**COURT OF APPEALS DECISION DATED AND FILED**

**October 15, 2013**

**Diane M. Fremgen**
**Clerk of Court of Appeals**

**NOTICE**

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**A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.**

**Appeal No. 2012AP2547-CR**

**Cir. Ct. No. 2009CF973**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**MICHAEL L. CRAMER,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Milwaukee County: KEVIN E. MARTENS and JEFFREY A. WAGNER, Judges. *Affirmed*.

Before Fine, Kessler and Brennan, JJ.

¶1 FINE, J. Michael L. Cramer appeals the judgment entered on a jury verdict convicting him of first-degree reckless homicide, *see* WIS. STAT. § 940.02(1), and the circuit court's order denying his motion for postconviction

relief.[1] Cramer contends: (1) the State "presented demonstrably false and misleading testimony at the trial that violated" his right to due process; (2) he should get a ***Machner*** hearing on his claim that his trial lawyer gave him constitutionally deficient representation; and (3) he is entitled to a new trial in the interest of justice. *See* ***State v. Machner***, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979) (hearing to determine whether lawyer gave a defendant ineffective assistance). We affirm.

**I.**

¶2 In February of 2009, the State charged Cramer with physical abuse of a child because his ten-week-old son, Matthew, who had been in Cramer's care, came to the hospital with "acute bleeding around the brain, subdural hemorrhaging, retina bleeding behind both eyes, linear bruising to the left arm and left thigh area and consistent abusive head trauma." When Matthew arrived at Children's Hospital, he had a pulse, but needed help breathing and was in "a comatose state."

¶3 Cramer told Milwaukee police detective, Ronald Taylor, that he had been caring for Matthew and his three-year-old daughter, Camariana, because Cramer's wife, Candace, left at 8:30 a.m. to run errands. Cramer said Matthew seemed "perfectly healthy." Cramer said he fed Matthew at 11:30 a.m., but could not burp him. Cramer told the officer that he then put Matthew face down on the couch so he could take a shower. Cramer said that Matthew "appeared agitated"

[1] The Honorable Kevin E. Martens presided over Cramer's trial. The Honorable Jeffrey A. Wagner denied Cramer's motion for postconviction relief. The jury also found Cramer guilty of bail-jumping for violating a no-contact order by talking to his wife. He does not appeal that part of the judgment.

and "was fidgeting and moving around." Cramer said that he found Matthew limp and nonresponsive about fifteen to twenty minutes later. Cramer told the officer that he then started cardiopulmonary resuscitation and called 911.

¶4 Medical help arrived and, after twenty to thirty minutes, got Matthew's "pulse back." Paramedic Stephanie Hampton removed Matthew's diaper "to get some idea of how long this baby ha[d] been" "[n]ot breathing, no pulse, baby dead," and found "the stool in the diaper was cold." Hampton also noticed "bruising there on [Matthew's lower] leg" "[a]nd … some other bruising, upper body bruising[.]" The paramedics took Matthew to Children's Hospital.

¶5 Mrs. Cramer told the police that Matthew had been acting normally the night before this incident, explaining that she fed, burped, and changed Matthew at 3:45 a.m. and 6:55 a.m. She said that Matthew was awake when she left the house that morning and that she did not see any bruises on him. When police confronted Cramer about the medical evidence showing that Matthew "had sustained brain injuries that were consistent with blunt force trauma," Cramer told police "that he didn't know right from wrong anymore and didn't know himself anymore"; that "he wanted to tell what happened, but that he wanted to tell his wife first but that he didn't know how to tell her." When the officers told Cramer that he would have to tell them "the entire truth" before he could meet with his wife, Cramer refused, saying "he would be judged no matter what he said that he would be viewed as a child abuser."

¶6 Matthew died in September of 2009 after the hospital removed him from life support. Milwaukee County medical examiner, Dr. Wieslawa Tlomak concluded that Matthew died from "complications of blunt force injuries of the head[,]" and ruled the death a homicide. The State amended the charge against

Cramer to first-degree reckless homicide. At the trial, the State called Dr. Thomas Valvano, who treated Matthew as an "attending child abuse physician[ ] at Children's Hospital." Dr. Valvano testified, as material:

- He does evaluations on children who come to the hospital with "injuries [that] we don't know how they happened or we are worried that they may have been inflicted injuries."
- "Matthew was a two[-]month old who had a severe brain injury without any clear explanation as to why that happened[.]"
- Mrs. Cramer told him that Matthew had not been in any car accidents or had fallen, and that Matthew had not been sick but was "an active, healthy, normal acting baby."
- He examined Matthew and found that he was non-responsive and had fixed and dilated pupils. He also testified that "Matthew had a linear bruise to his left arm and also had bruises above and below his left knee, and those were important because he's only two months old. So he's not walking and running and playing like a toddler, and so he's not doing anything that should result in a bruise. Unless something is done to him, he shouldn't have any bruise. … So they were a sign that Matthew had sustained some trauma."
- Matthew's bruises suggested that the child "sustained some intentional injury," in light of no "history of any accidental injury."
- "[T]he CT scan showed that Matthew had bilateral, meaning on both sides of his brain, subdural hemorrhages. So that means that there

was bleeding in the subdural space over the front part of his brain on both sides."

- "[B]y the time we got the MRI done" "you could still see the subdural hemorrhages" and "we could now see significant swelling of the brain that had evolved from this initial brain injury that Matthew had sustained." "[W]e also saw small petechial hemorrhages within the brain tissue itself[,]" and "there was injury to the brain stem itself."

- "[W]hen we see trauma to the head, we often see in association with that head trauma bleeding in the retina." "Matthew had extensive retinal hemorrhages in both eyes" in "a very specific pattern that has very few causes."

- "[W]here the neck ends and the upper back starts, so at that part of the spine and the spinal cord there was a hematoma, essentially a swelling and collection of blood … a bruise to the spine."

- Based on this, Dr. Valvano told the jury that his "opinion was that Matthew had sustained abusive head trauma." "These injuries take significant force. This isn't trauma from normal handling of a child. This isn't trauma from an accidental injury. This isn't symptoms of an infection or a bleeding disorder or suffocation, accidental suffocation, or all of the other things that we considered that didn't fit. This taken as a whole all of these injuries indicated that Matthew had been abused." (Formatting altered.)

- Dr. Valvano testified that he ruled out sudden infant death syndrome as a cause because "you don't see bruising. You don't see retinal hemorrhages. You don't see these subdural hemorrhages and petechial hemorrhages to the brain tissue itself. [Sudden infant deaths] look very, very different than Matthew looked."

- Dr. Valvano also told the jury that he did not "think that the injuries I saw are the result of the [e]ffects of having resuscitated him and having him brought back to life." "We see [the injuries that Matthew had] in children whose head has sustained these sort of rotational acceleration, deceleration kind of forces to the brain as a result of trauma."

- Dr. Valvano also told the jury that he could not "tell you the exact mechanism of what was physically done to him[,]" but "[t]hese injuries are the result of what we call rotational acceleration deceleration forces to the brain" "either because someone throws the baby down or throws the baby across the room or bangs the baby's head against something or hits the baby's head against a sofa cushion or shakes the baby or a combination of those things, the head moves in this arc back and forth."

- He testified that "[w]e have a lot of experience with" "accidental falls or [kids who] get accidentally dropped" in hospitals "and it's been well studied." "These kids don't sustain brain injury from those short falls. They may have a bump on the head. They may have a little bit of focal bleeding. They may sometimes rarely have a skull fracture or a collar bone fracture or a bump or a bruise. But

that kind of focal injury from one impact gives you a very sort of focal specific located injury, not a diffuse injury and not multiple injuries like Matthew had."

¶7 On cross-examination, Dr. Valvano testified:

- There was no evidence of external injury on the skull, no bruises on the skull or neck.
- "Oftentimes children with abusive head trauma present with absolutely no signs of external trauma, and that's not uncommon … because you can have impact against, for example, a cushion like a mattress or a sofa cushion or a chair cushion, and that won't leave any external signs of injury necessarily. But that's still a force from sudden deceleration that gets transmitted to the brain and that injures the brain even though it leaves no external sign of injury."
- "Shaking could have been part of what happened to him, but it's only one of the different types of mechanisms I've described that causes these injuries." "Shaken baby syndrome is a subset of the types of trauma that can cause these injuries. So abusive head trauma includes shaken baby syndrome, but it also includes banging the child's head against a table or a wall or throwing a child against the room."
- Shaken baby syndrome is "still used quite frequently; but as I said, it's a subset of abusive head trauma which is also a term that is being used to describe this because it more fully describes what may have happened to the child."

¶8 When asked about the "controversy in the medical field about shaken baby syndrome" Dr. Valvano responded:

> There really is no controversy outside the courtroom. The American Academy of Pediatrics, pediatricians, neurosurgeons, it's well accepted that violently shaking a baby causes injury to that baby. And outside of a few limited numbers of physicians, most of whom appear as defense witnesses, there's really no controversy about it.

¶9 When the defense lawyer asked Dr. Valvano about "biomechanical research on the amount of force it takes to injure the brain," Dr. Valvano told the jury:

> There has been biomechanical modeling. It's very crude. It's very, very hard to recreate the complexities of the human brain and human neck in a doll model.
>
> So, for example, one of the first studies ever done was a plastic doll head stuffed with wet cotton attached to a metal hinge. That hardly replicates a human baby.
>
> So, yes, there is biomechanical modeling that have tried to estimate forces. And that work is ongoing, and what we find is as those models become more sophisticated the amount of force that we are seeing that is required to cause these injuries is actually less.
>
> ….
>
> But nonetheless there is a substantial amount of research, and it's well accepted in the medical community that abusive head trauma is a very real thing.

¶10 There was then the following exchange between the defense lawyer and Dr. Valvano:

> Q. Before you said that there wasn't really any research. Now you're saying there is but you just don't agree with it?
>
> A. I'm confused. I never said there wasn't research supporting abusive head trauma.

Q. But there has been research about how you cause brain injury either forcible events or how much force it takes to cause brain injury; is that correct?

A. There are biomechanical modeling studies and also computer modeling studies that are trying to do that, yes. But those are fairly crude still.

Q. And you don't believe in them?

A. It's not that I don't believe in them. I think we are still learning from them; and as the models become more sophisticated, our information is better.

But you can't look at a doll head stuffed with cotton and say that the information you get from that is directly transferable to a human baby who has been subjected to abusive head trauma. Because the human baby is obviously much more complex than a plastic head stuffed with wet cotton.

¶11 Dr. Tlomak, the medical examiner, also testified for the State, as material:

- That she did the autopsy of Matthew and concluded the "cause of death was complications of blunt force injuries of the head."
- She "saw bilateral … subdural hemorrhages that were overlying frontal, parietal, and lateral lobes of the brain[.]" "[S]ubarachnoid hemorrhage, diffuse retinal hemorrhages" that "are markers for significant brain injury."
- That she did not believe that Matthew died from sudden infant death syndrome "[b]ecause I had findings of remote subdural hemorrhage, remote subarachnoid hemorrhage, findings of severe brain injury, findings of remote retinal hemorrhages; and it's not consistent with SIDS. With SIDS death that autopsy findings are negative."

- She also told the jury that Matthew's death "was a homicide" because there was no "history of accidental type injuries;" and "[t]he amount of force required to cause this type of injuries is very large" like that caused "during high speed motor car accidents or falling from high buildings." "There were multiple studies done that showed falling from at least third floor, at least third floor can cause this type of injuries." "[F]alling from the short distance two, three, four feet will not cause a severe brain injury."

¶12 During his cross-examination of Dr. Tlomak, Cramer's trial lawyer criticized her for:

- relying on "no history of accidental injury" and that "[i]f someone had given you a history of accidental injury, than you could well have determined that was an accident?";

- for basing "a large part [of] your determination is really your opinion based on what other people told you?"; and

- for "not go[ing] out and investigat[ing] it yourself" and for "relying on what those other people tell you to be the truth?"

¶13 The defense lawyer then asked Dr. Tlomak if she "rule[d] out shaken baby syndrome?" Dr. Tlomak answered: "I don't use the term 'shaken baby syndrome'" because "[i]t's a very controversial term." She explained that: "The baby can die from being shaken, but it's -- the cause of death is still blunt force injuries of the head. … Because when the baby is shaken, the baby's head will move back and forth, and it's not in the straight line. The head will go on both

sides. At the same time, the brain is moving inside the head; and it causes this severe injuries in the brain, and that's why the babies will die."

¶14 Cramer's lawyer got Dr. Tlomak to admit that she did not "know how much force" it would take to cause Matthew's injuries, and charged in his cross-examination that Dr. Tlomak had "no idea at all." The lawyer also got Dr. Tlomak to say she "wasn't there" and she "cannot tell what happened to the child." Dr. Tlomak also testified in response to the defense lawyer's questions that she looks for fractures in head trauma cases, and "there was no evidence of fractures" here.

¶15 Dr. Thomas Young, a "self-employed … forensic pathologist," testified as an expert witness for the defense. Dr. Young theorized that Matthew's injuries were the result of "resuscitated Sudden Infant Death Syndrome" or "complications of hypoxic ischemic encephalopathy due to an apparent life threatening event." He testified that when the heart and breathing stops and "if somebody happens to get there early enough and then start doing CPR trying to resuscitate the child, they may be able to get the heart functioning again." He explained that in those rare cases:

- "[T]here's usually been very, very severe brain damage by that point" because when "blood flow to the brain stops for a period of time" "tissue death starts" and when "the heart starts up again and there's blood flow that is resumed" "the blood vessels will get leaky" "and then you'll start to get some oozing of blood" that can result in subdural hemorrhaging.
- "And at that point, you still start to get collections of blood in the subdural space that are not under any kind of pressure. It's just that

they are basically oozing, and they start to collect in the subdural space." And then the leaky blood "will basically shift with gravity" "along the spinal cord[.]"

- That a subdural hemorrhage "is not always due to trauma."

- Dr. Valvano and Dr. Tlomak "committed an error in terms of their determination of cause and manner of death."

¶16 Cramer's lawyer then asked Dr. Young a series of questions about short falls:

> Q. [Dr. Tlomak] testified earlier that assume that she said that, for example, that a fall on a bathtub where you hit your head may not be fatal. Do you agree with that?
>
> A. I disagree with that.
>
> Q. Why is that?
>
> A. Because people and children have had accidents there in home situations in which there have been falls, frequently unguarded falls. And they've died as a result of this. These are items that are well documented.
>
> Q. And in your experience as a pathologist, forensic pathologist, have you had these sorts of cases?
>
> A. Yes.

¶17 Cramer's lawyer also asked about the "lack of evidence of trauma in this case" and Dr. Young answered: "What both of these doctors do is they reason backwards where they start with the evidence and they don't listen to any witnesses and they don't pay attention to any accounts. They just basically say, this child has a subdural hematoma, this child has retinal hemorrhages, therefore, it's child abuse." (Formatting altered.) According to Dr. Young, subdural

hematoma could be caused by "an inborn error of metabolism" problems with "platelet functions or blood clotting" "hypoxic ischemic encephalopathy" and "[w]ide varieties of trauma mostly from impact." Dr. Young also offered a variety of other causes for "retinal hematoma" besides "child abuse."

¶18 When asked about "shaken baby syndrome" Dr. Young said "Shaken baby syndrome was basically proven false back in 1987." Dr. Young testified about his experience with blunt force trauma cases:

> In situations where I've seen subdural hemorrhages from trauma from impact, either in the form of somebody either being hit with a blunt object or basically falling, there's evidence of trauma.
>
> You see the deep bleeding in the scalp. You can see skull fractures. It takes quite a bit of force. It takes quite a bit of energy to cause a subdural hemorrhage from trauma.
>
> When you see that sort of thing, traumatic cases are traumatic looking. There's a problem basically when you are attributing something to trauma, and there's no evidence of trauma.

Dr. Tlomak testified during the State's rebuttal that the damages seen on Matthew's autopsy "were completely different" from an autopsy she did on a resuscitated sudden infant death case.

¶19 As we have seen, the jury found Cramer guilty. His postconviction motion claimed that "the state presented demonstrably false testimony to the jury, that trial lawyer was ineffective in failing to challenge the false testimony and that because of the false testimony the real controversy has not been fully tried." Cramer's motion relies on the post-trial opinions of forensic pathologist, Dr. John Plunkett, who, according to Cramer's motion, would testify that:

- "[L]ucid intervals" of up to three days, which can occur with head trauma, make it impossible to determine when Matthew's head injury occurred.

- Dr. Valvano and Dr. Tlomak's conclusions were incorrect; "Matthew had no evidence of shaking or impact injury." "There is no experimental evidence that shaking can cause brain damage in an infant" only neck damage.

- "Dr. Valvano's conclusion that Matthew's pattern of retinal hemorrhages can only be due to abusive head trauma or an severe accidental trauma is speculation and is contradicted by research and case-report literature. There are no experimental studies that support this mechanism. In contrast, there are several experimental studies indicating that an increase in intracranial pressure is the cause for hemorrhage in these situations."

- Dr. Valvano's testimony on "low-level fall[s]" "is incorrect."

- "Dr. Valvano's claim that other than a few defense witnesses there is no controversy about SBS syndrome is wrong as demonstrated by several recent court cases and journal articles."

- "Dr. Valvano's dismissal of biomedical modeling as crude … is incorrect."

- "Dr. Valvano was incorrect when he said" he could not put a number on the force necessary to cause Matthew's injury because "[t]here have been Federal Standards for *infant* head injury thresholds since approximately 1995."

- Dr. Tlomak's testimony that the scarring found during autopsy supported a traumatic brain injury was incorrect because this can only occur with "skull fractures, which Matthew did not have."

- Dr. Tlomak's testimony about the amount of force needed and her short-fall-distance opinions were wrong. He averred that a three-story fall would cause a "displaced skull fracture."

- A "sudden unexpected infant death in which the infant has been resuscitated and lives for several weeks or months may have identical autopsy findings to those of mechanical (impact) trauma."

- Dr. Tlomak's testimony about a prior resuscitated sudden infant death case showing different injuries than Matthew's was, in his view, irrelevant.

¶20 Cramer claims that Dr. Plunkett's testimony proves that the State's experts testified falsely at trial and violated his due-process rights. The trial court denied the motion without a hearing, ruling:

> Dr. Plunkett's conclusions are no more than his opinions. The fact that his conclusions differ from those made by the State's witnesses does not establish that their testimony was false or misleading. Drs. Valvano and Tlomak were qualified to render the opinions they did, and Dr. Young offered his own opinion. There is no basis to conclude that Drs. Valvano or Tlomak made false or misleading statements because the defendant's postconviction expert takes issue with certain aspects of their testimony.

We now turn to Cramer's contentions on this appeal.

## II.

### A. *Alleged false testimony*.

¶21 As we have seen, Cramer claims Dr. Plunkett's opinions prove "the State presented demonstrably false and misleading testimony" and the trial court erred in summarily denying his motion. We, like the trial court, disagree.

¶22 The State may not use false testimony to get a conviction. *See* ***Giglio v. United States***, 405 U.S. 150, 153–154 (1972), because this would, obviously, violate a defendant's right to due process, ***Napue v. Illinois***, 360 U.S. 264, 269 (1959). To prove a due process violation, a defendant must show: "(1) that there was false testimony; (2) that the [State] knew or should have known it was false; and (3) that there is a likelihood that the false testimony affected the judgment of the jury." ***United States v. Freeman***, 650 F.3d 673, 678 (7th Cir. 2011). We review *de novo* a trial court's conclusion whether a defendant was denied due process because of the State's presentation of allegedly false evidence. *See* ***State v. Burns***, 2011 WI 22, ¶23, 332 Wis. 2d 730, 747, 798 N.W.2d 166, 174.

¶23 When a "defendant fails to allege sufficient facts in his motion to raise a question of fact, or presents only conclusionary allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the trial court may in the exercise of its legal discretion deny the motion without a hearing." ***Nelson v. State***, 54 Wis. 2d 489, 497–498, 195 N.W.2d 629, 633 (1972).

¶24 Cramer has not shown that the State used false testimony. Both Dr. Valvano and Dr. Tlomak were qualified expert witnesses, and we do not understand Cramer to contend in his postconviction motion or on this appeal that they were not. *See* WIS. STAT. RULE 907.02. Both physicians personally treated

Matthew and saw evidence of his injuries first-hand. Both based their opinions on their training, experience, and knowledge. The fact that Dr. Plunkett (or Dr. Young for that matter) disagreed with their opinions does not make their testimony false. Indeed, Cramer's argument that Drs. Valvano and Tlomak testified *falsely* is tenuous at best. For example, Cramer argues that Dr. Valvano's testimony that: "There really is no controversy outside the courtroom. The American Academy of Pediatrics, pediatricians, neurosurgeons, it's well accepted that violently shaking a baby causes injury to that baby" is false given the medical literature on which he relies. The medical-literature controversy however, is not that "violently shaking a baby causes injury to that baby" but rather whether shaking alone, without some type of impact, can cause the type of brain injury commonly associated with shaken baby syndrome in the past. *See* ***State v. Edmunds***, 2008 WI App 33, ¶15, 308 Wis. 2d 374, 385, 746 N.W.2d 590, 596 ("[A] significant and legitimate debate in the medical community has developed in the past ten years over whether infants can be fatally injured through shaking alone[.]"). As we have seen, Dr. Valvano testified that Matthew died from abusive head trauma, not shaken baby syndrome.

¶25 Cramer's other "false testimony claims" centered on: (1) short falls, and (2) that impacts with soft cushions do not leave external evidence of injury rest on red herrings. There is no history in the Record that Matthew fell—short or long. Moreover, Cramer's theory that short falls can cause injury, and that Matthew did not have any broken bones or other external injuries was also fully presented to the jury through Dr. Young's testimony and Cramer's cross-examination of Drs. Valvano and Tlomak. The jury believed the State's experts despite Cramer's expert's contrary opinions.

B. *Alleged need for a **Machner** hearing.*

¶26 Cramer claims the trial court should have held a ***Machner*** hearing to determine whether his lawyer gave him constitutionally ineffective representation because his trial lawyer did not: (1) raise the lucid-interval in sudden-infant-death-syndrome situations; and (2) more effectively challenge the State's expert witnesses.

¶27 In order to show constitutionally ineffective representation, Cramer must show: (1) deficient representation; and (2) resulting prejudice. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). To prove deficient representation, he must point to specific acts or omissions by his lawyer that are "outside the wide range of professionally competent assistance," *see* ***id.***, 466 U.S. at 690, and to prove resulting prejudice, he must show that his lawyer's errors were so serious that he was deprived of a fair trial and reliable outcome, *see* ***id.***, 466 U.S. at 687. We do not need to address both ***Strickland*** aspects if a defendant does not make a sufficient showing on either one. *See* ***id.***, 466 U.S. at 697.

¶28 A circuit court must hold an evidentiary hearing on an ineffective-assistance-of-counsel claim only if the defendant "'alleges sufficient material facts that, if true, would entitle the defendant to relief.'" ***State v. Love***, 2005 WI 116, ¶26, 284 Wis. 2d 111, 123, 700 N.W.2d 62, 68 (quoted source omitted). If the postconviction motion does not assert sufficient facts, or presents only conclusory allegations, or if the Record conclusively demonstrates that the defendant is not entitled to relief, the circuit court may deny the claim without a hearing. ***Ibid.*** We review *de novo* whether a defendant is entitled to an evidentiary hearing. ***State v. Bentley***, 201 Wis. 2d 303, 310, 548 N.W.2d 50, 53 (1996).

1. *Lucid Interval*.

¶29 Cramer contends that his lawyer should have argued that there was a possibility that Matthew had a lucid interval because that, he claims, would have convinced the jury that he was not responsible for Matthew's death. There is, however, no evidence to support the lucid interval argument. Both Cramer and his wife denied that Matthew had had any prior accidental falls or trauma. Both Cramer and his wife said that Matthew had been healthy from birth and was acting normally the morning of the 911 call. Moreover, the defense's strategy was that the cause of Matthew's death was natural—a resuscitated sudden infant death. In other words, the trial lawyer's theory was that no one caused Matthew's death. If Cramer's lawyer would have added "lucid interval" to that defense, he would have had to argue that Matthew had an earlier accident or trauma. There is no evidence in the Record that Matthew had an earlier accident or trauma, and Cramer's appellate materials do not suggest otherwise. On our *de novo* review, the trial court did not err when it denied Cramer's request for a ***Machner*** hearing.

2. *Challenging the State's experts*.

¶30 Cramer also argues his lawyer gave him constitutionally ineffective representation because he did not challenge the State's experts more vigorously on cross-examination. The Record forcefully belies this claim, however. As we have seen, Cramer's lawyer aggressively cross-examined the State's expert witnesses. Further, Cramer's lawyer presented the testimony of a strong defense expert witness, Dr. Young, who not only opined that Matthew's death had a "natural cause," but who also sharply criticized and contradicted the testimony of the State's experts. The fact that the jury did not credit Dr. Young's opinions, does not make Cramer's lawyer constitutionally ineffective. Again, on our *de novo*

review, the trial court appropriately denied Cramer's motion for a ***Machner*** hearing.

C. *Interest of Justice*.

¶31 Cramer asks us to reverse "in the interest of justice" because the jury did not hear Dr. Plunkett's testimony on shaken-baby-impact syndrome and lucid intervals. WISCONSIN STAT. § 752.35 controls discretionary reversals. That section provides:

> In an appeal to the court of appeals, if it appears from the record that the real controversy has not been fully tried, or that it is probable that justice has for any reason miscarried, the court may reverse the judgment or order appealed from, regardless of whether the proper motion or objection appears in the record and may direct the entry of the proper judgment or remit the case to the trial court for entry of the proper judgment or for a new trial, and direct the making of such amendments in the pleadings and the adoption of such procedure in that court, not inconsistent with statutes or rules, as are necessary to accomplish the ends of justice.

¶32 The "real controversy" here was what and who caused Matthew's death. The State's experts testified that Matthew died from abusive head trauma and Cramer's expert testified that Matthew died from sudden-infant-death syndrome, and attributed all of Matthew's internal injuries to Cramer's alleged efforts to resuscitate the child. Finding another expert after the trial who would have disagreed with the State's experts does not mean the real controversy was not tried. The jury heard the State's experts and Cramer's expert. It believed the State's. This is not one of those relatively rare situations where we should grant a new trial in the interest of justice. *See* ***Vollmer v. Luety***, 156 Wis. 2d 1, 11, 456 N.W.2d 797, 802 (1990). Indeed, Cramer's interest-of-justice contention is but the wine of his other arguments, which we have already rejected, repackaged in a new

container. *See* ***Mentek v. State***, 71 Wis. 2d 799, 809, 238 N.W.2d 752, 758 (1976) ("We have found each of these arguments to be without substance. Adding them together adds nothing. Zero plus zero equals zero.").

*By the Court*.—Judgment and order affirmed.

Publication in the official reports is not recommended