**STATE’S CLOSING ARGUMENT IN CHILD PHYSICAL ABUSE CASE**

**State of Minnesota**

**Prosecutor:** Your Honor, Counsel, members of the jury. On behalf of the prosecution team, on behalf of the State of Minnesota, I’d like to thank each member of the jury panel for your obvious attentiveness throughout this trial. It goes without saying that the decisions you are about to make will affect forever the lives of a great many people and your diligence is appreciated not only by me, but I suspect by every officer of this Court.

Having said that, let us turn to the matter at hand. As a forward let me say that it seems to me before we decide what this case is about we need to talk for a few moments about what this case is not about. This case is not about C.S., her multiple teenage pregnancies and associated problems that come with a child having children may be fodder for the moral indignation of those without sin, but it is not relevant to this case. It is not relevant to this case because C.S. has never been a suspect in this case. Because as Detective R. told you, a basic element before someone can be a suspect to a crime is that she or he must have had the opportunity to commit the crime. Now R. was with C.S. for two hours on March 27. However, no accident occurred during that time which would account for R.’s subsequent injuries and there were several witnesses which corroborated that. The boy was returned at 9:00 or 9:30 p.m. on the 27th and C.N. promptly bathed the child. Given the defendant’s reported propensity in reporting C.S., surely a report would have been made if R. looked on March 27 like he did on April 3. The evidence shows that most of R.’s April 3 injuries were fresh, Dr. M. told you that in her opinion while over 50 percent of the injuries were fresh. Dr. S. saw the child on April 2 and he testified that on that day the linear lesions on the boy’s face and the fresh bruises on his nose and forehead and the back were simply not there. Dr. G. testified that the retinal hemorrhaging and the subdural hematoma could have occurred as old as a week, but his best guess is that they were no more than three days old, and that they very well could have been inflicted the morning of April 3. Most importantly, the defendant herself told you that she bathed the child the morning of April 3 and on that morning none of the injuries in these pictures were present. Members of the jury, C.S. simply wasn’t around at the time most, if not all of the these injuries were inflicted, and it seems to me that any attempt to smear her character is nothing more than the despicable act of a desperate defendant who is begging each one of you to look anywhere other than where the evidence takes you.

Having now discussed what this case is not about, let’s talk about what it is about. The defendant, C.D.N., has been charged by the state with two offenses, she’s been charged with assault in the first degree and she’s been charged with attempted murder in the first degree. Now the Court will instruct you in detail as to the elements of those two offenses. The Court will also submit for your consideration what is known as several lesser included offenses meaning there are other crimes, the elements of which are contained in these greater crimes of assault in the first degree and attempted murder in the first degree. Therefore I would simply focus my remarks on the two crimes that I have charged the defendant with, assault in the first degree, attempted murder in the first degree and I think it follows that if you convict on those two you need to convict as well on the lesser included. The first count is assault in the first degree and the Court will instruct you that that has three elements that the state has to prove. First I have to prove that the defendant did assault R.S. The judge will tell you that the assault includes the actual attempted infliction of bodily harm upon another, the second element to the crime is that the defendant inflicted great bodily harm. I don’t have to prove that she intended great bodily harm, but that she intended the assault and the great bodily harm resulted. The judge will instruct you that great bodily harm means harm which creates a high probability of death or other serious bodily harm. The third element of assault in the first degree is simply that the act took place in this county on or about April 3,…. I submit to you that the State of Minnesota has presented overwhelming evidence on each of those three elements. There is no question that someone assaulted R. and that the assault took place on or about April 3. No less than four medical experts testified that within a reasonable degree of medical certainty these injuries were not accidental. Three of these doctors, S., G. and M., personally examined R. on April 3 or April 4 and two of the doctors, S. and G., had examined that little boy both before and after April 3. Drs. M., G. and L. testified that they found absolutely nothing in this boy’s medical history which would account for any of these injuries. For example, Dr. G. said there is nothing in those records which would account for the hair loss, in his opinion, other than the fact that somebody had pulled the hair out. The doctors told you that the injury behind the ear would be an extremely difficult place for a child to injure accidentally. The same doctors told you it would be difficult, if not impossible, to accidentally injure your scrotum, your back, your legs, your buttocks, in the way that this little boy supposedly did. Now the defendant has, I guess I’m not sure, but I think she had made a suggestion that seizures perhaps somehow accounted for some of these injuries. That’s not true. Dr. G., whose specialty is neurology, told you he’s treated thousands of patients for seizure disorders and he’s never seen a seizure cause the type of injuries that this little boy received. P.F-R. told you that she has worked for a hundred and twenty-five children with seizure disorders and not one of them, not one of them, suffered the kinds of injuries that R. suffered. Now Dr. S. went the extra mile, he did what he could to give the defendant the benefit of the doubt, he tested for these seizures. He told you that he tested for meningitis, for hypoglycemia and a host of other ailments. And he also told you that each test proved negative and that the only conclusion, the only possible conclusion that he could then reach was that somebody intentionally hurt this little boy. Each of the witnesses told you that subdural hematoma and retinal hemorrhages are almost always the result of a shaking and throwing. They told you that in the absence of a car accident, or an equally serious tragedy, there is simply no other explanation for the head injuries this little boy had. They told you you can’t receive injuries like this from falling on a carpeted floor or running into a table. They told you that the evidence points to intentional trauma. This overwhelming medical evidence stands before you largely uncontradicted. Oh sure the defendant says Dr. L. only got to look at the pictures, they got Dr. S. to concede hey sure, new medical illnesses may crop up from time to time. They got Dr. M. to concede that sure, she didn’t have the time to measure the bruises, she told you there were so many that she would have been there all day. And they got her to acknowledge that in her report she thought that maybe the linear lesions were a hand slap and not a belt buckle. But the basic premise of these four doctors, that these injuries were intentionally inflicted, has not been shaken one iota. Between them by my calculations these doctors have treated over 230,000 children, and they told you that they reached their conclusions within a reasonable degree of medical certainty. They told you R. was beaten. R. was beaten. There is also no question that R. as a result of the beating or assault was the recipient of great bodily harm. Drs. L., M. and S. all testified that this little boy was extremely close to death the morning of April 3 as a result of this trauma. They told you the little boy was turning blue, he was extremely cold, they told you his body was contracting, his heart beat was dangerously slow and that his breathing had become dangerously shallow. In fact, R. was so close to death that when the ambulance crew arrived they didn’t even take time to strap him in. B.G. told you that the paramedics simply cradled that little boy in his arms and ran out to the ambulance. This medical evidence that the boy was close to death has also not been shaken. In fact, the defendant herself admitted the boy was close to death because she told her sister, C., please don’t let him die. There is also no question that this assault occurred on or about April 3. As I’ve already said, most of the injuries were fresh. A good many of them weren’t present on April 2 when S. examined the child’s face and back. None of the injuries were present on March 26 when Dr. G. did a complete physical on the child. On March 29 when R.T. saw R. in the defendant’s house she said she didn’t see any bruises on his face then; certainly not the kind that are depicted in the photographs. Most importantly the defendant herself yesterday told you the injuries occurred the morning of April 3 during the time she went to change sheets in the house. Now it seems to me that if we know that R. was beaten, if we know the boy received great bodily harm as a result of the assault, and we know that the injuries were received on or about April 3, the only question left in order to convict the defendant of assault in the first degree is this question, can we be sure that she is the perpetrator of this abuse?

Members of the jury I think that there are six reasons why you can be sure. First of all, the defendant was the only adult who had access to the child at the critical time. The evidence shows that by March 31 G.N. was on the road trucking. D.B. was in Las Vegas. R.L. supposedly was living in the house but he was working during the day. And there is no evidence to show that he was involved in any way in the care taking of this child. In fact C.N. told you, she was the primary caretaker of R. She said that she was the one who fed this child, clothed this child, took him to the doctor. She was the one keeping C.S. constantly informed as to the ever changing medical conditions of this little boy. She told you that on April 1, April 2 and April 3 that the only other person who cared for R. was her daughter, D., and that that was for only one hour and during that hour R. was asleep. I think a lay person can look at the photographs and know that even if R. wasn’t napping, no child committed those crimes. This was the work of an adult.

The second reason I think you can be sure that the defendant is the perpetrator we’re seeking is that the evidence shows she had the mind set to assault this little boy. In the past she called him “a fuckin’ little brat,” “little asshole,” I think there was evidence that she called him “retarded, and “stupid” and “slow.” And you know what, this evidence wasn’t given to you by the defendant’s enemies. This evidence was given to you by two people, one of whom was B.B., a friend of the defendant- the person the defendant had used as a daycare reference, the person that the defendant had gone on long walks with. She told you some of these stories. And the other person is L. F.-A., who is the niece of the defendant. And she told you under oath that she loves her aunt. In fact, I think L. F-A. was the was the only member of the defendant’s family who, despite her love, was willing to tell you the truth when placed under oath. Continuing on this question of the defendant’s mind set, B.B. told you that when he lived in the house, nobody got yelled at like R. In fact, I think he told you that R. got yelled at four times as much as any other child in that house. Neighbors, three of them, told you that they frequently heard screaming from the house and they told you that the source of the screaming was the defendant. L.A. and the defendant’s own son, T., acknowledged that R. was threatened with a belt. We also know through T. that Mrs. N. got mad when R. wet his bed. And we also know that Mrs. N. was trying to limit R.’s intake of liquids so that he wouldn’t wet his bed. And we also know on the morning of April 3, that R. did wet his bed, and that that event was proceeded by a week in which R. had been vomiting and had the diarrhea. The evidence can lead you to only one conclusion: on the morning of April 3 the defendant had a mind set to assault this little boy.

The third reason we can point the finger at the defendant is that we know that stress probably more than passivity, and an escalating pattern of abuse, is typically present in child abuse cases or cases of the battered child syndrome. In fact, the defendant’s own expert told you that much. That’s what the evidence here suggests, it suggests an escalating pattern of abuse which I would submit is consistent with the battered child syndrome. The evidence shows that when R. was in daycare he didn’t suffer any unusual bruising at that time. But as time passed, in fact it took about a month after he was in foster care, bruises began to appear on the boy’s body, and these bruises were accompanied by explanations from the defendant. R. fell off his bike. R. fell down the stairs. R. fell down the deck. R. fell off his bed, multiple times, R. fell against the toilet. R. was bitten by Dustin, R. fell against the toy box twice, et cetera, et cetera, et cetera. Members of the jury, I think you could watch a hundred Three Stooges movies and those characters would suffer fewer injuries than they want you to believe this little boy suffered in that woman’s home. I will concede some of these injuries could have been accidental. I maintained throughout this trail that little boys ages two and three are not always coordinated. Sometimes little boys do fall down. But I doubt that there is any little boy on the face of this planet now or in the history of this planet who in the care of a loving person could possibly fall as much as they want you to believe. The evidence shows that eventually this pattern of abuse escalated. The evidence shows that in the final week R. needed constant care. His flu required constant attention. I’m sure there was no joy in cleaning his vomit and his diarrhea, and the evidence shows that when the victim wet his bed the morning of April 3, despite the evidence the defendant prevented, almost certainly that morning the defendant lost control. The evidence shows an escalating pattern of abuse consistent with battered child syndrome.

The fourth reason I think you can be sure it was the defendant who is the source of this abuse, is the stories that she told about the abuse, because not one of them makes any sense. The defendant did not tell you that R. was in a car accident. The defendant did not tell you that some mysterious person broke into her home, overpowered her and then went in front of her and beat up this little boy. What she told you is that R. apparently fell on a carpeted floor while she was doing the laundry. All of the medical experts told you that could not account for these injuries. She also told you that the bruises on his buttocks were the result of sitting on the toilet for ten minutes. Now despite her present claim that this is somehow offered merely as a theory, that is not what the evidence shows. P.F-R. told you that when she interviewed the defendant, the defendant didn’t qualify that buttocks story. She said that’s how it happened and she didn’t pause in telling the story. Detective R. told you when the defendant told him the story about the toilet causing the bruises, same thing, she didn’t pause, and she said that’s actually how it happened. And she told him she was there and saw it. The medical experts told you that sitting on a toilet wouldn’t account for those injuries. Now it’s also not clear that morning where the body was found. We seem to have a couple of stories. D.S. talked to the defendant that afternoon and she testified that from that conversation she got the impression that C.N. found R.’s body not in the living room but in the bathroom. It seems to be most damning of all, the defendant told Officer G. that morning that R. falls out of the high chair a lot. Now I know that C.L. and L.R. were in the house that morning along with the defendant. And I know they along with the defendant told you that they didn’t recall this conversation about high chairs. But folks, C.L. and L.R. are the very sisters of the defendant who told you with a straight face that although they were around R. that morning as much as 45 minutes, that they were concerned that the little boy was dying, and that they were attending to his needs as they saw it. Neither one of them noticed that this little boy’s face had been battered into oblivion. Now, the defendant told you R. doesn’t sit in the high chair. So what. It seems to me if the defendant is going to lie about R.’s falling, it’s not surprising that she would lie or fabricate the source of the fictitious fall as well. This brings us to the fifth reason why I think you can be sure it was the defendant who committed these offenses. The evidence shows that the defendant lies. She told you she wrote checks when she didn’t have enough money to cover them. Where I grew up that’s a lie. She failed to disclose to human services that others were living in her house four months at a time, even though she was required to do that. That’s a lie. She told human services, “Sure, I’ll keep R.’s personal history private.” And yet she freely shared that personal history with friends and relatives alike, irrespective of whether or not they would ever care for that little boy. She lied. And the lie that hurts me most is she said, “Sure, I promise to human services I would never spank that little boy.” But then she told you and had the audacity to tell you with a straight face, swatting on the butt is not spanking. I don’t think there is anybody who could make that distinction, but the defendant tried to pass it off to you. Folks, R.S. may be only four years old now. He may have been only three when he received this trauma. But based on this evidence, even though R. was declared by the Court to be incompetent to testify, I will take his word over the defendant’s now or on any day of the week. In fact, I’ll go one step further, his word is more valuable than the whole C.N. family. Look at G.N., he told you that tickling, tickling could have accounted for these injuries. We’ve already talked about C.L. and L.R. who didn’t notice that the boy’s face had been this battered. Take the testimony of those three relatives and combine them with the testimony of C.N. and I submit to you that the combined value of the word of all four of them is not worth one-tenth of the value of the word of R.S.

This brings us to the sixth reason why you can be sure it was the defendant who is the perpetrator we’re looking for. R.S., the only eyewitness other than the defendant, told you that. And this isn’t something that he originally started saying after months of peppered questions from relatives and friends. He started saying that the very afternoon that he received the assault. When he was in the St. M.’s Pediatric Intensive Care Unit after he regained consciousness, the evidence shows that he regained consciousness in Dr. S.’s care while the defendant was outside the hall. So there is no basis to claim that he understood the defendant had brought him to the doctor and that’s what concerned him. The evidence shows for three hours that afternoon the pediatric nurse, J.L., wheeled that little boy from test to test. She gave him popsicles when he was thirsty. She otherwise showed him affection he had not received that day. And when she asked that little boy if he wanted to go home, he said, “No, C. hurt me.” He didn’t tell you, Mommy hurt me. He didn’t say, Grandma hurt me. He didn’t say, Grandpa hurt me. He didn’t say the doctors hurt me when they were putting these tubes in me. He said C. hurt him. And if you’re wondering why it is that R. would open up to J.L. and not other people, I think I know. When that little boy was too weak to hold his body up, J.L. held him. I think R. trusted her. And the evidence shows that for one year R. has continued to say pretty much the same thing. He said “C. hit [him] in the head,” “C. hit [him] in the back.” He once said “C. hit [him] with a can of Play Dough,” and I want to stop and talk about that story for a moment because I know the defendant has given you a different version of how this injury to the lip occurred. In fact, she’s given you two stories. In one version it’s she who walks in on R. in the bathroom, and he’s supposedly fallen on the toilet, and he’s bleeding all over, that’s one version. The other version is that she is somewhere in the house and D.J.B. walks in the bathroom and she’s the one that finds R. But in both of their versions neither one of them were present when R. receives the injuries. But R. told you that he was hit with a can of Play Dough, and that that caused his necessity for medical care. He only told you one story and his story was corroborated yesterday by the defendant. And she told you, “Yeah, there is Play Dough in that house and I don’t allow the children to play with it because I don’t want them to make a mess.” I think it’s fair to conclude that if R. got into that Play Dough, R. got hit. R. has persistently expressed fear of the defendant. The evidence shows that when he hears the defendant’s name, or when he’s in a car on S. Lane, or when he sees a woman in a McDonald’s Restaurant who looks like C., he gets scared. How could anyone think that R. was taught those things? The S.’s and the K.’s told you that they love that little boy too much to try to talk to him and hurtful things unless he wants to open up about it. On his own R. simply remembers, and the best example of that comes from the testimony of D.K. Nobody taught R. to fall to the floor and cover his head when an adult holds a belt over him. R. learned that from personal experience. Nobody told R. to choke a cat from behind when he’s playing with the kitten. R. experienced shaking and throwing. Do you remember Dr. M. when she told you that the petechial lesions around that little boy’s neck were not the result of a sneeze. She thought that that boy’s neck had been pinched and he could have been choked. Now Dr. S., the defendant’s expert, despite her best one time effort to discredit this little boy, failed completely to do so. In fact, she corroborated the boy’s statements. Dr. S. told you that even if R. did not remember who hit him with the belt, he could remember the belt, the object, and the action of an adult holding the belt over him and respond as he remembered, to respond with fear. She told you that. She also told you that it’s possible that R. could form the mental impression of fear when he sees somebody who looks like the defendant. Now the defendant, for a reason I do not understand, finds it significant that the victim apparently was submissive during this competency hearing a week ago. She says the victim smiled at her. Whether or not that’s true, I fail to see why she should find comfort in any of that. The evidence shows that when R. was in Mrs. N.’s home he always assumed a submissive role. The S.’s told you that R. put up a fight when it was time to return to the N.’s residence, he always put up a fight, but by the time he got there he always calmed down. Every witness, every witness who saw R. in the N. house, whether that witness was for the prosecution or for the defendant described this little boy in the company of C.N. as docile, inactive, a largely silent human being. R.’s dad, R.K., hit it on the head when he said, “If [he] had the crap beaten out of [him] as a little boy [he’d] learn to be submissive pretty quick.” I think when R. saw Mrs. N. at that competency hearing he simply assumed the role that had been hammered into him.

To summarize the evidence of the crime of assault in the first degree we know that R. was assaulted, we know the assault occurred on or about April 3, we know the assault caused him great bodily harm because he was brought to the point of death. We also know that he received other serious bodily harm including bleeding behind his eyes, bleeding in his brain. And we also know, because the evidence tells us, that it was the defendant who was the source of this assault, because she was the one who had access to the child. She was the one who had the mind set to commit an assault. She, at that moment, was in the midst of a pattern of escalating abuse. And we know that she lies. And most importantly, R.S. pointed the finger at her, and only at her.

This brings us to the second count that I charged out which is attempted murder in the first degree. The Court will instruct you that there are five elements to this crime. The judge will tell you first I have to prove the defendant committed an act of child abuse against R.S. Second the defendant committed an act which is a substantial step toward causing the death of R.S. while the defendant was committing or attempting to commit child abuse. Third that R.S. was a minor, a minor is a person under the age of eighteen years of age. Fourth that the defendant engaged in a past pattern of child abuse upon R.S. And finally that the defendant’s acts took place on or about April 3, 1991 in the county in which you sit.

Members of the jury if you remember nothing else about what I say to you, please remember this: In order to convict the defendant of attempted murder in the first degree I do not have to prove to you, and you do not have to find, that C.N. intended that that little boy die. That’s not what these instructions will tell you. The only issue is whether she took a substantial step toward causing the death of that little boy while she was engaged in child abuse, and whether the circumstances manifest an extreme indifference to R.’s life. It seems obvious to me that beating R. to a point where he was near death is an act of child abuse, and it seems to me that that is a substantial step toward causing the boy’s death. I think that’s what the medical evidence points to. As for whether these acts manifest an extreme indifference to his life I have two thoughts. First I would submit to you that beating a boy to a point where he looks like he does in the photographs is an extreme indifference to his life. More importantly, please do not forget what went on in this courtroom yesterday. Do not forget the unrebutted testimony is the defendant found R. a long time before she called the ambulance. She told you R. woke up probably about 8:30, her kids were already in school so it was around 8:30. She got him out of bed, took him into the bathroom, apparently he was in the bathtub for ten minutes, on the toilet for another ten minutes, she fed him for another ten minutes, took another 20 minutes while she went and did the laundry and then she came back and found him. Well, if he woke up at 8:30 that puts us around 9:30, maybe ten o’clock. G. told you he didn’t get to the house until about 11:30. The ambulance arrived shortly after that. D. S. told you he started treating the child at 11:45, and the ambulance had arrived shortly before that. It took her up to two hours after she found the body before she called anybody, or at least until she called 911. I submit to you that leaving that little boy lie on the floor as Mrs. N. debated what to do is an extreme indifference to the life of R.S. The other element of attempted murder in the first degree that I want to focus on is this element that I have to prove that there is a past pattern of abuse. Now what I want to emphasize is it doesn’t take a lot in my judgment to prove a past pattern of abuse. The judge will give you an instruction as to what constitutes a past pattern of abuse. He will say that any of the following crimes which he will define constitute a past pattern of abuse. But when you get that instruction what I want you to focus on for the state is the crime of assault in the fifth degree because it’s the easiest one to prove, it seems to me. And if that’s all I have to prove to establish a past pattern of abuse I think I have done it without question. Assault in the fifth degree is defined this way, it could take one or two forms. It could take this form first, the defendant intentionally inflicts or attempts to inflict bodily harm on R.S. Bodily harm means physical pain or injury, illness or any impairment of physical condition. All it takes is physical pain, intentionally inflicting harm which causes physical pain. I could prove assault in the fifth degree if I proved the second scenario, that the defendant acts with intent of causing R.S. to fear the immediate bodily harm or death. It is not necessary that the defendant intends to inflict bodily harm or death, but only that she intends that R.S. fears that she would so act. Now how can you say, prosecutor, that you proved that? Well, let’s look at the evidence. We know that in the past R. was assaulted by the defendant. There is no question about that. P.O. testified under oath in that chair that she once walked in on the defendant while the defendant was pinching the mandible of this little boy. And she said it wasn’t a gentle pinch, she said it was a violent pinch. And she stated it looked like it hurt. She said R. had tears in his eyes. Under the definitions I have given you, that’s an assault. She intentionally inflicted bodily harm and that harm caused that little boy pain. So we proved one assault, now can we prove that there are more. Well, we know that R. was threatened with a belt. The defendant’s son, T.N., told Officer B. that. L. F.-A. told you that she had witnessed the defendant threaten R. with a belt, it simply wasn’t displayed. Well under this definition that is also an assault, the defendant acts with intent of causing R.S. to fear immediate bodily harm or death. It’s irrelevant whether or not she’s going to carry through on the threat. When she tells R. “do this or I’m going to hit with a belt,” she’s intending to cause the little boy to fear the act of getting hit with the belt so that he will do whatever it is that she wants to do. Now we have proved two fifth degree assaults. Can you prove any more, Prosecutor? Yeah, I can. There’s a lot more in this case. There is powerful circumstantial evidence that the victim was assaulted by the defendant on other occasions as well. Now the Court is going to give you an instruction on what circumstantial evidence means, but let me give you an example to drive it home. If you go to bed on a night in December in the State of Minnesota and before you go to bed you look out your window and there is no snow on your front lawn, but when you wake up the following morning at 6:00 a.m. you come out of your covers and you look out the window and you see that there is now snow on the ground, you probably will conclude that sometime between the moment you went to bed and woke up it snowed on your front lawn. That’s circumstantial evidence. You take fact number one, there wasn’t any snow when you went to bed, fact number two, it was there when I woke up, and you conclude it snowed. Now that’s not the only conclusion you could reach, I suppose it’s theoretically possibly that some of your friends played a practical joke on you, they flew to Colorado, filled up a whole bunch or trucks with snow, drove up and put them on your front lawn, but that’s not reasonable, and so you conclude it snowed during the night. There is circumstantial evidence as powerful as that that R. was assaulted on additional occasions. On one occasion R. was dropped off at S.S.’s house and Mrs. S. observed a bruise, which was photographed and is in evidence, that she told you that bruise wasn’t acquired at her house. On another occasion R. had to go to the hospital for stitches of the lip because of the Play Dough incident. R. told you what happened, we’ve already focused on that. On countless other occasions R. was returned to the S.’s with patterns of bruises that he never received in the care of the S.’s, or in the care of R.K. after this little boy survived foster care. Also, please remember P.O.’s testimony. She said when she was in the house she often observed bruises on the boy. Do you remember the pattern that she described, they were along the mandible. She saw R. getting force fed and pinched along the mandible as part of the process of force feeding him. I think it’s fair to conclude that this was not the first time that little boy was forced to eat. That’s why he had a pattern of bruises on the mandible. It snowed during the night. If you want more, take these facts, combine them with B.B.’s testimony that nobody got yelled at like R. as well as the testimony of neighbors that screaming came from the defendant, from that house and that it was common place. Combine that with the testimony, or the words of R., which have already been referred to in which he points the finger at the defendant and you begin to see a puzzle. And you can now see the picture in the puzzle. And the picture tells you there was a past pattern of abuse.

Before I close I want to give you a thought or two or three on the concept of proof beyond a reasonable doubt. The Court is going to instruct you what that means and I think the Court is going to tell you that I don’t have to prove the defendant’s guilt to a mathematical certainty, I can’t do that. I only have to prove guilt beyond a reasonable doubt. And the judge will tell you that a reasonable doubt means a doubt based on reason. I can’t give you a video tape showing that here’s the defendant, here is R., watch the defendant beat R. I don’t have that evidence. Detective R. told you that in cases of child abuse it would be quite unusual to have a witness. Child abusers just don’t take the child on the front lawn and call the neighbors around and say watch me beat the child. It just doesn’t happen that way, it happens in private. Obviously I have to rely on something else, and I think in this case when we consider reasonable doubt it comes down finally to this question: Do you have a doubt based on reason? Because the defendant told you she left the little boy alone in the living room on the morning of April 3. He was fine then and when she came back 20 minutes later he had been battered to hell. Is that a doubt based on reason? Obviously I cannot tell you, probably only God can tell you exactly what happened on the morning of April 3. But based on this evidence I can give you a better explanation than the defendant. R. wakes up at 8:30, he wet his bed, the defendant is exhausted, exhausted from a week long effort to control that boy’s vomit, his diarrhea. She sees the wet bed and she’s reminded of a long term failure to prevent this boy’s bedwetting and she reacts violently. She hits him in what G.B. called targeted areas, the groin, the legs, the back. She takes him from behind and she shakes him just like R. demonstrated with the cat. The shaking is followed by a throw and as a result R. is now on the floor and he has received a subdural hematoma and retinal hemorrhaging. The defendant goes in the bedroom or maybe she doesn’t go in the bedroom, maybe she just takes the belt out of her pants. She hits R. in the face with it creating linear lesions. But she is not done. She grabs R. by what B. called controlled areas, probably started with the hair but it didn’t work, because she pulled too hard and the hair came out, grabs R. by the ear, another controlled area, and drags him either to the kitchen first or to the bathroom. Eventually though she drags him into the bathroom, throws him in the shower with his clothes on just like L.A said was once done before, takes him out of the shower, bangs his butt on the toilet saying that’s where you pee, and then she leaves him in the bathroom just like R.T. or, rather D.S. thought, the defendant told her.

Now remember this, members of the jury, P.O. told you she was in the house the morning of April 3. She told you she arrived at 9:45, and that what she remembers unusual about that morning is that R. wasn’t in the living room like he always was before. I think he was either in the bedroom or the bathroom or, I think that at that moment he was dying. I think after P.O. left, the defendant goes and changes the sheets, washes them and then she checks on R. And now she realizes that this time she has gone too far. She looks at R. She sees that he is crossing the fine line that separates life from death. She sees that he is now leaving the hell he knew and is about to wing his way into heaven and she panics. She told you it took about 15 minutes before she called anybody. I think that’s probably true. And I think the first call was not to 911, it was to her sisters. I think L.R. told you the truth. I think the sisters were in the house a long time before 911 was called. I think they probably were there 45 minutes and that trio of unfeeling felines hovered around this little boy thinking not how can we save R., they were thinking how can we save C. Eventually they concluded we have got to call 911 because he is going to die and so they made the call. C. runs to get G. G. comes and he looks at the little boy and says “what happened here” and the defendant responds with the first in a long line of lies when she says, “He falls out of the high chair a lot.” I don’t know if it happened exactly that way, none of us will ever know. But we can be sure of this, the medical evidence says this child was beaten and the story I told you is a lot closer to the truth than the garbage the defendant is trying to force feed every member of this jury.

Now the defendant presented character evidence, a lot of character evidence. She wants you to believe that she’s a good person and that may be true. Dr. S. told you that many good people for a variety of reasons commit acts of child abuse. Her character evidence does not create a doubt based on reason. My wife, L., and I listen to a folk singer by the name of N. G. In one of her songs she says, “If wishes were changes, we’d all live in roses and there wouldn’t be any children who cry in their sleep.”

In my heart I wish I could change the events of April 3. In my heart I wish I could change the fact that because of those events this trial has had to happen. But it seems to me that if I cannot change these events, if you cannot change these events, perhaps the best thing that can be done is that we all remember them. When you retire to the jury room remember these events, remember the victim of these events and remember that although R.S.’s first cry may have been for help, his second cry undoubtedly is for justice. The defendant, C.D.N., is guilty of assault in the first degree, the defendant, C.D.N. is guilty of attempted murder in the first degree.