend after the head injury, that we could see, either  
13 Saturday or when it showed up more on Sunday, didn't take  
14 the baby to the emergency room then, but we went into Dr.  
15 Dawis for that appointment that day. And there really  
16 isn't any discussion about shots in the medical records.

17 But what's critical about those records? And  
18 doctors do keep them because they've gotta keep straight  
19 all the different patients interactions and what they do.  
20 "Mom denies fall." That's doctor speak for, I inquired,  
21 had a fussy baby. Any problem? Any fall? Denies fall.  
22 It's not even ambiguous. And doctor says it's part of a  
23 routine, if I see a baby having problems. Any fall? Mom  
24 denies fall.

25 What had happened that weekend before

1 Dr. Dawis' visit? Codie is called up by Dane. Baby's  
2 had a fall, hurt his head -- or hit his head. They talk  
3 about what they're going to do. She says, I'm calling my  
4 mom, Shawn Stevens. Shawn Stevens gets involved. Shawn  
5 testifies to you under oath, I told them to take the baby  
6 in. That meant the doctor, the emergency room.

7 Codie and Dane say, no, we just -- she said  
8 just keep an eye. That's not what Shawn Stevens said  
9 under oath to you. You understand, though, when you say  
10 something different to police, or to investigators, or it  
11 shows up that you've testified differently before than  
12 what you say, we bring that out. That's what lawyers do.  
13 But didn't you say something different on this other day?  
14 Did you notice that nobody impeached or drew attention to  
15 a difference in Shawn Stevens' testimony here before you  
16 in the trial, that she told Codie and Dane to take the  
17 baby in? You might reasonably infer that's probably what  
18 she said from the beginning, when she's first asked on  
19 February 22nd, out of the presence of Dane and Codie,  
20 Detective Worden goes to her house on Snow and says, what  
21 happened? And she gets the story. And then Detective  
22 Worden interviews her on tape. You don't have all that  
23 stuff because that's just out-of-court statements and  
24 hearsay. What's important is what she said here. What  
25 she said here is I said to them, take him in the day they

1 called me, the day I went over and saw the injury.

2 So Dr. Dawis sees the baby when she does,  
3 perhaps because of a scheduled appointment, or perhaps  
4 because Codie and Dane are now playing catch-up with  
5 their responsibilities as parents. They're covering  
6 their you-know-whats. They are rationalizing not taking  
7 the baby in on Saturday when the fall happened, or  
8 Sunday, when the baby threw up repeatedly, to the point  
9 where even Codie testified here to you, yeah, this is  
10 bigger than spitting up. This is all over me, head to  
11 toe, and repeatedly, three times. And I know a baby can  
12 get dehydrated, could die from that, but I'm still not  
13 taking him in on Sunday. I got a head injury yesterday,  
14 I got the throwing up today repeatedly, so I'm waiting  
15 till Monday, we'll see Dr. Dawis, and then maybe our  
16 conscience will be clear. If there's a bump, we'll talk  
17 about it.

18 Dr. Dawis didn't note a bump or a bruise. They  
19 had furiously been applying the peas and the cold cloth.  
20 Perhaps it got down to where it wasn't that visible, or  
21 visible at all. But Dr. Dawis' records confirm mother  
22 denies fall. And she didn't see an any apparent bruises  
23 or bumps. And on the stand Dr. Dawis was asked, would  
24 you have noted that? Oh, yes.

25 You say to yourself, why? You heard testimony

1 about this concern about protective services being  
2 involved. And you know what that means. They get  
3 involved and, we need to protect your children from you,  
4 the parents.

5 The law creates their place in society, that  
6 doctors, cops, dentists, all the various professions that  
7 deal with human beings, have a duty to protect children  
8 and to report. Maybe medical privileges be damned,  
9 patient confidentiality set aside. If it's children, we  
10 don't care if the parents don't want to get the child  
11 looked at. We, as professionals, have to. So that's  
12 what protective services does. And enough said about  
13 that.

14 The defendants, both of them, were aware that  
15 could happen. Because what else did Shane -- or Shawn  
16 Stevens say to you when she was under oath? Not only did  
17 she say, I told them to take the baby in then, Saturday.  
18 Protective services is going to be called, you might as  
19 well just face it.

20 Now you have some inkling that protective  
21 services was somehow involved before, you asked lots of  
22 questions about that. You're not going down that road  
23 because that's not part of the evidence in this case.  
24 But what is part of the evidence in this case is this  
25 awareness that protective services is there. Could they

1 have called other people? No, they called Shawn Stevens.  
2 Shawn Stevens will stick by them.

3 And she did stick by them. As far as she  
4 could, and apparently she didn't rat them out. But when  
5 asked by a police officer, when asked under oath in  
6 court, what did she say? I told them to take the baby  
7 in. I keep coming back to that because Codie Stevens  
8 relied on her mother, she said. That's the person she's  
9 going to go to with an emergency, with an anxious  
10 situation, with a crisis. And she disregarded her  
11 because of that concern, protective services.

12 And Dane was aware of that. That's in his  
13 statement. You got the chance to hear it. You get the  
14 chance to replay it. You satisfy yourself, if that was a  
15 concern. He downplayed it in court when he was on the  
16 witness stand, but what did he say on February 22nd when  
17 he's confronted by Detectives Bean and Brooks? Yeah, he  
18 was aware that risk was there.

19 Codie Stevens, when she was with us under oath  
20 before you, was confronted by me about what did you do  
21 with Ella, your first baby, when you had issues? When  
22 you had things like vomiting, constipation, rashes,  
23 injured her arm, drank the hand sanitizer, had a fever.  
24 Six times, she said before Ella was two, she took her to  
25 the emergency room. Why didn't she take this baby? Why

1 didn't Dane take this baby? Both of them as parents,  
2 when you have a head injury to an infant that's visibly  
3 causing trauma, bruise, bump, what have you? Maybe you  
4 can explain it away Saturday. Codie was confronted about  
5 the fact that she had said, back on February 22nd when  
6 she was interviewed by the detectives, when did you see  
7 it? She says it showed up the next day, which would be  
8 Sunday, the 8th. In court here she tried to say she  
9 could see the bump, or the dot, on Saturday, the day it  
10 happened. But when she was told, or reminded, here's  
11 what you said. This is you talking to detectives back in  
12 February. Okay, I didn't see it till the next day. She  
13 agreed that that would be something important enough to  
14 bring Shawn over, to get mom over here. We got a  
15 problem.

16 She tried to say it was right there that day,  
17 and it was significant enough to get mom there. But when  
18 confronted with her prior statement said, okay, I didn't  
19 really see the swelling till the next day. Then why not  
20 take the baby the next day, Sunday, to the ER? Dane  
21 Krukowski testified it wasn't a condition of -- or an  
22 issue of money, cost to see the ER physician to get  
23 treated. We know that that's how it works. Despite all  
24 the horrible costs of medicine and procedures and  
25 doctors, you take the baby to the ER. That's the -- cost

1 isn't an issue.

2 They had something else of concern. That PS  
3 concern, that CPS might be in their business. So,  
4 assuming the swelling didn't show up till Sunday, she's  
5 already told you, by having gotten Shawn over there on  
6 Saturday, she thinks that's serious. Now it's on Sunday,  
7 she has another chance to be a good mom and for Dane to  
8 be a good dad.

9 Nope.

10 And then the vomiting episodes happen. Another  
11 chance, another indication, a separate reason you need to  
12 get the baby in. And that happened on February 21st,  
13 two weeks later after the fall. We had the vomiting  
14 happen. Starts Friday, and then it's three vomiting  
15 episodes on Saturday the 21st, the day before they took  
16 the baby to the hospital.

17 Potential the baby could be dehydrated. And  
18 this is after the baby got the ProSobee from the WIC  
19 visit earlier that week and they thought they had formula  
20 that would inhibit or stop the vomiting episodes.  
21 Something's going wrong, and they don't take baby in on  
22 the 21st. Let's just try these home remedies, a little  
23 peppermint water. Watch the baby. They still have CPS  
24 in the back of their mind.

25 Please keep in mind that there's a lot that you

1 don't have to decide. Are they the parents? They're the  
2 parents. Those are one of the elements of the crime.

3 Do they have a duty to take care of the child?  
4 Of course they do.

5 Are the injuries serious? Of course they are.

6 Are the injuries accidental or nonaccidental?

7 There's just too many doctors saying these are  
8 nonaccidental, they're diagnostic of child abuse. These  
9 are all issues that you can spend time in the jury room  
10 fighting about, but you should be focused on the major  
11 issue. Did they have a duty to act a certain way, and  
12 did they fail to do that?

13 This is not a hindsight issue, thinking back  
14 now like we're in there on the stand, saying knowing what  
15 we know now, we would have done something different. No,  
16 they knew then. They had motivations, an intent and a  
17 state of mind that should have compelled them to act for  
18 the baby's best interests, but they had different  
19 concerns and different priorities. They don't want  
20 anybody else telling them how to raise the child. Not  
21 PS, and apparently not Shawn Stevens either, who said  
22 take the baby in and they didn't do it. They didn't take  
23 the baby in when the fall happened in the bathtub  
24 February 7th. They only went on the 9th, and didn't even  
25 tell the doctor.

1           Then on the 21st when the vomiting starts, they  
2 don't take the baby in, and then it gets worse on the  
3 22nd. And that's all the People are trying to prove.  
4 Child abuse second-degree. I can't tell you who did all  
5 those injuries, that constellation of injuries the  
6 radiologist and the neurologist and the neurosurgeon saw.  
7 Don't have to prove it. It breaks my heart I can't make  
8 it easy for you and say Dane did it, or Cody did it, or  
9 they both did it. That's not your job. Did they fail to  
10 take action when they should have? And that's the  
11 instructions that the court's going to give you.

12           Thank you.

13           THE COURT: Mr. Sturtz?

14           MR. STURTZ: A devious web we weave is the  
15 practice to deceive. A devious web we weave is the  
16 practice to deceive. It applies to both tables here.  
17 That table and the table over there.

18           May it please the court, Mr. Duggan, ladies and  
19 gentlemen of the jury, I have only one opportunity to  
20 speak to you today. And under the rules of the game we  
21 play in this courtroom, Mr. Duggan gets to answer and  
22 talk last because he has the burden of proof. So if  
23 there's anything I say during my final argument to you  
24 about the facts that have come from that witness stand,  
25 they are not meant to mislead you or misguide you. I

1 have been busy listening to the testimony, making notes.  
2 So if there's anything that doesn't jibe with what you  
3 wrote on your notebooks, please draw upon your collective  
4 memories and discuss it with your fellow jurors to see  
5 what the testimony is.

6 In this courtroom, we have three distinct  
7 areas: The jury, the witness box, and her Honor. It's  
8 for a purpose. The court tells you what the law is.  
9 People and exhibits that come in through that witness  
10 stand show you the facts. It's your job to use your  
11 common sense, your ordinary experiences of life, and  
12 apply it to what her Honor tells you and what facts come  
13 from that stand.

14 And it would be very simple to plug somebody  
15 into a little meter and find out what's going on. But  
16 we've had a time tested, time honored jury system in this  
17 country for many, many years, and it's based upon your  
18 common sense and your everyday experiences that are  
19 important in making a decision in this case.

20 Some of the important things that are going to  
21 be discussed today are the pillars of what this system is  
22 all about. A lot of people have died in this country for  
23 these principles, and there's some very hard principles  
24 to understand.

25 Presumption of innocence. My grandfather used

1 to come here and sit in the courtroom, and I'd have a  
2 break and he'd say, Phillip, why do you represent all  
3 these guilty people? Don't you know that when they come  
4 in that courtroom, they're guilty?

5 Well, grandpa, that's true a hundred miles away  
6 in Canada. But in this country, in this state, you're  
7 presumed to be innocent until proven guilty beyond a  
8 reasonable doubt.

9 The judge is going to read to you and tell you  
10 that a person accused of a crime is presumed to be  
11 innocent. This means that you must start with the  
12 presumption that the defendant is innocent. This  
13 presumption runs and continues throughout the trial and  
14 entitles the defendant a verdict of not guilty, unless  
15 you are satisfied beyond a reasonable doubt that he is  
16 guilty.

17 Every crime is made up of elements. The  
18 prosecutor must prove each element of the crime beyond a  
19 reasonable doubt. The defendant is not required to prove  
20 his innocence or do anything. If you find the prosecutor  
21 has not proven every element beyond a reasonable doubt,  
22 then you must find the defendant not guilty.

23 A reasonable doubt. This is going to be hard  
24 in this case because we're talking about apple pie,  
25 mother, and the Detroit Tigers. Did you hear how many

1 times Mr. Duggan referred to the CPS people? Did you  
2 hear how many times did he talk about this is not  
3 accidental, but this is intentional act. This is to get  
4 your mind all upset and convict somebody without looking  
5 at the rational facts that came from that stand. They  
6 take you down the path, and then here you go. Please use  
7 your common sense. That's why you're here.

8 A reasonable doubt is a fair, honest doubt  
9 growing out of the evidence or lack of evidence. It is  
10 not an imaginary or possible doubt, but a doubt based  
11 upon common sense. When you kick the tires on that  
12 Chevrolet, you'll know what's going on.

13 In my opening statement I talked about what's  
14 called the Information. Mr. Duggan even referred to that  
15 a couple of times in his final argument. It talks about  
16 the date, 2/7 through 2/22. Mr. Duggan even signs it on  
17 4/27/16. He charges my client, Dane Krukowski, with the  
18 offense of child abuse second-degree. The terms of that  
19 charge are that Dane Richard Krukowski, late of the  
20 County of Saginaw, did cause serious physical harm and/or  
21 knowingly or intentionally committed an act likely to  
22 cause serious physical or mental harm to a child by  
23 failing to seek medical treatment after significant  
24 trauma, which resulted in further exacerbated physical  
25 injuries or deterioration of the child's health and/or

1 intentional causing physical trauma, contrary to statute.

2 In addition to that, the court is going to  
3 instruct you upon a number of theories that Mr. Duggan  
4 has talked about. One is abandonment. Reckless act.  
5 And serious physical harm and fourth-degree.

6 When I throw all this stuff against the wall,  
7 if one doesn't stick, maybe I'll get it on another.

8 Your difficult task is you just don't have one  
9 charge here to decide. You've got a lot of them to look  
10 at. Please look at the facts that you recall and make a  
11 decision based upon what you have heard and what you have  
12 seen.

13 The additional matter of the included offense  
14 in this case is called child abuse fourth-degree. To  
15 establish this charge, the prosecution must prove each of  
16 the following elements beyond a reasonable doubt:

17 First, the defendant is the parent.

18 Second, that the defendant's omission or  
19 reckless act caused physical harm to Roegan.

20 And third, Roegan at the time was under the age  
21 of 18.

22 Now to try to establish and prove these  
23 charges, the child abuse second-degree, knowingly and  
24 intentionally committing an act, intentionally causing  
25 physical harm, they called a number of people. You folks

1 have been very attentive and listened very well as far as  
2 the evidence has been presented in this case. The first  
3 witness that was called was Sara Markle. She's the  
4 Covenant nurse at the emergency room. What she recalls  
5 from her notes and what she remembers is that the child's  
6 vitals were stable. She saw no trauma on this child.  
7 She saw in the charting that the baby had fallen.  
8 Dr. Kirby had entered something on the charting that the  
9 baby had fallen. Both parents were there. They were  
10 cooperating with the nurse. They gave a history of the  
11 fall in the tub and trauma.

12 If these parents were so mean and vindictive to  
13 withhold care for this child, why would they be  
14 cooperating with the hospital to give them a history of a  
15 fall in the tub, and the nurse's observation that the  
16 parents were being cooperative and helpful when asked  
17 questions? That's not the picture that Mr. Duggan would  
18 paint you.

19 Dr. Sahouri was the next person to testify.  
20 He's the gentleman that took pictures of the inside of  
21 the eyeball. I've had more pictures taken of the inside  
22 of my eyeballs than anybody. But Sahouri and I have had  
23 some pictures taken of my eyes. He's a very fine,  
24 excellent doctor. You know, when Dr. Sahouri, before he  
25 left and I didn't hear any of this, I asked him, I said

1           could a chiropractor's actions in shaking a baby upside  
2           down cause these problems? Cause these -- cause these  
3           hemoglobins [sic] in the child's eye, the hemorrhages? I  
4           cannot exclude them from the cause.

5                         Look at those hemorrhages inside that baby's  
6           head. It's like a dalmatian dog. It's horrible. How do  
7           these hemorrhages get in there? Oh, by shaking the baby.  
8           Did any neighbors testify about Shawn? Did any neighbors  
9           testify about Codie and Dane, as far as their  
10          relationship with the baby?

11                        The baby had a very traumatic time, as you can  
12          see in this picture, being born. Trauma pushing,  
13          pulling. Baby got stuck in the birth canal. You heard  
14          what Codie had to say about her labor and what happened  
15          and what went on, and finally the baby was delivered and  
16          she was aghast at the condition of the child. I suggest  
17          to you that the shaken baby syndrome came from the trauma  
18          of pushing the baby down the birth canal, and it also  
19          caused the retina hemorrhages that were inside the baby.

20                        Tammy Nowaczyk was the next person to testify.  
21          She's the lady that talked about the baby at the hospital  
22          and when the photographs were taken. She said there was  
23          no outward appearance of any injury to the child. When  
24          you look at the photographs were taken at the hospital,  
25          look at the area where the so-called injury was. The

1 injury, according to what I understand, was a dime size  
2 injury where my finger is. And the dime-size injury  
3 didn't last very long. The dime-size injury had no  
4 abrasion, no cut, no lesion or anything of that kind.

5 Another view of his left side. This is, I know  
6 this is several days later. But from what -- the  
7 tremendous fall that the baby had inside the bathtub,  
8 wouldn't something show up as to what was described? I  
9 don't see it on the baby at all. You take an observation  
10 yourself and look at it.

11 This is a top view of the baby's head. This is  
12 the right side of the child. You see no injury to the  
13 head at all. Fontanel is located in this area. The head  
14 at this point in time is supposedly expanding. When you  
15 look at the child's head compared to the nurse's hand and  
16 compared to his ear, it's for you to make a determination  
17 whether that head has expanded. Or is that view of that  
18 head a ringing of the bell to mom and dad to take the  
19 baby in? You as parents, grandchildren -- grandmother  
20 and grandpa, when you look at a child like that, you see  
21 nothing as far as outward appearances, as far as any  
22 injuries are concerned to the child.

23 There's no outward appearance as to these  
24 retina problems that we see. When you look at the child  
25 in the photograph here, you can't see the retina on the

1 inside, of course. But you would think, because of the  
2 trauma and the shaking, or whatever, there would be  
3 appearance around the eyes because of the huge amount of  
4 hematomas that are on the retina. Take a look at it.

5 What alerted -- what alerted Dane that his  
6 child required to go to go hospital? Did he know that  
7 the child had a skull fracture of 12 millimeters? Was  
8 there anything done to his skull from the outside? There  
9 was no outside appearance.

10 Was there any bells ringing when Dane looked at  
11 his child and picked him up out of the bathtub that he  
12 had broken ribs? He was breathing okay. His vitals were  
13 a-okay. There was nothing to show that the baby required  
14 to go to the hospital right then and there.

15 His arm. Was there anything that showed Dane  
16 that the baby's hand was broken? He tells you how the  
17 baby's hand, according to him, was injured by the  
18 movement and the action that was done in the emergency  
19 room dealing with the child and getting an intravenous  
20 needle in there.

21 The brain hemorrhages located on the child,  
22 there was one back here and there was one up here. These  
23 hemorrhages were described as being acute, or more acute.  
24 One was old, one was not so old. Nothing was ever  
25 offered to us to indicate when and where and how these

1           hematomas arrived in the skull.

2                         And where -- if the bleeding was occurring so  
3 bad inside the baby's head that we would see this -- and  
4 it wasn't several cups of blood. As I remember,  
5 Dr. Schinco testified at one time that there was 10 cups  
6 of blood came out of the child. Then he's oh, no, no,  
7 no, I made a mistake, it was a half a cup. When you  
8 looked at that bag, tell me how much blood is in that  
9 bag, how old that blood is.

10                         What did Schinco do that took care of the baby?  
11 Did he go inside and operate on the brain and stop the  
12 bleeders? Did he cauterize anything inside the brain?  
13 Did he have to open up the skull and look inside?  
14 Schinco, all he did was put a catheter in the child's  
15 head. A needle. It's more like a little tube. Ever  
16 been catheterized for not being able to go to the  
17 bathroom, you'll know what it feels like or what it's  
18 like. And as a result of that, they didn't have to put  
19 any pump on it or anything, the blood just came out.  
20 After putting the catheter in, within a day, two days,  
21 the child was back in normal health and he went home.

22                         Was there anything in this scenario of  
23 witnesses that showed that Dane knew that the baby's head  
24 was expanding? Was there anything that showed, when the  
25 baby got to the emergency room, that the skull was taut?

1 That the skin was taut? That the fontanel was taut?  
2 You've gotta use your common sense. Tammy Nowaczyk said  
3 the hair and the veins and everything, there was no  
4 injury, no bruises, there was no goose eggs. The child  
5 was sleeping okay. Child had spontaneity. It opened his  
6 eyes. Responsive to touch. The child was intubated, no  
7 question about it. She talked about the rib fractures  
8 being old, that they were all callused. She was aware of  
9 that.

10 Dr. Dawis. Dr. Dawis is a pedestrian that saw  
11 the baby after his birth, I believe somewhere around the  
12 first time was December 12th or 13th, and then he was --  
13 then she was scheduled to see him again for the next  
14 visit somewhere around 2/9/15, is when Dr. Dawis saw the  
15 child again. Dawis pounds the hands, the baby has  
16 responses at that point in time on 2/7. The baby is  
17 okay. Hands seem to grab. She touches the feet. She  
18 does her finger on the face to see if the child is  
19 responsive to feeding. She measures the head. Does she  
20 tell us how big the head is? No. All she remembers is  
21 that she's got the phone number for the chiropractors to  
22 examine this child and to shake him up.

23 Sure enough, as a result of Dr. Dawis, the  
24 mother, Codie, takes the child to the chiropractor to be  
25 examined. Down there it's interesting that Dr. Dawis

1 [sic] does not do anything as far as X-raying the baby at  
2 all. What type of examination did you do of the baby  
3 that he determined that the baby needed an adjustment of  
4 his spine and its neck? Do you recall what was said? He  
5 takes the baby between his legs, and tips the baby upside  
6 down, and by his feet he jerks the child three times.  
7 Once, crack, loud enough that the grandmother hears it.  
8 Counsel would have you say that she's apparently a very  
9 honest person, but she's testified. Well she's testified  
10 under oath before you ladies and gentlemen. She told you  
11 that it was loud enough that she heard it across the  
12 room. And she heard it each time that the baby was  
13 jerked. Three times. Then the doctor puts the baby on  
14 the examining table, moves his neck, crack. Moves it the  
15 other way, crack.

16 These are health professional people that had  
17 this 3200 or 2300 form that they have to watch out,  
18 they're protectors for children. Did Dawis [sic] look at  
19 the baby? Did he examine the baby's head? Did he see  
20 anything wrong with the baby at that point in time on the  
21 9th? No -- pardon me. The chiropractor, Dr. Dense.

22 The next person to testify was a Jessica Kirby.  
23 She's the emergency room doctor. She sees no signs of  
24 trauma on the child. CAT scan, she orders a CAT scan and  
25 MRI, and it's hard to see if the head is larger. That's

1 her observation of the child. She can't tell, by looking  
2 at the child, if the head is larger or whatever.

3 Dr. Farrar testifies. He testifies that these  
4 hemoglobin, these clots inside the brain, there's two of  
5 them, he cannot tell which -- what kind of trauma caused  
6 it, but he says they are of different ages. What caused  
7 the hematomas? He doesn't know. The left-handed side is  
8 older, the right-handed side is recent. Cannot say that  
9 the baby's being held upside down and the cracking of the  
10 back caused the injuries to the eye.

11 Do you recall that? Dense, he testified, he's  
12 the chiropractor I talked about just moments ago, there  
13 was no X-rays. He shakes the baby up three times.

14 Grandmother, she's there, she testified here in  
15 open court as to what she heard and what she saw. That  
16 occurs on the 9th. The next day the baby goes back again  
17 and sees another chiropractor. He looks at the baby. He  
18 doesn't see anything wrong with its head. He doesn't see  
19 anything wrong with its arm. He examines the baby. Now  
20 he's a medical provider and he's got an obligation to  
21 report whatever he sees that occurs to the baby.  
22 Nothing. Nothing is wrong. He cracks the baby three  
23 times. Each time the baby has a (Mr. Sturtz mimicked  
24 cracking noises), and when he maneuvers his neck, two  
25 more cracks. Common sense.

1           The age of the baby's bones. Are they more  
2 brittle than a gentleman's age like me? I think a baby's  
3 bones are very supple. And to hear them crack or move, I  
4 think some great deal of effort has got to be exuded on  
5 those bones to make them crack that it's loud enough for  
6 the grandmother and the mother to hear.

7           And the grandmother and the mother both tell  
8 Dawis that the baby did have a fall. Mr. Duggan would  
9 believe you that the -- that they had no conversation at  
10 all with the doctor. Now why would those two ladies, who  
11 take their grandchild and their son in to see Dr. Dawis,  
12 lie from that witness stand under oath that we told the  
13 doctor that the baby had a fall and that the fall  
14 occurred on the 7th, just a couple of days before we came  
15 to you. And we waited to come to you per your  
16 instructions that you'd rather have us come to see you  
17 rather than go to the emergency room. Barrigar sees the  
18 child again on 2/10. Barrigar sees the child again on  
19 2/18. Same type of treatment is done. There's no  
20 crying. No X-rays. Shaking him the same way, same  
21 noises.

22           Dr. Constantino, the radiologist, she does the  
23 skeletal survey. It's funny up to this point in time  
24 nobody in that hospital, even as a result of a CAT scan  
25 and an MRI, didn't see this 12-millimeter hole in that

1 kid's head. Twelve-millimeter, what I believe, is over a  
2 half-inch long. Not according to what Mr. Duggan would  
3 believe, 2 or 3 inches or whatever. It's a half-inch, I  
4 believe. And it had already been callused over.

5 What did you do to fix that hole in the baby's  
6 head?

7 Oh, nothing.

8 What did you do to fix the ribs on that baby?  
9 You knew it had cracked ribs.

10 Oh, nothing. They were all callused over.

11 Was the baby in pain or anything with the hole  
12 in the head? Did you have any problems with that? I  
13 didn't hear one nurse or one doctor say anything about  
14 pain, or any type of discomfort from the 12-millimeter  
15 hole in the baby's head.

16 The skeletal scan revealed, according to  
17 Dr. Constantino, the rib fractures. She also at that  
18 point in time detected the arm that was broken and it was  
19 callused over.

20 Do you have any idea what caused any of these  
21 things?

22 No.

23 How old are they?

24 Remember her response? I didn't get anything.

25 Shawn Stevens, the grandma was next to testify.

1 The mother of Codie. Hears the bones break. There was  
2 no X-rays taken. When she goes, she gets X-rays. Goes  
3 to Dawis, talks to the doctor, explains -- and she  
4 recalls she even told the doctor that the baby had  
5 fallen, and even the mother had told Dawis also that --  
6 they go to the chiropractor, she hears the cracking of  
7 the bones.

8 That bothers me as a grandfather. It bothers  
9 me as a dad. This baby is a small baby, 11 weeks old,  
10 approximately, and to hear those bones crack, to me,  
11 there was something -- something wasn't right. So much  
12 force was being used that something occurred that was not  
13 normal.

14 That's for you to decide.

15 Did you ever pull your knuckles apart? I can't  
16 do that.

17 Mike Fiore, he's the hospital pediatrician. He  
18 sees no goose egg, no injury on the outside, nothing  
19 appeared to show broken bones in the hand, in the head.  
20 Skull fracture; did you do anything to correct it? No,  
21 we didn't. It was all callused over.

22 What caused these injuries, Doctor?

23 Well, they were involuntary.

24 Well, what do you mean by involuntary? Mr.  
25 Duggan would have you believe that it was all done as a

1 result of shaking the baby. Did my client testify he  
2 ever shook his son? Do you recall the testimony of his  
3 girlfriend shaking the baby? Not one time. How about  
4 the grandma, who saw the baby all the time? She came  
5 over and picked the baby up at various times. Did she  
6 see any evidence of that? Did she see any evidence the  
7 day when she went over there other than you better take  
8 the baby in because CPS is going to be involved. Well,  
9 wait a minute. Take the baby in because it's an injury  
10 to its head. It's a dime size, round thing. There  
11 apparently was some discoloration to that circle, but  
12 there was no swelling at that point in time.

13 What did the parents of this child do? They  
14 wash him up. They clean him up. They watch him. He's  
15 breathing normally. He has no unusual movements. He's  
16 not having any seizures. The child is acting normally.  
17 He goes to take -- he goes to bed, he sleeps. He has his  
18 bottle. Is there any violent projectile vomiting?  
19 Nothing. She takes him downstairs. They sit with the  
20 baby all day. Is that something that a person would do  
21 if they knowingly and intentionally committed an act to  
22 cause serious physical and mental harm? What did Dane do  
23 that day? Did he run away, go outside and smoke a  
24 cigarette or anything? He was inside.

25 Dr. Farrar, apparently because of his access to

1 the films and to the medical records of the birth of the  
2 child, he's the only guy that tells us that the baby's  
3 head size at birth -- this is on page 10 -- was  
4 34 centimeters. We don't know what it was with Dawis. We  
5 don't know what it was with Dense, the chiropractor, or  
6 Barrigar. We don't know from any of these people what  
7 size the head was.

8 Even when they get to the hospital, and the  
9 first nurse that sees him, Sara Markle, or Tammy  
10 Nowaczyk, do they measure the child's head to say, hey,  
11 listen, back at birth time it was 34, and now all of the  
12 sudden it's 50? Well, I don't hear that at all.

13 What made -- or what should have made these  
14 parents aware that the child was in distress? What would  
15 give you the idea that, hey, listen, we need to get this  
16 baby in right now? Change in vitals. Blood pressure.  
17 Pulse. Breathing. Temperature. Heart rate. All of  
18 those apparently were all normal. The size of the bump,  
19 the size of the bruise, the size of the cut or abrasion;  
20 there was nothing even scuffing the skin.

21 Any swelling immediately at that time? No.

22 Any non-movement or the child being lethargic?  
23 Nothing.

24 How about his bowels? Did he move his bowels  
25 all right? Did the child urinate? Was there any problem

1 in the hospital with the child urinating or having a  
2 bowel movement?

3 The child's eyes. Pupils. Responsiveness.  
4 The mother upstairs, when she changed the baby, she put  
5 finger up and down, the eyes went up and down, or  
6 sideways, or whatever she did. Then she held her fingers  
7 out by the child's hand and the child grabbed on.  
8 Everything's normal. She did the scratching on the feet.  
9 Feet reacted.

10 Any vomiting going on at that time? Crying?  
11 Moaning? Whimpering? There was no crying, moaning, or  
12 whimpering at all back on the 8th or the 9th when they  
13 went to see the doctor.

14 Not wanting to take the bottle. Involuntary  
15 movement. Jerking. None of that was present back on the  
16 7th in the afternoon, during the 8th. And on the 9th,  
17 they went to see the doctor.

18 On the 10th, they went to see a doctor.

19 On the 18th, they went to see a doctor.

20 Did anybody say to them, hey, listen, your  
21 kid's head is blowing up? Your kid's head, I see this  
22 big, bulging thing coming out of its head. No, the baby  
23 was responsive. He was responsive enough to be shaken up  
24 and down on the 9th, the 10th and the 18th.

25 From the 18th to the 22nd is three days. What

1 happened during that three-day period that would give  
2 some indication to Dane or to Codie that the child was in  
3 distress? Nothing. This vomiting occurred, to my  
4 knowledge and from my remembrance of the testimony, and  
5 it's up to you to make that decision or not, occurred  
6 sometime on the 21st, and then in the morning the  
7 vomiting was projectile. The child what's whimpering.  
8 That's what woke up Codie. Whining. Moaning.

9 And then she noticed this twitching. Seizuring  
10 activity. Dane says, Hey, you're nuts. Let me play with  
11 the baby. He looks at the baby, the baby smiles at him,  
12 and then next thing you know the baby twitches. Hey,  
13 something's wrong here.

14 According to the testimony that I heard, within  
15 7 to 10 minutes they were out of the house, with Ella and  
16 both of them, and they were in the hospital. And they  
17 were cooperating with the nurses. They were not giving  
18 them the finger. They were not being obstinate. They  
19 were not being defensive. They told them that the baby  
20 had fallen. This was all in the notes of Dr. Kirby and  
21 Tammy Nowaczyk.

22 Miss Stevens was recalled -- I don't recall the  
23 purpose right now, but I remember she went back over that  
24 she described the cracking noise of the child, she  
25 described doctors, as far as the chiropractors, they were

1 informed of what was going on.

2 Robert Bean, he testified about those tapes.  
3 Played this tape of Dane Krukowski. If you ever want to  
4 see some person that was set up and the cops were after  
5 him. They didn't believe a damn word he had to say. He  
6 told them five or six times the same thing. They kept  
7 after him. They wanted him to say something, and he told  
8 them the truth each time he opened his mouth. I'm sorry.

9 These people that are on the CPS system, when I  
10 talk to them, I'd advise my clients never to talk to the  
11 CPS people, only because of the problems and difficulties  
12 as far as reporting stuff and how it's transcribed.

13 What they want is they want to either divide  
14 these families, to do something. A three-year-old girl,  
15 an 11-week-old child. They even take the three-year-old  
16 girl down and have her interviewed for sexual  
17 molestation. You know what the answer was? This lady  
18 right here tells you nothing happened to the girl.

19 MR. DUGGAN: Objection. I don't know where the  
20 sexual molestation reference comes from.

21 THE COURT: Mr. Sturtz, your argument is to be  
22 based on the evidence, and I advise the jury the lawyers'  
23 comments and arguments are not evidence, and you're to  
24 recall the facts that you hear in this courtroom and base  
25 your decision on that.

1                   Go ahead, Mr. Sturtz.

2                   MR. STURTZ: Thank you, Judge.

3                   You recall what Mindy Worden said after what  
4 the child was interviewed. You make your own decision.

5                   Officer Collison is from the Saginaw Township  
6 Police Department. She was at the hospital. Did not  
7 talk to the parents. Was there after CPS arrived.

8                   Dr. Schinco. Dr. Schinco performed a bedside,  
9 he didn't say "surgery," he performed a bedside procedure  
10 where he put this catheter in to relieve the pressure.  
11 Could the chiropractic actions cause any lesions in the  
12 child's brain by shaking him up and down? Look at your  
13 notes and see what his response is.

14                   The doctor, immediately upon seeing the baby on  
15 the 22nd, didn't do anything. He said wait. Let's wait  
16 and see. Let's wait and see what's going on.

17                   On the 23rd, according to my notes, according  
18 to my knowledge, after much discussion with Dr. Kelly --  
19 pardon me -- Dr. Kirby, Farrar, decision is made to put  
20 this catheter in. And there is some discoloration of the  
21 blood. He couldn't tell us how old the blood was.

22                   On 3/2/15, the child goes home, it's stable.  
23 No seizures. The child is eating well. It's okay to be  
24 discharged. Page 56 and 57. Read what he has to say  
25 about the child.

1 Do we know what the child is like right now?  
2 Whether he's got one leg or two legs, whether he's had an  
3 eye which has been shut because he can't see out of it  
4 because of these hematomas inside the eye? We don't know  
5 anything about the age, the condition of the child now.

6 We know that he went to the hospital, folks.  
7 And we know that there was pressure on the young man's  
8 head. But Schinco didn't do it right away. He said  
9 let's wait. He went in the next day and put this  
10 catheter in. Did he do anything about fixing the  
11 bleeders inside the head? Inside the brain? Going in  
12 with a cautery or some type of instrument, stop the  
13 bleeding? No. No.

14 Have any of these doctors that have testified  
15 here, Dr. Dawis, Dr. Kirby, Dr. Farrar, Dr. Dense, Dr.  
16 Barrigar, Dr. Constantino, Dr. Farrar, Dr. Schinco, have  
17 they ever seen the child after his discharge and told us  
18 how he's doing now? No.

19 Mindy Worden testified. She brought in the  
20 Exhibits 5 and 6 of the bathtub. She went there, she  
21 apparently didn't know what the bathtub was made of.

22 Codie Stevens testified and Dane Krukowski  
23 testified.

24 Ladies and gentlemen, from that you must make  
25 your decision as to whether my client is guilty or not

1 guilty of child abuse second. That he did cause a  
2 serious physical harm. The physical harm was, is that  
3 there was a crack in his skull. Who and how it was  
4 caused we don't know, but it was callused over.

5 How his wrist got broken, you heard from my  
6 client his version. But what condition is the wrist in?  
7 The wrist was all callused over when he was in the  
8 hospital.

9 The ribs were all callused over.

10 What problems with the retinal spots that we  
11 see in there?

12 THE COURT: You have about 10 minutes,  
13 Mr. Sturtz.

14 MR. STURTZ: Thank you, Judge.

15 Anything happen as a result of those  
16 hemorrhages inside the eye? We don't know. How they  
17 were caused? We don't know.

18 The brain hemorrhages. Apparently, they all  
19 dried up and went away as a result of the bedside  
20 procedure that Schinco performed.

21 The baby was seen by Dr. Dawis before the fall.  
22 Dr. Dawis saw the baby after the fall on the 9th. Two  
23 care providers, Barrigar and Dense, saw the child  
24 immediately following the fall. Did any of those people  
25 alert -- alert my client, Mr. Krukowski, to go to the

1 hospital? Take the child in because we see injuries to  
2 his head, or whatever?

3 Did you see anything about proving knowingly  
4 and intentionally committing an act to cause serious  
5 physical mental health problems and failing to seek  
6 medical treatment after significant trauma in this case?

7 Did you see anything in this case about  
8 intentionally causing physical trauma?

9 Did you hear anything in this case that Dane  
10 would come home from work and be frustrated and punch the  
11 child? Shake the child?

12 There sure was suggestions, when you listened  
13 to the tape, by Mr. Bean. Listen to what Bean tells this  
14 poor guy. Play that tape.

15 Abandonment. How did they abandon this child?  
16 They stayed home all day with the child. They even went  
17 the next day after -- after the fall. She saw Dawis.  
18 Another time she went to see a medical care provider that  
19 worked on the baby's head. Abandoned? I don't see how  
20 they abandoned. I don't see a reckless act here.  
21 Serious physical harm. Ladies and gentlemen of the jury,  
22 this is a difficult case.

23 There's a lot of emotions that go with a  
24 youngster. Especially, if you had little guys. Please,  
25 put your emotions on one side of the table and your

1 analyzation of this case on the other. It's going to be  
2 difficult. And if you find that my client knowingly and  
3 intentionally dropped his kid in the bathtub, and that he  
4 knowingly abandoned his child, then you find him guilty.

5 But there's not one shred of proof, from what I  
6 see, and when I look at all these photographs, and when  
7 you look at the child at birth. He had one hell of a  
8 time being born. You don't get purple, and you don't get  
9 all of this discoloration. You see the indentations in  
10 the poor child's head? Take these in and look at them.

11 With that, I want you to please use your common  
12 sense, please discuss this case amongst yourselves,  
13 listen to your fellow jurors, and as a result of that,  
14 I'm sure you will return a verdict of not guilty.

15 Thank you.

16 THE COURT: Mr. Duggan, rebuttal.

17 MR. DUGGAN: I believe I'll about be about  
18 10 minutes or so, even though the jurors have been  
19 sitting for a couple hours. If they can wait, I can get  
20 it in in about that amount of time.

21 THE COURT: All right.

22 MR. DUGGAN: Thank you again, ladies and  
23 gentlemen, for your attention. Both sides are entitled  
24 to a fair trial, we hammered at that in jury selection,  
25 and now you know what we mean. We both have a story we

1 need to tell you. We both have a case to make and our  
2 theory of the case.

3 Defense counsel is right. I do get the last  
4 word. That's the way this format of a trial is set up.  
5 I have to open the case with my proofs. I put on the  
6 evidence. So I close. I make the first closing argument  
7 saying what I think the evidence has shown. And I've  
8 done that. Why do I get a second chance? It's called a  
9 rebuttal. Because I don't know what the defense attorney  
10 is going to argue until I hear it just like you do,  
11 because he goes second. My purpose in standing up here  
12 is respond to specific issues he raised during rebuttal  
13 and not repeat myself. So I want you to know why I'm  
14 even standing here. Because if I were to be silent, you  
15 would think I have no answer to the things he raised, and  
16 I certainly do.

17 He asked you at the beginning of his opening  
18 statement, or opening argument, to use your common sense.  
19 Absolutely, I agree with that. If you, at the end of all  
20 your deliberations, 12 of you can conclude his client,  
21 which is the only one you have to make a decision about,  
22 did all the right things, faced the circumstances --  
23 facing the circumstances that he and Codie had, then your  
24 common sense tells you they behaved appropriately, even  
25 though all the other evidence would suggest otherwise,

1 then your common sense can drive a verdict of not guilty.

2 The evidence in this case, and the common sense  
3 that I think you will use, will go the opposite  
4 direction, completely.

5 The suggestion was made the prosecution just  
6 was throwing stuff at the wall to see what sticks. As I  
7 said before, it is our obligation to deal with the way  
8 the legislature wrote this law, and there are multiple  
9 theories. And as he finished his closing argument,  
10 counsel suggested there's been no proof my client  
11 intentionally set out to harm his child or did an act  
12 that was intentionally to hurt his child. I agree. The  
13 evidence in this case is limited by what we learned from  
14 the investigation and what was presented here. This is  
15 not a case of intentionally caused harm. Even though the  
16 evidence shows somebody caused intentional harm. It was  
17 either Codie or Dane Krukowski, or both of them, but we  
18 don't have the videotape from the home, from a hidden  
19 camera, showing you how it happened, or anybody admitting  
20 that they intentionally did any harm, so this case is  
21 only second-degree.

22 And because when we make the charges, as he had  
23 the Information up on that board there, we don't know  
24 exactly what the evidence will show ultimately, months  
25 down the road, since this case started last year. We

1 don't know what the defense will say. We basically want  
2 to let the jury have every possible theory the evidence  
3 will show. So that's why it came down to second-degree  
4 in these various theories. And those are the ones the  
5 judge will instruct you on. Not the way the Information  
6 reads. That was just to give notice of what we think the  
7 evidence might be. Now the evidence is done, and the  
8 instructions are there to tell you how you articulate  
9 your verdict if it is guilty.

10 The suggestion made by the defense that the  
11 birth experience caused these injuries is belied by the  
12 evidence. There is a baby who, either because of the  
13 light in the picture, or because of purple colored skin  
14 from the process of being born, looks unusually dark  
15 skinned, except when we look at Exhibit 27 and we see  
16 that, while still at the hospital, the baby doesn't have  
17 any of those telltale signs. The birth process did not  
18 cause the injuries, according to all the experts who had  
19 the chance to see the baby. They are at other times.  
20 This was a normal, uncomplicated birth, despite what  
21 counsel wants to argue from the evidence. And, frankly,  
22 much of his argument, like that particular point, is not  
23 really established by the evidence. It was just his own  
24 personal experiences in life, his own particular  
25 maladies, what he and his grandpa talked about. You

1           gotta base them on the evidence.

2                       For instance, his suggestion that, you know,  
3           the baby is getting a day or two of draining and then  
4           getting sent home. The evidence is the baby needed the  
5           drain almost at the beginning on the 23rd, the day after  
6           admission, the baby is getting the drainage for many  
7           days, and doesn't get out of hospital for a total of nine  
8           days.

9                       Look at the evidence. Look at the testimony  
10          you're heard and the records that have been received.

11                      Mr. Sturtz, on behalf of Mr. Krukowski, because  
12          it's his obligation to zealously represent his client's  
13          interests, is doing just what the parents did. He's  
14          minimizing. Just forget the stuff that shows the  
15          defendant's guilty.

16                      Just like they minimized the injuries. Which  
17          causes them to say we're going to take care of it at  
18          home. We're going to watch it. We're going to keep an  
19          eye on it. Just the same way he wants you to disregard  
20          the obvious in this case so you can arrive at a verdict  
21          of not guilty. If you disregard the evidence, you will  
22          arrive at a verdict of not guilty, because the  
23          defendant's presumed innocent until proven guilty. The  
24          whole job of the jury is to look at the evidence,  
25          evaluate it, deliberate about it, and arrived at

1 conclusions as to what it shows.

2 Don't minimize it. Accept it. And in this  
3 regard, again I point out counsel just going beyond the  
4 record and saying bones are cracking, bones are breaking.  
5 No, they're not. Sounds are audibly made because  
6 nitrogen in the joints is released when the joints are  
7 realigned, when the spine is moved, when the abilities to  
8 move, which is why there are joints and muscle and  
9 tendons, are activated by a chiropractor, by us making  
10 the sound of nitrogen pop, like I've done for 50 years, I  
11 wish I hadn't, but I don't have broken fingers. Bones  
12 didn't break. Fractures of ribs, fractures of skull,  
13 arm, those are real fractures, those show up on X-rays,  
14 on a baby whose bones are supple and soft, that shouldn't  
15 have those injuries at that point. And according to all  
16 the experts, wouldn't have them from the birth process,  
17 or the mild chiropractic adjustments.

18 The chiropractic thing is a diversion. It's to  
19 see if your knee-jerk reaction, rather than your common  
20 sense and your evaluation of actual evidence from the  
21 chiropractors, can maybe mislead you into thinking that's  
22 what it's all about. If the baby had died, I have no  
23 doubt Mr. Sturtz would be saying the hospital and the  
24 chiropractors and all those experts murdered him. Don't  
25 pay attention to my client and what he did, or what Codie

1 did. Look at somebody else.

2 His suggestion that I said the fracture was a  
3 couple inches long when it was only 12 millimeters?  
4 Remember the evidence. It was clarified by  
5 Dr. Constantino, that fracture went along a couple of  
6 inches. Its width, which is different than its length,  
7 was 12 millimeters at the greatest. Please pay attention  
8 to evidence, and not what attorneys say when we get you  
9 going on the wrong road.

10 He says what did they as parents do, or know,  
11 to know that their baby was in distress? There's just  
12 nothing. They just don't know anything about the baby  
13 being in distress. Well, I direct you back to the  
14 evidence. On February 7th, there's a trauma to the head  
15 such that they called Shawn Stevens over because, either  
16 that day or the next, there's a bump, there's bruising,  
17 there's swelling. It's a baby's head. On the 8th, if it  
18 wasn't apparent on 7th, it was apparent on the 8th.  
19 Still took no action, even though a baby can be in  
20 distress. As I put it on about Mr. Krukowski and his  
21 football experience when he testified, I'm sure players  
22 want to go right back in the game. They're not crying.  
23 They're not asking to be taken to the hospital. They're  
24 minors. They want to stay in the game. Yeah, they might  
25 have a concussion that could kill them. Look at the

1 celebrities, the Kennedy grandson, Sonny Bono, Natasha  
2 Richardson skiing down the hill and hitting a tree.  
3 They're fine, they don't get treated, and then an hour,  
4 or a day, or whatever it is later, they're dead. That's  
5 what head injuries do, and concussion does, when there's  
6 hematomas, when fluid starts forming, when pressure  
7 builds up, when nerves and other vessels in the head  
8 don't have anywhere to expand to.

9           Again, Mr. Sturtz says what did they know as  
10 parents, their baby's in distress. Skip down to February  
11 21st. They control the throwing up with a formula change  
12 in the middle of that week, Wednesday or so, but by the  
13 21st, the baby is throwing up severely, not spitting up.  
14 And it goes on three times, and it's on the 22nd it's  
15 still going on. Those are the signs that the baby's in  
16 distress.

17           Now the doctors said there was new subdural  
18 hematomas, 24 to 36 hours old, as of the time they saw  
19 the baby on the 22nd of February and the 23rd, so that  
20 happened in that period just before the severe vomiting  
21 happened. Kind of projectile vomiting you hear about  
22 with concussions. We don't know who caused --

23           THE COURT: Five minutes, Mr. Duggan.

24           MR. DUGGAN: Pardon?

25           THE COURT: Five minutes.

1 MR. DUGGAN: Thank you.

2 We don't know who caused that injury because  
3 the people don't have to prove that because this isn't  
4 first-degree. It's the failure to act and take care of  
5 your child after some injury has occurred, when there are  
6 obvious signs of distress.

7 The only thing that actually sent them to the  
8 hospital to talk about a baby being injured, and to bring  
9 up the fact that two weeks before there even was a head  
10 injury, with that bump and a bruise and swelling, was the  
11 baby having seizures.

12 The defendant Dane Krukowski has an equal  
13 obligation, along with Codie Stevens, to get the baby the  
14 help it needs. Exhibit 30 shows that Codie Stevens is  
15 not the one that should be making the decision about what  
16 to do with that baby based on her medical training.  
17 She's the first to admit, when she testified, this is not  
18 a stellar record of learning how to be a good medical  
19 assistant. It's just short of failure. So that's why --  
20 and I think the evidence would show she is intelligent  
21 and articulate, that's why she got Shawn Stevens  
22 involved, who they both relied on, to watch the babies,  
23 to help with taking care of the babies when there were  
24 problems, and this all-important day when there's a head  
25 injury. Something like never happened with Ella,

1 according to the testimony and the five or six times she  
2 went to the emergency room, but which has happened to  
3 Roegan. Only now, CPS breathing down their neck.

4 This is a case where it would be very easy to  
5 be sympathetic. Resist that urge. As the judge will  
6 tell you, sympathy and prejudice do not dictate a  
7 verdict. Evidence does. You have all the evidence you  
8 need. On his own, Dane Krukowski has failed to do what  
9 the law says he must do to care for his child. He and  
10 Codie are the only ones who have that obligation. They  
11 both failed. He failed too. Thank you.

12 THE COURT: All right, ladies and gentlemen  
13 we'll break for a short lunch at this time. It's about  
14 1:14. I'm going to ask you to return about 1:45 to the  
15 jury room that you're assigned to, and we will resume at  
16 that time, you'll get the instructions and be able to  
17 begin your deliberations. Miss Maddox will meet you in  
18 the hallway. You can go ahead.

19 (At 1:15 p.m., jury for Defendant Krukowski  
20 left the courtroom.)

21 MR. DUGGAN: I got the final version from the  
22 law clerk and, contrary to what we agreed to in chambers,  
23 I thought I corrected my mistake in chambers and that he  
24 was going to use subsection 1 of 4.5, he's still using  
25 sub -- or section 2 for the impeachment, so I can alert