

New Hampshire vs. Chad Evans

CLOSING ARGUMENT FOR THE STATE OF NEW HAMPSHIRE,

by Assistant Attorney General Simon Brown

18 December 2001

[This copy contains Chad Evans's comments in Italic CAPS of whether Simon Brown's statements were TRUE, FALSE or T/F, meaning partially true, or partially false. Chad's complete responses are in other "Key Documents" and other sections of his website, www.chadevanswronglyconvicted.org, and in his "Letters from NH State Prison."]

MR. BROWN:

TRUE We've asked you to sit through a very difficult case.

FALSE It won't be a difficult case to decide. Deciding this case will be easy for you because the evidence of the defendant's guilt is so devastating, so overwhelming and so clear.

TRUE But it was a difficult case to watch and to listen to.

FALSE Nobody wants to believe that a person is capable of doing what the defendant did in this case, to repeatedly manhandle, beat, and eventually kill a beautiful little girl less than two years of age.

FALSE But now you know the defendant is capable of such brutality, and you know that he murdered Kassidy Bortner.

And as hard as this evidence has been to listen to, I'm going to ask you even more right now. I'm going to ask you to think about the last months of Kassidy Bortner's life. The time that she lived with the defendant.

T/F The time that she was transformed from a vibrant, playful, happy little girl into a withdrawn, quiet, shell of a human being.

TRUE When Amanda began living with the defendant, she was attached to her mother. She was jealous of her mother's attention.

T/F And when the defendant showed affection towards her mother, Kassidy cried, she threw tantrums.

T/F She reared her head back and stomped her feet and she cried.

T/F She also did this at bedtime.

FALSE The defendant could not tolerate tantrums.

FALSE His son Kyle, his three-year-old son, he didn't throw tantrums. Kyle was disciplined.

T/F And the defendant insisted on discipline and eye contact with children in his household.

T/F But from Kassidy he got neither of those things. He got tears and tantrums.

FALSE As Kassidy's crying continued, the defendant's anger erupted.

T/F He began to grab Kassidy's face with his hand, hold her eyes to his, and make her look him in the eye. He was disciplining her.

TRUE But he squeezed her cheeks and he hurt her.

TRUE Ugly bruises began to appear on Kassidy's face.

FALSE But instead of the defendant being horrified that he caused even one mark on that little girl, his temper continued to erupt.

T/F And this grabbing of the face, we heard, happened at least twice a week, and the bruises kept reappearing. When old ones began to fade, new ones took their place.

FALSE But the defendant's violence towards Kassidy was not confined to grabbing her face.

FALSE He hurled Kassidy into a wall.

FALSE He propelled her into a wall.

FALSE One time he threw her into a closet door, causing her to bang her head.

FALSE He picked her up by her armpit and her arm and jerked her arm back and he threw her on the bed.

FALSE When she cried, he took his finger and he jabbed her in the throat, making her gag, and angering Amanda.

FALSE He pulled roughly on her leg and fractured it.

T/F One time when she was crying, he couldn't take it, and he took her, brought her to a faucet, put water in her face, causing her to scream, and ...

FALSE after that, Kassidy was terrified of water;

As Jeff Marshall told us in this trial, when he tried to give her a bath, she freaked out, she was terrified.

FALSE He [Jeff Marshall] described to the police how he [Chad Evans] roughly picked up Kassidy off the ground by her neck. He described it as pulling her up like a kitten.

T/F And he [Chad Evans] told the police that he smacked her in the mouth when she used bad language. He showed the police. He went like that.

Which is pretty ironic. Pretty ironic that the defendant would chastise and discipline Kassidy for bad language, considering how he talked about Kassidy.

FALSE During one of his violent outbursts he told Amanda exactly how he felt about her daughter. He told Amanda that he wished Kassidy wasn't around. He wished she had never been born.

FALSE The 18-year-old girlfriend was fine with the defendant, but he couldn't stand her child. He couldn't stand her crying.

T/F And this grown man actually referred to a 21-month-old on a regular basis as "a little bitch," as "stupid," and as "a retard."

FALSE That's how he felt about Kassidy.

FALSE Instead of learning to coexist with his girlfriend's daughter and doing something about his out-of-control temper, the defendant's violence continued to escalate.

FALSE It got to the point where he and Amanda took steps to keep her away from people who would likely report the abuse.

T/F She wasn't taken to daycare.

T/F she wasn't taken to the doctor.

T/F She was kept away from parents.

T/F And then, wild excuses started to come from Amanda and the defendant.

T/F Stories of trampolines and falls and flying toys.

T/F And during this time Kassidy's personality changed.

TRUE It changed to the point that on an overnight stay at Jeff Marshall's house, Jeff found her out of bed, in the living room, standing in the darkness, staring at a wall.

That was Kassidy living with the defendant.

FALSE A living hell.

FALSE Jeff Marshall became the defendant's fall guy on November the 8th of last year because on that day the defendant went too far.

FALSE He beat Kassidy Bortner to a pulp,

TRUE he didn't take her to a doctor,

FALSE and because of that beating, she slowly died,

TRUE and died at Jeff Marshall's house.

TRUE On November the 9th, [sic: 8th] Kassidy was at the defendant's, I'm sorry, Jeff's house. The defendant was in Portsmouth He wanted Jeff to bring Kassidy down to him. He needed to get to Dover for a six o'clock pickup time. Jeff wouldn't go to Portsmouth, so the defendant had to go north to Kittery to pick up Kassidy. And when he got there, he realized he didn't have a car seat for little Kassidy, so he was frustrated.

TRUE He put her in the back seat, strapped her into an adult seatbelt, which you can imagine for a 21-month-old, would not be the most comfortable situation. He straps her in, chit-chats with Jeff, and he drives off.

FALSE During that trip, during that trip back to New Hampshire, Dover, something happened in that car.

FALSE Only the defendant knows when and where he struck the first blow, but a first blow was struck in that car.

FALSE And the result of him striking Kassidy caused her to become groggy and lethargic.

TRUE The defendant noted her behavior,

FALSE and he began his campaign to shift the blame,

FALSE something that he and Amanda had become practiced at by that point.

TRUE He called up Jeff

T/F and he said to him, "The little bitch is acting weird. What did you do to her?"

TRUE Jeff said, "Nothing, nothing, she was fine." The topic is changed. He continues to drive. He picks up Kyle from Dover and then they head to Rochester.

T/F When the defendant gets to Rochester, he observes the result of his blow. He sees that Kassidy is injured.

FALSE And he knows at that point that Jeff knows when that child was picked up she had no new bruises on her face.

FALSE He has to explain this.

TRUE And so phone calls to Jeff kept coming,

FALSE and the story got more and more bizarre.

TRUE He called Jeff and he told him that Kassidy was injured but it was due to a flying baseball.

FALSE But unfortunately for Kassidy, that first blow would not be the last one she would absorb that night. There would be more.

FALSE Horrible photographs show us that there were more.

TRUE And we know that the defendant was the only adult caring for Kassidy for about one hour plus before Travis got home, and then from about nine o'clock to midnight when Amanda got home.

T/F And we know that during that night the defendant called or spoke to Amanda on the telephone and he told her, "Amanda, I don't want to look after her any more. Something always happens when I look after her."

FALSE And he told her "We should take her to a doctor once the bruises go away." The bruises.

And what was the defendant's mood that night? Was he the multi-tasked Mr. Mom that he described to the police?

FALSE Hardly.

T/F When Amanda got home from working at Old Navy, they discussed changing a messy diaper on Cassidy. Neither of them ended up changing it.

T/F And then the subject turned to work. Amanda worked a long shift that day, and she made the innocuous little statement of "I work harder than you."

FALSE Incredibly, the defendant's reaction to that innocent statement was to fly into a rage, to grab Amanda by the throat, pin her up against the couch, and to have the gall to say to her, "You know what gets me going. You've got to work with my temper. It's as if you're looking for it."

FALSE That is the foul, assaultive mood the defendant was in around midnight on November 8th going into the 9th.

TRUE Coincidentally, that is in the time range that Dr. Greenwald ages the vast majority of the bruises on Cassidy.

Let's talk about the defendant's claims in this case and to point out the serious problems with his claim.

T/F We know that Cassidy died from blunt impact injuries to the head, face and abdomen. Dr. Baden made that fat emboli opinion yesterday morning, but he agrees that blunt force trauma caused this child's death.

T/F When the defendant picked up Cassidy from Jeff's house on Wednesday evening, she had no new bruises. She had fading bruises around her mouth that Jeff described, but no new bruises.

TRUE And the defendant, in his multiple phone calls to Jeff, never says to Jeff, "What the heck! She's covered in bruises! What did you do to this girl? She's got bruises all over her face and body." He never says that.

TRUE He says that she's been injured by a flying baseball, a baseball that came off the bat of his three-year-old son, a little indoor baseball, where his three-year-old generated

enough bat speed and power to send a line drive right into Cassidy's face. That's how he accounts for injuries on Cassidy that night.

T/F And the next morning when the defendant tells the police that Cassidy was fine and mowing cereal, the reality is, she was returned to Jeff Marshall's house a mass of bruises.

TRUE Jennifer Conley had never seen anything like it before.

TRUE Jeff Marshall said it was the worst ever.

T/F She left his house on Wednesday with no new bruises.

T/F She returned covered with them.

That's the problem with the defendant's story.

TRUE And Dr. Greenwald already told us that the injuries were not consistent--no injury on this child is consistent with a ball.

Unfortunately, we're getting used to look at these terrible photographs.

TRUE But Dr. Greenwald pointed out circular injuries on this little girl's forehead and her cheek, but she told us that if this was a ball, a baseball, the surface of the ball would cause an accompanying contusion. It wouldn't be clear skin next to the curve.

FALSE It makes sense. That's not a ball injury.

T/F Another problem is there are 8 to 10 blows to the child's head and face, not a single blow from a ball. The blows that happened in this case would have left corresponding bruises, Dr. Greenwald told us that. And she told us that she painstakingly aged these bruises, and as I said, the vast majority are in the 8-hour range to 12-hour range, the time when the defendant had control of Cassidy.

T/F And I note that even Dr. Baden wouldn't touch the baseball. We heard no opinion from the defendant's expert accounting for the baseball story.

T/F And Dr. Greenwald told you it didn't happen.

This trial from the defense perspective has been as much about Jeff Marshall as it's been about the defendant.

- T/F* And they told you that he's an animal. That's what you were told in opening. He's an animal, and they told Jeff Marshall to his face "We're accusing you of murder; let's get that straight."
- FALSE* But let me point out something very obvious. Making Jeff Marshall the scapegoat is the defendant's only viable defense in this case. This is not an original defense. It's his only hope of deflecting this evidence.
- FALSE* And the evidence--the defense in this case in a nutshell is basically to acknowledge that the defendant hated Kassidy, hurt Kassidy, abused her over many, many weeks,
- T/F* but miraculously on November 8th and 9th, Jeff Marshall comes in and murders her, and the defendant has nothing to do with it. That's what they want you to believe. How unlucky for Kassidy. How unlucky to have two, not one, unbelievably cruel and violent caretakers. But the evidence doesn't bear that out.
- TRUE* In opening, the defense told you that the ugly bruising that so many witnesses saw in this case began to develop 4 to 5 weeks before Kassidy's death when they say Jeff Marshall was looking after her.
- T/F* Well, there are several problems with that claim. We know now after trial that the ugly bruising was appearing long before 4 to 5 weeks before death, long before Jeff Marshall's slow season in landscaping.
- T/F* Bruising was first seen by other witnesses as early as July. Tammy Gagne saw a bruise on Kassidy's forehead in early September. Melissa Chick told us about the bath she gave Kassidy where she saw incredible bruising on her buttocks, on her legs, on her abdomen, and all over her face. Early September, long before Jeff Marshall even semi-regularly looked after Kassidy. Kathy Nuernberg told us that before she went back to Texas in September, she saw grab marks or what she thought were grab marks on Kassidy's face.
- TRUE* Amanda only began her job at Old Navy the very week that Kassidy died. And it was that week that Jeff looked after her. And it was during that week, up until Wednesday, that he told you her bruising was clearing up.
- T/F* But before that week when she started working at Old Navy, the defendant told the police that Amanda was looking at Kassidy during the day for about three weeks, which takes us into October, folks. And he called it complete Kassidy time for Amanda. Yet in that time period when the defendant's coming home in the evenings and Amanda is looking after Kassidy during the day, she's getting these bruises.

And the defense can't have it both ways.

T/F Amanda Bortner accounts for that horrible bruising. She told you in vivid detail how the defendant would abuse her, throw her into walls, jerk her arm, throw her onto beds and grab her face.

You are the fact-finders in this case. You've heard that over and over again. Will in his opening asked you not to be passive observers but to actively participate in this trial and actively assess each of the witnesses that's come before you to determine who is telling you the truth, who is credible, who has no credibility. And I want to talk about some of the important witnesses in this case and talk about their credibility. There's a cynical saying that you may have heard, "No good deed goes unpunished."

TRUE And that might apply to Jeff Marshall in this case. Because he did a favor for the defendant and Amanda by looking after Cassidy. His season got slow, and he looked after her when he could. Yet now he finds himself accused of murder by the defendant's lawyers.

And in retrospect, Jeff's problem may have been that he was too up front with the defendant and Amanda about each and every mishap that happened at his house.

T/F He told Amanda everything. He said he did so because she was his [sic] mother. He told her about the fall from the truck. He told her about slapping Cassidy on the bottom after she got into Windex. He told her about tripping over Cassidy when he was answering the phone. He told her everything. He didn't tell her wild stories to account for her bruising. He told her everything.

And you have to ask yourself if Jeff Marshall was abusing this child all the while, why would the defendant and Amanda send her back to Jeff Marshall time and time and time again?

FALSE It doesn't make any sense. And it makes as much sense as the trampoline story and the baseball story.

FALSE It was, in fact, the opposite situation.

FALSE The bruising was getting so bad that the defendant and Amanda sent Cassidy to Jeff to stash her away, basically, to keep her away from people who might report this.

FALSE And the plan was always "Once the bruising goes away, we'll put her in daycare."

T/F But the bruising didn't go away. Jeff Marshall said that she had bruising on her face almost all the time.

T/F And let's not forget, Jeff Marshall had a relationship with Kassidy. He had known her basically since birth. He drove up to Auburn, Maine, and would visit with her. Josh Conley said that Kassidy loved Jeff, Jeff loved Kassidy. Jackie Conley said the same thing. He had no reason to hurt this child. It was his girlfriend's niece. And if he was hurting Kassidy, he wouldn't be approaching his neighbor, basically presenting his neighbor Kassidy, pointing to bruising on her face and asking the neighbor, "Should I report this?" He wouldn't be doing that if he was the one abusing her.

FALSE And in none of the excuses that came from the defendant and Amanda while Kassidy was alive, during none of those excuses about trampolines and falls and things like that do they mention "We think it's Jeff. We think Jeff Marshall is doing this." That didn't happen.

T/F They made up wild excuses to cover the defendant's conduct, not Jeff's.

T/F On the night that the defendant was arrested, November 16th, when he was arrested one week after Kassidy died, Amanda was there, she was at his house. The police come in, they serve him with the arrest warrant. She gets into her car and drives to Springvale, Maine. She drives unannounced to Tracey Foley's house, the woman she used to babysit for. She shows up in tears. She shows up, Tracey lets her in.

T/F Does she say to Tracey, "They've arrested Chad but they got the wrong guy. It was Jeff Marshall. Let me tell you what he's been doing to Kassidy?" No. She said to Tracey Foley, "And you knew, you knew and I didn't listen."

T/F And then for the next two hours she proceeded to tell Tracey Foley exactly what the defendant had been doing to Kassidy.

So recognize this defense for what it is.

FALSE It's the defendant's only way out, to point the finger at Jeff Marshall.

TRUE Not that Jeff Marshall isn't [sic] without blame here. He is. He is with blame. Kassidy was delivered to him on Thursday, November 9th, covered in bruises, and he didn't do anything about it. He saw bruises before that; he didn't do anything about it. He told us "I looked up to Chad." That certainly doesn't cut it.

T/F But he didn't try to make an excuse to you for his behavior, because for two days he was questioned and he was intensely cross-examined by the defense, and he didn't make excuses. He knows that he made a huge mistake.

You could be angry at his inaction. No question about it. But don't confuse his inaction to the actions that caused these injuries and caused the death of Cassidy Bortner.

FALSE Only one person caused those injuries, and that's the defendant.

Let's talk about the defendant's credibility.

FALSE The defendant in this case told so many lies it is hard to count them.

TRUE He told that trampoline story,

T/F what we now know as the trampoline lie. He told numerous people that he was on the trampoline with Cassidy, they're bouncing around, and somehow she bounces off the trampoline, and like Spider Man, he's able to rip her by the face and bring her back in. That's the story he concocted with Amanda to tell people to account for that facial bruising.

T/F The bruising that some people described as looking like dirt that was all over her face. And amazingly, a lot of people bought that lie. He told it to Cassidy's grandmother. He told it to Jeff and Jennifer. He told it to a lot of people, and he told it to the police detectives who were investigating the death of Cassidy, right there, in an earnest manner, having a great conversation with the police, he out and out lied to them. And he said it in as convincing a manner as you could believe.

T/F But as absurd as the trampoline story was, the defendant topped himself with the baseball story.

TRUE The baseball stories that he told to the police, where he's letting his child hit baseballs in the bedroom, we were all in that bedroom, he says he's sitting on the bed, Cassidy's to his right, and he's throwing baseballs to three-year-old Kyle. And Kyle whacked one, and you can listen to this on the tape, and the defendant says he reached out with his left hand, couldn't get the line drive, and it went right into Cassidy's face.

FALSE That was the story that he was concocting to the police.

TRUE And it's a story he told to others as well. He told Jeff the story, and he told Travis and Tristen. You know what?

When you're lying, it gets difficult to keep the details straight.

FALSE And that's what happened here.

TRUE Because the defendant told some people it was a baseball,

FALSE and he told some people it was a Whiffle ball.

TRUE Ladies and gentlemen, there is no mistaking a baseball with a Whiffle ball, especially if you were there.

T/F Travis got home that night and Travis tells us that he went up and was talking to the defendant, watching Kassidy splash around in the bath. He described her mood that night as chipper at one point. He said on the stand she was absolutely normal. He saw no bruising on her other than what the defendant told us, the bruise under her eye. But Travis tells us that, yeah, gee, "After that I went into the bedroom with Kyle and I did a little batting practice with him, too." Here's Travis, he's home from work, he's in his uniform, and he goes into that bedroom and he starts tossing Whiffle balls to Kyle. And he's whacking them, he's hitting them pretty good, Travis said.

T/F And he was asked what kind of bat was he using? Well, he was using one of those yellow skinny long Whiffle ball bats. We've all seen them. That's what he said. Well, the police secured that house that night. They wouldn't let anyone in or out. Well, they let them out, but they secured it, and the very next day they searched the house and removed every single ball and bat in that house. And there was no long yellow Whiffle ball bat in that house.

TRUE And we know that Travis left that house at nine o'clock that night. He went to his then girlfriend's house. He said he wasn't back till midnight.

TRUE And during that time the defendant was the only adult with Kassidy.

Let's talk about the defendant's statements to the police.

T/F He told so many lies in that statement it's difficult to count them.

T/F His first one was immediately. He walks in and he tells the detectives he doesn't want to sit down, he's been driving for two and a half hours. And we know that he was in Portsmouth around four o'clock talking with his friend Jeremy. He was in the area. Portsmouth is right down the road from Kittery.

TRUE He told the trampoline story,

TRUE he told the baseball story.

- T/F* He said that Kassidy was fine in the morning, she was mowing cereal.
- TRUE* He gave her a kiss goodbye and he described only limited bruising on Kassidy's face.
- T/F* Well, even Amanda contradicts him on how Kassidy was behaving that morning. She told us that she didn't even get out of bed. Kassidy normally walked into their bedroom every morning. But this morning she was lying in bed crying, and she was lethargic.
- T/F* That's not what the defendant told police. The defendant says that the night before Kassidy was eating a pop-ice, they were playing games, doing ABCs, having a great time.
- TRUE* Dr. Greenwald told us that if that child had sustained a serious subdural prior to that, she wouldn't be going in peaks and valleys behavior. It was a steady decline.
- T/F* He told the police that Kassidy had a giant goose egg on her head from Jeff, that Jeff had caused.
- TRUE* Dr. Greenwald told us that she performed an autopsy on November 10th and she saw no goose egg on that child's head.
- T/F* He said that Kassidy had a black and blue foot from Jeff stepping on her. She had that on Wednesday night.
- TRUE* These are the photographs of her feet. They're not black and blue.
- T/F* And then he began to tell a series of excuses about Kassidy, about the bruises, that she fell a lot, that Kyle, here's Kyle again, hit her with toys, causing bruising. He admitted that he himself grabbed Kassidy by the face to get eye contact. But then he said, "But Kyle touched her face right after me. Kyle did, too, so it could have been from him."
- T/F* He told the police that he never choked Amanda. Even on Amanda's version at trial when she says she threw a mug at him first, she told us he certainly did choke her and pin her up against the couch, and he told the police he never did it.
- TRUE* And maybe most incredibly, he told the police that Kassidy on her own would sometimes run into the wall herself and propel herself into the wall, causing bruising, and that he and Amanda had chuckled about it, they couldn't believe it. These are the things that he's telling the detectives investigating Kassidy's death.

TRUE Let's look at how he behaved on November the 9th, Thursday the 9th. Kassidy has gone to Jeff Marshall's, and he receives a phone call from DCYF, from Patricia Hawker. She leaves him a message saying, "It's about the children. Get back--please give me a call back." Well, he does call her back. This is Thursday morning. And he tells her, leaving her a message, "You know, why don't you call me back on Tuesday afternoon between 3 and 4. I'm going out of town."

TRUE This is an effort to buy time, ladies and gentlemen, to buy time for the bruises to go away.

TRUE So after the DCYF called, he picks up the phone and calls Jeff Marshall. He calls Jeff and says, "How's Kassidy?" And then he says to Jeff--he tells Jeff about the DCYF call.

T/F He tells Jeff that he knows it was Emily, Amanda's friend, who called DCYF on him, and he was angry about that. He wasn't calling Jeff and saying, "Thanks a lot, Jeff. You beat her up last night, she's covered in bruises, and now I'm getting calls from DCYF." He's saying "Emily called on me," And he says to Jeff, "If this is about Kassidy, Amanda and Kassidy are out of my house."

TRUE Later that day he's paged by the Kittery Police Department. It's in the phone records and they're in evidence. He's paged after two o'clock, just after two, and asked to come down to the police station. Now, the defendant knows that Kassidy was staying in Kittery that day.

T/F Does he get in his car and immediately drive up to the station as he's asked to do? No. He starts contacting all of his close friends wondering, "Hey, what do you think this is about? What do you think?" He actually goes to visit Jeremy Hinton at a restaurant and tells him or talks to him about the situation. He calls Travis. He calls Travis and says to him that he needs to go to the Kittery Police Department and he reminds Travis, he reminds him of the baseball story. He reminds him that Kassidy was hit by a baseball, and he reminds Travis that he was playing games with Kassidy and she was fine. Kind of a curious thing to do, don't you think? Kassidy's father figure, the defendant, shows up at the Kittery Police Department that evening later than anyone else, and he arrived with a posse of loyal friends.

Are these the actions of a man with a clear conscience who is totally surprised by this page, or is he circling .the wagons?

T/F Amanda Bortner, let's talk about her a minute. Amanda got on the stand and she told you an incredible eyewitness account of the abuse that Kassidy suffered at the

defendant's hands. Her testimony supports all of the assault charges that you have before you. She told you some terrible things that happened to Kassidy.

But you've got to look at Amanda and ask yourself if she's telling you everything.

TRUE She told you on the stand that she loves the defendant, she misses him, she wants to be with him, she's been staying with the defendant's sister.

FALSE In this case she over and over again lied to other people to cover for the defendant's abuse.

TRUE To Sergeant White, the man she described as kind and nice, she lied. She lied to him when he asked her if she was having contact with the defendant.

And given her loyalties at this point, she has every incentive to trash Jeff Marshall, to make Jeff Marshall look bad because that's going to help the defendant in this case. To use Attorney Sisti's words, be suspect about her claims regarding Jeff. Be suspect when she tells you that she never, ever saw bruising on her daughter's body.

TRUE She never did. She bathed her all the time. She never saw that.

T/F Well, her very close friend Melissa Chick testified in early September she gave Kassidy a bath and she saw her covered in bruises, her stomach, her bottom, everything. And she approached Amanda immediately. She said to Amanda, "There's something wrong. There's something wrong here. You better take her to a doctor. She might have leukemia. She might be anemic." And Melissa told you that Amanda's response was "I don't want people to think she's being abused."

T/F Amanda made her choice a long time ago. She told you about the abuse that she witnessed. She lived that. She saw Kassidy being hurt, she knows that Kassidy has died, and she's still standing with the defendant. She didn't protect Kassidy in life and she's chosen to defend [sic] him in death.

T/F Now, the defendant dominated this relationship. Kathy Nuernberg told us about that. She had seen Amanda in a prior serious relationship, and she said Amanda did what she wanted before. But with the defendant it was different. She was afraid to be late, she was afraid to go against him. And it's easy to see why. It's easy to see why the defendant was the dominant one in this relationship. He had the good job, he had the money, he was better educated, he had a lot of close friends, he had a house, and he was 10 years older than her. We all know that there's a big difference between the age of 18 and 28. And we know that he's a persuasive person.

FALSE When you watch that tape again, you can see that the defendant is very comfortable talking to these detectives.

T/F He's very comfortable talking about topics not having to do with Cassidy. And he's gone far in his job because he's a schmoozer, he knows how to talk. But when you watch that tape, pay special attention when the questions get pointed, when they start asking him questions about the abuse of Cassidy. You'll see him, when he's asked, "Did you ever cause bruises to that child?" "Is that your cell phone or mine?" Then in mid-stream when he's answering the question, he'll change the topic entirely and they'd have to bring him back to it.

TRUE He admits to causing bruising on Cassidy's face, but then says Kyle did it, too.

He tried to be persuasive to the detectives, but it didn't work. And the detectives told you that they had talked to him for a long time that night and they, in monitoring other interviews that had been going on, and Lance McCleish said that the tough questions had to be asked, and they asked them. They were investigating the death of a 21-month-old girl. We know the defendant is persuasive for other reasons.

T/F We know that he persuaded Amanda to stay with him for nine months in violation of the bail order. We know that he persuaded a close friend of his to do incredible things to help him violate the bail order. And he convinced Jeremy Hinton, a restaurant manager, and Vanessa Manson, who worked in the prosecutor's office, he convinced them to help him out. People gave up their apartments and their own beds so that the defendant can have intimate time with the eyewitness of his abuse. These close friends didn't say to the defendant, "Are you crazy? You're on your own." They didn't do that. They wanted to help him. And it even got to the point where the defendant's own family set up this campsite in the woods of Vermont, a campsite where the defendant could have unfettered contact with the state's star witness, in secret, in violation of the Court's order, and out of sight of authorities. And please don't accept the claim that's been made in this case that, well, the defendant was just helping out Amanda because she had nowhere else to go. He did it out of the goodness of his heart. We know that Amanda had other options. She had her friend, Kathy, in Texas who she actually lived with for a while, and she had Melissa and Tracey in Maine. Tracey Foley had an open invitation for her to stay with her. But instead, she abandoned her close friends, dropped contact with her close friends, and aligned herself with the defendant.

Now, the defense has said what does this all add up to? It doesn't mean anything, nobody's been tampered with here, nobody's been influenced. But the tricky thing about influencing a witness is that if you're successful, that witness isn't going to acknowledge they've been influenced.

FALSE The point of this contact for nine months against the Court's order is to show that the defendant was being deceptive and that he is conscious of his guilt.

T/F On that tape when he was talking to the police, when he's have a free-wheeling conversation, you know, they start talking about Amanda, and he says, "Well, guys, you know, I'm just getting out of a divorce, and I'm going to take things real slow. You know, I can tell this girl really loves me, but I don't want to jump into it too quickly." He says to the police that Amanda keeps bugging him to tell her "I love you." But he said that he told her, "Well, don't you want it to be natural, Amanda, when I finally do say this to you?" This is what he's telling the detectives. But by the end of that interview, he knew that the police suspected him, and within minutes he's out in the parking lot of the police department approaching Amanda and telling her how much he loves her. This is on the same day that he called Jeff Marshall and said that "They're out of my house if this is about Cassidy."

Now, the defendant's lawyers, their job in this case is to convince you that there is reasonable doubt--

MR. SISTI: Objection.

THE COURT: sustained.

MR. BROWN: The defense in this case has poked and prodded the State's case, trying to hit parts of the case that they think show a shoddy investigation. And perhaps the most shameless of those is the one involving these pajama bottoms. They want you to believe that Jeff Marshall was doing something inappropriate with this child on that morning. What other reason would they point to that?

TRUE The fact is, Cassidy had a diaper on. Jeff Marshall had pants on, and the photograph of those men's jeans show that it was right below an overloaded laundry basket.

And we have heard absolutely no medical evidence that anything of the like was going on. Dr. Baden was the last defense witness in this case. And Dr. Baden was hired by the defense and paid handsomely to provide you with an expert opinion. Judge Nadeau will tell you that you are not required to accept an expert's opinion. If you weigh it against other expert opinions and against the other evidence in the case, you can find that opinion to be unreliable. In this case, Dr. Baden's opinion is unreliable. In this case, Dr. Baden had known about this case for a long time. And on November 20th he issued a report, he issued a report agreeing with Dr. Greenwald, this child had died from blunt impact injuries of the head and abdomen. That report was a page and a half, and nowhere in that report was there one mention of fat emboli. Sixteen days before today Dr. Baden was deposed. It was the second day of a two-day deposition. And Will mentioned to him Dr. Greenwald's findings as to fat emboli. Dr. Baden expressed surprise at that time that fat emboli was a part of this case, even though it was mentioned several times in the autopsy report of Dr.

Greenwald. And yesterday morning he traveled up here to New Hampshire and for the first time in this courtroom yesterday morning he presented his opinion that fat emboli, something that he didn't know anything about two weeks before, caused a sudden death on Thursday morning. Major trauma happened on Thursday morning that caused fat to liquify and go into major organs and cause a sudden death. That's his brand new opinion. But strangely, Dr. Baden did not testify about what this major 'trauma was. What were these blows on Thursday morning that brought about this rare medical phenomenon? He didn't point to these blows that caused that. In his report of November 20th, he said that the bruising that Dr. Greenwald aged was between 5, 12 and 20 hours old. His new opinion about the fat emboli is totally contrary to Dr. Greenwald's expert opinion about fat emboli in which she said it takes many, many hours for that to develop and is contrary to the treatises that were presented to him. Additionally, he was wrong about the leg fracture. He was emphatic that he did not see a leg fracture to the left tibia, and he disagreed with Dr. Greenwald on that. He said that the fracture, if there even was one, didn't go through the bone marrow. Then you heard from Dr. O'Connor, who is a pediatric radiologist, and he told you that there most certainly was such a fracture.

FALSE Ladies and gentlemen, the purpose of Dr. Baden's testimony was to muddy the waters. Muddy the waters where they're in reality clear.

While you wonder how Dr. Baden earned his \$9,000 in this case, let me talk to you about Dr. Greenwald. Dr. Greenwald is not a hired gun. Her testimony was hardly biased. She herself has over 20 years of experience as a forensic pathologist. She has practiced all over the country, and unlike Dr. Baden, she did her homework in this case. She was prepared and she painstakingly aged these bruises. As I said before, using a microscope, she aged these bruises, and the vast majority of them are in the 8 to 12-hour range, 8 to 12 hours before death. Now, Attorney Sisti talked about three injuries, three injuries that could be recent. We're talking about two bruises on the back, one to the frenulum--and let's not confuse the frenulum. This giant injury right here is not the frenulum. The frenulum is that little mark there. And one to the back of the head. None of these injuries, ladies and gentlemen, were to fatty areas of the body, fatty areas where this emboli would originate. And Dr. Greenwald told you that when you take these slides, the bruising ages from the outside in, and there's a possibility that you're not getting a section of the bruise that's started the healing process. And also, in this case Jeff Marshall testified that he was fishing around in her mouth when he was trying to help her. There is photograph--there are photographs where the EMTs are putting tubes into little Cassidy's mouth. A picture right here with an EMT and with his hand in her mouth.

T/F And you have heard no convincing evidence that Jeff Marshall beat this child that morning. That child was brought to his house covered in bruises. She couldn't walk. He put her in bed.

The defense wants you to believe that in that state he began administering more beatings. It's not credible. Dr. Greenwald told us that Cassidy was a battered child. She had injuries of varying ages all over her. An aspect of battered child syndrome is that the parent singles out one child and leaves other children alone. That's what happened in this case. The abuser creates implausible stories that don't fit the facts.

FALSE That's what the defendant did in this case.

And the most common area for abuse with battered child syndrome, the head and the abdomen. That's where the defendant struck in this case.

FALSE Ladies and gentlemen, the defendant roughly pulled on Cassidy's leg, fracturing her leg.

T/F He repeatedly grabbed her face, causing bruising,

FALSE he assaulted Amanda Bortner on November 8th.

T/F He had repeatedly hurt Cassidy

FALSE and did nothing to help her.

FALSE He finally on November 8th into the 9th, he recklessly caused her death by beating her again. And he showed an extreme indifference to the value of Cassidy's life. Cassidy's life with the defendant was a living hell. And the abuse only stopped when the defendant finally killed her.

We ask that when you deliberate and you decide who has told you the truth here, who has credibility, and where the truth lies, because the time for lies is over, the time for false excuses is over. It's now time to gain justice for Cassidy Bortner. We ask that when you finish your deliberations, you come back into this courtroom and deliver the only verdicts consistent with the evidence and consistent with justice: Verdicts of guilty.

THE COURT: Thank you, Mr. Brown.