

1 Come on up, please, ma'am. Let's see.
2 I gave you the oath last week, didn't I?

3 **THE WITNESS:** Monday.

4 **THE COURT:** Monday. So, you may have
5 a seat on the witness stand, you're still under the
6 oath.

7 **MS. BYRNE:** May I proceed, Judge?

8 **THE COURT:** Yes, ma'am.

9 **AMBER DEWALT,**

10 having been first duly sworn, testified as follows:

11 **DIRECT EXAMINATION**

12 **Q.** **(BY MS. BYRNE)** Could you state your name
13 for the record?

14 A. Amber Dewalt.

15 **Q.** On February 8, 2013, how were you employed?

16 A. As a CPS investigator.

17 **Q.** Did you arrive at a residence on Five Forks
18 Drive in Harris County, Texas, to conduct an
19 investigation?

20 A. Yes.

21 **Q.** Did that investigation involve a 15-day-old
22 named Josiah Fisher?

23 A. Yes.

24 **Q.** At that location, was the father of the
25 baby, Timothy Fisher, present?

1 A. Yes.

2 Q. Okay. Where did you first begin speaking
3 to Mr. Fisher?

4 A. At the residence of his landlord.

5 Q. Did you force Mr. Fisher to talk to you?

6 A. No.

7 Q. Did you tell him that he needed to talk to
8 you because you were from the Texas Department of
9 Family Protective Services?

10 A. No.

11 Q. Was he willing to speak with you?

12 A. Yes.

13 Q. Was it voluntary?

14 A. Yes.

15 Q. Did he seem to answer your questions
16 without hesitation?

17 A. Yes.

18 Q. Have you in your eight and a half years
19 with the Texas Department of Family and Protective
20 Services had occasions where parents -- a parent did
21 not want to talk to you?

22 A. Very rarely.

23 Q. But it's occurred?

24 A. Maybe once or twice, not too often.

25 Q. Okay. When the parent did not want to

1 speak with you, did you force them to speak with you;
2 or did you --

3 **THE COURT:** Let's focus on this trial
4 and this case.

5 **MS. BYRNE:** Okay.

6 **Q.** (BY MS. BYRNE) Had Mr. Fisher not wished to
7 answer your questions, would he -- would that have
8 been his right to do so?

9 **A.** Yes.

10 **Q.** And did you force him into the ambulance?

11 **A.** No.

12 **Q.** Did he voluntarily go to the hospital?

13 **A.** Yes.

14 **Q.** Did he have to do that if he didn't want
15 to?

16 **A.** I don't know that. I don't know how that
17 part works.

18 **Q.** Because you don't know how a baby --
19 whether it had to be accompanied or not?

20 **A.** Right.

21 **Q.** But he wasn't required to go with you, was
22 he?

23 **A.** No, he didn't go with me. He wasn't
24 required to go with me, no.

25 **Q.** Okay. And you didn't indicate that to him

1 at all?

2 A. Did I -- sorry. Yes.

3 Q. You didn't tell him he had to go with you?

4 A. No.

5 Q. And at the hospital, where did you speak
6 with him?

7 A. They had like a little room that we spoke
8 in.

9 Q. Okay. Did he willingly go into the room
10 with you?

11 A. Yes.

12 Q. Did he say anything about not wishing to
13 speak with you prior to the conversation starting?

14 A. No, not at all.

15 Q. Would he have been free to get up and leave
16 that room at any time if he so wished?

17 A. Oh, yes.

18 Q. Okay. And he appeared willing to do so?

19 A. Yes.

20 **MS. BYRNE:** Pass the witness.

21 **CROSS-EXAMINATION**

22 Q. **(BY MS. WILLIAMS)** Ms. Dewalt, after you
23 came to the location of the dollhouse, you told
24 Mr. Fisher and Ms. Jenkins that the child, Josiah,
25 was having seizures?

1 A. No.

2 Q. You told them that you thought he was
3 having seizures?

4 A. Not at that time, no.

5 Q. Well --

6 **THE COURT:** I'm sorry, Mr. Fisher. I
7 know the jury is not here; but when you shake your
8 head like that, that was the biggest head shake I
9 ever saw. So, that's a form of communicating to
10 whoever is the fact-finder. Right now it's me. When
11 the jury comes back out, it will be them. And so,
12 you're not allowed to communicate with the Judge or
13 the jury through gestures.

14 **THE DEFENDANT:** Yes, ma'am. Sorry.

15 **THE COURT:** Okay.

16 Q. **(BY MS. WILLIAMS)** So, you thought -- you
17 personally thought the child was having a seizure?

18 A. When I first made contact with him and he
19 did that with his arm and leg, my personal thought
20 was that he was having a seizure.

21 Q. And you told the father and Ms. Jenkins,
22 after looking at Josiah Fisher, that he needed
23 immediate medical attention?

24 A. Yes.

25 Q. Did Mr. -- and Mr. Fisher appeared to

1 believe you --

2 A. Yes.

3 Q. -- correct?

4 A. Yes.

5 Q. And he cooperated fully with you?

6 A. Yes.

7 Q. In fact, he walked with you over to the

8 EMS --

9 A. Yes.

10 Q. -- dispatch?

11 And then he suggested calling 9-1-1 to
12 get his baby some treatment, and you called 9-1-1?

13 A. No, he didn't suggest.

14 Q. But, obviously, Mr. Fisher acted as if he
15 was aware, after talking to you, that this child had
16 needed immediate medical care?

17 A. Mr. Fisher did what I told him to do.
18 Whatever I asked him to do, he did. I don't know if
19 that meant he was aware or not. All I can say is he
20 followed my instructions.

21 Q. And when you told him that the baby needed
22 the medical attention, you did that in an
23 authoritative way as a CPS worker?

24 A. Say that again. Say your question again.

25 Q. Well, you did it authoritatively. You

1 didn't say: I think maybe the baby needs some
2 medical attention.

3 A. I said it in a regular voice. We need --
4 this baby needs to go to the hospital.

5 Q. Okay.

6 A. Calling 9-1-1.

7 Q. Okay. Now, you work with law enforcement
8 officers over injury with a child. You work with law
9 enforcement officers often when you're dealing with
10 injury to a child case; is that correct?

11 A. When it's serious injury.

12 Q. When it's serious bodily injury?

13 A. Yes.

14 Q. And you were part of a team working on the
15 Josiah Fisher case with Dr. Donaruma?

16 **THE COURT:** Sorry. Can we limit this
17 to the time the statements were made, not something
18 afterwards --

19 **MS. WILLIAMS:** Okay.

20 Q. **(BY MS. WILLIAMS)** On February the 8th,
21 2013, you questioned Mr. Fisher as to how this
22 happened to Josiah?

23 A. Yes.

24 Q. And you met with other members of child
25 abuse child -- other members -- did you meet with

1 CPS -- excuse me.

2 Did you meet with CAC in regards to
3 this case?

4 A. No, that's sexual.

5 Q. You didn't have a meeting with any of the
6 doctors or --

7 **THE COURT:** Sorry. Let's focus on
8 what happened up until the time the statement was
9 made, not afterwards. That has nothing to do with
10 whether or not the statement was voluntary, what
11 happened afterwards.

12 **MS. WILLIAMS:** Okay.

13 Q. (BY MS. WILLIAMS) And --

14 **THE COURT:** Because the purpose is not
15 to practice cross. Okay.

16 Q. (BY MS. WILLIAMS) The -- you talked about
17 the other cases that very few people ever refused to
18 make a statement in your experience. And isn't --

19 **THE COURT:** Excuse me.

20 Q. (BY MS. WILLIAMS) Isn't that because they
21 want to help their children?

22 A. I don't know why they refuse.

23 **THE COURT:** I'm sorry. Let's focus
24 on --

25 A. -- or not refuse.

1 him. Raise your right hand.

2 (Witness Duly Sworn)

3 THE COURT: Thank you. You may have a
4 seat, sir.

5 TIMOTHY WAYNE FISHER,

6 having been first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 Q. (BY MS. WILLIAMS) Mr. Fisher --

9 A. Yes, ma'am.

10 Q. -- are you Timothy Wayne Fisher, the
11 defendant in this case?

12 A. Yes.

13 Q. And Josiah Fisher is your biological child?

14 A. Yes, ma'am.

15 Q. When Ms. Dewalt came to the business of
16 Ms. Jenkins, you and Ms. Jenkins were both present?

17 A. Me and Ms. Jenkins were present, and
18 Mr. Bob was in the garage. That's where his -- where
19 his lounge -- that's where he relaxes.

20 Q. Okay. When -- when Ms. Dewalt came in,
21 what did she do?

22 A. She said that she was here on behalf of the
23 school calling her, telling her that there was
24 something wrong with my son, Josiah. And she asked
25 where he was at.