



"Unexplained Injuries, Unexplained Bruising"

The Complicated Case of Baby Owyn Part 2

Kathleen Nolan, Senior Attorney, Zero Abuse Project
Crystal Uhe, Special Prosecutor, Illinois Office of the State's Appellate Prosecutor

1




Kathleen Nolan, Senior Attorney
Kathleen.nolan@zeroabuseproject.org


Crystal Uhe, Special Prosecutor
cuhe@ilsaap.org

This project was supported by Award #15PJD-22-GK-03979-JJVO awarded by the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this program are those of the author(s) and do not necessarily reflect those of the Department of Justice.

2

Disclaimer

- The following is not intended to constitute legal advice.
- Always consult your local prosecutor or attorney for guidance.



3

Agenda

Part 1

- Investigation
 - Witness interviews
 - Medical records
- Charging Considerations
- Speedy Trial Issues

Part 2

- Pre-Trial Motions
- Jury Instructions
- Case Presentation
- Post-Trial Motions and Sentencing



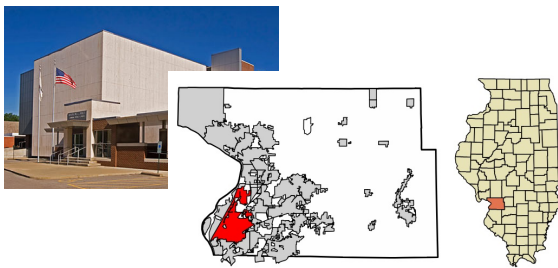
4

Who Are We? (Back in 2014....)



5

Where Are We?



6

Teamwork makes the dream work



7

Baby Owyn

DOB: July 17, 2014



8

Mom and Mom's Boyfriend

- Kamryn Kerr
 - 14 CF 1912
- Ashlee Wethington
 - 14 CF 1914
- Granite City, Illinois
- 7-week-old Baby Owyn
- Kerr is not bio dad



9

Procedural Status

- Both Defendants charged in identical indictments.
- Both Defendants in custody of MadCo Jail.
- Wethington has PD, Kerr retains private counsel.
- Kerr begins to push for trial.
- Wethington does not.



10

Δ's early motions/Sanctions requests

- Motion to Quash Indictment/Motion for a Bill of Particulars
 - Denied
- Motion to Compel Discovery
 - Granted
- Motion to Reduce Bond
 - Denied
- Motion for a Restraining Order (To prevent DCFS from approaching or contacting Defendant Kerr)
 - Withdrawn
- Renews Demand for Speedy Trial



11

Pre-Trial Motions – Defense Motions

- Motion In Limine to prevent video recording of the defendant's interview with police as hearsay.
 - Denied
- Defense Motion for Discovery Sanctions
 - Granted in part



12

Pre-Trial Motions – Defense Motions

- Defense Supplemental Motion of Limine to prevent State from eliciting testimony that Defendant did not want the minor child
 - Denied
- Motion In Limine that the Defendant wanted to have his own biological child with Ashley instead.
 - Denied



13

Pre-Trial Motions – Defense Motions

- Motion In Limine to prevent the State from talking about any injuries unless they are specifically stated in the charging document.
 - Denied



14

Pre-Trial Motions – State Motions

- State's Motion to Admit Evidence of Other Acts per 404(b)
- Witnesses
 - Emily Booth
 - Peggy Wethington
 - Veronica Remner
 - Eric & Lacy Dodd
 - Phillip Ballew
 - Devon Fair



15

Pre-Trial Motions – State Motions

- State's Motion to Admit Evidence of Other Acts per 404(b)
- Witnesses
 - Emily Booth
 - Peggy Wethington
 - Veronica Remner
 - Eric & Lacy Dodd
 - Phillip Ballew
 - Devon Fair



16

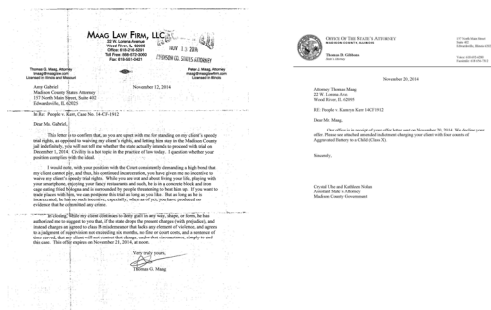
Grand Jury Amended Indictment

- November 20, 2014: Grand Jury issues an Amended Indictment charging four counts of Aggravated Battery to a Child.
 - Count 1: Rib fractures to right posterior
 - Count 2: Acute Rib fractures
 - Count 3: Tibia fracture
 - Count 4: Skull fracture
- Sentencing Considerations:
 - 6 – 30 years each count
 - Mandatory consecutive to one another



17

Negotiations



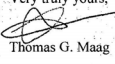
18

Negotiations

MAAG LAW FIRM, LLC
1000 Peachtree Street, Suite 1000
Atlanta, Georgia 30309
Phone: (404) 525-1100
Fax: (404) 525-1101
Email: info@maaglaw.com
www.maaglaw.com

OFFICE OF THE STATE'S ATTORNEY
JENNIFER L. HARRIS, Attorney General
100 North Peachtree Street, Suite 1000
Atlanta, Georgia 30309
Phone: (404) 462-1000
Fax: (404) 462-1001
Email: info@ga.gov
www.ga.gov

In closing, while my client continues to deny guilt in any way, shape, or form, he has authorized me to suggest to you that, if the state drops the present charges (with prejudice), and instead charges an agreed to class B misdemeanor that lacks any element of violence, and agrees to a judgment of supervision not exceeding six months, no fine or court costs, and a sentence of time served, that my client will not contest that charge, under that circumstance, simply to end this case. This offer expires on November 21, 2014, at noon.

Very truly yours,

Thomas G. Maag

zeroabuse PROJECT

19

Negotiations

MAAG LAW FIRM, LLC
1000 Peachtree Street, Suite 1000
Atlanta, Georgia 30309
Phone: (404) 525-1100
Fax: (404) 525-1101
Email: info@maaglaw.com
www.maaglaw.com

OFFICE OF THE STATE'S ATTORNEY
JENNIFER L. HARRIS, Attorney General
100 North Peachtree Street, Suite 1000
Atlanta, Georgia 30309
Phone: (404) 462-1000
Fax: (404) 462-1001
Email: info@ga.gov
www.ga.gov

Our office is in receipt of your offer letter sent on November 20, 2014. We decline your offer. Please see attached amended indictment charging your client with four counts of Aggravated Battery to a Child (Class X).

MAAG LAW FIRM, LLC
1000 Peachtree Street, Suite 1000
Atlanta, Georgia 30309
Phone: (404) 525-1100
Fax: (404) 525-1101
Email: info@maaglaw.com
www.maaglaw.com

OFFICE OF THE STATE'S ATTORNEY
JENNIFER L. HARRIS, Attorney General
100 North Peachtree Street, Suite 1000
Atlanta, Georgia 30309
Phone: (404) 462-1000
Fax: (404) 462-1001
Email: info@ga.gov
www.ga.gov

zeroabuse PROJECT

20

Jury Instructions

- Disclosed to Defense Prior to Trial
- Defense objects to parental accountability instruction

zeroabuse PROJECT

21

Accountability

- A person is legally responsible for the conduct of another person when, either before or during the commission of an offense, and with the intent to promote or facilitate the commission of an offense, he knowingly solicits, aids, abets, agrees to aid, or attempts to aid the other person in the planning or commission of an offense.

IPIC 5.03



22

Accountability - Parents

- (1) A parent has a legal duty to aid a small child if the parent knows about a danger to the child and the parent has the physical ability to protect the child. Criminal conduct may arise by overt acts or by an omission to act where there is a legal duty to do so.
- (2) Actual physical presence at the commission of a crime is not a requirement for legal responsibility. However, mere presence at the scene of a crime does not make a person accountable for an offense. You may consider a person's presence at the scene of a crime along with other circumstances when determining accountability.
- (3) Intent to promote or facilitate the commission of an offense may be shown by evidence that the defendant shared a criminal intent of the principal or evidence that there was a common criminal design.
- (4) A person cannot be found accountable for the conduct of another based on acts taken solely after the commission of the offense. You may consider the defendant's actions after the offense to the extent that they raise an inference of the defendant's prior or concurrent participation in the offense. However, actions taken only after the commission of the offense do not establish an independent basis to hold a defendant accountable for an offense that has already been completed.



23

Jury Instructions

- Disclosed to Defense Prior to Trial
- Defense objects to parental accountability instruction
- Files an additional Motion In Limine asking the court to prevent the State from arguing accountability → Denied
- Who is a parent for the purpose of this instruction?



24

Ongoing Investigation

- Medical Records
 - Birth records
 - Well-baby visits
 - Leg ultrasound
- Timeline Witnesses
 - Discounting any other injury theory.



25

Timeframe and Access

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	2014			JULY 17	18	19
				Bobby Owen's Birth		
20	21 Owen discharged. Stay with Peggy	22	23	24 Home visit with James Janssen	25	26
27	28	29	30	31 Home visit with James Janssen	1	2 Family Picture Day
3 Go to stay with Bob & Lorey Dodd	4	5 Notice Owen's leg at WIC office	6 Go to stay with Emily Booth	7	8	9
10	11 Owen taken to Dr. Olson	12	13	14	15	16
17 Fight in Street. Go stay with David	18	19	20 SCRS hotline by Lorey	21 Owen taken to ultrasound	22 Go to stay of Hilary Moore	23
24	25	26	27	28 SCRS hotline by Peggy	29	30
31	1	2 Return to Peggy's	3	4	5	6 Return to Peggy's
7	8 Owen at Gateway Hospital at 13:30					

www.cabodanews.com



26

Ongoing Investigation

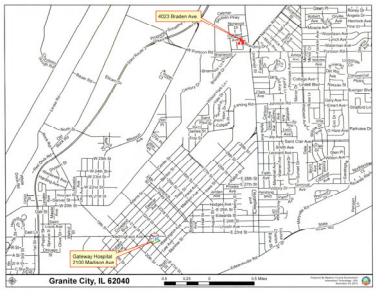


- Day of ER visit (September 8, 2014)
 - Why?
 - Resistant and uncooperative at hospital. Why go?
- Additional witnesses from records
 - Healthy Families of Madison County
 - Mandatory home visit set 9.8



27

Ongoing Investigation



zeroabuse PROJECT

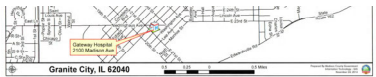
28

Ongoing Investigation

Granite City Police Department – Investigative Supplement

On 12/16/14 at approximate 0909 hours I walked from 4023 Braden Street to Gateway Regional Hospital Emergency Room, located at 2100 Madison Ave. The route walked was Nameoki Road to Fehling Road to Benton Ave to 27th Street to Madison Ave. The route was approximately 3 Miles in length and took approximately 54 minutes to walk. The temperature was approximately 37 degrees with winds of 13 miles per hour.

B. Skalsky



zeroabuse PROJECT

29

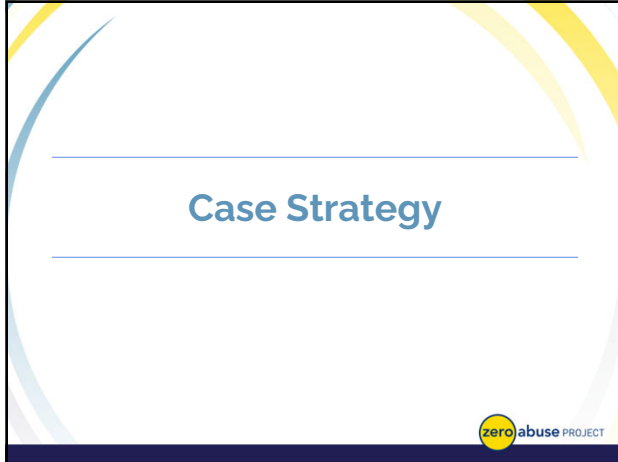
One More Witness

- Kerr's cell mate
- Wrote a letter from jail.
 - Doing meth and fighting.
 - Kerr threw baby down and hit head on the nightstand
 - Pulling baby back and forth, heard a popping noise.
 - Baby screaming and crying like never before.
- Offered transfer back to STL CO to handle his cases.



zeroabuse PROJECT

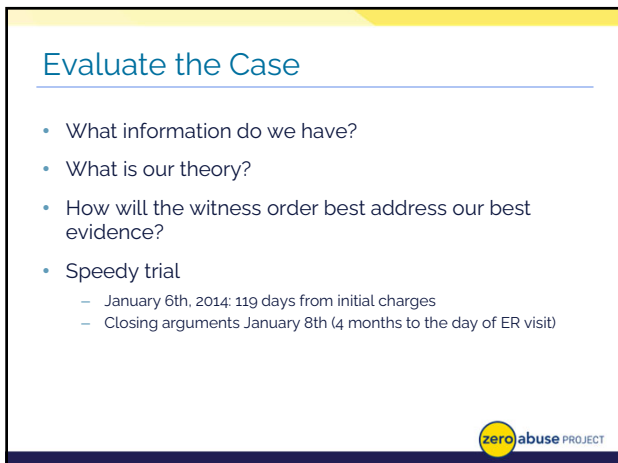
30



31



32



33

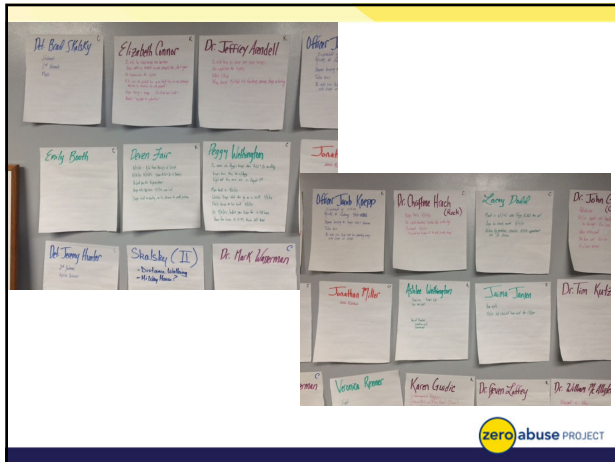
Unconventional Opening

- Defendant Kerr's statement was full of inconsistencies, downplayed responsibility, over-exaggeration of importance, and outright lies.
- Turned traditional trial strategy around and started with his video.



zeroabuse PROJECT

34



zeroabuse PROJECT

35

Building a Multi-Media Trial

- Lots of pictures, images.
- Knew jury would not get to see Owyn in person.
 - Baby Owyn
- Wanted as many visuals as possible.

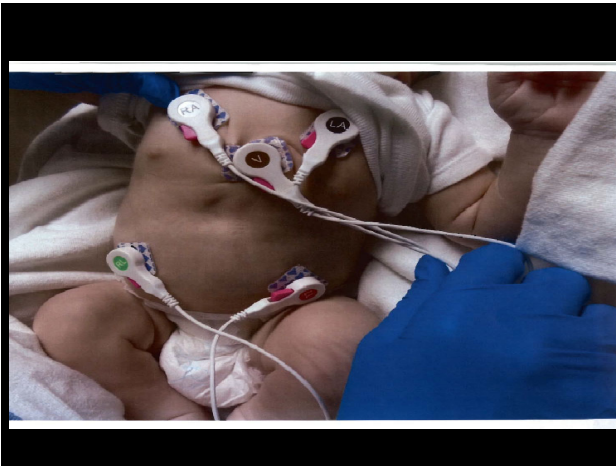
zeroabuse PROJECT

36

Dr. Arendell & Elizabeth Connor, RN



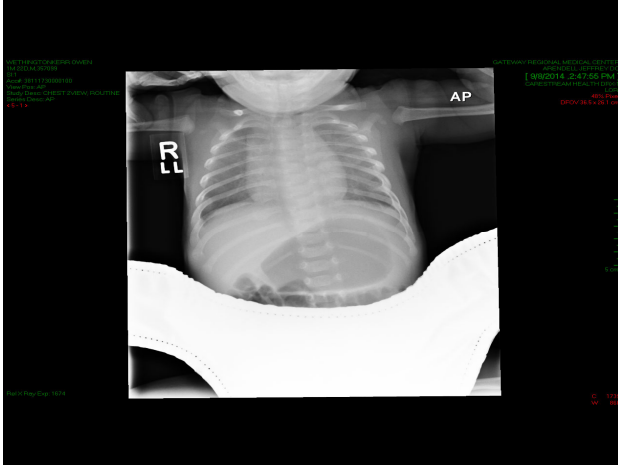
37



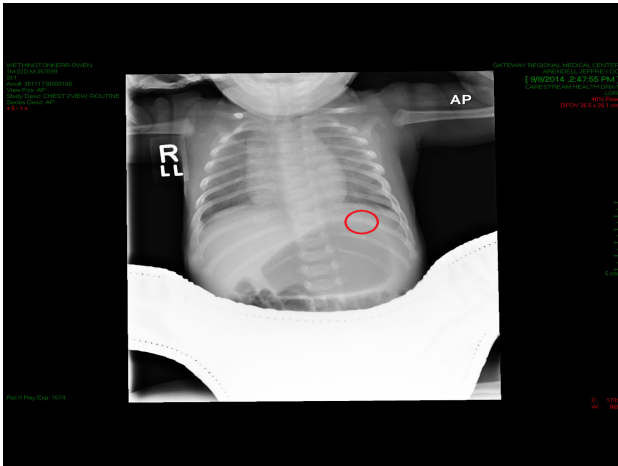
38



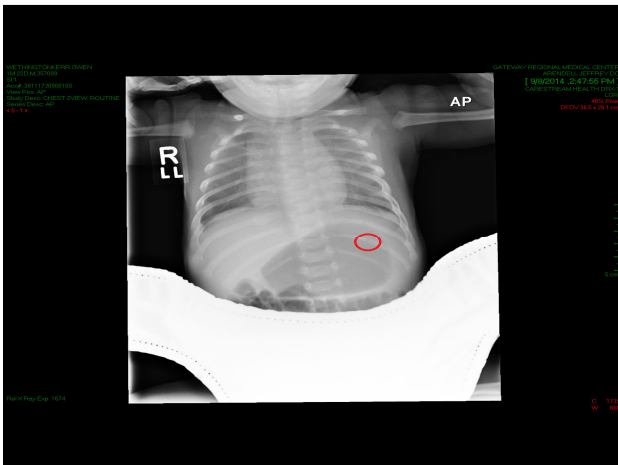
39



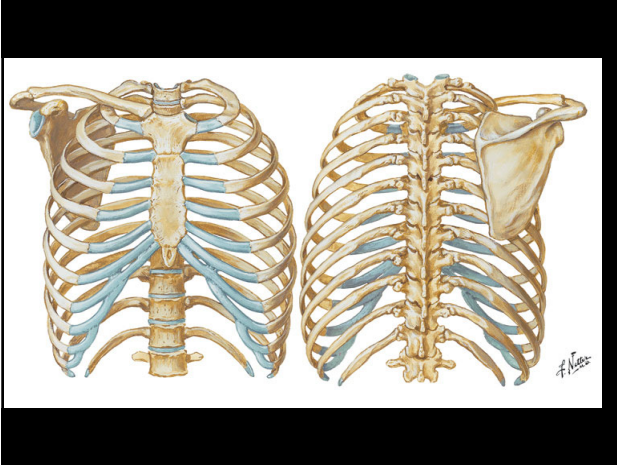
40



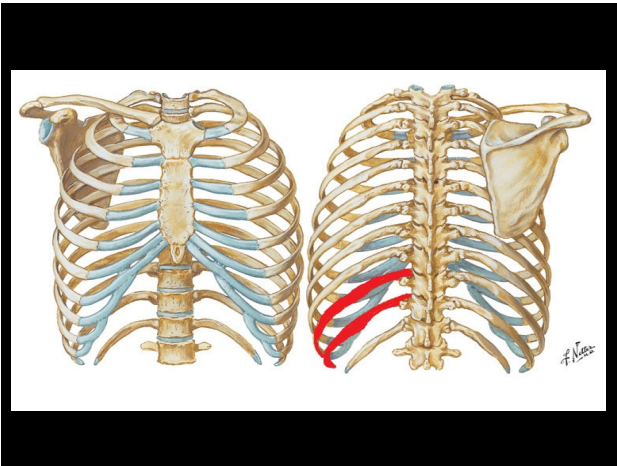
41



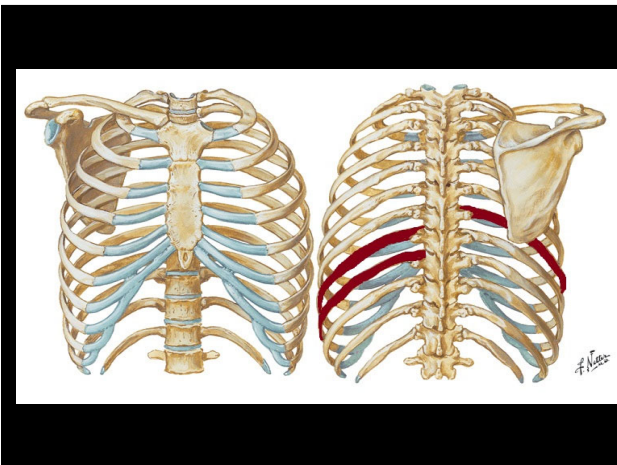
42



43



44



45

Pulling it all together

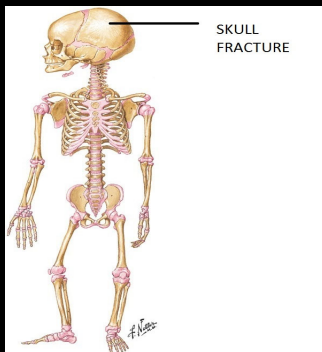
- Dr. Kutz, Director of Child Protection
 - Board certified in General Pediatrics & Child Abuse Pediatrics
- Final witness
- Full assessment of medical
- Ultimate opinion within a reasonable degree of medical certainty: Injuries by non-accidental trauma.



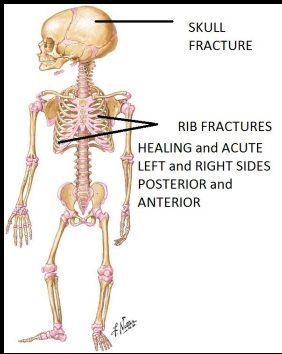
46



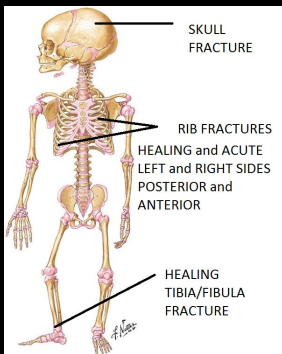
47



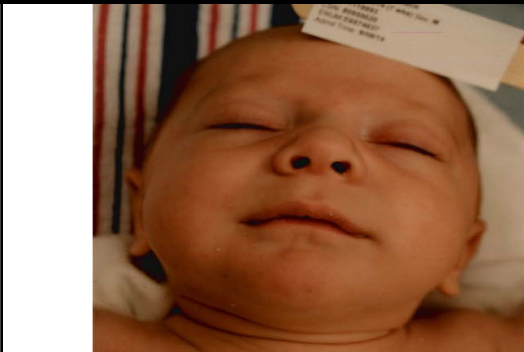
48



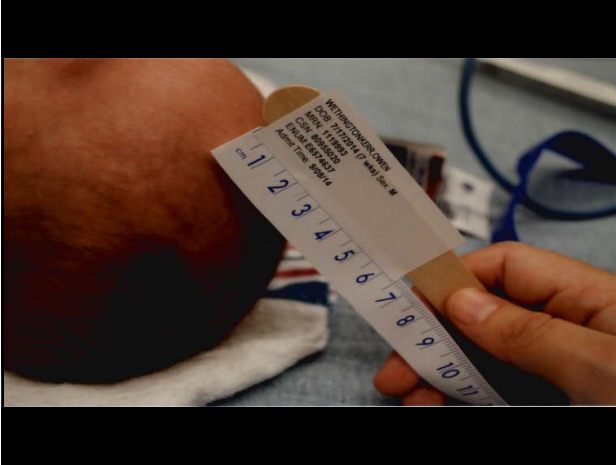
49



50



51



52

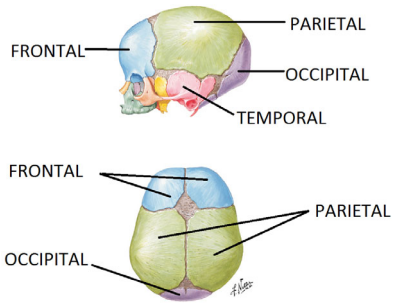


53



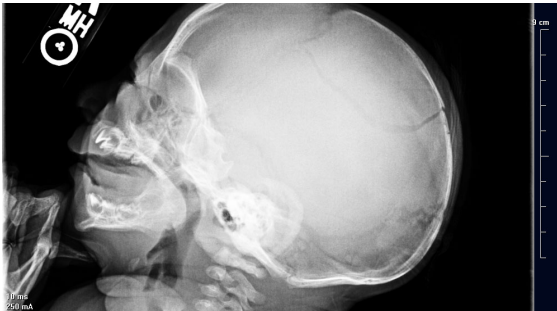
54

Exhibit 14



zeroabuse PROJECT

55



zeroabuse PROJECT

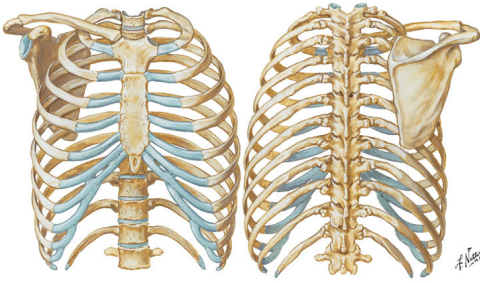
56



zeroabuse PROJECT

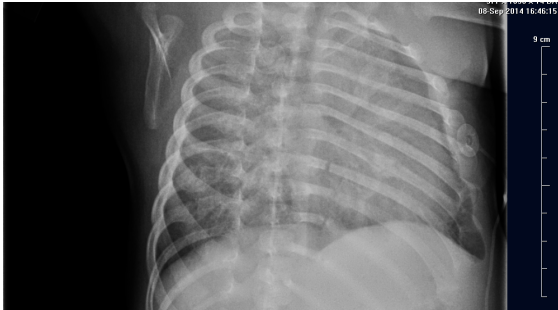
57

Exhibit 15



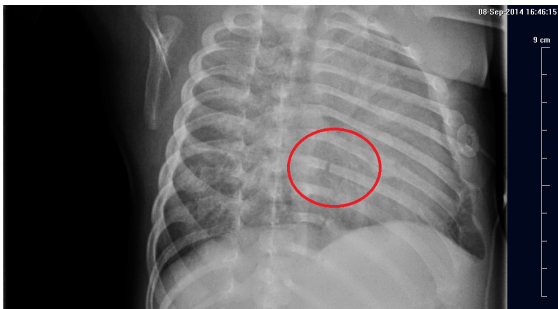
zeroabuse PROJECT

58



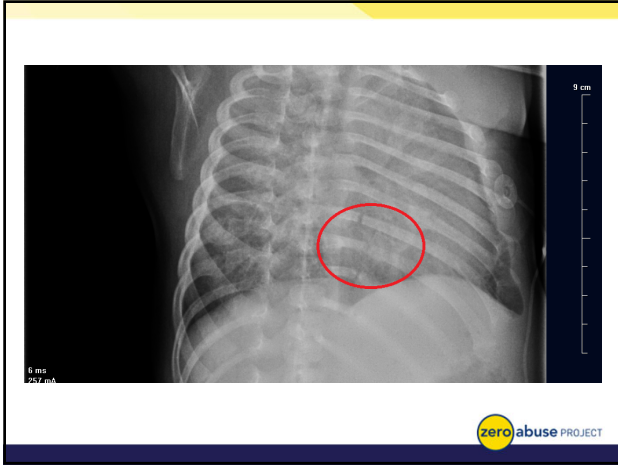
zeroabuse PROJECT

59



zeroabuse PROJECT

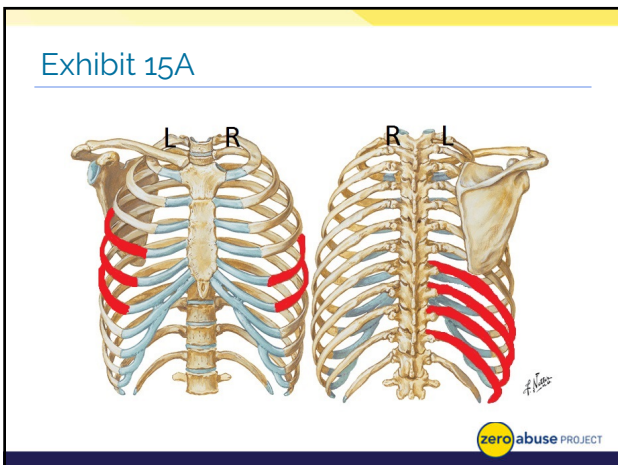
60



61

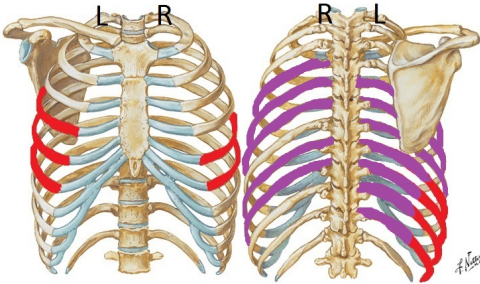


62



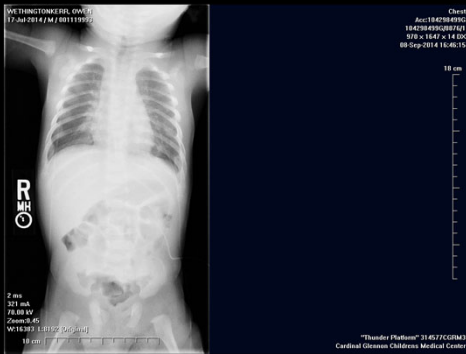
63

Exhibit 15B

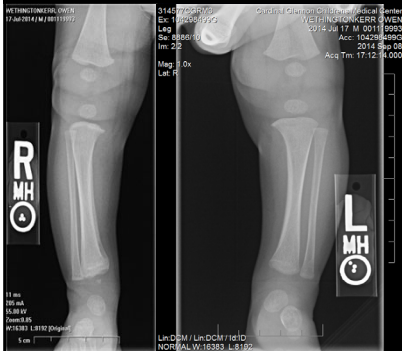


zeroabuse PROJECT

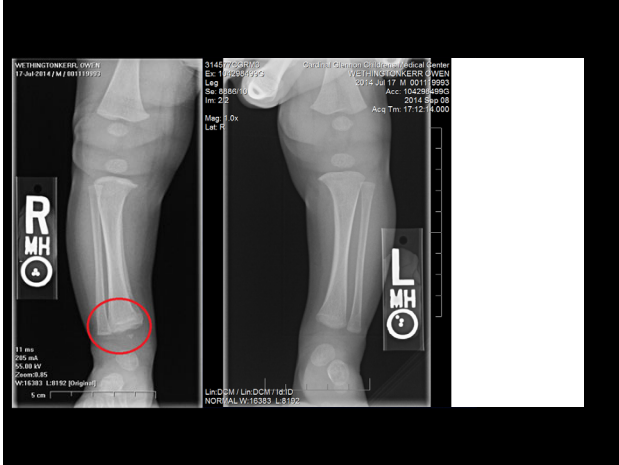
64



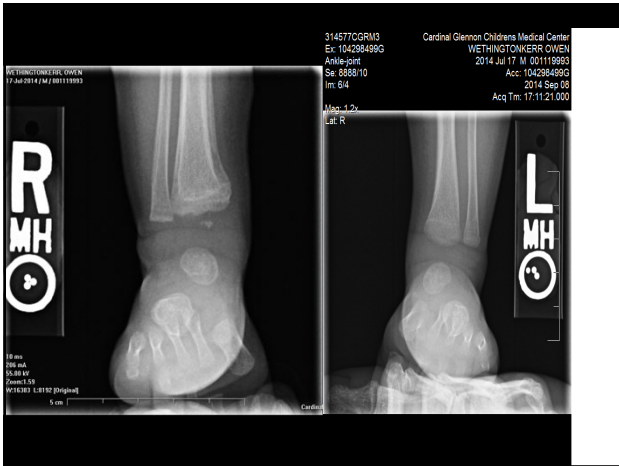
65



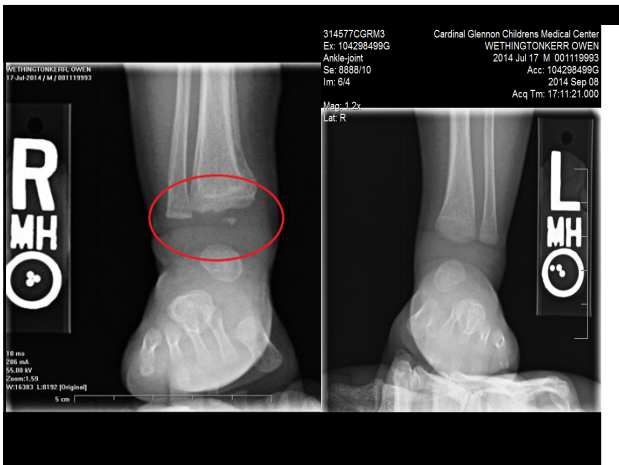
66



67



68



69

Closing

- Argued accountability.
- But that both Kerr and Wethington were themselves responsible for injuries. (there was no innocent bystander)
- The timeline of the injuries put together by witnesses and medical records show that the only people who had access to Owyn during this time were Kerr and Wethington.
 - By his own admission



70

The Verdict

Granite City man convicted in child abuse case

Jan 8, 2015 Updated Sep 9, 2020

EDWARDSVILLE – A Madison County jury convicted a Granite City man Thursday for battering a 7-week-old infant in his care.

Jury selection began Monday afternoon in the case against Kamryn Kerr, 20, who was originally charged by the Madison County State's Attorney's Office on Sept. 10, along with the child's mother, Ashlee Wethington, 19. Kerr is listed as the baby's father.

The case went to the jury around 3 p.m. Thursday and, following less than two hours of deliberation, the jury returned a guilty verdict against Kerr.



71

Post-Trial Motions & Sentencing

- Defendant was found guilty of all four counts of Aggravated Battery to a Child
- The Court set aside the count regarding the fractured tibia
 - Delay in assessment meant drs. Could not say abusive trauma within a reasonable degree of medical certainty.
- Defendant was sentenced to 8 years on each of the remaining three counts
 - To Run consecutively
 - 24 years total



72

METRO-EAST NEWS

Madison County man gets 24 years for 'horrific' beating of infant

BY BETH HUNSDORFER
bhunsdorfer@metronews.com

September 29, 2015 11:51 AM
Updated October 01, 2015 10:12 AM

Seven-week-old Owen was a poster child for child abuse, said the Madison County judge who handed a 24-year prison sentence Tuesday to the man who broke the infant's ribs and skull.

Circuit Judge Kyle Napp gave the sentence to Kamryn Kerr on charges of aggravated battery to a child. The child, who survived the abuse, is the son of Kerr's former girlfriend.

"Never think for a minute that what happened to Owen was not horrific," Napp said.




73

Appeal

- Appellate Court of Illinois (5th District) affirmed the conviction on August 15, 2019
- Issues on Appeal:
 - The Parental Accountability Instruction
 - Sufficiency of the Evidence
 - Sufficiency of the Amended Indictment
 - Accountability
 - One Act One Crime Rule
 - Imposition of consecutive sentences

"O.W. is the victim in this case. He was born July 17, 2014. As will be evident, O.W.'s journey through the first seven weeks of life was harrowing and brutal".




74

Final Notes


- Ashlee Wethington received no deal at trial. Plead to 10 years on Aggravated Battery of a Child, 85%.
 - Agreed to terminate parental rights
 - On parole until 2026

UPRISK 10 INCLUSIVE PHOTO 1-17



Y11540 - WETHINGTON, ASHLEE N.

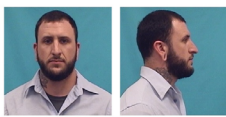
Parent Institution: LOGAN CORRECTIONAL CENTER
Offender Status: PAROLE
Location: PAROLE DISTRICT 4



75

Final Notes

- Ashlee Wethington received no deal at trial. Plead to 10 years on Aggravated Battery of a Child, 85%.
 - Agreed to terminate parental rights
- Owyn placed in traditional foster care and was ultimately adopted.
- Kerr remains in custody of IDOC.



S17071 - KERR, KAMERYN N.
Parent Institution: GRADAM CORRECTIONAL CENTER
Offense Status: IN CUSTODY
Location: GRADAM

ADMISSION / RELEASE / DISCHARGE INFO
Admission Date: 10/01/2015
Projected Parole Date: 02/01/2035
Last Parole Date:
Projected Discharge Date: 02/05/2038



76

Final Notes



77



78