

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 now at the -- outside the presence the jury.

2 **MS. WILLIAMS:** Your --

3 **THE COURT:** Is he going to testify
4 that she coerced him?

5 **MS. WILLIAMS:** Not that she coerced
6 him. The situation --

7 **THE COURT:** Okay. Well, let's call
8 your witness and see if the -- as to the
9 voluntariness of his statements to the CPS worker.

10 No, no. No, not at this time, sir.
11 Have a seat.

12 Okay. Ready for the witness, and we
13 will start with that one issue outside the jury's
14 presence just to clear it up on the record.

15 Ms. Williams, I'm not going to want to
16 spend any time on constructive custody because --
17 that's creative, but it is clearly not the law.

18 **MS. WILLIAMS:** Okay.

19 **THE COURT:** I --

20 **MS. WILLIAMS:** I understand, Judge.
21 I'm not trying to draw it out.

22 **THE COURT:** I know. I'm just -- I
23 know lawyers -- good lawyers are always trying to
24 build a record, but that's just too -- too creative
25 for me to spend time on.

1 house?

2 **MS. WILLIAMS:** Well, Mr. Fisher went
3 in the ambulance -- in the ambulance with the CPS
4 workers.

5 **THE COURT:** And clearly --

6 **MS. WILLIAMS:** Sorry. Excuse me.
7 With the EMS workers.

8 **THE COURT:** Well, then clearly he was
9 not in custody.

10 **MS. WILLIAMS:** Well, I think the whole
11 situation is a constructive custody situation because
12 of the emergency nature.

13 **THE COURT:** That's not working.
14 That's not working for me. So, I'm not going to give
15 you a hearing on that. But if you would call your
16 witness and ask if the statements were freely and
17 voluntarily given just on that one point outside the
18 presence of the jury, or you can cross on that one
19 point.

20 Will your client be testifying as to
21 that issue?

22 **MS. WILLIAMS:** I don't know.

23 **THE COURT:** I'm sorry?

24 **MS. WILLIAMS:** I don't know yet.

25 **THE COURT:** Well, I'm talking about

1 All rise, please, for the jury.

2 **(Jury released)**

3 **THE COURT:** Thank you. You may
4 proceed.

5 Okay. Just to see if I can kind of
6 cut through this, and certainly you may argue, but if
7 he is not in custody, it seems to me -- I understand
8 you have an argument that she is law enforcement; but
9 without reaching that argument, let's suppose the
10 police officer had done the same thing she did. If
11 he wasn't in custody, there is no obligation to give
12 Miranda.

13 Are you claiming that what he said to
14 her was not freely and voluntarily given? What's the
15 basis of the Motion to Suppress?

16 **MS. WILLIAMS:** Well, the basis is that
17 as well as he was in constructive custody, he was in
18 a situation where he -- he had been told that the
19 baby -- that Josiah Fisher was having seizures --

20 **THE COURT:** Just to -- just to --

21 **MS. WILLIAMS:** -- in the midst --

22 **THE COURT:** Very creative,
23 Ms. Williams. But he did not go to the hospital --
24 drive to the hospital or someone took him to the
25 hospital after that, after the conversation at the

1 **MS. BYRNE:** Judge, while the witness
2 is coming up, may we approach?

3 **THE COURT:** Sure.

4 **(At the Bench)**

5 **MS. BYRNE:** This is the CPS case
6 worker who went to the scene to do an investigation,
7 and the defendant made voluntary statements to her
8 while he was not in custody when she was trying to
9 get some information and gather facts. He also spoke
10 to her at the hospital voluntarily. He was free to
11 leave. He was not taken into custody or in custody
12 at the time. And I do intend to elicit those
13 responses, and I am approaching because Ms. Williams
14 had asked that we do so prior to eliciting them.

15 **THE COURT:** It seems to me she is
16 entitled to go into that.

17 **MS. WILLIAMS:** I'm sorry. I didn't
18 hear.

19 **THE COURT:** It seems to me she is
20 entitled to go into that.

21 **MS. WILLIAMS:** I have a Motion to
22 Suppress that's been on file.

23 **(End of Bench Discussion)**

24 **THE COURT:** Excuse me. I will need to
25 send the jurors out briefly. Excuse me.

1 of seeing him with other children as well as Josiah;
2 is that correct?

3 A. Yes.

4 Q. Based on all your knowledge of Mr. Fisher,
5 you consider him a safe and nurturing father to
6 Josiah?

7 MS. BYRNE: Objection, Judge,
8 relevance.

9 THE COURT: Sustained.

10 MS. WILLIAMS: Judge, I have nothing
11 further from this witness.

12 THE COURT: Is she excused for all
13 purposes?

14 MS. WILLIAMS: I'd like to keep her on
15 call.

16 THE COURT: Okay. You're free to go
17 today, subject to recall. Thank you so much. But
18 you can go today.

19 THE WITNESS: Okay.

20 THE COURT: Thank you.

21 (Witness released)

22 THE COURT: Who would be your next
23 witness?

24 MS. BYRNE: Amber Dewalt.

25 THE COURT: Thank you.

1 A. Just that day.

2 Q. Just that day.

3 **MS. WILLIAMS:** Pass the witness.

4 **THE COURT:** Thank you.

5 Any redirect?

6 **REDIRECT EXAMINATION**

7 Q. (**BY MS. BYRNE**) Ma'am, you only saw the
8 defendant with Josiah on two occasions, correct?

9 A. Yes.

10 Q. One was for 15 minutes the first time --

11 A. Uh-huh (affirmative.)

12 Q. -- is that correct?

13 A. Yes.

14 Q. And the other time was when he came over
15 because the baby wouldn't stop crying, right?

16 A. Yes.

17 Q. Okay. You have no idea what kind of a
18 parent he was, good or bad, when you weren't around,
19 do you?

20 A. No.

21 **MS. BYRNE:** Nothing further.

22 **THE COURT:** Anything further?

23 **MS. WILLIAMS:** Yes, Your Honor.

24 **RECROSS-EXAMINATION**

25 Q. (**BY MS. WILLIAMS**) You have the experience

1 nurturing parent in the community where he lives and
2 works?

3 **MS. BYRNE:** Same objection, Judge,
4 improper bolstering and impeachment of the character.

5 **THE COURT:** Well, it's not bolstering.
6 I think the issue is with regard to the child in
7 question. So, it's irrelevant what his parenting was
8 with a child other than Josiah. That's my problem
9 with the question.

10 **MS. WILLIAMS:** Okay. Thank you,
11 Judge. I appreciate your help.

12 **THE COURT:** Yeah. I don't think that
13 if you're trying to fix it within the community --
14 with the community, I don't think that that applies
15 to this issue.

16 **MS. WILLIAMS:** Okay.

17 **THE COURT:** I understand what you are
18 doing, but I don't think that applies here.

19 **MS. WILLIAMS:** Uh-huh (affirmative.)

20 **Q.** (BY MS. WILLIAMS) Ms. Jenkins, do you have
21 an opinion as to whether Mr. Fisher was a safe and
22 nurturing parent to Josiah Fisher?

23 **A.** Yes.

24 **Q.** Would he consult with you from time to time
25 if he was doing the right thing with Josiah?

1 **Q.** Did he perform well?

2 **MS. BYRNE:** Objection to relevance and
3 bolstering.

4 **THE COURT:** Sustained.

5 **Q.** **(BY MS. WILLIAMS)** Do you have an opinion as
6 to whether or not Mr. Fisher is a safe and nurturing
7 parent?

8 **MS. BYRNE:** Objection, Your Honor.

9 **MS. WILLIAMS:** Judge, I'm entitled
10 to -- to have this witness who has a solid knowledge
11 for the last two years, seeing Mr. Fisher over that
12 time frame, to testify as to his character because
13 that's what this trial is about, for being a safe and
14 nurturing parent.

15 **THE COURT:** And you still object?

16 **MS. BYRNE:** I mean, I do object,
17 Judge; but I will accept whatever ruling.

18 **THE COURT:** I'm sorry?

19 **MS. BYRNE:** My objection stands.

20 **THE COURT:** Thank you. Give me just a
21 minute to think about the ruling.

22 That would be sustained as to the way
23 it was asked. Thank you. Yes, ma'am. Sustained.

24 **Q.** **(BY MS. WILLIAMS)** Do you have an opinion as
25 to Mr. Fisher's character for being a safe and

1 question? Judge, sorry. I couldn't follow it.

2 **THE COURT:** Would you mind giving the
3 question again?

4 **Q. (BY MS. WILLIAMS)** Did -- did Mr. Fisher
5 call you from the hospital the night that Josiah went
6 to the -- you know, Josiah was taken to the hospital
7 from your place of business, did he call you?

8 A. I truly don't remember.

9 **Q.** Okay. All right. So, you're not saying he
10 didn't or he did?

11 A. Right.

12 **Q.** Okay. One other thing, does Mr. Fisher --
13 does he like you and Mr. Jenkins? Does he behave as
14 if he likes you and Mr. Jenkins?

15 **MS. BYRNE:** Objection to relevance and
16 bolstering.

17 **THE COURT:** I will allow it.
18 Overruled.

19 **Q. (BY MS. WILLIAMS)** Okay.

20 A. Yes.

21 **Q.** Okay. And you would say -- would you say
22 that y'all are friends?

23 A. Yes.

24 **Q.** Has he done some work for you in the past?

25 A. Yes.

1 refreshing the witness' memory with a police report.

2 **THE COURT:** Sorry?

3 **MS. BYRNE:** It's not a written
4 statement.

5 **THE COURT:** That's not something that
6 she wrote. So, that's sustained.

7 Ma'am -- ma'am, I sustained the
8 objection. You have to return that to the lawyer.

9 **THE WITNESS:** I'm sorry.

10 **THE COURT:** Thank you.

11 **Q.** (BY MS. WILLIAMS) Did that refresh your
12 memory?

13 **A.** I didn't read it all.

14 **Q.** You didn't read it?

15 **A.** No.

16 **Q.** If -- if you -- if you said -- if you
17 told -- well, let me ask, would your memory have been
18 better back then on the 8th or near the event than
19 now over a year?

20 **A.** Yes. Yes.

21 **Q.** Okay. So, it's possible you could --
22 Mr. Fisher could have called you and asked you to
23 keep the children during the period with CPS rather
24 than them going to CPS custody?

25 **MS. BYRNE:** Can you repeat the

1 with your client.

2 **MS. BYRNE:** Nothing further.

3 **THE COURT:** Thank you. May the
4 witness be excused? They have no redirect.

5 **MS. WILLIAMS:** Your Honor, I'd like
6 to -- another question for Ms. Jenkins.

7 **THE COURT:** All right. I will allow
8 that so we don't have to recall her for that. Okay.

9 **Q. (BY MS. WILLIAMS)** Ms. Jenkins, did
10 Mr. Fisher call you on the 6th and ask you if you
11 could give him a ride home, February the 6th, 2013,
12 just two days before the 8th?

13 **A.** I don't remember.

14 **Q.** You don't remember?

15 **A.** At all.

16 **Q.** Mr. Fisher called you from the hospital
17 that night that the baby was taken to the hospital
18 and asked you about keeping -- whether or not you
19 would be able to keep Lex and Josiah during this
20 period that they were involved with CPS?

21 **A.** No.

22 **Q.** Okay.

23 **MS. WILLIAMS:** May I approach --
24 well --

25 **MS. BYRNE:** Your Honor, I object to

1 **Q.** That day when you were dealing with the
2 baby, Josiah, was he intoxicated?

3 **A.** Not to my --

4 **MS. BYRNE:** I object to speculation.

5 **THE COURT:** Overruled.

6 **Q.** **(BY MS. WILLIAMS)** I'm sorry. I didn't hear
7 you.

8 **A.** Not -- not to my knowledge.

9 **Q.** Okay. Do you know whether or not he was
10 tired on that day, February the 8th, 2013?

11 **A.** I -- I don't know.

12 **Q.** Is that because your focus was on trying to
13 help, not on Mr. Fisher?

14 **A.** Right.

15 **Q.** Were you aware he had been stranded
16 Wednesday night and had to sleep in his truck?

17 **MS. BYRNE:** Objection, based on
18 hearsay.

19 **THE COURT:** Sustained.

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

21 **THE COURT:** Thank you.

22 Any redirect?

23 Excuse me. We can hear what's being
24 said between the client and the attorney. You're
25 welcome to move over there if you need to communicate

1 before you answer. Thank you so much.

2 And, Ms. Williams, it's the lawyer's
3 job to control the pacing.

4 **MS. WILLIAMS:** Thank you, Judge. I
5 appreciate your help in that regard.

6 **THE COURT:** Huh? I just want --

7 **MS. WILLIAMS:** I appreciate your help.

8 **THE COURT:** Well, I don't mind if you
9 kind of do the pacing to help with the problem, is
10 what I'm trying to say. It's my job to admonish the
11 witness, but I don't think really you're doing most
12 of the talking over. I just wanted to take it up
13 before it gets to be a serious problem.

14 **MS. WILLIAMS:** Certainly.

15 **THE COURT:** Thank you, ma'am. Okay.

16 **Q. (BY MS. WILLIAMS)** So, he didn't appear
17 intimidated by CPS coming into your -- to your
18 office. Did the ambulance drivers come into your
19 home -- into your office or your place of business?

20 **A.** Yes.

21 **Q.** Was he -- did he appear upset or glad that
22 they were there?

23 **A.** Concerned.

24 **Q.** Had you ever seen Mr. Fisher intoxicated?

25 **A.** No.

1 Q. (BY MS. WILLIAMS) Is it true that
2 Mr. Fisher did not appear to be intimidated or
3 fearful in any way when CPS came into your place of
4 business and began to ask questions and look at
5 Josiah?

6 A. What was your -- how did you say that?

7 Q. Okay.

8 A. Again?

9 Q. Did -- did he appear -- did he -- did
10 Mr. Fisher appear to be concerned or afraid when CPS
11 came in and looked at Josiah in your -- in your place
12 of business?

13 A. No.

14 Q. Did he appear to be trying to help the CPS
15 worker --

16 A. I don't recall.

17 Q. Or cooperate --

18 A. Yes.

19 Q. -- probably would be a better term?

20 A. Yes. Yes.

21 **THE COURT:** Excuse me. Mrs. Lee is
22 writing what everybody says -- the court reporter
23 right here -- and if the attorney and witness talk at
24 the same time, her job is very difficult. So, let
25 Ms. Williams finish the question all the way through

1 2013?

2 **MS. BYRNE:** Objection to relevance.

3 **THE COURT:** Overruled.

4 A. No.

5 **Q. (BY MS. WILLIAMS)** Were they easily visible
6 to anyone who walked into the home?

7 A. Yes.

8 **Q.** Were you surprised by this?

9 **MS. BYRNE:** Objection, relevance.

10 **THE COURT:** Sustained.

11 **Q. (BY MS. WILLIAMS)** Did anyone ever represent
12 to you that on Thursday night, February the 6th,
13 2013, that Josiah had been fussing all night?

14 **MS. BYRNE:** Objection, calls for
15 hearsay.

16 **THE COURT:** Sustained.

17 **Q. (BY MS. WILLIAMS)** Had anyone ever expressed
18 to you that Ms. Dickerson was up all night on that
19 date?

20 **MS. BYRNE:** Same objection, Judge,
21 backdoor hearsay.

22 **THE COURT:** Sustained. Please
23 don't -- please don't ask questions that call for a
24 hearsay response unless it falls under one of the
25 exceptions.

1 **MS. WILLIAMS:** Been over to the
2 Dickersons', inside their house prior to -- prior to
3 February the 8th, 2013.

4 **THE COURT:** And your objection is
5 relevance?

6 **MS. BYRNE:** It's relevance.

7 **THE COURT:** Overruled. But I will
8 entertain another objection if it goes too far.

9 **Q. (BY MS. WILLIAMS)** Huh?

10 **A.** Yes.

11 **Q.** Subsequent to that date, were you in the
12 Dickersons' home shortly after Josiah was taken to
13 the hospital?

14 **A.** Yes.

15 **Q.** Was there anything different that you
16 noticed on that occasion?

17 **MS. BYRNE:** Objection to relevance.

18 **THE COURT:** Overruled.

19 So, you may answer.

20 **A.** Yes. Just as you went in the front door,
21 Ms. Dickerson's diploma and all her credentials where
22 she worked in an orphanage were right on the wall
23 when you walked in.

24 **Q. (BY MS. WILLIAMS)** Had you ever seen -- did
25 you -- had you seen those prior to February the 8th,

1 **MS. WILLIAMS:** Thank you, Your Honor.

2 **THE COURT:** Okay. We're ready for the
3 witness and then the jury. Okay.

4 *(Witness returns to the witness stand)*

5 *(Jury enters the courtroom)*

6 **THE COURT:** Thank you. Please have a
7 seat.

8 **Q.** *(BY MS. WILLIAMS)* Were you aware that
9 William Dickerson does not like Mr. Fisher?

10 **MS. BYRNE:** Objection.

11 **THE COURT:** Sorry. I couldn't quite
12 get the question.

13 **MS. WILLIAMS:** The question was: Is
14 she aware that Mr. Dickerson does not like
15 Mr. Fisher?

16 **MS. BYRNE:** Objection is relevance and
17 based on hearsay.

18 **MS. WILLIAMS:** It's already in
19 evidence, Your Honor.

20 **THE COURT:** Nonetheless, sustained.

21 **Q.** *(BY MS. WILLIAMS)* Had you been over to the
22 Dickersons' prior to February the 8th, 2013?

23 **MS. BYRNE:** Objection, relevance.

24 **THE COURT:** I'm sorry. I didn't quite
25 get that. Had she been where?

1 **MS. WILLIAMS:** Well, that's
2 circumstantial evidence that their behavior changed
3 and that Mr. Fisher's didn't change the way he
4 related and acted.

5 **THE COURT:** The State's objection is
6 sustained. I just don't see that that has probative
7 value, you know. Who --

8 **MS. WILLIAMS:** Well --

9 **THE COURT:** You know, does it mean --
10 what does that mean with regard to whether or not
11 your client committed the offense? Is the inference
12 that the Dickersons didn't come over because they had
13 injured the baby?

14 **MS. WILLIAMS:** Well, something
15 happened to this baby; and Mr. Fisher doesn't know
16 what happened to the baby.

17 **THE COURT:** Yeah. I just don't see
18 that who brought the rent check makes any difference.
19 Excuse me. So, I think my job as a Judge is to keep
20 us on track; and I find that to be off track. So,
21 the State's objection is sustained.

22 **MS. WILLIAMS:** Okay. And is what --
23 my answer will be: Would the Court consider that as
24 a bill?

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

1 pattern that Ms. Jenkins noticed following the
2 hospitalization of Josiah.

3 **THE COURT:** So, how is that relevant?

4 **MS. WILLIAMS:** Well, I think it's -- I
5 think the jurors need to know that to know how these
6 people acted and how the defendant acted.

7 **THE COURT:** So, who paid the rent?

8 **MS. WILLIAMS:** Well, Mr. -- Mr. Fisher
9 had always paid it before or brought it or given it
10 to the Jenkinses.

11 **THE COURT:** I'm sorry. I thought it
12 was: Who paid the rent for the Dickersons?

13 **MS. WILLIAMS:** That's -- I'm -- the
14 Dickersons paid the rent to the Jenkinses, but it
15 was -- Mr. William Dickerson for eight years paid the
16 rent directly to the Dickersons (sic.)

17 **THE COURT:** So --

18 **MS. WILLIAMS:** And afterward it was --
19 after February the 8th, Mr. Dickerson did not pay the
20 rent or bring the rent to the Jenkinses.
21 Ms. Dickerson did. That was one thing.

22 The other --

23 **THE COURT:** So, what's the inference
24 of that that's important? That's circumstantial
25 evidence of what?

1 **(End of Bench Discussion)**

2 **THE COURT:** I think I have to send the
3 jury out. All rise, please.

4 **(Jury released)**

5 **THE COURT:** Thank you. Yes, ma'am?

6 **MS. WILLIAMS:** I think it's -- Judge,
7 I think it's highly relevant.

8 **THE COURT:** And what is the answer
9 going to be?

10 **MS. WILLIAMS:** Well --

11 **THE COURT:** Should I have the witness
12 step out?

13 **MS. WILLIAMS:** You can.

14 **THE COURT:** Do you mind stepping out
15 for just a moment while we have the conference?

16 **THE WITNESS:** This way (indicating)?

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

18 **(Witness released)**

19 **MS. WILLIAMS:** And can the court
20 reporter read back the question?

21 **MS. BYRNE:** It was who paid the rent
22 up until that day.

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

24 **MS. WILLIAMS:** There was a change
25 in -- there was a change in a long established

1 **MS. BYRNE:** Object to relevance.

2 **THE COURT:** Sustained.

3 **Q. (BY MS. WILLIAMS)** Was it unusual?

4 **MS. BYRNE:** Objection to relevance.

5 **THE COURT:** You may ask that question.

6 **Q. (BY MS. WILLIAMS)** Was it unusual for
7 Mr. Dickerson to come over and talk with you that
8 long?

9 **A.**Yes.

10 **Q.**Was the conversation mostly about Josiah?

11 **MS. BYRNE:** Objection to relevance and
12 calls for hearsay.

13 **THE COURT:** Sustained.

14 **Q. (BY MS. WILLIAMS)** Did you have an occasion
15 after this long conversation -- well, let me back up.

16 Up until February the 8th, who paid
17 the rent in -- for Mr. and Mrs. Dickerson's property?

18 **MS. BYRNE:** Object to relevance.

19 **THE COURT:** Sustained.

20 **MS. WILLIAMS:** Judge, may we approach,
21 the bench?

22 **THE COURT:** All right.

23 **(At the Bench)**

24 **THE COURT:** Yes, ma'am?

25 **MS. WILLIAMS:** Judge, I think --

1 could he -- yeah, could he come and get him.

2 Q. Did he readily agree?

3 A. Uh-huh (affirmative.) Yes.

4 Q. Okay. And was that when you had the long
5 conversation with him?

6 A. No.

7 Q. Okay. When did you have -- do you know
8 when you had the long conversation with
9 Mr. Dickerson?

10 **MS. BYRNE:** Objection to relevance.

11 **THE COURT:** Overruled. You may
12 answer.

13 A. It was sometime after the baby was hurt. I
14 could not tell you when it was because I felt it
15 was --

16 **MS. BYRNE:** Nonresponsive.

17 **THE COURT:** Sustained.

18 A. -- unusual.

19 **THE COURT:** Listen carefully to the
20 question asked and answer just that question.

21 **THE WITNESS:** Okay.

22 **THE COURT:** Thank you.

23 Q. **(BY MS. WILLIAMS)** Had Mr. Dickerson ever
24 visited with you like that in the nine years or eight
25 years he had been living on your property?

1 A. Okay. I was at the shop. The school had
2 called me because I was the emergency contact person
3 to see if the principal could bring Lex to my shop.
4 And I said yes. Later on I had gotten in touch with
5 William, Mr. Dickerson, so I could take Lex over
6 there.

7 Q. Okay. And did you actually take Lex to
8 Mr. Dickerson's, or do you remember?

9 A. I don't remember. He -- I think he -- I
10 think he came to get him.

11 Q. And before you took Lex to Mr. Dickerson,
12 did someone check him out for injuries?

13 A. There was an officer that came, and he
14 talked to Lex and asked him if he could pull his
15 shirt up and look at him.

16 Q. And did -- was he able to pull his shirt
17 up --

18 A. Yes.

19 Q. -- and look at him?

20 A. And -- and -- yes.

21 Q. And was -- never mind.

22 Now, that conversation that you had
23 with Mr. Dickerson, was it at your place of business?

24 A. Well, I had to call him first to tell him
25 that I wasn't going to take Lex home with me and

1 next question, please.

2 Q. (BY MS. WILLIAMS) Was -- did anybody make
3 an effort to call an ambulance before the CPS worker
4 came in?

5 A. No.

6 Q. And that was because it didn't appear to be
7 necessary; is that correct?

8 A. Correct.

9 Q. And I think you said that Mr. Fisher was
10 frustrated. Was that like any parent would be if
11 they couldn't find out what to do for their child to
12 comfort it?

13 A. Right. Yes.

14 Q. Subsequent to Josiah going to the hospital,
15 did you have a conversation with William Dickerson?

16 THE COURT: You may answer "yes" or
17 "no."

18 A. No.

19 Q. (BY MS. WILLIAMS) You never -- never spoke
20 to Mr. Dickerson any time after the baby was taken to
21 the hospital?

22 A. Yes, I did.

23 Q. Okay. And without going into what was
24 said, what was the circumstances? Like where were
25 you?

1 A. Yes.

2 Q. He didn't know what to do with Josiah?

3 A. Yes.

4 Q. And you're a mother and a grandmother?

5 A. Well, I'm a step grandmother.

6 Q. Step grandmother?

7 A. Okay.

8 Q. When you saw the baby with a scratch, when
9 you saw Josiah with a scratch that day, did you
10 believe he was seriously injured?

11 A. That --

12 **THE COURT:** You may answer.

13 A. That was the first time that I had seen
14 him. Tim brought him over and I noticed just a
15 little scratch and I didn't think anything about it.

16 Q. **(BY MS. WILLIAMS)** On the 8th, did you think
17 he was seriously -- that he needed immediate
18 hospitalization or medical attention before the CPS
19 worker came in?

20 A. No.

21 Q. Did Mr. Fisher say anything previous to the
22 CPS person coming in about getting him
23 hospitalization?

24 **MS. BYRNE:** Calls for hearsay.

25 **THE COURT:** Sustained. Wait for the

1 **MS. BYRNE:** I object to relevance.

2 **THE COURT:** As to relevance,
3 overruled.

4 A. Prior to his birth --

5 **MS. BYRNE:** I object to hearsay and
6 bolstering.

7 A. -- yes.

8 **THE COURT:** If one of the lawyers
9 stands up --

10 **THE WITNESS:** Okay.

11 **THE COURT:** -- I need to make a ruling
12 before you answer.

13 **THE WITNESS:** Okay.

14 **THE COURT:** Thank you.

15 **Q. (BY MS. WILLIAMS)** Did he -- did Mr. Fisher
16 act excited about --

17 **MS. BYRNE:** Objection. Same
18 objection.

19 **Q. (BY MS. WILLIAMS)** -- Josiah's birth?

20 **THE COURT:** As to this question, you
21 may answer. Overruled.

22 A. Yes.

23 **Q. (BY MS. WILLIAMS)** When he came over to you
24 on February the 8th, 2013, he was coming for your
25 help with Josiah?

1 **Q.** **(BY MS. WILLIAMS)** That means you can
2 answer --

3 **A.** Okay.

4 **Q.** -- Ms. Jenkins. How would you describe Lex
5 as a child? That was the question.

6 **A.** He was a sweet little boy. He loved to
7 learn. He would call me Ms. Sherrill. He was --

8 **THE COURT:** Excuse me. I think
9 that's --

10 **A.** Hyper.

11 **THE COURT:** -- going a little beyond
12 the scope of what we anticipated.

13 **Q.** **(BY MS. WILLIAMS)** You know that Lex was
14 hyper, ADHD?

15 **MS. BYRNE:** I object to relevance.

16 **THE COURT:** Overruled on that
17 question. You may answer.

18 **A.** I would consider him to be.

19 **Q.** **(BY MS. WILLIAMS)** And Ricky, Ricardo
20 Dickerson, is he -- is he hyper or similar to Lex or
21 do you know?

22 **A.** I -- I haven't been around him as much.
23 So, I do not know.

24 **Q.** Okay. Now, did Mr. Fisher express any joy
25 in having Josiah?

1 you see him; is that correct?

2 A. What? What?

3 Q. And you said you know Lex?

4 A. Yes.

5 Q. Lexicon Acosta?

6 A. Yes.

7 Q. And you spent some time with Lexicon?

8 A. Yes.

9 Q. And you have helped him with his
10 schoolwork?

11 A. A little bit, yes.

12 Q. And you have seen him progress?

13 A. Yes.

14 Q. And Tim helps him with his schoolwork?

15 **MS. BYRNE:** I object to relevance.

16 **THE WITNESS:** Yes.

17 **THE COURT:** How is this relevant?

18 **MS. WILLIAMS:** Well, to how -- excuse
19 me, Your Honor. To how he treats children.

20 **THE COURT:** Sustained.

21 Q. **(BY MS. WILLIAMS)** How would you describe
22 Lexicon as a child?

23 **MS. BYRNE:** Object to relevance.

24 **THE COURT:** Overruled. In light of
25 our discussion before trial, overruled.

1 hearing me, Ms. Jenkins, would you let me know?

2 A. Okay.

3 Q. Thank you.

4 Would you say that you saw Mr. Fisher
5 quite a bit in the two years that you have known him?

6 A. Yes.

7 Q. At least 25 times?

8 A. Probably, yes.

9 Q. And your husband knows him, as well?

10 A. Yes.

11 Q. And your husband's disabled, isn't he?

12 A. Yes.

13 Q. And he has been -- your husband has spent
14 quite a bit of time on the property where Tim -- the
15 trailer was that Tim was renting? I don't mean like
16 eight hours a day.

17 A. No. He is really at my shop most --

18 Q. Most of the time?

19 A. -- most of the time.

20 Q. In your shop or in your garage?

21 A. Uh-huh (affirmative.) Yes.

22 Q. The garage?

23 A. Well, it's -- the garage is my workroom at
24 the shop, yes.

25 Q. You also know Lex and Ricky -- Ricardo when

1 **(Defendant Identified)**

2 **Q.** **(BY MS. BYRNE)** Did you ever see Josiah
3 after that incident?

4 **A.** No.

5 **MS. BYRNE:** I pass the witness.

6 **THE COURT:** Thank you. Why don't we
7 take up cross-examination after lunch.

8 And, members of the jury, your food
9 has arrived.

10 Is that right?

11 **THE BAILIFF:** Yes, ma'am.

12 **THE COURT:** So, have a good lunch; and
13 we will try and start up at 1:15. So, if you walk
14 around, be back by 1:10 or so.

15 All rise, please, for the jury.

16 **(Jury released)**

17 **(Recess taken)**

18 **(AFTERNOON SESSION)**

19 **THE COURT:** Thank you. Please be
20 seated.

21 Ms. Williams, I believe you were about
22 to begin cross-examination.

23 **MS. WILLIAMS:** Thank you, Your Honor.

24 **CROSS-EXAMINATION**

25 **Q.** **(BY MS. WILLIAMS)** If you have any trouble

1 A. If I remember right, they walked over
2 there.

3 Q. Because it's so close?

4 A. Right. It's next door.

5 Q. So, were you -- when EMS arrived to take
6 care of the baby, where did you remain?

7 A. Right there by my desk.

8 Q. Okay. So, would you have been able to see
9 when they had the baby at the ambulance and they were
10 inspecting the baby's body and things like that?

11 A. No.

12 Q. So, you never saw the baby with his
13 clothing off?

14 A. No.

15 Q. Okay. When we're talking about Tim, do you
16 see Tim in the courtroom today?

17 A. Yes.

18 Q. Can you point to him and describe an
19 article of his clothing?

20 A. Light blue shirt, tie, navy tie
21 (indicating.)

22 **MS. BYRNE:** May the record reflect the
23 witness has identified the defendant?

24 **THE COURT:** The record will reflect
25 that, please.

1 you remember his little legs jumping and they would
2 stop?

3 A. Yes.

4 Q. But you didn't know what, if anything, that
5 was?

6 A. No.

7 Q. That could have been normal as far as you
8 were concerned?

9 A. Because babies cry and --

10 Q. Okay.

11 A. -- and kick.

12 Q. Now, without going into anything that
13 anybody else said, when the CPS case worker came,
14 what did she do when she walked into your shop?

15 A. She looked at him and --

16 Q. When you say "looked at him," do you mean
17 Josiah?

18 A. Josiah. And she said he is seizing.

19 Q. And what did you tell her?

20 A. I told her that there is an EMS center
21 right next door to my shop.

22 Q. Okay. So, who actually called the police
23 or called EMS, if you recall?

24 A. I -- I don't know that anybody called.

25 Q. Okay.

1 A. Yes.

2 Q. Okay. Now, do you remember who that was or
3 just that it was somebody from CPS?

4 A. Amber.

5 Q. Okay. That's all you -- that's what you
6 remember. Now, I want to talk to you -- you
7 mentioned the bruises that you observed. Do you
8 remember whether or not you ever saw the baby making
9 any jerking movements?

10 A. When he was fussing and they first got
11 there and I laid him down in the chair and was
12 checking, you know, his diaper and everything and I
13 noticed a little bit of kicking, but it didn't -- it
14 looked like a fussy baby kicking.

15 Q. Okay. You don't have any medical training?

16 A. No.

17 Q. Okay. You wouldn't necessarily know what a
18 seizure might look like?

19 A. No.

20 Q. Okay. Were you paying attention to the
21 baby's eyes, or were you looking at -- what were you
22 looking at?

23 A. No.

24 Q. Okay. Do you remember telling Officer
25 McClure in that interview on February 9, 2013, that

1 McClure that you sat and watched him try to feed the
2 baby and the baby wouldn't drink?

3 A. No.

4 Q. Okay. Do you deny that you said that?

5 A. No.

6 Q. Okay.

7 A. I just don't remember.

8 Q. You just don't remember saying it. Okay.

9 Now, shortly after you returned from
10 Walgreen's, what happened?

11 A. Well, the officer showed up and CPS worker
12 showed up.

13 Q. All right. How long does it take you
14 generally to get from Walgreen's back home?

15 A. Ten minutes, 15 minutes.

16 Q. So, you probably would have gotten back
17 home approximately 3:25, 3:30 --

18 A. Yes.

19 Q. -- in the afternoon?

20 Okay. So, when you got back home, you
21 woke up the baby. And then shortly thereafter,
22 somebody from CPS came?

23 A. Yes.

24 Q. Okay. Did you let them onto the property?
25 How did they get there?

1 Q. Now, do you remember when you left Tim, I
2 mean, was he the only person there with the baby?

3 A. Yes.

4 Q. And when you came back, was it just Tim and
5 the baby?

6 A. Yes.

7 Q. Okay. Did you wake them up? I mean, what
8 did you do when you came back?

9 A. Woke them up.

10 Q. Now, do you remember attempting to feed the
11 baby or somebody attempting to feed the baby with the
12 formula that you got?

13 A. No.

14 Q. Okay. Do you remember doing an interview
15 with Sergeant McClure from Harris County the day
16 after February 9, 2013?

17 A. Yes.

18 Q. Okay. And do you remember him recording
19 that interview?

20 A. Yes.

21 Q. Okay. And do you think that your memory
22 would have been better then, around February 9, 2013
23 or better today, a little over a year later?

24 A. Probably better then.

25 Q. Okay. Do you recall telling Sergeant

1 State's Exhibit No. 19 into evidence and tender to
2 Defense for inspection.

3 **MS. WILLIAMS:** No objection.

4 **THE COURT:** Thank you. Admitted. And
5 what was the number, again?

6 **MS. BYRNE:** 19.

7 **THE COURT:** Thank you.

8 **Q. (BY MS. BYRNE)** So, I'm going to show you
9 State's Exhibit No. 19. Up at the top, what time
10 does it say you checked out?

11 **A.** 3:14 p.m.

12 **Q.** All right. So, if you were checking out at
13 Walgreen's at 3:14 p.m., about how long before that
14 would Tim have come over with the crying baby?

15 **A.** Thirty, 40 minutes.

16 **Q.** Okay. So, he probably came over at
17 approximately 2:45, 2:35?

18 **A.** Yes.

19 **Q.** Okay. Now, when you got back from
20 Walgreen's, do you remember -- where were Tim and the
21 baby?

22 **A.** They were in the sunroom of my shop.

23 **Q.** Okay.

24 **A.** I had a little platform rocker, and they
25 were both asleep.

1 A. No.

2 Q. Okay. Now, what did you offer to do based
3 on everything Tim had told you?

4 A. I left my shop, and I went to Walgreen's.

5 Q. Okay. Let me approach. You indicated you
6 weren't positive about the time. I'm going to show
7 you what's been marked as State's Exhibit No. 19.

8 Do you recognize this?

9 A. Yes.

10 Q. Okay. What is it?

11 A. It is my Walgreen's receipt.

12 Q. Okay. And what did you purchase at
13 Walgreen's on February 8, 2013?

14 A. Similac Sensitive. I bought some baby wash
15 and just some diaper rash ointment just to have.

16 Q. Okay. And so, do you think that the time
17 stamp on this Walgreen's receipt would be fair and
18 accurate as to when you actually checked out at
19 Walgreen's?

20 A. Yes.

21 Q. Okay. And is this -- this is the same
22 receipt that you had there that day that -- does it
23 appear to be tampered with or altered in any way?

24 A. No.

25 **MS. BYRNE:** At this time I offer

1 Q. Now, when you were looking at the baby, did
2 you notice whether or not there were any bruises on
3 the baby?

4 A. I did.

5 Q. Okay. And where did you see the bruises on
6 the baby?

7 A. Both cheeks.

8 Q. You said on both cheeks, and you're kind of
9 holding --

10 A. Uh-huh (indicating.)

11 Q. -- your hands over your mouth. So, it
12 looked like there were two places on each side of the
13 mouth?

14 A. Yes.

15 Q. Okay. And what did you say when you saw
16 the bruises?

17 A. I asked him what happened.

18 Q. When you say you asked him, who did you
19 ask?

20 A. Tim.

21 Q. Okay. And what did Tim say when you asked
22 him about the bruises?

23 A. He said: I don't know.

24 Q. At that point in time, did he say anything
25 about Graciela or William Dickerson?

1 help him get the baby to stop crying?

2 A. Yes.

3 Q. Okay. Now, do you recall approximately
4 what time that was?

5 A. I -- I don't know. Maybe 2:00, 2:30,
6 something like that.

7 Q. Well, let me -- let me ask you this: When
8 he first brought the baby over and said he couldn't
9 get it to stop crying, what did you do with the baby?

10 A. I took the baby, and he had been crying.
11 So, he was hot. And I took the blanket off of him,
12 and I laid him in a chair and checked his diaper to
13 see if he might have a diaper rash or something.

14 Q. Okay. And how did the baby appear when you
15 checked his diaper?

16 A. It was fine.

17 Q. Okay. Do you remember if it looked a
18 little red but nothing of concern?

19 A. No.

20 Q. Okay. Now, did you actually take all the
21 baby's clothes off or just --

22 A. No.

23 Q. Okay.

24 A. I just took the blanket off because he was
25 hot.

1 A. Yes.

2 Q. Okay. And why did he come over to the
3 shop?

4 A. He said: Ms. Sherrill, I can't make the
5 baby stop crying. I don't know what's wrong. I
6 don't know if it was -- well, the baby was supposed
7 to be on Similac sensitive.

8 Q. Okay.

9 A. And Tim said that he had run out of that,
10 but the school had given him some regular Similac
11 that was not sensitive formula. He says: I don't
12 know if that's what's wrong with him.

13 Q. Okay. So, he thought maybe he had fed the
14 baby formula that maybe made it upset or maybe what
15 happened?

16 A. Uh-huh (affirmative.)

17 Q. Okay. Now, when Tim came over, it's fair
18 to say that he was concerned?

19 A. Uh-huh (affirmative.)

20 Q. Yes?

21 A. Yes.

22 Q. Sorry. Is it also fair to say that he was
23 frustrated?

24 A. Yes.

25 Q. Okay. And he was hoping that you would

1 where it came from or anything like that?

2 A. No.

3 Q. Did you ask about it or concern yourself
4 with it?

5 A. I just assumed it was a baby scratching.

6 Q. Okay. Now, after that 15 minutes when the
7 defendant came and introduced the baby to you, did
8 you see it again before Friday, February 8th?

9 A. No.

10 Q. All right. I want to talk to you about
11 Friday, February the 8th. What were you doing on
12 that day?

13 A. I was just at my shop.

14 Q. Okay. So, your shop was open for business
15 that day?

16 A. Uh-huh (affirmative.)

17 Sorry. Yes.

18 Q. You have to say "yes" or "no." The court
19 reporter is going to get mad at us. She has got to
20 write everything down. So, you were working at the
21 shop. In that -- that morning did you have any sort
22 of interaction with Tim or the baby at all?

23 A. Not in the morning.

24 Q. Okay. If you remember, sometime in the
25 afternoon, did Tim come over to your shop?

1 assume that it would have been Tuesday, February 5th,
2 that you would have seen the baby?

3 A. Yes.

4 Q. Okay. And that would have been several
5 days before the incident that we're here to talk
6 about?

7 A. Yes.

8 Q. Now, how long were you in contact with the
9 baby on Tuesday?

10 A. Maybe 15 minutes.

11 Q. Okay. And did you hold the baby, look at
12 the baby? What did you do with the baby, if you
13 remember?

14 A. I know he brought the baby to show us the
15 baby.

16 Q. Okay.

17 A. And I really don't recall.

18 Q. That's okay. On that Tuesday, do you
19 recall whether or not you saw a big scratch or mark
20 underneath the baby's eye?

21 A. Yes.

22 Q. So, you did observe it on that Tuesday, the
23 4th?

24 A. Yes.

25 Q. The 5th. Okay. Did you have any idea

1 to your knowledge?

2 A. Just -- just Tim.

3 Q. So, it would be Tim, the baby, and Lexicon?

4 A. Uh-huh (affirmative.)

5 Q. Yes?

6 A. Yes.

7 Q. Sorry. I know it's not normal.

8 Now, you didn't live over there; but
9 were you there fairly regularly because of your
10 business?

11 A. Yes.

12 Q. And would your husband be there fairly
13 regularly because of the property and tinkering
14 around in the shop and stuff?

15 A. Hanging around in the shop, yeah.

16 Q. All right. Now, I want to talk to you
17 about -- how many times did you actually see the
18 baby? Was it two occasions?

19 A. Two.

20 Q. I know you probably don't recall the exact
21 dates, but which day was the first time you saw the
22 baby? Like day of the week.

23 A. It was on a Tuesday.

24 Q. Okay. So, if the baby wasn't released from
25 the hospital until February 1st, would it be fair to

1 Q. And who lived with them?

2 A. Lex.

3 Q. And how old was Lex?

4 A. Five. Approximately 5.

5 Q. Okay. And would it be fair to say that you
6 had a good relationship with Tegan and Timothy?

7 A. Yes.

8 Q. And you were very helpful to them and
9 taking care of Lex after school and things like that?

10 A. Yes.

11 Q. Okay. And would it be fair to say you have
12 all grown to care for each other? You care -- you
13 have -- they are not family, but you consider them
14 close?

15 A. Well, yes.

16 Q. Okay. Now, did you know where Tegan was
17 when she gave birth?

18 A. Yes.

19 Q. Okay. And where was she?

20 A. In jail.

21 Q. And do you recall who brought the baby home
22 from the hospital to live back on the property?

23 A. Tim.

24 Q. Now, when Tim came home with the baby, who
25 all was there in that trailer? Who was living there,

1 nine years?

2 A. Yes.

3 Q. And how long have you known Tegan Shows and
4 Timothy Fisher, approximately?

5 A. Approximately that long.

6 Q. Okay. Now, has Timothy been in the picture
7 that long or --

8 A. No.

9 Q. Have you known Tegan longer?

10 A. Tegan longer.

11 Q. Okay. How long have you known Timothy,
12 approximately?

13 A. A couple of years.

14 Q. Okay. Where -- where did Timothy and Tegan
15 reside? Where were they living?

16 A. They were living in a truck. They were
17 homeless.

18 Q. I'm talking about on the property.

19 A. Oh, on the property?

20 Q. On the property.

21 A. Oh, okay. There was a trailer -- vacant
22 trailer on the land and --

23 Q. And were they living on your property in
24 that trailer?

25 A. Yes.

1 here (indicating)?

2 A. Yes.

3 Q. Directly across the street over here
4 (indicating)?

5 A. Uh-huh (affirmative.)

6 Q. And just for the court reporter, I know
7 it's normal for us to say "uh-huh" (affirmative) or
8 "huh-uh" (negative.)

9 A. Oh.

10 Q. But she has got to actually type down
11 words. So, it has to be "yes" or "no."

12 A. Yes.

13 Q. So, one of the tenants that rent out
14 property would be William and Graciela Dickerson?

15 A. Yes.

16 Q. What else is located very near to your
17 home? Is there an emergency medical --

18 A. Next door there is an EMS training center.

19 Q. Let me show you State's Exhibit No. 6. We
20 see your shop right here (indicating.) What is right
21 here (indicating)?

22 A. That is the EMS training center, and they
23 dispatch ambulances from there.

24 Q. Okay. Now, would it be fair to say that
25 the Dickersons have rented space for approximately

1 Five Forks and Stuebner Airline.

2 Q. Now, on that 25 acres of land, do you and
3 your husband rent out trailers or properties to
4 tenants?

5 A. Trailer space.

6 Q. Okay. So, you rent out the property
7 itself?

8 A. Uh-huh (affirmative.)

9 MS. BYRNE: May I approach the
10 exhibits?

11 THE COURT: Yes, ma'am.

12 Q. (BY MS. BYRNE) Let me show you what's in
13 evidence as State's Exhibit No. 45. What evidence
14 are we looking at here?

15 A. That is my dollhouse shop.

16 Q. How long have you had the shop?

17 A. In this location, 13 years.

18 Q. What days are you open?

19 A. Tuesday through Saturday.

20 Q. Okay. And then the property where you rent
21 out trailer space, where is that located in
22 relationship to the house?

23 A. Across the street from this house.

24 Q. So, if we're looking here at State's
25 Exhibit No. 8, is that where your dollhouse is right

1 A. Since 1986.

2 Q. Are you married?

3 A. Yes.

4 Q. What is your husband's name?

5 A. Robert Jenkins.

6 Q. And how old is he?

7 A. Eighty-four.

8 Q. And have you ever had to testify before in
9 a criminal case?

10 A. No.

11 Q. Okay. Are you a little nervous?

12 A. Yes.

13 Q. What neighborhood do you live in?

14 A. Cypresswood.

15 Q. And in addition to living in Cypresswood,
16 do you have other property in the area?

17 A. Yes.

18 Q. And where is that property located at?

19 A. The address?

20 Q. Well, what road is it on?

21 A. It's on Five Forks Drive.

22 Q. And what other property do you have on Five
23 Forks Drive?

24 A. I have a dollhouse shop on Five Forks and a
25 little house, and my husband has 25 acres of land at

1 Raise your right hand, please.

2 **(Witness Duly Sworn)**

3 **THE WITNESS:** Yes.

4 **THE COURT:** Thank you. You may have a
5 seat there on the witness stand. If you wish, you
6 may adjust the mike so it's more comfortable for you.

7 **THE WITNESS:** Shorter.

8 **THE COURT:** Okay.

9 **SHERRILL JENKINS,**

10 having been first duly sworn, testified as follows:

11 **DIRECT EXAMINATION**

12 **Q. (BY MS. BYRNE)** Ms. Jenkins, could you
13 please state your full name for the jury?

14 **A.** Sherrill J. Jenkins.

15 **Q.** How old are you?

16 **A.** Sixty-two.

17 **Q.** What part of town do you live in?

18 **A.** Spring, Texas.

19 **Q.** And how long have you lived in Spring?

20 **A.** Fifteen years.

21 **Q.** Are you originally from Houston?

22 **A.** No.

23 **Q.** Where are you from?

24 **A.** Wichita, Kansas.

25 **Q.** And how long have you been in Texas?

1 **MS. WILLIAMS:** No further questions.

2 **THE COURT:** Thank you.

3 Any redirect?

4 **MS. BYRNE:** No, Judge.

5 **THE COURT:** Is this witness excused or
6 on call?

7 **MS. BYRNE:** The State has no problem
8 with him being excused.

9 **THE COURT:** Ms. Williams?

10 **MS. WILLIAMS:** On call, Your Honor.

11 **THE COURT:** Okay. You're free to go
12 today, subject to recall.

13 **THE WITNESS:** Yes, ma'am.

14 **THE COURT:** Thank you so much.

15 **(Witness released)**

16 **THE COURT:** Your next witness?

17 **MS. BYRNE:** State calls Sherrill
18 Jenkins.

19 **THE COURT:** Thank you.

20 **THE BAILIFF:** Judge, the witness has
21 not been sworn in.

22 **THE COURT:** Thank you.

23 Come on up please, ma'am, this way.

24 Kind of a trick. Yes. Thank you. And if you would
25 stand and face the jury, I will give you the oath.

1 Q. How many children?

2 A. I have three.

3 Q. And have you had to check out, previous to
4 this time, other complaints of neglect or abuse of
5 children?

6 MS. BYRNE: Object to relevance.

7 THE COURT: Sustained.

8 MS. WILLIAMS: Judge, while he is not
9 an investigator, from his testimony, I think --

10 THE COURT: Are you trying to get into
11 his experience?

12 MS. WILLIAMS: Just trying to ask him
13 briefly has he ever had any experience.

14 THE COURT: You may ask that up -- up
15 to this date but not since then.

16 MS. WILLIAMS: Okay.

17 Q. (BY MS. WILLIAMS) Office Lerma, up to this
18 date, being February the 8th, have you had -- had you
19 had any experience with child abuse or child neglect
20 calls?

21 A. Never.

22 Q. No? How long did you say you had been with
23 the sheriff's department?

24 A. Sixteen years.

25 Q. Sixteen years.

1 A. That's correct.

2 Q. And are you -- were you -- and the baby's
3 clothes were clean, best you observed?

4 A. Yes, ma'am.

5 Q. And all the baby's movements were normal?

6 A. Yes, ma'am.

7 Q. You didn't see any jerking or twitching or
8 anything like that?

9 A. No, ma'am.

10 Q. And the baby whimpered a little but didn't
11 actually cry?

12 A. No, ma'am. It just -- like, you know, just
13 a baby's whimper. That was it.

14 Q. And you went straight to try and find
15 Mr. Fisher from the school; is that right?

16 A. Yes. After I left the school, I went and
17 searched a little bit to see maybe if he was walking
18 around because I don't think they were exactly sure
19 that that was the address. So, I figured I will try
20 some of the side streets real quick on the way going
21 there -- or going up Five Forks and see what I see.
22 And when I saw the gate with the number on it, that's
23 when I knew that was it.

24 Q. And are you a father?

25 A. Yes, ma'am.

1 A. When you look up because, you know, the
2 position of the baby was -- and I'm looking kind of
3 over. It was mostly squinting. So, I couldn't
4 really see what the eyes were doing.

5 Q. Okay. The baby wasn't one big bruise,
6 though?

7 A. What do you mean?

8 Q. The baby wasn't just one big bruise, was
9 it?

10 A. You know, when babies are real young, you
11 know how they got this chubby look to them? That's
12 what it looked like to me. It had like, you know,
13 just that newborn chubbiness to it.

14 Q. Okay.

15 A. And that's what I was seeing on the baby --
16 or on the arms and legs. That's how I perceived it.

17 Q. Deputy Lerma, I think I was asking when --
18 whether or not you saw any bruises on the baby?

19 A. No, ma'am, I did not. I did not.

20 Q. Okay. Mr. Fisher was cooperative, I think
21 you said; is that correct?

22 A. Yes, ma'am.

23 Q. And based on his demeanor, your impression
24 definitely was that the baby was safe with him; is
25 that correct?

1 **THE COURT:** Thank you.

2 **MS. WILLIAMS:** Yes, ma'am.

3 **CROSS-EXAMINATION**

4 **Q.** **(BY MS. WILLIAMS)** Good morning, Deputy
5 Lerma.

6 **A.** Good morning.

7 **Q.** My name is Clyde Williams, and I represent
8 Mr. Fisher.

9 **A.** Yes, ma'am.

10 **Q.** When you went out there to see Mr. Fisher,
11 he told you about the baby getting the scratches
12 after he picked it up the night before from the
13 grandfather and his wife?

14 **MS. BYRNE:** Your Honor, I object.

15 **MS. WILLIAMS:** Grandfather --

16 **MS. BYRNE:** That question calls for
17 hearsay.

18 **THE COURT:** Sustained.

19 **MS. WILLIAMS:** It's --

20 **Q.** **(BY MS. WILLIAMS)** The baby's eyes, when you
21 saw the baby, its eyes weren't rolling back in his
22 head; is that true?

23 **A.** It was a sunny day, really bright and sunny
24 day. So, the baby's eyes were squinting.

25 **Q.** Squinting?

1 A. No -- oh, yes, that I did not thoroughly
2 inspect.

3 Q. You did not?

4 A. Yes.

5 Q. You did not thoroughly inspect the baby?

6 A. Yes.

7 Q. Okay. In fact, you didn't even look at the
8 other side of the baby's head?

9 A. No. No.

10 Q. Okay. Because at that time the defendant
11 didn't appear intoxicated to you --

12 A. Uh-huh (affirmative.)

13 Q. -- is that right?

14 A. That's correct.

15 Q. And so, you thought things were okay?

16 A. Yes.

17 Q. What did you do after that?

18 A. I explained to him -- I said: Well -- he
19 appeared okay. He answered everything that I needed
20 to know and I told him that I was doing a report and
21 it was because of the school making a complaint
22 against him -- or allegations. So, I was going to do
23 a report and I was going to refer it to CPS and then
24 I just left.

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

1 been a good idea to get a look at the baby's whole
2 head; or do you think that's something -- knowing
3 what you know now, that you should have done?

4 A. Well, you know, like I said, you know, the
5 baby -- everywhere else on the body, it looked good.
6 And as I saw the one side of the head and front,
7 hindsight, I probably should have taken the baby and
8 looked all over the baby.

9 Q. Okay. So, you never took the baby's
10 clothing off. You never -- did you ever look at the
11 baby's trunk area or anything like that?

12 A. I pulled the shirt out and I looked at the
13 back of the child and I felt the diaper, see if it
14 was a clean diaper and see if I saw anything on the
15 body and I didn't see anything else.

16 Q. When you say you pulled the shirt out, did
17 you look at the entire back and shoulders or just
18 kind of looked a little bit?

19 A. I looked down the back, down the torso
20 area, in that area.

21 Q. So, you didn't --

22 A. Like the back, you know, around the ribs
23 and such.

24 Q. Would it be fair to say that you did not
25 thoroughly inspect this baby?

1 down his face.

2 Q. On the side of the face that you saw --

3 A. Uh-huh (affirmative.)

4 Q. -- did you observe a bruise?

5 A. No, I did not. No, I did not.

6 Q. Now, that is one of the things that had
7 been indicated to you from the school, correct?

8 A. Yes, ma'am.

9 Q. Why did you not ask to hold the baby or to
10 look at the baby yourself?

11 A. The baby looked fine. He answered every
12 question I asked and clearly and concisely. The baby
13 looked good from what I saw, you know, on the arms,
14 legs, and the part of the body that I saw. I
15 didn't -- at that moment, at that time, I didn't see
16 anything that warranted me going any further with
17 looking at the child, you know, looking any deeper
18 into it.

19 Q. Now, but you were only looking at one side
20 of the face, right?

21 A. Yes. Yes. Uh-huh (affirmative.)

22 Q. And it had been reported that the baby had
23 a bruise somewhere on its head?

24 A. Yeah.

25 Q. And, I mean, don't you think it would have

1 A. Yes. Yes.

2 Q. Torso?

3 A. All of the torso area was covered up.

4 Q. Now, when you say the baby was moving, at
5 that point in time, did you observe it to be just
6 what you thought would be normal or jerking
7 movements, something that would stand out now?

8 A. Normal for a baby that young. It just --

9 Q. Okay.

10 A. It was little movements, not nothing, you
11 know.

12 Q. Now, you mentioned the baby had its head
13 against -- I guess where was the baby's head?

14 A. It was leaning up against -- against like
15 his chest.

16 Q. Could you see the baby's entire head as you
17 were -- as you were checking out the baby?

18 A. No, ma'am.

19 Q. What part of the baby did you see?

20 A. The front and the side, where I was told it
21 was scratched. That's what I was looking for now.
22 And the baby had his hands on his face and was
23 scratching at his face; and where the scratches were
24 at, that's where his hands were connecting and going
25 down. Scratches were consistent with his hands going

1 defendant, did he appear to be intoxicated?

2 A. No, he didn't.

3 Q. And without going into everything that was
4 said, were you able to have a conversation with him?

5 A. Yes, ma'am, I was.

6 Q. Did you explain to him why you were there?

7 A. Yes, ma'am, I did.

8 Q. I want to talk to you about the baby.

9 A. Uh-huh (affirmative.)

10 Q. What did you observe about the baby?

11 A. When -- when he came out of the house with
12 the baby, I noticed that the baby was -- had looked
13 like it had clean clothes on, and the legs were
14 moving. Arms were moving. I could see the baby
15 looked like it was trying to crawl up him. The
16 baby's head kept turning towards his body, putting
17 its face into his shirt. And it was when he got kind
18 of close to me, I could hear it whimpering a little
19 bit. So, I looked at the baby and I didn't say
20 anything because the legs were exposed, arms were
21 exposed, and one side of the head was and the face.

22 Q. When you say "the arms," I mean, he had
23 clothing on his shoulders?

24 A. Yes, ma'am.

25 Q. And back and stomach?

1 he came up to me, he moved the baby over to the other
2 side. So, when he made contact, he had already moved
3 the baby over. And that is from one side to the
4 other.

5 Q. Was the baby clothed?

6 A. Yes, it was.

7 Q. Okay. Do you remember whether or not there
8 was a blanket or anything on the baby, if you
9 remember?

10 A. No. I don't -- I don't recall that.

11 Q. Now, what was your purpose in going over
12 there?

13 A. From what I had heard at the school, what I
14 was told at the school, my -- I was going to check on
15 the baby to see if there was -- you know, what they
16 were saying about it, if I could see that on the
17 child and then check on him, too. If he was going to
18 be by himself, if he was intoxicated or anything, I
19 was going to see what we could do from this point if
20 he was by himself.

21 Q. Now, you mentioned by the time you actually
22 came into contact with him, it was a little over two
23 hours after the initial call?

24 A. Yes, ma'am.

25 Q. Okay. When you came into contact with the

1 Q. (BY MS. BYRNE) So, you didn't have to go to
2 the door?

3 A. No, ma'am.

4 Q. Okay. Who came out of the residence when
5 you pulled up?

6 A. At first I didn't know it was Timothy
7 Fisher, but he came out of the residence and he had a
8 baby with him when he came out. He was carrying a
9 baby.

10 Q. Was there anybody else present with him?

11 A. No. I didn't see anybody else.

12 Q. Okay. And so, where did you actually come
13 into contact with him?

14 A. Out in the yard.

15 Q. All right.

16 A. By my patrol car. He walked up to my
17 patrol car.

18 Q. So, he walked up to you?

19 A. Yes.

20 Q. Okay. And you mentioned he was holding a
21 baby?

22 A. Yes, ma'am.

23 Q. Okay. How was he holding the baby?

24 A. He had -- on the porch. He had the baby on
25 his -- on this side (indicating), and then he -- when

1 inside.

2 Q. Okay. But they weren't with -- they
3 weren't with Timothy Fisher. They was by themselves?

4 A. They were by themselves, yes, ma'am.

5 Q. Okay. So, when he let you into the
6 property, did they point you in the right direction;
7 or did you know which unit you were going to?

8 A. No. As soon as we pulled in, I park. They
9 kind of pulled over off to the side, and I found a
10 clearing that I pulled into. And while I was still
11 in my patrol car, that's when Timothy stepped out of
12 the trailer.

13 Q. Okay. Now, when you say Timothy, do you
14 mean Timothy Fisher?

15 A. Yes, ma'am.

16 Q. Okay. And do you see Timothy Fisher in the
17 courtroom today?

18 A. Yes.

19 Q. Can you point to him and identify him by an
20 article of clothing?

21 A. He has got a blue shirt on, blue tie
22 (indicating.)

23 **MS. BYRNE:** May the record reflect the
24 witness has identified the defendant?

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

1 A. I didn't know who they were.

2 Q. Were they the owner of the property where a
3 lot of these residences were located?

4 A. Yes, ma'am.

5 Q. Okay. Now, did you have a name of who you
6 were trying to come into contact with?

7 A. Yes, I did.

8 Q. Okay. And who was that?

9 A. Timothy Fisher.

10 Q. Okay. Were you able to find Timothy Fisher
11 at the address?

12 A. When I followed them in, we got to where
13 those trailers were at; and I saw him walking out,
14 walking out one of the trailers. When I saw him, I
15 followed them in.

16 Q. Who did you follow in?

17 A. Older gentleman and the female that was
18 with him. They came in a truck and I followed
19 them --

20 Q. Okay.

21 A. -- deeper into the property.

22 Q. So, they had -- they were coming into the
23 property at the same time you were trying to come in?

24 A. No. They came from the inside and met me
25 at the gate. I was on the outside. They were on the

1 A. Yes, ma'am.

2 Q. And that's in Harris County, Texas?

3 A. Yes, ma'am.

4 Q. Okay. Now, about what time was it when you
5 finally made your way over to the Five Forks address?

6 A. It was about 12:30.

7 Q. Okay. So, it's fair to say it was a little
8 over two hours?

9 A. No. 12:34.

10 Q. 12:34. So, about two hours and maybe close
11 to 10 minutes after the initial call had come in that
12 you actually made it to the residence?

13 A. Yes, ma'am.

14 Q. Okay. Now, when you got to the residence,
15 were you able to get in?

16 A. Yes.

17 Q. Okay. And who did you come into contact
18 with?

19 A. There was an older gentleman and a female
20 in a truck that met me at the gate, and they let me
21 in. That was who I met first.

22 Q. Okay. And do you know who those people
23 were?

24 A. At the time I didn't.

25 Q. Okay.

1 A. Yes.

2 Q. Based on that, what did you decide you
3 needed to do?

4 A. Based on that, once -- once they expressed
5 a concern about the father and the baby, that's what
6 I went -- by that time I had gotten what we thought
7 was probably the address.

8 Q. Who provided the address?

9 A. Ms. Hansen, secretary or counselor, I think
10 is who she was. She had given me that. And what I
11 did then was I went and searched again. Maybe I
12 would see him at a store or something. And then I
13 went up to the -- I saw on the fence, on a gate, I
14 saw the address. And I just parked at the gate, and
15 it was right where it was a big track of land.

16 Q. Okay.

17 A. I just waited.

18 Q. What was the address? I guess, did the
19 school provide the address to you?

20 A. Yes, they did.

21 Q. Okay. And what was the address that you
22 responded to?

23 A. It was -- it was a Five Forks address. I
24 believe it was -- let me see. 7310 Five Forks.

25 Q. 7310 Five Forks?

1 him.

2 Q. Okay. Was it one call or a couple of
3 calls?

4 A. It was a couple of calls --

5 Q. Okay.

6 A. -- that had dropped.

7 Q. And they all mentioned a man with a
8 stroller?

9 A. Yes.

10 Q. Okay. When you say Five Forks, that is a
11 street kind of in that area near the school?

12 A. Yes, ma'am.

13 Q. Okay. And all the residences along Five
14 Forks road, are those in Harris County, Texas?

15 A. Yes, ma'am.

16 Q. Now, when you got to the school, was the
17 father and the baby that you were supposed to be
18 going out for, were they present?

19 A. No, they were not.

20 Q. Okay. Did you gather information from
21 employees of the school?

22 A. Yes, I did.

23 Q. And were -- without going into what
24 everybody said, were concerns expressed to you about
25 the health of the baby and the state of the father?

1 there that they had that they felt that --

2 Q. Well, let me -- without going into all the
3 details, what was the welfare that you were being
4 asked to check on?

5 A. Originally it was a call for a man walking
6 down the street pushing a stroller with a baby in it;
7 and everybody thought he might be intoxicated.

8 Q. Now, did -- there was no specification as
9 to what type of intoxication?

10 A. None.

11 Q. Okay. How long did it take you to respond
12 to the school?

13 A. Respond to the calls?

14 Q. Yes, to actually get to the school.

15 A. I was dispatched to the call at 11:37, and
16 I got there at 12:01.

17 Q. On your way to the school, did you see or
18 were you looking for the supposed man with the
19 stroller?

20 A. That's initially what I did because that's
21 what it dropped. He was walking down Five Forks; and
22 I think the other street was Rose, Rosebrook. And
23 so, that's what I did first. I was looking for him
24 first, and I didn't see him. And then that is when I
25 went to the school after that, when I didn't find

1 Q. What shift were you working?

2 A. Day shift, 6:00 to 2:00. 6:00 a.m. to
3 2:00 p.m.

4 Q. 6:00 a.m. to 2:00 p.m. Now, at some point
5 did you receive a call; and were you dispatched to
6 Ehrhardt Elementary?

7 A. I was dispatched.

8 Q. Do you recall what time?

9 A. Right around noontime, 11:00.

10 **MS. BYRNE:** May I approach the
11 witness?

12 **THE COURT:** Granted.

13 Q. (**BY MS. BYRNE**) Deputy Lerma, I'd like to
14 show you -- do you -- take a look at your call slip
15 and see if it refreshes your memory as to when the
16 call was originated?

17 A. Yes.

18 Q. Okay. What time did the initial call come
19 in to Ehrhardt Elementary School?

20 A. The initial call came in at 10:27 a.m. that
21 morning.

22 Q. Okay. Now, what was the general nature of
23 the call?

24 A. It was a welfare check in the sense that
25 the school had wanted to report one of the students

1 Q. So, you obviously have gone through the
2 academy and training and various things like that?

3 A. Yes, I have.

4 Q. Would it be fair to describe you as a first
5 responder?

6 A. Yes.

7 Q. When 9-1-1 -- when somebody calls 9-1-1,
8 are you the initial person dispatched out?

9 A. Yes.

10 Q. Okay. Are you an investigator?

11 A. No, I'm not.

12 Q. Do you -- do you know -- or are you trained
13 to do specialized investigations into child abuse or
14 homicide, sexual assaults, things like that?

15 A. No, I'm not.

16 Q. Okay. Is it fair to say your basic --
17 you're kind of -- you're there to just be the initial
18 person there, gather info?

19 A. Pass it on.

20 Q. Pass it on. Okay.

21 I want to talk to you about
22 February 8, 2013?

23 A. Uh-huh (affirmative.)

24 Q. Now, were you working that day?

25 A. Yes, I was.

1

FRED LERMA,

2

having been first duly sworn, testified as follows:

3

DIRECT EXAMINATION

4

Q. (BY MS. BYRNE) Deputy, would you introduce yourself to the jury?

5

6

A. I'm Deputy Lerma with the Harris County Sheriff's Department.

7

8

Q. How long have you been with the Harris County Sheriff's Department?

9

10

A. Sixteen years.

11

Q. What area are you assigned to?

12

A. I'm assigned to the north district, north district patrol.

13

14

Q. Does that cover Spring/Klein area?

15

A. Yes, it does.

16

Q. Okay. And are you a patrol officer?

17

A. Yes, I am.

18

Q. What are your basic duties as a patrol officer?

19

20

A. My basic duties, we get calls for service, various calls; and we go to the call and answer that and see what's going on there.

21

22

23

Q. You're a certified peace officer in the state of Texas?

24

25

A. Yes, I am.

1 **MS. WILLIAMS:** Pass the witness, Your
2 Honor.

3 **THE COURT:** Thank you.

4 **MS. BYRNE:** Nothing further.

5 **THE COURT:** Thank you.

6 Is this witness excused for all
7 purposes, or is she on call?

8 **MS. WILLIAMS:** On call, please.

9 **THE COURT:** All right. Thank you.

10 It just kind of means don't leave town
11 in case we need you back. That doesn't include the
12 weekends, of course. Thank you so much.

13 **THE WITNESS:** You're welcome.

14 **(Witness released)**

15 **MS. BYRNE:** The State calls Deputy
16 Lerma.

17 **THE COURT:** Thank you.

18 **THE BAILIFF:** Judge, this witness has
19 been sworn.

20 **THE COURT:** Thank you.

21 Come on up, Deputy. And you may have
22 a seat on the witness stand.

23

24

25

1 A. We all wanted to help the Fishers.

2 Q. And that would include you, wouldn't it,
3 Ms. Otte?

4 A. Yes, it did.

5 Q. And you had -- you saw some pretty serious
6 symptoms that you testified to earlier. Why did you
7 tell -- only tell Officer McClure that you noticed a
8 bruise on the left side of the baby's face and that
9 his eyes looked glassy and unfocused and that he was
10 twitching like being startled?

11 A. Why did I?

12 **THE COURT:** Excuse me. That is really
13 a long, multifarious question.

14 **MS. WILLIAMS:** I'm sorry.

15 **THE COURT:** I am going to ask that you
16 break it down. Let's have --

17 **MS. WILLIAMS:** Break it down.

18 **THE COURT:** Let's have shorter
19 questions, please.

20 **MS. WILLIAMS:** Thank you.

21 Q. **(BY MS. WILLIAMS)** Without going into what
22 anyone said, specifically did anyone at the school
23 indicate to you that they saw the baby twitching like
24 he was being startled?

25 A. Yes.

1 A. I don't -- I don't remember if I told him
2 or not, but that is what he told me.

3 Q. That is what he told you?

4 A. That is what Mr. Fisher had told me.

5 Q. And that would be very important, wouldn't
6 it, in a child injury case for the law enforce --
7 enforcement officers to know about?

8 A. Ma'am, I really was not thinking -- when he
9 talked to me over the phone, I wasn't thinking about
10 everything. All I know is what I can tell you
11 happened that day. And I looked back on it, and I
12 think I should have questioned --

13 **MS. WILLIAMS:** Objection --

14 **THE COURT:** Ma'am, excuse me.

15 **MS. WILLIAMS:** -- narrative.

16 **THE COURT:** You have to wait for the
17 next question.

18 **THE WITNESS:** Oh, I'm sorry.

19 **THE COURT:** Thank you.

20 Q. **(BY MS. WILLIAMS)** Of course, this was
21 upsetting to you and you wanted to help him and you
22 had been wanting to help for quite some time; is that
23 correct?

24 A. Wanting to help who?

25 Q. The Fisher family?

1 what I could do with this baby.

2 Q. Would it be correct to say that you did not
3 believe that this baby needed to go to the hospital
4 right at that moment when you first saw the baby?

5 A. Honestly, I am not a medical expert. I'm
6 just a parent and a grandparent, and the experience I
7 have is what I know about my babies. I did not know
8 how sick the baby was or could have been. All I know
9 is that I did not want to give that baby back.

10 Q. Now, how many law enforcement officers do
11 you recall speaking with?

12 A. I recall speaking with one. His name was
13 Sergeant McClure. And he had called me and talked to
14 me over the phone.

15 Q. Okay. And he talked to you on March the
16 4th, 2013?

17 A. I guess. It was after the case, after the
18 situation.

19 Q. After February --

20 A. Right.

21 Q. -- the 8th?

22 Now, is it correct that you never told
23 him in your recorded statement on March the 4th that
24 Mr. Fisher supposedly said the baby rolled off the
25 bed, did you?

1 stroller, and I held Josiah.

2 Q. Okay. So, you did not pass Josiah around?

3 A. No, I did not.

4 Q. Okay. And the baby, you -- the reason you
5 knew that Mr. Fisher and his family -- his children
6 were there was because of the crying?

7 A. Yes. And I also heard him talking loudly,
8 that he was upset because Lex was going to be marked
9 absent; and he might as well just leave because he
10 needed to go to work.

11 Q. Now, on February the 8th, did you talk with
12 any law enforcement officers in person?

13 A. No, I did not.

14 Q. Okay. Did you talk with any law
15 enforcement officers by phone on February the 8th?

16 A. No, I did not.

17 Q. Okay. Who did you tell -- if I understood
18 your testimony correctly, who did you tell to call
19 the police or to call an ambulance or --

20 A. I didn't tell anybody to do anything. I
21 was -- I was just concerned about the baby. There
22 were other people around, I know, that were off
23 calling CPS and trying to reach Ms. Hansen. I was
24 just trying to keep the baby and have as many people
25 as I could see the baby and give me an answer as to

1 carpool line the day that I told you it had had the
2 dirty diaper, that was a hungry, scary cry. The
3 other time that I saw -- heard the baby at CITGO, it
4 was just a cry. It could have been a hungry cry.

5 Q. Okay. Now, were you the -- on February the
6 8th, you were the first one to see Mr. Fisher and Lex
7 and baby Josiah?

8 A. No, I was not. The receptionist that
9 checks the parents and students in, she was the first
10 one.

11 Q. Okay. Who -- was she actually in the
12 presence of Mr. Fisher and his children?

13 A. Yes. She was behind the desk.

14 Q. Okay. And so, when you went out, was
15 anyone else there from the school that was in
16 Mr. Fisher's presence?

17 A. I know there was another employee that I
18 work with in the work room, and I -- to be honest
19 with you, there was a parent checking her child in.
20 As far as how many other people were in there, I was
21 not really paying attention to who was around.

22 Q. And other people besides yourself picked up
23 Josiah; is that correct?

24 A. Not that I'm aware of. I was the one that
25 had asked permission to pick up Josiah out of the

1 A. Yes, ma'am.

2 Q. And was this on the school campus or
3 someplace else?

4 A. This was off the campus. This was at the
5 CITGO gas station.

6 Q. Okay. And the third time you saw him was
7 in the carpool again?

8 A. Yes, but he was not in his car. He was
9 walking with Lex and the baby.

10 Q. Did you get a better look at the baby on
11 that occasion?

12 A. Yes, I did.

13 Q. And the baby was crying on that occasion?

14 A. Yes, he was.

15 Q. Did you have a clue as to why the baby was
16 crying on either of the two occasions you just spoke
17 to me about?

18 A. I have no clue because I am not a doctor or
19 a nurse. I'm just a mother and a grandmother, and I
20 saw the baby crying. I don't know. It could have
21 been hungry, tired, could have been just about
22 anything.

23 Q. Was it a normal cry, in your opinion, based
24 on your motherly and grandmotherly experience?

25 A. When I saw the baby in the stroller in the

1 you saw him?

2 A. The second time I saw him, he was working
3 on his truck. I guess it was broken down because he
4 had the hood up and he was trying to work on
5 something in the engine.

6 Q. And he actually pulled the baby -- did he
7 pull -- no. I think you said he didn't pull the baby
8 out of the truck. Did I understand correctly?

9 A. Yes, that's correct. He did not pull the
10 baby out of the truck.

11 Q. Okay. You just -- did you go to the
12 window -- the driver's window and look at the baby?

13 A. No, I did not. I told you, I'm sorry, that
14 I had heard the baby from the -- the side of my car,
15 and I did not approach the baby. I could see the
16 baby in the car seat; but, no, I did not approach the
17 baby.

18 Q. Did you -- and you said if -- you said that
19 you heard the baby crying the very first time you saw
20 this baby, the very first time you saw Josiah in the
21 carpool?

22 A. No, he was not crying.

23 Q. Not crying?

24 A. Not crying.

25 Q. But the second time he was crying?

1 5-year-old, and we were all concerned with trying to
2 help him.

3 Q. In other words, you felt that it would be a
4 pretty big task for him?

5 A. Him and anybody else.

6 Q. Okay. Now, I wasn't quite sure that I
7 understood where you saw him. First time it was at
8 the carpool?

9 A. Yes.

10 Q. And what is a carpool?

11 A. A mess. It's -- the carpool line is where
12 all the parents drive their children through the back
13 of the school, and aids and students -- actually,
14 more aids -- open the car doors and make sure that
15 the flow goes and the kids can get to the class
16 safely.

17 Q. The first time you saw the baby, were you
18 getting Lex out of the vehicle --

19 A. Yes.

20 Q. -- to go to school?

21 And you know -- you don't remember
22 exactly what date that was, do you?

23 A. No. I can't swear about what day it was.

24 Q. And the second time was his truck broke
25 down, or was he working on his truck the second time

1 A. Absolutely not.

2 MS. BYRNE: I pass the witness.

3 THE COURT: Thank you.

4 MS. WILLIAMS: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 Q. (BY MS. WILLIAMS) Good morning, Ms. Otte.
7 My name is Clyde Williams, and I think this is the
8 first day that we have had an opportunity to meet; is
9 that correct?

10 A. Yes.

11 Q. And were you here yesterday?

12 A. Yes.

13 Q. With the other witnesses, Ms. Hansen,
14 Mr. and Mr. Dickerson?

15 A. I know Ms. Hansen's name. I'm not aware of
16 the other names. But, yes, I was.

17 Q. Okay. Would it be true that you -- have
18 you -- has your school helped other families like you
19 have with the Fisher family?

20 A. Yes.

21 Q. And knowing that Ms. Shows was in jail, you
22 were concerned about the baby to begin with after you
23 found out that it was born while she was in jail;
24 isn't that true?

25 A. Yes. We knew he was a single father with a

1 guess?

2 A. They -- I had to go, and they -- as far as
3 I know, they went out. And I don't know. Maybe
4 Ms. Hansen or someone else may have talked to them,
5 but I had -- I was very, very upset.

6 Q. And did you voice your concerns?

7 A. Yes, I did.

8 Q. And do you know whether or not the police
9 were called?

10 **MS. WILLIAMS:** Objection to hearsay.

11 **THE COURT:** Sustained.

12 Q. **(BY MS. BYRNE)** Were the police called?

13 A. Yes.

14 Q. Did an officer at some point respond to the
15 school?

16 A. Yes.

17 Q. Did you ever see the baby after that?

18 A. No.

19 Q. At that point in time, with everything that
20 you had observed and seen and your interactions with
21 the defendant and the baby, what was your biggest
22 concern?

23 A. The health of the baby.

24 Q. Did you feel good about letting the baby
25 leave?

1 A. I was -- I don't have that. I mean, I'm an
2 employee. I'm not an administrator.

3 Q. Did you return the baby to the defendant?

4 A. Yes. But, first, I took the baby into the
5 principal's office with another person who was our
6 case worker, thinking --

7 Q. And what did you do when you took the baby
8 to the principal's office?

9 A. I went into the principal's office, and I
10 undid -- the baby had a pretty little gown on, and I
11 undid it to check. I really wanted to check to see
12 if the diaper was that yellow color, and the baby was
13 very clean.

14 Q. Okay. So, his diaper was okay?

15 A. The woman had told me he looked dehydrated
16 but he was very clean.

17 Q. Did you take the gown all the way off?

18 A. No, I did not.

19 Q. Okay. So, did you inspect the baby's arms
20 and extremities?

21 A. No, I did not.

22 Q. Okay. When you returned the baby to the
23 defendant, where did he go?

24 A. The baby?

25 Q. I'm sorry. Where did they both go, I

1 A. Very calm. Very calm.

2 Q. Did he appear concerned when you were
3 pointing -- asking these questions?

4 A. No.

5 Q. What was the feeling that you got when you
6 were asking to keep the baby?

7 A. Truly, I felt that he wanted us to keep the
8 baby, that he really wanted us to keep the baby at
9 school.

10 Q. Okay. What was his appearance on that
11 date, if you know, if you noticed anything?

12 A. I didn't really pay attention. Usually he
13 would come in and he would be very, very dirty but
14 that was just because he worked and no one ever
15 really wanted to judge that.

16 Q. Right. Now, what did you do as you were
17 holding the baby kind of going around person to
18 person?

19 A. Asking them what could I do, what could we
20 do with this baby with the mark on his head and --

21 Q. What did you want to do with the baby?

22 A. I wanted to keep the baby and call the
23 police or call an ambulance, but I don't have that
24 authority to do that.

25 Q. The authority to keep the baby, you mean?

1 This witness is labeling this, she is not qualified
2 to know what's happening to the baby.

3 **THE COURT:** Sustained. Can you
4 rephrase, please?

5 **Q.** (**BY MS. BYRNE**) What -- what did you think
6 was happening when the baby was jerking and his eyes
7 were rolling back?

8 **A.** I had no idea. I just knew that something
9 wasn't right.

10 **Q.** Okay. Now, on normal occasions when you
11 interacted with the defendant, would there -- would
12 they be brief or long?

13 **A.** Brief.

14 **Q.** Was this occasion different?

15 **A.** Yes.

16 **Q.** Okay. What kind of things were you saying
17 or asking the defendant about the baby?

18 **A.** I asked him if we could keep the baby there
19 and he could go to work.

20 **Q.** And what did he say?

21 **A.** Yes.

22 **Q.** How was his demeanor as you are asking
23 about the baby, what's wrong, you know, where the
24 bruise come from, things like that? What was his
25 demeanor?

1 Q. Why?

2 A. Because I wanted them to see the condition
3 of the baby.

4 Q. What were your concerns?

5 A. I was concerned that there was something
6 wrong with the baby.

7 Q. While -- did you pass the baby around? Did
8 anybody else hold the baby?

9 A. I didn't pass the baby around. I kept the
10 baby in my arms, and I wanted everybody to see the
11 baby. So, I actually said: Look, everybody. Look
12 at this beautiful baby. And I went to the nurse's
13 office. I was trying to get some help from someone
14 in the office.

15 Q. While you were holding the baby, did
16 anything occur with his eyes?

17 A. The baby's eyes just kind of rolled back in
18 his head, and he start -- and he just kept doing this
19 startling motion as if he was asleep.

20 Q. Okay. Now, do you have any medical
21 training?

22 A. CPS and first aid.

23 Q. Okay. Did you know what was happening to
24 the baby, or were you just concerned by what you saw?

25 **MS. WILLIAMS:** Object -- objection.

1 A. No, she was not.

2 Q. Okay. When you asked him, what
3 specifically did you ask the defendant about the
4 bruise that you saw?

5 A. Well, I acted like I wasn't shocked and I
6 looked at him and I asked him what had happened to
7 the baby. And he told me that it had rolled off the
8 bed. He thought it had rolled off the bed.

9 **THE DEFENDANT:** That's not --

10 Q. **(BY MS. BYRNE)** What do you mean you were
11 acting like you weren't shocked?

12 A. Well, I didn't really know what to do and I
13 wanted everybody to see the baby and so I was --

14 Q. What do you mean you wanted everybody to
15 see the baby?

16 A. Well, I had the baby in my arms; and the
17 baby was not right. And so, I looked at him; and I
18 said: What happened to the baby?

19 **MS. WILLIAMS:** Objection. It's
20 previously in evidence.

21 **THE COURT:** Overruled.

22 Q. **(BY MS. BYRNE)** What do you mean you wanted
23 everybody to see the baby?

24 A. I wanted all of the people that were in the
25 office to see the baby.

1 in the stroller that day and it was screaming, I
2 never -- I never really got that close to see how the
3 eyes were and all that.

4 Q. Okay. So, when you picked up the baby,
5 what -- what happened as you were holding the baby?

6 A. I picked up the baby and I was sitting in
7 the chair and I had the baby in my hand, in my arms,
8 and Mr. Fisher was standing right here by the wall.
9 And I looked at the baby, and I noticed that there
10 was a bruise on the side of the baby's head.

11 Q. If you recall, where do you remember seeing
12 the bruise?

13 A. I had the baby like this (indicating.) So,
14 I recall it was on the left side when I was holding
15 the baby.

16 Q. Okay. And what -- did you comment about
17 that? What did you say as you observed this bruise?

18 A. Yes, I commented. I asked him what had
19 happened.

20 **MS. BYRNE:** May I approach, Judge?

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

22 Q. **(BY MS. BYRNE)** Okay. At this point in
23 time, who all was present in the front office area --
24 or I guess I should ask: Was Angela Hansen present
25 at the time -- at this point in time?

1 it?

2 A. In the stroller.

3 Q. And when you asked to hold it, what was the
4 defendant's reaction?

5 A. Yes.

6 Q. So, what did you do?

7 A. I picked the baby up.

8 Q. When you picked the baby up, what did you
9 observe?

10 A. When I picked the baby up, the baby moved
11 as if startled, like when you wake up a baby and it
12 sort of shakes a little bit. And then I picked him
13 up, and I noticed he had scratches on his eyes and
14 scratches on his nose.

15 Q. Okay. Now, what else did you observe about
16 the baby?

17 A. I observed that the baby's eyes were kind
18 of glossy and just his head was kind of -- I mean,
19 it's hard to explain; but he looked like he was just
20 out of it, not -- not looking around, not coherent.

21 Q. Now, any time that you had seen the baby
22 prior to that, regardless of whether it was clean or
23 not, did the baby ever have that appearance as far as
24 the eyes and things like that?

25 A. No. But to be honest, when I saw the baby

1 Q. Okay. And what did you start to talk to
2 him about?

3 A. I said: Well, why don't you leave Lex
4 here; and even though he is marked absent, he can at
5 least still come to school. And then I asked to see
6 the baby, and he let me hold the baby.

7 **MS. WILLIAMS:** Objection, Your Honor,
8 can -- to the narrative.

9 **THE COURT:** Sustained.

10 Q. **(BY MS. BYRNE)** Now, you mentioned that
11 earlier that week, the baby appeared, I guess,
12 unclean. In regards to cleanliness, how was the baby
13 on Friday?

14 A. The baby was very clean.

15 Q. Did you ask to see the baby, or how did
16 that come about?

17 A. I asked if I could hold the baby.

18 Q. And when you -- you said you heard the
19 baby, what did you hear about the baby? How did you
20 hear?

21 A. I don't understand.

22 Q. You said you heard the baby come in. What
23 you did you hear?

24 A. I heard the baby crying.

25 Q. Where was the baby when you asked to hold

1 A. A few little scratches, but a lot of babies
2 get those when -- you know, I didn't really pay much
3 attention to that.

4 Q. Okay. Was that the last time you saw the
5 baby before Friday, February 8th?

6 A. Yes.

7 Q. I want to talk to you about Friday,
8 February 8, 2013. Where were you that day?

9 A. I was in the office at Ehrhardt.

10 Q. Approximately what time was it that you
11 came into contact with the defendant?

12 A. I want to say 10:00ish -- after 10:00
13 because the tardy bell had rang and Lex was going to
14 be marked absent.

15 Q. Describe that. What was the defendant
16 saying?

17 A. I was in the office in the work room which
18 is attached to the office. And I heard them come in
19 and I heard the baby and I heard the receptionist
20 talk to Mr. Fisher, saying that Lex was going to be
21 late -- marked absent.

22 And Mr. Fisher had said: Well, we
23 might -- I might as well just take him out because he
24 is already marked absent, and I need to go to work.
25 And that's when I came out and talked to him.

1 baby at the beginning of that next week? So, I guess
2 that would be the week of February 4, 2013?

3 A. Yes.

4 Q. How did you come into contact with the
5 baby? Where did you see it?

6 A. They were walking -- I think he was walking
7 Lex to school and he had the baby in a stroller and
8 the baby was crying.

9 Q. How did the baby appear?

10 A. Awful.

11 Q. And what do you mean by awful?

12 A. The baby was strapped in, a T-shirt on and
13 a diaper, and was crying, screaming and crying. And
14 the diaper was a real yellow mustard color.

15 Q. Now, although you described the baby as
16 awful at that time, did you have any -- did you
17 observe anything abnormal about the baby and the way
18 it was moving or about its eyes or face or anything
19 like that?

20 A. The baby -- all I could picture was almost
21 a rat, and it was very red because it had been
22 screaming and dirty. Very, very dirty. The nose was
23 dirty, the ears were dirty, just dirty.

24 Q. Now, you didn't observe any bruising or
25 anything like that?

1 question.

2 **THE WITNESS:** I'm sorry. I'm really
3 nervous.

4 **THE COURT:** It's not a problem. You
5 wouldn't know that unless you have testified before.

6 **THE WITNESS:** Okay.

7 **Q. (BY MS. BYRNE)** What -- how did Mr. -- how
8 did the defendant respond to you when you made an
9 offer of help?

10 **A.** I got this.

11 **Q.** Did he appear to be interacting with or
12 soothing the baby?

13 **A.** No.

14 **Q.** And when you say the baby was crying, I
15 mean -- I mean, babies do fuss and cry. I mean, how
16 would you describe it?

17 **A.** The baby was crying loud enough for me to
18 hear the baby, and I was standing at my car.

19 **Q.** Now, I believe you have mentioned there was
20 another time that you saw the baby again in the
21 carpool line. Do you recall when that was?

22 **A.** That was I want to say maybe the Tuesday
23 that next week.

24 **Q.** Okay. Now, describe how you saw the
25 baby -- or how did you come into contact with the

1 witness has identified the defendant?

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

3 **(Defendant Identified)**

4 **Q.** **(BY MS. BYRNE)** Do you recall which day this
5 was or just sometime, I guess, in that week time
6 period?

7 **A.** I -- I'm -- I think -- this is where I get
8 confused. It was either that Friday, or it was -- it
9 wasn't the same day that I had seen the baby.

10 **Q.** Okay.

11 **A.** It was either that Friday or the next
12 Monday. But I was concerned.

13 **Q.** You mentioned that while the baby was in
14 the back of the car he was crying?

15 **A.** He was crying. He wasn't in the back of
16 the car. It's a two -- it's old, old, gray Ford or
17 Chevy truck; and the baby was in the center where the
18 console would be, kind of in the car seat like this
19 (indicating.) And the baby was crying and I had
20 asked him if he needed anything and he said --

21 **MS. WILLIAMS:** Objection to the
22 narrative.

23 **THE COURT:** You can just answer in a
24 sentence or two, not a paragraph. And so, after you
25 give a short answer, you have to wait for the next

1 the school as a whole.

2 Q. Okay. Now, I want to talk about one of the
3 next times that you saw the baby. When was the next
4 time you saw baby?

5 A. The next time I saw the baby, I was -- I
6 live in the neighborhood and I was running home for
7 something and I saw the truck was at this little
8 local CITGO gas station, which is right in our
9 neighborhood, and the truck -- hood of his car was up
10 and I could hear the baby crying and I had stopped
11 and said: Is everything okay? Is there anything you
12 need?

13 And he said: Yeah, I got it. I got
14 it. I --

15 Q. When you say "he," who are you talking
16 about?

17 A. I'm talking about Timothy.

18 Q. And do you see Timothy in the courtroom
19 today?

20 A. Yes, I do.

21 Q. Can you point to him and identify something
22 he is wearing?

23 A. He is right here, and he is wearing a blue
24 shirt (indicating.)

25 **MS. BYRNE:** May the record reflect the

1 Friday. So, it would have had to have been about
2 approximately a week before Friday, February 8th?

3 A. Possibly. It might -- you know, I don't
4 want to say exactly. It might have been a Thursday,
5 but I -- I know the baby was -- he had just brought
6 the baby home.

7 Q. Describe how the baby was the first time
8 you saw him.

9 A. Beautiful. Beautiful. All I could
10 describe and told everyone is it looked like an
11 angel. Just a beautiful baby.

12 Q. How long would you say that you observed
13 the baby that first time that it was in the carpool
14 line?

15 A. I don't know. Maybe five minutes. He
16 pulled over. So, you know, pulled up. He was in his
17 truck and he pulled up and let Lex out and we got to
18 see the baby and -- you know, I got to see the baby;
19 and I was very excited.

20 Q. At that time did you have a bunch of
21 interaction with Mr. Fisher, or was it just you were
22 looking at the baby in a brief encounter?

23 A. I talked to him, told him if there was
24 anything he needed, we were all there for him and
25 please let us know. I'm sorry. I was talking about

1 Q. And that wasn't out of the ordinary in the
2 roles that you play?

3 A. No. I saw them quite a bit.

4 Q. Now, at some point were you aware that
5 Tegan Shows, the mother of Lexicon, was in custody
6 somewhere else?

7 A. Yes. I was told by Lex.

8 Q. Did you also learn that Lex's baby brother,
9 Josiah Fisher, had been born?

10 A. Yes.

11 Q. Now, I want to talk to you about the baby.
12 On how many occasions do you recall seeing the baby?

13 A. I would say approximately maybe five times.

14 Q. Let's go through some of those times. What
15 do you remember -- or if you recall, when was the
16 first time you saw the baby?

17 A. I saw the baby the first time when the
18 father went through the carpool line and was bringing
19 Lex to school.

20 Q. Do you recall the specific date or just
21 have an idea?

22 A. I want to think this was, like, a Friday
23 but we were all excited because we felt a part of
24 this whole thing and I was excited to see the baby.

25 Q. And the very first -- you think it was a

1 California.

2 Q. What are -- when you say the carpool line
3 and lunch room, what are your typical -- where is
4 your office at? Where are you mostly spending your
5 time?

6 A. I spend mostly all over the school. I'm
7 sort of actually the little gopher-type person. I
8 run the copies. And we also have cafeteria duty,
9 which is all the students come in; and we just make
10 sure that they sit down and do their things.

11 And then, also, I do carpool duty,
12 which is I greet the kids in the morning and let them
13 in and make sure they get to class.

14 Q. In your capacity at Ehrhardt Elementary, do
15 you have a lot of contact with the students and their
16 parents as they are coming and going from school?

17 A. All day long.

18 Q. Now, I want to talk to you about the
19 beginning of February, 2013. Did you know of or were
20 you familiar with a student named Lex Acosta?

21 A. Yes.

22 Q. And had you seen his mother and his
23 stepfather on various occasions, I guess, since he
24 had been going to the school?

25 A. Yes.

1 Elementary?

2 A. I work in the workroom and I do cafeteria
3 duty and carpool duty, just about everything they ask
4 me to do.

5 Q. Are you -- what is your actual job title?

6 A. Workroom aid.

7 Q. Are you a parent or, I guess, a caregiver
8 of a student that attends Ehrhardt Elementary?

9 A. Yes, I am.

10 Q. And how old is that person?

11 A. Six years old.

12 Q. So, are you -- is it a voluntary position
13 or actually employed by the school?

14 A. I'm employed by the school.

15 Q. Okay. And how long have you been doing
16 that?

17 A. About 15 years.

18 Q. At the same school or --

19 A. Yes. You mean how long have I been a
20 caretaker of the 6-year-old or how long --

21 Q. No.

22 A. I'm --

23 Q. Obviously not 15 years. How long have you
24 been working at Ehrhardt Elementary?

25 A. Fifteen years, since we moved from

1 **THE COURT:** We're a little late
2 starting because we had to resolve some legal issues
3 before you came out. So, I think now we're ready.
4 We're good to go.

5 And would you call your witness for
6 the record, please.

7 **MS. BYRNE:** State calls Kathy Otte.

8 **THE COURT:** Thank you. And, Ms. Otte
9 took the oath yesterday.

10 Thank you. You may proceed.

11 **KATHY OTTE,**

12 having been first duly sworn, testified as follows:

13 **DIRECT EXAMINATION**

14 **Q.** **(BY MS. BYRNE)** Ms. Otte, would you please
15 introduce yourself to the jury?

16 A. My name is Kathy Otte.

17 **Q.** What part of town do you live in?

18 A. I live in Spring, Texas.

19 **Q.** How long have you lived in the area?

20 A. About 15 years.

21 **Q.** How are you employed, or where do you work?

22 A. Several places. I work at Ehrhardt
23 Elementary. I worked there for 15 years. I also
24 work at H-E-B.

25 **Q.** And what is it that you do at Ehrhardt

1 **THE COURT:** Right. So, the
2 polygrapher translated -- or spoke Spanish, and he
3 translated it?

4 **MS. BYRNE:** Yes. She was polygraphed
5 in Spanish.

6 **THE COURT:** Okay. So, if you have got
7 everything, except the short two-minute statement --
8 so, she will get you a copy, if that's all right.

9 **MS. WILLIAMS:** Okay.

10 **THE COURT:** And then you can get
11 somebody to work on that.

12 **MS. WILLIAMS:** Thank you.

13 **THE COURT:** Okay. But we only pay
14 \$40. I guess the interpreter charges 75 an hour.
15 So, whatever is the going rate, if you want to use a
16 certified court interpreter.

17 **MS. WILLIAMS:** Yes.

18 **THE COURT:** Okay. Thank you.
19 All right. We're ready for the jury.
20 Have you taken the oath?

21 **THE WITNESS:** Yes, ma'am.

22 **THE COURT:** Thank you. Please have a
23 seat.

24 Good morning, jurors. Welcome back.

25 **GROUP RESPONSE:** Good morning.

1 something on that.

2 **THE COURT:** Okay. You don't speak
3 Spanish, do you, Ms. Byrne?

4 **MS. DAVIS:** No. I had somebody else
5 listen to it and help me understand what was on there
6 and my work product. I mean, I don't -- you want my
7 rough notes? Because I can't say that they are --

8 **THE COURT:** Accurate. Well, I think
9 just so this isn't an issue down the road, a Motion
10 for New Trial or something, I think the safest course
11 of action would be just to give her a copy of that
12 short two-minute statement. And if you need money
13 for somebody to translate it, then --

14 **MS. WILLIAMS:** Yes, Your Honor.

15 **THE COURT:** -- the Court will grant
16 that. And, apparently, the longer recorded
17 statement, everybody has a transcript of.

18 **MS. WILLIAMS:** Yes, that's correct.

19 **THE COURT:** And that was provided by
20 HPD --

21 **MS. WILLIAMS:** Well --

22 **THE COURT:** -- or sheriff's office, I
23 guess?

24 **MS. BYRNE:** It was the -- it was the
25 polygrapher's report.

1 English by a police officer, but I haven't seen any
2 notes about what a Spanish-speaking person
3 transcribed.

4 **THE COURT:** I take it it's not a real
5 reliable statement since she speaks so little English
6 and she was questioned in English, right?

7 **MS. BYRNE:** I think the problem is --
8 I mean, you can listen to what she is saying; but the
9 officer who is interviewing her, he is picking up
10 some of what she is saying. But he didn't interview
11 her in Spanish or have somebody that spoke Spanish
12 come interview her. So, it's just a very brief
13 interview because he wasn't really able to
14 communicate very effectively with her.

15 **THE COURT:** Those are the ones you
16 were referring yesterday when you were talking --

17 **MS. BYRNE:** Yes.

18 **THE COURT:** -- about transcription?

19 So, do you want a copy of that,
20 Ms. Williams?

21 **MS. WILLIAMS:** If there is anything
22 additional --

23 **THE COURT:** Okay.

24 **MS. WILLIAMS:** -- besides what's in
25 the offense report, yes, I would like notes or