

1 (PAUSE)

2 MS. WIBERG: Good morning.

3 JURORS, IN UNISON: Good morning.

4 MS. WIBERG: I'll talk as loud as I can for you.

5 Amanda Bortner did not purposely or knowingly endanger the  
6 welfare of her child. Amanda Bortner loved Kassidy more  
7 than anything. Every witness that testified told you that.  
8 She was a very young mother, somewhat inexperienced to have  
9 a child at 17. But Kassidy was her whole world. She was  
10 trying to better herself, working any number of jobs,  
11 living with Chad, trying to go back to school. She has her  
12 daughter in child care with her sister and her boyfriend--  
13 sister's boyfriend. You heard Angela Blodgett say that  
14 Amanda told her that the reason she lived with Chad was  
15 because he was wonderful, he had a house, she had a family  
16 like she always wanted. And as part of Chad's role in the  
17 family, Amanda did see him discipline Kassidy. She saw him  
18 grab her face, like this, to make Kassidy look at him when  
19 he was talking to her if she wasn't paying attention. She  
20 saw him put her into time-out. She saw him play rough with  
21 her when he was trying to toughen her up, to act like a  
22 boy, playing airplane and other games like that. It didn't  
23 seem out of the ordinary. And, yes, Amanda [sic] had  
24 bruises. She had a fall to a coffee table that hit her  
25 right over her eye. And she fell down going up and down

1 the stairs. And she had a bruise on her buttocks, that  
2 Amanda certainly noted, from Jeff Marshall. And Amanda  
3 said she took care of it, when asked by Travis. She had  
4 talked to Jeff and Jen and told them what she had seen.  
5 She was looking for daycare. Travis testified today that  
6 Amanda was on the phone looking for daycare before Kassidy  
7 died. Amanda told Angela Blodgett she was looking for day  
8 care. She wasn't hiding Kassidy under a bushel. She was  
9 taking her out to grocery stores and things like that, she  
10 told Angela. She knew Kassidy had a bump on the back of  
11 her head, actually two, because she was told that by Jeff.  
12 That there had been an accident when he was watching her on  
13 a different day, and that she had fallen out of a truck.  
14 When she saw Kassidy falling and accidents, she took care  
15 of it. Kassidy didn't seem to be acting abnormal. She  
16 said she was tired, and her eyes did something when she was  
17 falling asleep that night. But the next day she looked  
18 fine. She even start--finished counting when Kyle was  
19 counting. Kyle goes, "1, 2, 3, 4." Kyle was a little bit  
20 older than Kassidy. And Kassidy picked up the numbers and  
21 when up to 10. She thought she was okay. Jeff kept  
22 saying, in his--during his testimony, "I just want the  
23 truth to come out. I just want the truth to come out." He  
24 was up on the stand tearfully talking about Kassidy. And  
25 everybody cries when they talk about Kassidy. She was

1 beautiful, and they all loved her. But Jeff gave two  
2 truths. He gave one on November 9th when he talked to the  
3 detective, that Cassidy was sleepy when Amanda brought her  
4 over, but that he and Jen had her walking around the room,  
5 that she was watching TV. And then he had another one here  
6 when he talked to you. Amanda carried her in, she didn't  
7 really move, she didn't talk, she didn't react, he thought  
8 she was sleepy, she just laid there. He thought he should  
9 let her sleep. And then he went in and checked her. "I  
10 just want the truth to come out. I never hurt her. I  
11 never spanked her." Travis saw the bruises. And they were  
12 bad. And Jeff told them what he had done. And then the  
13 phone calls to Kittery, to Jen, when he wasn't sure what  
14 was going on with Cassidy. "She looks terrible. Her eyes  
15 are rolling to the back of her head." And then the second  
16 call. "She's fine now." Then he calls 911. And the  
17 police come, and the ambulance comes in response. And  
18 luckily, they're right down the road. And they talk about  
19 that Jeff was frantic. Who wouldn't be with a baby dying  
20 in front of you? Especially somebody you love, your niece?  
21 And the first thing he says is, "Chad did this." Detective  
22 Hamel. You know, the focus of this case really isn't who  
23 killed Cassidy. And it's really going to be really hard in  
24 the jury room for you to put that aside, because it's awful  
25 that she died. We all know children that are 18 or so

1 months old. We may have some, or have nieces or nephews  
2 or grandchildren that age, and you'll look at them when you  
3 go home after this case and appreciate them even more, and  
4 say, "How could this possibly have happened?" Except that  
5 this is all hindsight. The whole case is hindsight. All  
6 the statements that the police took from all the witnesses,  
7 is hindsight. Because when it was going on, when the  
8 bruises were happening, they'd come and they'd go, you  
9 heard testimony about that, no one realized, least of all  
10 Amanda, what was happening to Cassidy. Cassidy wasn't at  
11 an age where she could articulate. She'd say "Ow, it  
12 hurt." But in all the months that people saw her, and you  
13 heard from a number of friends of Amanda's, all the  
14 witnesses that saw her, she was walking, she was using her  
15 arms, she talked a little bit, she played, not one person  
16 knew that she had a broken bone. And she had three at  
17 various times. Not all at once, granted, but three. That  
18 little girl. And Amanda didn't know either. If you look  
19 at the pictures of Cassidy, they're awful. If you look at  
20 the report we went over with Dr. Greenwald--

21 (PAUSE)

22 MS. WIBERG: --the injuries that led to Cassidy's  
23 death--if you remember when we talked to Dr. Greenwald, I  
24 started marking on her list the items that Amanda wouldn't  
25 know about, and that Dr. Greenwald only found out about

1 after an autopsy. The healing and local contusions on her  
2 head. The fall from the truck. Cassidy seemed better  
3 after that. The jaw. Amanda explained to the police what  
4 that was, Chad disciplining her. The feet. The  
5 superficial injuries to her feet. Amanda investigated that  
6 when she noticed it. She even went over to Jeff and Jen's,  
7 and you heard Jen say they walked around the house looking  
8 for what could have caused that. They determined it might  
9 be something like--between the wood flooring and the  
10 linoleum. She didn't ignore that.

11 (PAUSE)

12 MS. WIBERG: Left tibia fracture in remodeling  
13 stage. Ulna fracture.

14 THE COURT: Can you keep your voice up?

15 MS. WIBERG: Ulna fracture. I'm sorry. These  
16 are injuries that, when testified--when Dr. Greenwald  
17 testified she said they weren't apparent to her until she  
18 looked at the x-rays. And you could say, "How could she  
19 not know that a child had a broken leg or a broken arm?"  
20 Tristan Evans testified that in her line of work she takes  
21 those kind of x-rays, and it happens. It's a common  
22 occurrence that people don't know something is broken.  
23 Something might be bothering them. You have to take the  
24 situation as it was at the time, prior to Cassidy's death,  
25 to understand that Amanda was thinking. She had entrusted

1 Jen and Jeff with Cassidy's welfare while she was getting  
2 work and finishing up her job, trying to go to school. Her  
3 sister and her sister's boyfriend from a long time. And  
4 she questioned them about the Windex and about the--hitting  
5 her head, the things on her feet, and the spanking. And  
6 this wasn't all as it was portrayed in the last five days  
7 to all of you, something that happened in a three-day  
8 period. This was over a period of a month and a half or  
9 so. She would ask these questions, and she would have an  
10 explanation--get explanations for them. And she believed  
11 them, because who would ever think that her child was being  
12 tortured when they were entrusted? And the bruises for  
13 Chad, from him grabbing her face. Yeah, she talked to him  
14 about it, and yeah, when he splashed water in Cassidy's  
15 face, she certainly told him--said something to him. She  
16 wasn't there. She heard about it. She was downstairs with  
17 the water running. And she yelled at him, and she told  
18 Angela Blodgett that. And in hindsight all that--all of  
19 that adds up to a terrible picture for Cassidy. But if you  
20 take it one at a time, with the explanations that are given  
21 by Chad, or by Jeff, or by Jen, to Amanda, how would she  
22 know? And then you go to the point that--you know, why  
23 didn't she bring her daughter up to her mother's when she  
24 had bruises? She didn't want her mother to see the  
25 bruises, because her mother would judge her. Just like

1 everyone was going to judge her when they look at those  
2 pictures, the pictures of Kassidy. Now, I realize this is  
3 not how Kassidy looked to Amanda when she dropped her off  
4 at Jeff and Jen's. When she was talking to Angela Blodgett  
5 Angela said, "What about the bruises on the rest of her  
6 body?" And Amanda said, "What bruises? There were  
7 bruises?" This wasn't a woman who had time to like make up  
8 a story here. She had just been told her daughter died.  
9 She hasn't been able to see her. Hasn't been able to talk  
10 to any of her family about anything. She hasn't been able  
11 to even comprehend what has happened. Even when she asked  
12 to see her, they said it was too late, they shipped her to  
13 Augusta. Never got to see her. Why does she tell Tristan  
14 that Kassidy fell down the stairs instead of that Chad  
15 grabbed her on the trampoline? Perhaps because Tristan is  
16 Chad's ex-wife, and that she felt in fear in some way  
17 because Tristan had a piece of Chad that she didn't have.  
18 But Chad did come up with a story. "I grabbed her face.  
19 She was going to fall off the trampoline." Everyone in  
20 their mind logically is thinking, "Who would grab a kid's  
21 face when they're going to fall off a trampoline?" What do  
22 you grab? You grab an arm or a leg? You grab whatever you  
23 can catch, or whatever you can get, especially if you think  
24 they're going to fall. He grabbed her face. He left  
25 marks. He left bruises. It was careless, but it's a fact.

1 Amanda wanted the best for Cassidy. She wanted her to have  
2 things that she never had, like her own room, like she told  
3 Melissa--or--excuse me--Tracey Foley. And that's security,  
4 and being cared for, and being taken care of. Those are  
5 all the things that Amanda wanted for Cassidy. Now, move  
6 on to Jennifer Conley Bortner statements. On the first day  
7 that she talks to the officer is on the 9th. She tells  
8 them that Cassidy's face did not look like that when she  
9 left for work, when she was dropped off. Again, this is  
10 your initial reaction, your gut reaction when, "Oh my God,  
11 look what happened! I don't recognize that picture.  
12 That's not the niece I left this morning. Yeah, she had  
13 marks on her eye, and she had another mark on the other  
14 side. She didn't look like that." And that's consistent  
15 with what Amanda said in all of the statements that she  
16 made. Four statements with Detective Blodgett, and then  
17 the interview with Officer White, the New Hampshire State  
18 Police officer. Amanda is consistent. Yes, she should  
19 have seen what was happening. Yes, she should have  
20 realized. But she didn't. She had no idea. Then after  
21 the interrogations were over and people were allowed to  
22 leave, and Amanda is leaving, Jennifer, and Jeff, and  
23 Amanda are leaving the building, and Amanda sees Chad and  
24 she walks out there and talks to him. And he offers  
25 comfort to her and vice-versa, because they both had a

1 loss, because for as little time as they lived together,  
2 Kassidy was part of Chad's family too. And Amanda leaves  
3 with Jeff and Jen and goes back to the house, the house  
4 that Kassidy died in. She won't stay. They went to a  
5 hotel. And then she did talk to Chad that night. And she  
6 said, "You killed my daughter." And she said those words,  
7 the words she's heard for the four hours she's been in the  
8 police interview room with Angela Blodgett. Angela  
9 Blodgett classified her discussions with Amanda as, you  
10 know, trying to just talk to her about what happened.  
11 Trying to get the facts out. But as more and more  
12 information came into that room, Angela's method of talking  
13 to Amanda changed, as you saw and heard what she said.  
14 "You stood by and let him beat your daughter to death?"  
15 Amanda's in shock, she's confused, she doesn't know what  
16 happened. She's a bad mother now? She's lost her  
17 daughter. And she remembers the times that Chad did  
18 discipline Kassidy, that he did put her in time-out in her  
19 room, he did grab her cheeks, he splashed water in her  
20 face, because she told all that to the officer. Because  
21 maybe there's something to that, now, in hindsight. And  
22 because Amanda was on the phone, and because she left early  
23 the next morning with Chad's sister, Jeff and Jen decide  
24 they're going to go make some more statements to the  
25 police. And of their own volition they go down there, and

1 Jennifer's story changes dramatically, to "It was horrible,  
2 she was beaten, she looked like that all the time, Amanda  
3 never brought diapers, she never brought toys. I just love  
4 my sister. I want to protect her." That's what she kept  
5 saying when she was on the stand. Amanda never asked her  
6 to lie for anything. All she wanted to find out was what  
7 happened to Kassidy. That's all she wanted. "What  
8 happened to my daughter? How did this happen? What did I  
9 miss?" "I just wanted to protect my sister." Protect her  
10 from what? Her daughter is already dead. What does she  
11 have to lose? She lost the most important thing already.  
12 Now, everyone who has spoken to you told you that Kassidy  
13 was running around, and that she was playing, and that she,  
14 you know, was learning her ABCs, and she had favorite toys,  
15 and--and that she was adjusting to living at Chad's house,  
16 in this new environment. She had only been there for a  
17 month or so, two months. But Jeff and Jen told you that  
18 they were concerned from the beginning because she had  
19 bruises all over her. From the first time she was at  
20 Chad's, the first time, period, that she was at Chad's.  
21 And Mr. Ruoff showed you this picture. And Jennifer  
22 identified it for you as the picture of Kassidy at her  
23 grandmother's house. And there are no bruises. This was  
24 taken after she was living with Chad, in late September  
25 when she went to visit her grandmother.

1 THE COURT: Will you keep your voice up, please?

2 MS. WIBERG: I'm sorry. In late September when  
3 she was up visiting her grandmother. She's even got a  
4 flannel shirt on. It was probably cold that day. No  
5 bruises on her. And this is in Chad's house too. There's  
6 no bruises on her.

7 MR. RUOFF: Objection, your Honor.

8 THE COURT: Sustained. I'm going to ask the jury  
9 to disregard that comment. It has not been admitted as a  
10 full exhibit.

11 MS. WIBERG: Thank you, your Honor. Now, when  
12 you go back in the deliberation room--Mr. Ruoff is going to  
13 speak to you before that--remember I said at opening that  
14 everything is not black and white. It's not that easy.  
15 You know that saying, "Appearances can be deceiving."  
16 Amanda saw the bruising on Kassidy. The bruises would go  
17 away, and Kassidy seemed fine. She didn't know about the  
18 internal injuries. She had no way of knowing. Even the  
19 night before, when Travis saw Kassidy in the bathtub, the  
20 night before she died, he said she was playing. She said  
21 "Hi" to him. He was concerned about her eye. He didn't  
22 mention anything else about any other bruises that he saw.  
23 And statements that Amanda made to the police, consistent  
24 statements that she made to the police right after Kassidy  
25 died, she's been berating herself every single day.

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THE COURT: Keep your voice up, Ms. Wiberg?

MS. WIBERG: Huh?

THE COURT: Keep your voice up.

MS. WIBERG: I'm sorry. And she has been berating herself every single day because she has to live with that same question that Mr. Ruoff asked all the witnesses that testified: "If you saw the bruises, why didn't you do anything?" And they all said, "I don't know." They would--someone said they would come and go. Some said that the explanations made sense. The same explanations made sense to Amanda when they were given to her by Jeff and Chad. She was there when Kassidy hit her head on the coffee table, she saw it. She knows Kassidy bruises. But what you have to do when you go back in there is try not to focus on the pictures that--of Kassidy from Dr. Greenwald's office, from the autopsy. These pictures were taken in hindsight. Think about Kassidy running around, taking a bath, doing things little girls do during the day, eating, playing with her toys, and how Amanda saw it. Things aren't always what they seem. You know, unless--the Judge will instruct you about your duties as jurors today. And you can't judge on appearances. That's not your job. You're the fact-finders. It's going to be difficult to separate your hearts and your minds from pictures of Kassidy, and think about Amanda, who did

1 question what was going on, who did take her daughter to  
2 the doctor when someone mentioned something about her leg  
3 did not appear correctly, being pigeon-toed. Who did ask,  
4 "What happened? How did that happen to her?" And you're  
5 told, you know, "She stepped off the car seat," or, you  
6 know, "I knocked her over." Because we weren't there. You  
7 don't know how Cassidy appeared before November 9th, before  
8 she was dropped off, the last time that Amanda ever saw  
9 her. It's a very dangerous thing to pre-judge something.  
10 Sometimes we assume we know the facts. For instance, I've  
11 been watching, you know, talking to you for five or six  
12 days now, with my scarves on. And probably, if you thought  
13 about it at all, you presumed that you knew why I was  
14 wearing it. Because, you know, what you see, you make a  
15 judgment, and that's fine. A lot of people make judgments  
16 when they view things, you know? But if you go down to the  
17 next layer, if you just--if I just took this off, okay, you  
18 might make more questions, because more things are  
19 observable to you, different scarves, and things like that  
20 that might make you question, "Oh, maybe I wasn't right the  
21 first time." You know, just think about that. You can't  
22 make up your mind just because of appearances of what you  
23 see. You have to know beyond a reasonable doubt. You have  
24 to know there's no question in your mind that Amanda  
25 Bortner did purposely deprive her child, caused the

1 injuries to her, the ultimate--what happened, that Amanda  
2 was--that Kassidy was not given the proper care and  
3 protection. You'll need to think about and know that  
4 beyond a reasonable doubt, and I don't believe that you'll  
5 find that when you go in your room and you discuss  
6 everything that would induce that, I believe that you'll  
7 find--ask you to find Amanda not guilty of endangering  
8 Kassidy Bortner. Because that's what you have to focus on.  
9 Not who killed her, not who Amanda believes may or may not  
10 have killed her, but did Amanda purposely deprive her of  
11 care and protection. I'm going to ask you to go into that  
12 very carefully, and I'm going to ask you to find her not  
13 guilty. Thank you.

14 THE COURT: Thank you, Attorney Wiberg. Attorney  
15 Ruoff?

16 (PAUSE)

17 MR. RUOFF: The abuse, the grabbing, the throwing  
18 that the defendant watched was the price she was willing to  
19 pay for living in comfort. It was the price she was  
20 willing to pay to live with a man who she thought was  
21 Mr. Perfect, to live with a man who made a lot of money,  
22 owned his own house. It's that simple. So how do we know  
23 what Ms. Bortner knew? We look at what she said, and we  
24 look at what she did in the course of the time she was  
25 living with Chad Evans. And when asked, in the hours after