

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BYRON A. BOWDISH,

Defendant-Appellant.

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UNPUBLISHED  
September 8, 2000

No. 213408  
Detroit Recorder's Court  
LC No. 97-009943

Before: O'Connell, P.J., and Kelly and Whitbeck, JJ.

KELLY, J. (concurring in part and dissenting in part).

I concur in affirming the defendant's conviction for second-degree murder and his sentence of forty to eighty years' imprisonment on that charge. I would, however, vacate the defendant's conviction of first-degree child abuse and the consequent sentence for that offense as I consider it a violation of the Michigan Constitution's, prohibition against double jeopardy, Const. 1963, art. 1, sec. 15. The defendant is being punished more than once for the same offense. A single transgression resulted in the injury which killed the victim. Either way, the injury that killed the child is the same as the injury resulting in his conviction for child abuse.

Both parties and the majority agree that the injury occurred during the 10 minute absence of the mother. Defendant told the mother, "the boy fell off the couch onto a near-by space heater." Both doctors disputed that version of events. One testified that the split in the victim's skull was caused by having his head struck against a flat surface at least three times. The other testified that the victim died from sudden impact (or shaken impact) syndrome.

I would vacate defendant's conviction and sentence for first-degree child abuse.

/s/ Michael J. Kelly