

THE STATE OF NEW HAMPSHIRE

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STRAFFORD, SS.

SUPERIOR COURT

STATE OF NEW HAMPSHIRE

V.

CHAD EVANS

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00-S-888-
00-S-896,
et al.

STATE'S OPENING STATEMENT

Excerpt of proceedings in the above-entitled matter,
which came on for Jury Trial at the Strafford County
Superior Court, Strafford County Justice and
Administration Building, County Farm Road, Dover,
New Hampshire, on Tuesday, December 4, 2001, before
the Honorable Tina L. Nadeau, Presiding Justice.

TUESDAY, DECEMBER 4, 2001

(2:20 p.m.)

(Whereupon, the following took place in open court,
in the presence of the jury)

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MR. DELKER: Kassidy Bornter was just 21 months old when her life was abruptly cut short by the defendant. Until a few months before her death, Kassidy was a happy, normal little girl. She was just learning her ABCs, and she was exploring the book. All that changed when this man, the defendant, Chad Evans, came into her life. In the last weeks and months of her life, Kassidy suffered from repeated bruises and broken bones caused by the abuse inflicted by the defendant. And the defendant had a short temper, and on November 8th of last year, the day before Kassidy died, his anger exploded.

Beginning shortly after the defendant picked Kassidy up at the babysitter's in Kittery and continuing throughout the evening, the defendant inflicted a series of injuries on Kassidy that ultimately ended her life. And then the defendant, throughout the evening, made a number of telephone calls to try to cover his tracks. At first, he tried to blame the babysitter, and when the babysitter said he had no idea what he was talking about, the defendant called back again and again and again. One time he said that Kassidy fell down on the driveway and was covered in dirt.

1 Another time, the defendant called back and said that Cassidy got
2 hit in the face with a baseball. When Cassidy was dropped off at the
3 babysitter's house the next day, she was lethargic, and her face was
4 a mask of bruises. Cassidy died just a few short hours later from the
5 injuries inflicted by the defendant the night before.

6 Now, about the beginning of last summer, the defendant, who
7 was 28 years old at the time, began dating Cassidy's mother,
8 Amanda Bortner. She was just 18. And at the beginning, Cassidy
9 spent time with her grandmother—lived with her grandmother,
10 actually—in Maine, while Amanda spent time with the defendant in
11 Rochester. When Cassidy lived with her grandmother, she was a
12 vibrant, normal little girl. But, over time, Cassidy began to spend
13 more time at the defendant's house in Rochester; and, towards the
14 end of the summer, Amanda and Cassidy actually moved in with
15 the defendant.

16 At first, the bruises only appeared once in a while, but as
17 Cassidy began to stay more regularly at the defendant's house, the
18 bruises began to show up more frequently. Toward the end of her
19 life, Cassidy was constantly covered in bruises. As soon as some of
20 the bruises began to fade, new one—the defendant inflicted new
21 ones. The defendant had a short temper, and Cassidy, who was just
22 a toddler, was not even two years old, she didn't stand much more
23 than two and a half feet tall, but the defendant had no patience for
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1 Kassidy. The more she cried, the more frustrated and angry he'd
2 get, and the more he'd take it out on Kassidy. Sometimes he'd grab
3 her roughly by the arm and he'd propel her into the wall, and her
4 head would hit the wall with a bang. Other times, he'd grab her face
5 and squeeze so hard that he caused deep black bruises on her
6 cheeks. At least once the defendant grabbed Kassidy by the leg, and
7 after that, she had difficulty walking. The defendant and Amanda
8 got into a fight one night, and the defendant said he wished Kassidy
9 were never born.

10 Now, the defendant realized, when the bruises became so
11 frequent and so obvious, that he had to come up with some kind of
12 excuse to explain what happened. And that's when he concocted the
13 most ridiculous story. He instructed Amanda to tell her friends and
14 family that Kassidy had been injured playing on a trampoline. And
15 as one version of that story goes, the defendant and Kassidy were
16 jumping on a trampoline, and Kassidy, who was just 21 months old,
17 jumped up and was about to fall from the trampoline, when the
18 defendant reached out and grabbed Kassidy by the face. That's the
19 excuse that the defendant told different people and Amanda told
20 different people to explain why Kassidy had a grip mark, bruises in
21 the shape of a grip mark, on her face.

22 But that isn't the only excuse that they came up with. They
23 would tell people that one time the defendant was carrying Kassidy
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and he came around a corner too fast, and Kassidy hit her head on the wall. They told people that Kassidy was clumsy, that she fell a lot, that she hit her head on the coffee table and other items around the house and that she bruised easily. Every time there was a new bruise, they had to come up with a new excuse or they needed to recycle an old one.

And not only did the bruises change the face of this beautiful little girl, but over time Amanda's friends and family noticed that Kassidy's behavior changed, as well. She was no longer the vibrant little girl she was when she lived with her grandmother in Maine. Toward the end of her life, Kassidy was quiet and withdrawn. She would stare blankly at the wall, or she would sit on the couch for hours without moving. The def—Kassidy's behavior had changed so dramatically that the defendant would refer to her repeatedly as an "idiot," as stupid, or a "retard."

And Kassidy's condition became so obvious that the defendant knew, too, that he couldn't let his family or Amanda's parents see Kassidy. And that's when Amanda and the defendant decided to bring Kassidy to Amanda's sister's house in Kittery that we visited. Amanda's sister, Jennifer Conley, lived with her boyfriend, Jeff Marshall, in Kittery. And the defendant and Amanda knew that they could trust Jeff and Jen not to tell anyone because Amanda's sister didn't want Kassidy taken away from Amanda.

1 And so, in the late—late October of last year, Amanda asked Jeff
2 Marshall to babysit. Jeff—because Amanda wanted to get a job—
3 Jeff had his own landscaping company, and the late fall was his
4 slow time of year, so he had the time. But, more importantly,
5 Amanda and the defendant knew that Jeff Marshall wouldn't tell
6 anyone about the abuse inflicted by the defendant.

7 So, on November 8th of last year, the day before Kassidy
8 died, Amanda brought her daughter over to Jeff Marshall and Jen's
9 house for the last time that day, and Amanda went to work. Jeff
10 watched Kassidy for about an hour, maybe an hour and a half, until
11 the defendant got off of work. And at around five o'clock that
12 afternoon, the defendant called Jeff Marshall and asked him to
13 bring Kassidy down to Portsmouth because the defendant was
14 running late to pick his own son up at day care, and the defendant
15 explained that he still had an errand to run. When Jeff refused
16 because he didn't want to use his company truck, the defendant got
17 frustrated. He told Jeff that he'd be by in a little while. And
18 sometime after five o'clock that day, the defendant showed up at
19 Jeff's house, and Jeff carried Kassidy down to the car and handed
20 her to the defendant. The defendant took Kassidy and put her in the
21 back seat of the car and seatbelted her in.

22 The defendant then took off to get his own son at day care.
23 And, as I said, he was running late to pick his son up, but he ran
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1 into traffic at the Dover tolls that we drove through today on the
2 Spaulding Turnpike. We'll never know for sure what happened in
3 that car, because Kassidy and the defendant were alone, but what
4 we do know is that whatever happened to Kassidy should never
5 have happened to anyone, not to mention a toddler.

6 What we do know is that the defendant called Jeff Marshall
7 from the Dover tolls and explained that he was stuck in traffic. He
8 told Jeff, um, that Kassidy was dazed and out of it. He asked Jeff
9 whether Jeff had done anything to Kassidy that day. And when Jeff
10 said he had no idea what the defendant was talking about, the
11 defendant dropped it, and he and Jeff went on to talk about the
12 election that was playing out on television.

13 Then, about an hour later, the defendant called Jeff Marshall
14 a second time that night. This time the defendant was home in
15 Rochester. He told Jeff that, when he took Kassidy out of the car, he
16 stood her up next to the car and she fell face-down onto the dirt. He
17 described how she was covered in dirt and how he picked her up,
18 cleaned her off and brought her into the house. According to the
19 defendant, Kassidy was fine at that point.

20 Then the defendant called Jeff Marshall a third time that
21 night. This time, the defendant began to weave another one of his
22 preposterous excuses. He told Jeff that, um, the defendant and his
23 son Connor were playing baseball in the bedroom and Kassidy was
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1 sitting next to the defendant. And, according to the defendant, he
2 pitched a ball—a baseball—to his son. And his son, who was just
3 three years old, hit the baseball with a plastic wiffleball bat so hard
4 that she—that he hit a line drive directly into Kassidy's face, and
5 she fell back on the bed with a whimper. And when the—when the
6 defendant got off the phone with Jeff Marshall, he spoke with
7 Amanda Bortner, Kassidy's mother, at work and told her the same
8 thing about the baseball story. And he also told Amanda that he
9 didn't want to watch Kassidy anymore because every time he did,
10 she got hurt.

11 Then the defendant called Jeff a fourth time that night. This
12 time, the defendant was in a panic, he was frantic. He told Jeff that
13 Kassidy was out of it, that she was unconcious, she was not
14 responding. He called out, Kassidy! Kassidy! Kassidy! Kassidy!
15 while Jeff was on the other end of the telephone. And then, all of a
16 sudden, the defendant said, Oh, she's coming to, she's fine, she'll
17 be all right, and the call ended.

18 Jeff Marshall will describe each of those calls for us, calls
19 that are reflected in the telephone records, and he'll tell us that
20 those calls, not only the content of those calls were out of the
21 ordinary, but they were out of the ordinary because the defendant
22 had never called him before when Kassidy had been injured. But
23 that time, he called Jeff Marshall four times.

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1 And when Amanda got home from work at around midnight,
2 the defendant was in a foul mood. Amanda went upstairs to check
3 on Cassidy. And even though she didn't turn on the light in the
4 bedroom, she could see the bruise around Cassidy's eye that the
5 defendant attributed to the baseball. And when she went downstairs
6 to talk to the defendant, they got into an argument. When Amanda
7 suggested that she worked harder at work than he did, the defendant
8 flew into a violent rage, and he put his hands around Amanda's
9 neck and he began to choke her. He said to her, You know what
10 makes me mad! It's like you're asking for it.

11 The next day, Cassidy got up crying in her bed earlier than
12 usual. Amanda changed Cassidy, and she lay still on the table.
13 Cassidy was groggy, lethargic, and her head was bobbing around.
14 Amanda brought Cassidy to Jeff and Jen's house for the last time
15 that day. When Amanda [*sic*] came to the door, Cassidy's condition
16 was immediately obvious. Amanda said, Look at her face; looks
17 like shit, doesn't it? Jeff and Jen will describe how Cassidy's face
18 was covered in bruises. And Amanda laid Ka—put Cassidy down
19 on the bed; and when Jeff and Jen tried to take Cassidy out of the
20 bed to walk around, she whimpered and cried and refused to move,
21 because she was in too much pain.

22 Then at about nine o'clock that morning, not long after
23 Amanda left a bruised and beaten Cassidy at Jeff and Jen's house,
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1 the Rochester office of the Department of Health and Human
2 Services called the defendant at home. The case worker didn't say
3 what she was calling about; she left a message. But she'll tell us
4 that she was following up on an earlier report of bruises on Cassidy.
5 The defendant called her back, called the case worker back, and he
6 lied to her. He said that he was gonna be out of town until the
7 following Tuesday. He was trying to buy time for Cassidy's injuries
8 to go away. And then the defendant called Jeff Marshall after he
9 received that call, and he told Jeff that—the first words out of his
10 mouth were, How's Cassidy? And then he told Jeff about the call he
11 had just gotten from Health and Human Services, and he told Jeff
12 that he suspected that they were calling about Cassidy. And he told
13 Jeff that he thought that one of Amanda's friends from Maine
14 named Emily had reported him for abusing Cassidy. The defendant
15 said that if Health and Human Services was investigating abuse of
16 Cassidy, he was gonna kick Amanda and Cassidy out of the house.

17 When the call ended, Jeff went back to watching the election
18 on television. He had checked on Cassidy just before the defendant
19 called. She seemed to be sleeping at the time. And then, sometime
20 between noon and 12:30, Jeff got the mail and he brought it into the
21 bedroom. And when he came into the bedroom, he noticed
22 immediately that there was something wrong with Cassidy. In a
23 panic, he called the defendant, he called Amanda, he called his
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1 girlfriend, and, finally, he called 9-1-1. But, when the EMTs got
2 there, it was too late; Cassidy was dead.

3 Now, I think we've spoken to each of you about this, but
4 throughout this trial, you're gonna hear testimony that's very
5 difficult about the injuries of Cassidy. And we're gonna have to
6 show you photographs that are awful. But you can't understand the
7 true extent of the injuries inflicted by the defendant unless you see
8 her condition. Simon and I don't show you these photographs
9 lightly, but it's part of the evidence in this case.

10 The photo shows the injuries on Cassidy's face, but that
11 wasn't all of her injuries. She had a deep purple bruise on the
12 underside of her chin. She had a deep purple bruise on the inside of
13 her lip. She had bruises on the back of her head, she had bruises on
14 her back, she had bruises on her arms, she had bruises on her legs.
15 She had marks on her feet. Her abdomen was covered in bruises
16 that caused internal bleeding.

17 The medical examiner for the state of Maine, Dr. Greenwald,
18 will tell us that Cassidy suffered from battered child syndrome. And
19 what that means is that Cassidy suffered from systematic abuse
20 over an extended period of time. And she'll tell us not only—she
21 can tell us, based on the ages of the different bruises and the broken
22 bones that were weeks old in Cassidy's arms, her legs and her hand,
23 that Cassidy's injuries weren't the result of an accident; they were
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1 intentionally inflicted. She'll also tell us that one aspect of battered
2 child syndrome is that the batterer makes implausible excuses for
3 the injuries.

4 And on the day Cassidy died, Jeff, Jen and Amanda all went
5 to the Kittery police station and gave detailed statements about
6 Cassidy's last days and weeks. The defendant did, too, but the
7 defendant continued to offer the same type of preposterous excuses
8 that he had in the past. You'll get a chance to see the defendant's
9 statement and hear the defendant's statement because it was
10 videotaped. He told the police that Cassidy was clumsy, that she
11 fell a lot, that she hit her head on the coffee table and other items
12 around the house. He even tried to suggest that Cassidy was
13 anemic, to explain her bruises. And when the police asked the
14 defendant whether he had ever caused any of the bruises, he told
15 them the same ridiculous trampoline story, about how he grabbed
16 Cassidy's face to keep her from falling to the ground.

17 He also told the police how he would, uh, discipline Cassidy.
18 He told the police that he didn't like it when Cassidy cried and that
19 recently she had been getting up at four or five o'clock in the
20 morning. He told the police that, for him, he would order Cassidy
21 into the corner for discipline. But, according to the defendant,
22 Cassidy would, quote, "throw herself" into the walls or "throw
23 herself" into the corner. He told the police that Cassidy—when he
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1 ordered Cassidy to stand in the corner for discipline, she would do a
2 face plant into the wall and that she'd slam into the wall so hard,
3 she'd get bruises. The defendant also told the police about how, for
4 him, a big part of discipline was eye contact. And you'll see on the
5 videotape how the defendant showed the police how he thre—how
6 he'd hold Cassidy's face and make her look him in the eye.

7 When the police asked the defendant whether he had ever
8 caused any bruises by grabbing Cassidy like that, the defendant
9 again immediately blamed his own three-year-old son. He told the
10 police he didn't know whether Cassidy—whether he had caused
11 injuries from grabbing Cassidy like that, because his son did, as
12 well, and his son might have done it. He told the police about how
13 he would swat Cassidy on the mouth when she swore and how he
14 would pick Cassidy up—and he showed the police—by the head
15 “like a little kitten,” as he described it.

16 Now, the defendant realized—the defendant also told the
17 police that night about the telephone calls that he had made to Jeff
18 Marshall, and he told the police that he had told Amanda that he
19 didn't want to watch Cassidy anymore because she always got
20 injured. The defendant real—when the defendant realized that his
21 preposterous excuses were no longer enough to explain Cassidy's
22 condition, he offered—he needed a new excuse, and Jeff Marshall
23 was the obvious scapegoat. The defendant blamed Jeff Marshall.
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1 But you'll get a chance to see Jeff Marshall and hear Jeff Marshall
2 on the witness stand in this case. And you'll hear what Jeff has to
3 say, and you'll be able to compare what Jeff says to the other
4 evidence in the case, to the telephone records, and to the testimony
5 of the other witnesses.

6 The defendant, though, needed to back up his—his claim that
7 Jeff was responsible for Cassidy's injuries. So he thought of any
8 and every instance he could think of that might—that he could
9 point to to blame Jeff. He told the police about how he had heard
10 from Amanda that Jeff had spanked Cassidy, and the defendant
11 attributed bruises on Cassidy's backside to that spanking. Well,
12 there's no question that Cassidy had bruises on her backside, but
13 those weren't caused by Jeff Marshall. Jeff and his girlfriend Jen,
14 Jennifer Conley, who was there, will both tell us that Jeff did spank
15 Cassidy one time over the diapers. The defendant also pointed to an
16 incident that he had heard about third-hand, about when Cassidy
17 fell out of the truck, fell out of Jeff's truck. And he attributed some
18 bumps on the back of Cassidy's head to that story he had heard
19 third-hand. But Jeff and his neighbor who lived, uh, at Johnson
20 Court that we saw today, who was standing right there when
21 Cassidy fell, will both tell us that Jeff caught Cassidy. She didn't
22 fall, she didn't hit herself, she didn't even cry. These were just the
23 same type of lame excuses that the defendant needed to point the
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1 finger at Jeff Marshall.

2 Now, Jeff is not the ideal babysitter. Jeff Marshall was the
3 choice that the defendant and Amanda made for Cassidy, though.
4 When you listen to the evidence in this case, ask yourselves, If Jeff
5 Marshall was abusing Cassidy like the defendant wants you to
6 believe, why would Amanda and the defendant let Cassidy go back
7 to Jeff's house again and again and again?

8 The defendant in his statement to the police also lied about
9 Cassidy's condition. He told the police that, at one minute, Cassidy
10 was acting dazed and spacy and out of it and that the next minute
11 she was fine; she was doing her ABCs, she was playing baseball,
12 she was eating a Popsicle. The medical examiner will explain that a
13 child who suffered the massive type of head trauma and injuries
14 that Cassidy suffered wouldn't be dazed and spacy one minute and
15 acting normal and playing the next. Rather, the child would have a
16 slow, steady decline into lethargy. And that's how Amanda, Jeff
17 and Jen all described Cassidy when she showed up at Jeff's house
18 the next day, the day she died.

19 When you listen to the defendant's statement, listen to how
20 he describes his relationship with Amanda Bortner at the time of the
21 interview. He told the police that he wanted Amanda and Cassidy to
22 move out, that he wasn't ready for a long-term relationship. He told
23 the police that, even though he really liked Amanda, he couldn't
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1 bring himself to say he loved her. But when the defendant walked
2 out of the police station that night, he knew that his biggest liability
3 was Amanda Bortner, because she knew the true extent of his abuse
4 of Kassidy. And so the defendant began to woo and coax Amanda
5 to try to convince her that he had done nothing wrong.

6 Shortly after Kassidy's death, the court imposed an order that
7 the defendant not have any contact with Amanda. But the
8 defendant, almost immediately, flaunted that order. He and Amanda
9 spent almost nine months continuously together. The defendant
10 arranged for a place for Amanda to stay, and he was so concerned
11 about getting caught with Amanda that he took extreme measures
12 to—to avoid being seen with her. They would move from apartment
13 to apartment to apartment. At one point the defendant became so
14 desperate not to be seen or caught with Amanda, they moved and
15 lived in a camper in the woods in the heart of Vermont, behind the
16 defendant's grandparents' property. They lived there for most of the
17 summer, hiding from the police. And the defendant also arranged
18 for a car for Amanda so she had transportation. But so that that—if
19 Amanda ever got stopped for speeding or a traffic ticket, so the
20 police couldn't connect that car back up to the defendant, he had his
21 best friend register the car in his best friend's name, so that if
22 Amanda were caught driving the car, the police wouldn't make the
23 connection that the defendant had been in contact with her.
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And you'll get a chance in this case to hear Amanda Bortner. She'll be one of the state's first witnesses. Amanda knew—knows the true extent of the defendant's abuse. And in the days and weeks after Kassidy's death, Amanda spoke to the police. But when she takes that witness stand in this trial, Simon and I can't predict what Amanda's gonna say, because she spent nine months with the defendant hiding from the police. And Amanda has also been charged with endangering the life of her child, so she has her own motivations. Amanda did not side with Kassidy in death, and she may not side with her—I mean, did not side with Kassidy in life, and she may not side with her after her death. When Amanda takes the stand, watch her closely. Watch her demeanor. Listen to what she has to say. Compare what she says to what all the other witnesses are telling you. See for yourselves and make a judgment about whether Amanda is telling the truth or whether she's lying.

And Judge Nadeau, as she explained earlier today, is providing you with a somewhat unique opportunity to take notes in this case. But I urge you not to get too caught up in the note-taking because it's important that you watch the demeanor and you listen to all of the witnesses while they testify here on the stand. You're being called upon not just to be passive listeners but to be active participants in this case. Your job is to decide the credibility of the witnesses. You are truly the judges of the facts in this case.

1 Now, I want to take a few minutes to talk about the crimes
2 with which the defendant's been charged. The defendant is charged,
3 first, with one count of second-degree murder for recklessly causing
4 the death of Kassidy Bortner under circumstances manifesting an
5 extreme indifference to the value of human life. Kassidy was fine
6 when she left Jeff Marshall's house on November 8th, but when she
7 came back on November 9th, she was lethargic and covered in
8 bruises, the tell-tale markers of the massive injuries that killed her
9 that the defendant inflicted the night before.

10 The defendant is also charged with six counts of second-
11 degree assault for knowingly causing bruises on Kassidy by
12 grabbing her time and time again from September until the week
13 before her death. No less than a dozen witnesses will tell us about
14 bruises on Kassidy, on different parts of Kassidy at different times,
15 on her neck, on her chin, along the jawline, on her cheeks, and on
16 her cheekbones.

17 The defendant is also charged with two counts of first-degree
18 assault for recklessly causing serious bodily injury by breaking
19 Kassidy's arm and by breaking her leg. The defendant made fun of
20 Kassidy and called her an "idiot" and a "retard" because she walked
21 funny and she wouldn't put out her hands to protect herself when
22 she fell. Well, it's a small wonder that she couldn't do that type of
23 basic instinct, um, putting her hands out to protect herself, when she
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1 had broken bones inflicted by the defendant.

2 The defendant's also charged with one count, a misdemeanor
3 count, of endangering the welfare of a child for purposely violating
4 a duty of care that he owed to Cassidy while she was under his
5 supervision. That count covers the entire course of abuse, as well as
6 the defendant's conscious decision to withhold medical treatment,
7 to not seek medical treatment for Cassidy.

8 Finally, the defendant is charged with one count of simple
9 assault for knowingly causing unprivileged physical contact when
10 he put his hands around Amanda Bortner's throat and began to
11 choke her in a fit of violent rage on the same night that he inflicted
12 the fatal injuries on Cassidy.

13 I started my opening talking about Cassidy, and I want to end
14 talking about Cassidy, because this case is about seeking justice for
15 Cassidy. Cassidy can no longer speak for herself. The defendant
16 has made sure of that. When this photograph was taken, Cassidy
17 had less than six weeks to live, and those weeks were a living hell,
18 and the defendant was the cause of her misery. Cassidy can't speak
19 for herself anymore, but at the end of this case, we will ask you to
20 speak for Cassidy and find the defendant guilty as charged.

21 (End state's opening statement)

22 (2:54 p.m.)

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