

1 will give you the oath.

2 (Witness Duly Sworn)

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

5 MARCELLA DONARUMA,

6 having been first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 Q. (BY MS. BYRNE) Could you please introduce
9 yourself to the jury?

10 A. Good morning. No, good afternoon. My name
11 is Marcella Donaruma.

12 Q. How are you employed?

13 A. I work for Baylor College of Medicine and
14 Texas Children's Hospital.

15 Q. And what is your title or your job over at
16 Texas Children's Hospital and Baylor College of
17 Medicine?

18 A. I am the assistant professor of pediatrics,
19 I am the fellowship director for the child abuse
20 pediatrics program, and I am the child abuse
21 pediatrician.

22 Q. Can you tell us about your background and
23 training and your education that lead you to become a
24 medical doctor and pediatric child abuse doctor?

25 A. Yes. I went to undergraduate at Texas A&M,

1 just up the road; and then I went to Baylor College
2 of Medicine for my medical school training. And then
3 I went away to St. Louis at Washington University and
4 St. Louis Children's Hospital for pediatrics
5 internship and pediatric residency. I was asked to
6 stay and be chief resident. So, I did.

7 And then after that year, I was a --
8 at that time it was called child abuse and child
9 protection and forensic pediatrics fellow. And then
10 after my fellowship, I came here in 2006.

11 Q. So, you have been in your current position
12 for a little under 10 years?

13 A. That's right. It will be eight, I think,
14 in July.

15 Q. Okay. In addition to your fellowship
16 training and your degrees and school, what other
17 educational background and training do you have in
18 the field of -- I don't want to say it wrong. Is it
19 child abuse pediatrician?

20 A. Yes, ma'am.

21 Q. Okay.

22 A. So, I have done my pediatric board. So, I
23 sat for my boards, passed my boards first time
24 around. And then the American Board of Pediatrics
25 recognized child abuse pediatrics as a subspecialty.

1 **MS. WILLIAMS:** Objection,
2 nonresponsive.

3 **THE COURT:** Sustained. Just answer in
4 a sentence or two, and then you have to wait for the
5 next question. Thank you, Doctor.

6 **THE WITNESS:** Okay.

7 **Q.** **(BY MS. BYRNE)** What other additional
8 training in the area have you had?

9 **A.** I have -- I am board certified in the
10 subspecialty of child abuse pediatrics in the first
11 round of those boards that were offered.

12 **Q.** And is child abuse pediatrics a recognized
13 science in the medical community?

14 **A.** Yes, it's a recognized subspecialty.

15 **Q.** Okay. Do you also teach in this area?

16 **A.** Yes, I do.

17 **Q.** Can you give us some examples of that?

18 **A.** Oh, yes. I'm a fellowship director. So,
19 I'm training new pediatricians in my field. I teach
20 residents in pediatrics, pediatrics -- in emergency
21 medicine and in family practice and in gynecology. I
22 teach other medical students from Baylor and other
23 medical schools -- what else -- firefighters, nurses,
24 Child Protective Services workers. I probably give
25 between two and four lectures a month, plus clinical

1 training.

2 Q. And without going into naming all of them,
3 have you published articles in this area?

4 A. Yes, a couple. Yes, ma'am.

5 Q. Okay. Do you belong to professional
6 organizations in this field?

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

8 Q. Okay. Few or many?

9 A. I guess it is many. Probably more than
10 three.

11 Q. Okay. Have you ever testified as an expert
12 witness in the area of child abuse pediatrics?

13 A. Yes, ma'am, I have.

14 Q. Would that be on few or many occasions?

15 A. Many. This is my 50th subpoena, I think,
16 for the year.

17 Q. And would that include expert testimony in
18 Harris County, Texas?

19 A. Yes.

20 Q. Okay. Now, what exactly is, generally,
21 child abuse pediatrics?

22 A. So, child abuse pediatrics is a branch of
23 pediatrics that is devoted to the assessment of
24 children who are suspected victims of child
25 maltreatment in the form of physical abuse, sexual

1 abuse, neglect, or medical child abuse, and also
2 addressing advocacy to help prevent the situations.

3 **MS. WILLIAMS:** Judge, I --

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

5 **MS. WILLIAMS:** I hate to interrupt,
6 but I'm having trouble hearing the witness.

7 **THE COURT:** You have kind of a soft
8 voice. Is the microphone on? Can you --

9 **THE WITNESS:** I also have a little
10 laryngitis, Your Honor.

11 **THE COURT:** Okay. Do you need some
12 water or anything?

13 **THE WITNESS:** That would be so great.

14 **THE COURT:** So, we will see if someone
15 can get her some water.

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

17 **THE WITNESS:** This is about as close
18 as -- okay. I will do my best, Your Honor.

19 **THE COURT:** Okay.

20 **Q. (BY MS. BYRNE)** A child abuse pediatric,
21 what are you normally doing day in and day out at the
22 hospital?

23 **A.** My time is divided in half. I spend half
24 my time doing inpatient consults, which means in the
25 hospital. When children are sleeping in the hospital

1 or the emergency room, they call me with questions;
2 and I come see patients who are inpatient. And then
3 also we have an outpatient clinic. So, people walk
4 in and then walk home to be assessed.

5 The other half of the time I spend at
6 the Children's Assessment Center of Houston, where I
7 see only suspected victims of sexual abuse.

8 Q. Have you seen a patient known to you as
9 Josiah Fisher?

10 A. Yes, ma'am, I have.

11 Q. Okay. And when did you see Josiah Fisher?

12 A. I saw him on March 28, 2013.

13 Q. In addition to personally evaluating Josiah
14 Fisher, have you reviewed all of the medical records
15 from Texas Children's Hospital in regards to Josiah?

16 A. Yes, ma'am.

17 Q. Okay. And have you also reviewed medical
18 records from the University of Texas Medical Branch
19 in Galveston?

20 A. Yes, ma'am.

21 Q. Okay. Have you consulted with neurologists
22 and neurosurgeons that have treated Josiah?

23 A. Yes, ma'am. I specifically consulted with
24 the neurosurgeons. I don't remember if I spoke to a
25 neurologist or not a year ago.

1 **Q.** Okay. Have you also reviewed birth records
2 from Conroe Regional Medical Hospital personal to
3 Josiah Fisher and his mother, Tegan Shows?

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

5 **Q.** In addition, have you reviewed medical
6 records from the Montgomery County Jail involving his
7 mother, Tegan Shows?

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

9 **MS. BYRNE:** At this time I would offer
10 State's Exhibits 63, 64, 65, 66, 66A, 66B, 67, 69,
11 70, 71, and 72 into evidence. All have been on file
12 prior to trial with business records affidavit. And
13 I tender to Defense for inspection.

14 **MS. WILLIAMS:** I had an opportunity to
15 review them. I have no objection to them being
16 admitted.

17 **THE COURT:** Thank you. May I see
18 counsel at the bench?

19 **(At the Bench)**

20 **THE COURT:** Are there some redactions?

21 **MS. BYRNE:** They have been made; and I
22 discussed them with Ms. Williams this morning, yes.

23 **THE COURT:** Do I need to instruct the
24 jury about that?

25 **MS. WILLIAMS:** I'm sorry. I didn't

1 hear.

2 **THE COURT:** Do you want me to tell the
3 jury there are some redactions because the records --

4 **MS. WILLIAMS:** Oh, yes.

5 **THE COURT:** -- contained things that
6 are inadmissible? Is that all right with the State?

7 **MS. BYRNE:** Yes.

8 **THE COURT:** Is that all right with the
9 Defense?

10 **MS. WILLIAMS:** Yes. That you're going
11 to make that statement? Yes.

12 **THE COURT:** What did she say?

13 **MS. BYRNE:** She said that's all right,
14 if that's how you want to do it.

15 **THE COURT:** Okay. Thank you.

16 **(End of Bench Discussion)**

17 **THE COURT:** Thank you. Members of the
18 jury, the medical records contain some information
19 which was not admissible; and so, that information
20 has been redacted. So, I want you to understand when
21 that -- when you see that, that was done by agreement
22 of the parties and order of the Court. Thank you.

23 **Q. (BY MS. BYRNE)** Would you agree with me,
24 Dr. Donaruma, that State's Exhibits 66A and 66B, the
25 record from Texas Children's Hospital, there is over

1 3,000 pages?

2 A. Yes, ma'am. That sounds about right.

3 Q. Okay. And in your personal evaluation and
4 treatment of Josiah and all of his medical records
5 and your consultation with some of the physicians or
6 medical professionals that have treated him, have you
7 been able to form an expert opinion and testify as to
8 the causes of Josiah's injuries from February 8,
9 2013?

10 A. Yes, ma'am.

11 **THE COURT:** Thank you. At this time
12 the law requires us to have a hearing outside your
13 presence. So, I will have to ask that you step back
14 to the jury room.

15 **(Jury released)**

16 **THE COURT:** Thank you. Please have a
17 seat. You may go ahead.

18 **MS. BYRNE:** Your Honor, I would
19 reoffer all of the testimony that this witness has
20 just testified to in regards to how she is employed,
21 how long she has worked there, her training and
22 experience, all of her background and qualifications,
23 and what she does on a day-to-day basis as well as
24 State's Exhibit 74 for purposes of the hearing, this
25 witness' curriculum vitae, that would detail her

1 expertise and experience in order to testify as an
2 expert in this court as to child abuse pediatrics and
3 the patient, Josiah Fisher.

4 **THE COURT:** Thank you. Any objection
5 to 74 as an exhibit outside the presence of the jury?

6 **MS. WILLIAMS:** No, Your Honor.

7 **THE COURT:** That's admitted. And I
8 will write at the top "Do not send to jury."

9 Are you contesting her qualifications,
10 Ms. Williams, or just the opinion --

11 **MS. WILLIAMS:** Your Honor, just --

12 **THE COURT:** Wait. Let me finish my
13 sentence -- and the underlying data? Are you
14 contesting her qualifications?

15 **MS. WILLIAMS:** Just in one area --
16 area, Your Honor.

17 **THE COURT:** All right. Then let's
18 take that up first. Is that all right? We'll do it
19 issue by issue. So --

20 **MS. BYRNE:** I'm not sure.

21 **THE COURT:** Had you finished, or do
22 you have more?

23 **MS. BYRNE:** Well, I'm not sure what
24 particular area she is talking about. So, I wouldn't
25 know which direction to go.

1 **THE COURT:** I was going to say do you
2 want to pass on that issue?

3 **MS. BYRNE:** Pass on that issue.

4 **THE COURT:** Okay. Thank you.

5 **CROSS-EXAMINATION**

6 **Q.** **(BY MS. WILLIAMS)** Dr. Donaruma, my name is
7 Clyde Williams; and I represent Mr. Fisher. And,
8 specifically, you're going to testify as to causation
9 of Josiah Fisher's injuries; is that correct?

10 A. Yes, ma'am.

11 **Q.** And I know that there are medical records
12 that obviously have just been introduced. Did you do
13 any of the imaging in reference to Josiah Fisher?

14 A. Did I --

15 **Q.** Specifically, did you perform --

16 A. Oh, heavens, no.

17 **Q.** -- any of the MRIs or CT scans or x-rays?

18 A. None. That's performed by our diagnostic
19 imaging tech.

20 **THE COURT:** You know what, I can't
21 even hear you.

22 **THE WITNESS:** Really?

23 **MS. WILLIAMS:** I --

24 **THE COURT:** I can --

25 A. That's done by the diagnostic imaging

1 technicians. No doctors perform those studies.

2 Q. (By Ms. Williams) Okay. And the -- are you
3 a radiologist that -- are you an expert in radiology,
4 as well?

5 A. No, I am not a board certified radiologist.

6 Q. Okay. And would you be testifying based on
7 some of the imaging in this case?

8 A. Yes.

9 Q. Okay. And prior to -- prior to the plans
10 for Josiah Fisher to be released from the hospital,
11 you didn't actually treat him?

12 A. That is correct.

13 Q. You're here as a consultant?

14 A. No.

15 Q. Okay.

16 A. I can elaborate, if that's okay.

17 Q. Please.

18 A. I saw him in follow-up clinic. So, I was a
19 physician who was his attending in my outpatient
20 clinic. So, I believe I referred -- took care of him
21 independently after his discharge.

22 Q. No. I think my question, though, dealt
23 with before his discharge.

24 A. I never saw him.

25 Q. And did you personally speak with the

1 radiologists that -- or the radiologist that gave his
2 impressions of the imaging?

3 A. Yes. It is my policy to review side by
4 side all imaging with the attending pediatricians and
5 radiologists of the cases I see.

6 Q. And who was that in this case?

7 A. Oh, beats me. I have to go back and look
8 through the records; but it's my policy in every case
9 of imaging, I always review with a neuro, a
10 N-E-U-R-O -- radiologist.

11 **THE COURT:** You always review what?

12 **THE WITNESS:** In any case with
13 abnormal imaging on head CT, MRI, CT spine, head CT,
14 other cervical spine and I always go down to the
15 department and I review what I think side by side
16 with the attending pediatric neuroradiologist every
17 time it's abnormal. So, I know I do it every time.

18 **THE COURT:** Just so I understand, so
19 there is not a report from the radiologist in the
20 records. It's just an oral conversation you had with
21 the radiologist.

22 **THE WITNESS:** No. There is -- they
23 always generate a report. And I look at the images
24 myself and then I go to them and I discuss the
25 contents of their report, my questions, and

1 perceptions.

2 **THE COURT:** I see. Thank you.

3 **Q.** (BY MS. WILLIAMS) And are -- how many child
4 abuse pediatricians are there in the state of Texas?

5 A. I need to count. I believe there are 11
6 currently in the state of Texas. The new board
7 results just came out, and I haven't checked. So,
8 there is at least 11; and there may be 14 or 15 by
9 now.

10 **Q.** Okay. And this is a new subspecialty, and
11 you are -- is your work funded by the Medicare
12 grant --

13 A. No.

14 **Q.** -- here in Texas?

15 A. No, ma'am, I am not funded by the Medicare
16 grant. My position comes through several
17 institutions donating for me, but Medicare funds
18 other aspects of my program, but not --

19 **Q.** Not you?

20 A. Not me.

21 **Q.** Okay. So, in your training as a child
22 abuse physician, did you study the -- how you
23 determine how much force is used?

24 **THE COURT:** Well, she -- let's see.
25 She hasn't given her opinion yet.

1 **MS. WILLIAMS:** No.

2 **THE COURT:** Why don't -- I wonder if
3 we need to pass her back and find out what the
4 opinion is and what it's based on and then you can
5 have cross.

6 **MS. WILLIAMS:** Thank you.

7 **THE COURT:** Okay.

8 **MS. BYRNE:** Judge, would you like me
9 to go through every single injury and how the force
10 was caused or overall her impressions, her
11 determination of child abuse, and the amount of force
12 used?

13 **THE COURT:** Do you need each
14 individual opinion?

15 **MS. WILLIAMS:** No, Your Honor, I do
16 not.

17 **THE COURT:** Okay.

18 **REDIRECT EXAMINATION**

19 **Q.** **(BY MS. BYRNE)** Overall, can you tell us the
20 trauma that you observed or the categories or types
21 of trauma that you observed on Josiah?

22 **A.** Yes, ma'am. He had abusive head trauma.

23 **Q.** Okay.

24 **A.** He had abusive skeletal trauma, and he had
25 abusive cutaneous trauma.

1 Q. Now, in regards to the abusive head trauma,
2 what are we looking at?

3 A. Okay. So, he had a massive left side skull
4 fracture. Over the top of that, he had a large scalp
5 hematoma. So, a blood collection. Underneath that
6 he had a subdural blood collection that was fresh.
7 So that means under the skull, over the brain, within
8 the lining under the skull. Then he had a
9 subarachnoid blood which was on top of the brain, and
10 then his whole brain was swelling and dying.

11 Q. Okay. Based on your training and
12 experience, are you able to make or, I guess, come to
13 an expert opinion about how those injuries were
14 caused?

15 A. Yes.

16 Q. Okay. And what is that opinion?

17 A. Physical abuse.

18 Q. Okay. And specifically how would that
19 skull fracture have been caused?

20 A. The skull fracture was caused due to blunt
21 force impact of an object to his skull or his skull
22 to an object.

23 Q. Does your training and experience allow you
24 to make an expert opinion about the amount of force
25 that would have had to have been used in order to

1 cause that skull fracture or to equate it to some
2 sort of example that would demonstrate the amount of
3 force necessary to cause that skull fracture?

4 A. Yes.

5 Q. Okay. How -- how do you -- how are you
6 qualified to that, or how do you do that?

7 A. In the course of my experience and
8 training, I am obligated to continue my medical
9 education. I don't get to stop reading once I
10 graduate. And so, I attend yearly conferences,
11 usually more than one; and I am involved in ongoing
12 reading in the area of my subspecialty.

13 So, in the course of doing this
14 reading and attending these conferences, I have read
15 studies and heard speakers discuss these situations.
16 And there are studies of accidental injuries that are
17 witnessed and measured where you can calculate the
18 forces, and they describe the findings under those
19 circumstances.

20 And so, I can say things like in a
21 head-to-head football collision, that force may
22 result in concussions. The child clearly had a
23 concussion. So, he had an equivalent force of a head
24 to head football collision.

25 Q. Okay. In addition to blunt force trauma,

1 what other cause do you have -- what is your other
2 opinion as to how some of Josiah's injuries were
3 caused?

4 A. In addition to the outside of his abusive
5 head trauma, that helped me with that. So, I believe
6 that in addition to the impact that had to have
7 occurred to rupture his skull, he was also subjected
8 to violent whiplashing forces of his head on his neck
9 because of the brain damage that he sustained as well
10 as the injury to the spine in the area of his neck.

11 Q. And how are you able to determine or to
12 give an opinion as to the amount of force that would
13 be necessary in order to cause that whiplash trauma
14 that would lead to those brain injuries that Josiah
15 sustained?

16 A. That whiplash trauma is more difficult to
17 equate to a number or physical activity because it's
18 more rare. And so, I rely on evaluations of people
19 who have described what they are doing and people who
20 were videotaped, not related to caretakers hurting
21 children. And in those descriptions of the witnessed
22 events and in the descriptions from the perpetrators
23 themselves, it is stated repeatedly that it is
24 obvious to the person it's excessive force that's
25 greater than what you need to move a child through

1 their daily activities and they see the child's head
2 flop back and forth and things of that nature.

3 Q. And these studies and these lectures and
4 these conferences that you attend, the papers that
5 you read, are they accepted in the medical community?

6 A. Yes, ma'am.

7 Q. Okay. And based on all that, you're
8 comfortable giving an opinion based on your training
9 and expertise as to what you believe the force needed
10 to cause these injuries would be?

11 A. Yes, ma'am.

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

13 **THE COURT:** Thank you.

14 Ms. Williams?

15 **MS. WILLIAMS:** Thank you.

16 **THE COURT:** And just as a reminder,
17 this has to do with whether or not the underlying
18 data, if it's inadmissible, should be allowed as a
19 basis for her opinion. So, the part of the data
20 that's already in evidence, of course, we won't have
21 to worry about, only what might be inadmissible.

22 What are you challenging is
23 inadmissible?

24 **MS. WILLIAMS:** Well, specifically, she
25 has testified that it's abusive head trauma and

1 that's what you have been taught when you were in
2 your training to be a child abuse pediatrician and
3 what you described regarding --

4 **THE COURT:** Wait just a minute.

5 **MS. WILLIAMS:** Sorry.

6 **THE COURT:** The purpose of the
7 hearing -- so we're all on the same page, the purpose
8 of the hearing under the Rules of Evidence is so I
9 can perform a balancing test. I think we're all in
10 agreement she is qualified as an expert, right?
11 You're not really challenging that?

12 **MS. WILLIAMS:** Yes, I don't know her
13 medical knowledge. What I'm challenging is her
14 opinion that it's abusive head trauma.

15 **THE COURT:** I see. So, you're not --

16 **MS. WILLIAMS:** The fact that it was a
17 whiplash injury, if she is going to say anything
18 about shaking.

19 **THE COURT:** Okay. So, there is
20 nothing about her underlying data you're trying to
21 keep out?

22 **MS. WILLIAMS:** Yes. Her -- oh, are
23 you talking about the medical records?

24 **THE COURT:** Well, she said there were
25 oral conversations, that she read articles, she has

1 been to seminars. So, you don't have any problem
2 with that coming in. Your only challenge is to the
3 accuracy or scientific basis for her opinion?

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

5 **THE COURT:** So, I don't have to worry
6 about data.

7 **MS. WILLIAMS:** For the -- for the
8 scientific basis in regards to timing of injuries as
9 well as the force used and the abusiveness, the
10 abusive issue, abusive head trauma, and also the
11 intentional versus accidental injury because that
12 cannot be determined.

13 **THE COURT:** So, are you claiming this
14 is junk science? I mean --

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

16 **THE COURT:** That's the basis you're
17 challenging?

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

19 **THE COURT:** Okay. Thank you. Okay.
20 I don't want to hear the whole cross, just the
21 relevant points for admissibility. Okay. Thank you.
22 In other words, I don't want to spend two hours on
23 this.

24 **MS. WILLIAMS:** No.

25 **THE COURT:** Okay.

1 **MS. WILLIAMS:** But --

2 **THE COURT:** She passed the witness.
3 You may question her. I just want to understand what
4 point we're focusing on so we can narrow the scope.

5 **MS. WILLIAMS:** Okay.

6 **Q. (BY MS. WILLIAMS)** Dr. Donaruma, what you
7 were speaking of, I think, in answer to the last
8 question, you are really talking about hearsay, what
9 people had said, perpetrators, different people had
10 said about how injuries occurred and the force used
11 and the movement that resulted from the injury.

12 Are there any scientific studies that
13 you're aware of with human infants using --

14 **A.** Where they would shake babies? You're not
15 serious, right? I'm sorry. I interrupted you. I
16 beg your pardon.

17 **THE COURT:** So, is the answer no?

18 **A.** Is the question am I aware of any
19 scientific studies where they shake human infants?
20 Really?

21 **Q. (BY MS. WILLIAMS)** No, of striking in
22 infants.

23 **A.** No, ma'am, I'm not aware of any studies in
24 which babies are shaken or struck.

25 **Q.** Are you aware of any studies regarding the

1 force that's necessary to cause injury to the
2 cervical spine?

3 A. There are studies that, of course, are not
4 done in children because no institutional ethical
5 review board would allow the shaking of a baby. For
6 instance, some studies are being done in Japan, APRIA
7 model in which adults are asked -- trained because
8 they don't do this usually very well -- trained to
9 shake a baby dummy. I'm not familiar with the
10 output. I don't know that the studies have been
11 published yet.

12 And then they are also studying head
13 forces with the same technology in -- I think it's
14 high school football players. But, again, I'm not
15 aware that's been published yet.

16 Q. And with the high school football players,
17 they weren't able to get the G forces that would
18 cause injury; is that correct?

19 A. Yes. Well, it depends on the type of
20 collision. So, head to body, not so much. Head to
21 head was pretty bad. And then there is older data
22 with like head injury criterion that are -- have been
23 performed to estimate those forces, and head injury
24 criteria of things like head-to-head collisions in
25 football players is above the known threshold for a

1 concussion.

2 Q. Are you familiar with static loading?

3 A. Yes.

4 Q. And what do you consider it to be?

5 A. A static load is a load where a child is
6 subjected to force over a long period of time; but
7 long period isn't long, like if I paused for 5
8 seconds. It's measured in milliseconds. But the
9 static load allows -- because it is comparatively
10 slower than a dynamic load, which would be something
11 like whiplash. The static load allows for better
12 distribution of the force throughout the tissue. You
13 get more focal force, depending on whether it stops,
14 and compared to dynamic load, which is more rapid
15 applications of force and damage, happens more
16 diffusely, not quickly.

17 Q. I'm sure you're familiar with the Caffey
18 and Ommaya studies. C A-F-F-E-Y, O-M-M-A-Y-A. I'm
19 sure you're familiar with that study that was done
20 approximately 30 years ago?

21 A. Yes, on the monkeys.

22 Q. Yes. On the Rhesus monkeys?

23 A. Yes, on also --

24 Q. And that was kind of the origin of this
25 shaken baby syndrome?

1 A. I don't agree with that statement.

2 Q. You don't agree with that statement?

3 A. No, ma'am. Those were monkeys that were
4 shot with a piston already attached to their head
5 helmet and anesthetized. So, it was a one-time
6 impulse versus repetitive loading. So, it's a nice
7 basis; but it's not really origin of a shaking.

8 Q. Well, it was after that that it came into
9 the literature as -- as a scientific fact --

10 A. Yes.

11 Q. -- versus a scientific theory?

12 A. Yes, but I think to say that's related to
13 shaking is an overstatement because it was a one-time
14 impulse. Just trying to be clear that I'm not over
15 interpreting that study.

16 Q. Okay. And the -- are you -- will your
17 testimony also cover retinal hemorrhages?

18 A. Yes, he had retinal hemorrhages.

19 Q. I beg your pardon?

20 A. Yes, ma'am, he had terrible retinal
21 hemorrhages.

22 Q. Yes. And are you -- is it going to be your
23 testimony that the cause of the retinal hemorrhages
24 is abusive head trauma?

25 A. Yes.

1 **Q.** Okay. You're aware, I'm sure, that lack of
2 oxygen is -- is the cause of retinal hemorrhage?

3 **A.** I am aware it is a cause of retinal
4 hemorrhage and different location and distribution in
5 Josiah. I do not agree that it's the cause of his
6 type distribution and the retinal hemorrhages.

7 **Q.** **(BY MS. BYRNE)** But there --

8 **MS. BYRNE:** Your Honor, at this point
9 I object. This appears to be more cross-examination
10 of the witness' opinion than her qualification to
11 testify in the first place.

12 **MS. WILLIAMS:** Okay. I will get more
13 on point on the force and the abuse.

14 **THE COURT:** If your theory is that
15 it's inadmissible because it's junk science, that's
16 basically your theory, then you may explore that, but
17 I'm hoping this isn't going to take a real long time.

18 **MS. WILLIAMS:** Okay.

19 **THE COURT:** But there has already been
20 testimony that this is accepted in her field.

21 **MS. WILLIAMS:** Right.

22 **THE COURT:** So, I guess the real issue
23 is: Do you have something to counter that it's
24 accepted?

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

1 the question is: Is it evidence-based medicine?

2 **THE COURT:** Okay. Well, you can
3 explore that.

4 **MS. WILLIAMS:** Okay.

5 **THE COURT:** I just want to move
6 through it pretty quickly.

7 **Q. (BY MS. WILLIAMS)** So, there -- there -- are
8 there -- you have testified, as I understand it, that
9 there are no scientific studies performed on children
10 regarding abusive head trauma or shaking, anything
11 like that?

12 **A.** I'm saying those would be unethical. So,
13 absolutely no studies available.

14 **Q.** Right. So, we don't have any scientific
15 basis for your stating that this injury in Josiah's
16 case is abusive head trauma or that it's whiplash
17 injury or that -- or the timing of the two injuries
18 that you have referenced, the skull fracture and the
19 hemorrhaging in the brain, the subdural hematoma, and
20 the subarachnoid hematoma, as well as the skull
21 fracture -- I think -- I'm not sure if I said that or
22 not.

23 **A.** I believe that is flawed conclusion, and I
24 do not agree.

25 **Q.** Okay. And that's your belief?

1 A. No. No. I think that you are not
2 referencing the vast load of literature done on
3 animals that we can extrapolate in part to children.
4 So, I think the fact that nobody's ever shaken a baby
5 on purpose to see what would happen is not what is
6 required to be able to address Josiah. So, I think
7 you're neglecting a large body of -- I think you're
8 neglecting a large body of peer-reviewed articles.

9 Q. And those are articles. They are not
10 scientific studies; is that correct?

11 A. That is not correct. They are studies on
12 lambs, pigs, puppies, monkeys that are out there.
13 The monkeys, we have talked about. So, I think that
14 you are overlooking those and over generalizing to
15 reach a flawed conclusion.

16 Q. Are you familiar with the work of
17 Dr. Plunkett?

18 A. Oh, yeah. I'm sorry. Yes, I am.

19 Q. You disagree with it, obviously?

20 A. I believe that his methods are also flawed
21 and a bit sloppy.

22 **THE COURT:** Flawed and what?

23 **THE WITNESS:** A bit sloppy.

24 **THE COURT:** Thank you.

25 Q. **(BY MS. WILLIAMS)** Okay. And Dr. Plunkett,

1 Dr. Goldsmith, and many others have challenged the
2 abusive head trauma, identification of it by the
3 subdural hematoma, the sub -- the hemorrhaging, and
4 the skull fracture?

5 A. Not precisely. Those gentlemen -- they
6 dispute the diagnosis of, quote, shaken baby syndrome
7 based on quota triad. When asked, none of them
8 denied that shaking a baby can kill a baby. They
9 have made a career about creating reasonable doubt in
10 regards to specific children across the country.

11 **MS. BYRNE:** Your Honor, at this time I
12 would object. This appears to be cross-examination
13 or something that could be brought out through the
14 use of an expert to dispute her expert testimony but
15 not to disqualify her -- her ability to testify to
16 the child's injuries.

17 **THE COURT:** I'm going to allow her to
18 build a record but to a limited extent. So, focus on
19 your studies. Okay?

20 **MS. WILLIAMS:** Okay.

21 **THE COURT:** Will you be bringing in an
22 expert at this hearing?

23 **MS. WILLIAMS:** I could.

24 **THE COURT:** Do you have a --

25 **MS. WILLIAMS:** I'd like to. I don't

1 have one right -- I don't have one on stand by, but
2 I'd like to consider -- for the Court to consider it
3 when the expert testifies.

4 **THE COURT:** Okay. So -- but, I mean,
5 you're not bringing in an expert for this hearing to
6 challenge her opinion. Are you presenting a witness?

7 **MS. WILLIAMS:** Later, not today. My
8 witness is not available today.

9 **THE COURT:** Okay. Okay.

10 **MS. WILLIAMS:** Okay.

11 **THE COURT:** You're just saying your
12 witness will testify in your case?

13 **MS. WILLIAMS:** Yes.

14 **THE COURT:** Okay.

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

16 **THE COURT:** Okay.

17 **MS. BYRNE:** And, Your Honor, not to
18 prevent her from building a record; but I want to
19 remind the Court that this witness will be out of
20 town starting tomorrow through next Wednesday. So,
21 we need to get done with her today if we want --
22 unless we want to start up next Thursday.

23 **THE COURT:** Okay. So, we will try and
24 let her be real thorough.

25 And when are you leaving town?

1 **THE WITNESS:** I'm leaving town
2 tomorrow and then I will be back for Thursday and I'm
3 gone Friday, Saturday, Sunday.

4 **THE COURT:** What time are you leaving
5 tomorrow?

6 **THE WITNESS:** Tomorrow my flight is at
7 7:55.

8 **THE COURT:** P.m.?

9 **THE WITNESS:** P.m. I haven't seen my
10 children in five days. I hope I'm not here tomorrow.

11 **THE COURT:** Well, I just -- you know
12 this is an important case.

13 **THE WITNESS:** Yes.

14 **THE COURT:** I hope you don't have to
15 come back tomorrow, too.

16 **Q. (BY MS. WILLIAMS)** Doctor, there is a body
17 of literature back from 30 years or more in the
18 medical profession that supports doctors making a
19 decision as to whether something is abusive or
20 accidental, the timing on an injury, the onset of the
21 injury, as well as the amount of force.

22 Can -- can you give us a number as to
23 the force that was necessary in this case to cause --
24 cause the skull fracture --

25 **A.** No.

1 Q. -- of Josiah?

2 A. Like in foot, pounds, or --

3 Q. Yes, in NGs.

4 A. No.

5 Q. Okay. And there is a science, though, that
6 can do that; and that's biomechanics, isn't it?

7 A. Yes.

8 Q. Because you didn't weigh the infant's head?

9 A. Take his head off and weigh it, no.

10 Q. No.

11 **THE COURT:** Ma'am, could you just
12 answer the questions rather than being humorous.

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

14 **THE COURT:** Thank you.

15 Q. **(BY MS. WILLIAMS)** And you have a general
16 idea of how much the -- Josiah weighed at that time,
17 correct?

18 A. Yes.

19 Q. But all the statistics of his bodily
20 measurements, you don't have that, do you?

21 A. No.

22 Q. Okay. So, you really can't tell how much
23 force is used because you weren't there, correct?

24 A. No. That's not correct.

25 Q. I beg your pardon?

1 A. No, you are not correct. No, you are not
2 correct.

3 I can tell you the force that was used
4 to break his skull was greater than what you need to
5 move a child through the course of their daily
6 activities. That's what I can tell you.

7 Q. Okay. And is that what you will be
8 testifying to?

9 A. Yes. Yes, ma'am.

10 Q. Okay. The timing of the injury, will you
11 be testifying to the timing of the onset of the
12 injury?

13 A. I can testify to a window of timing. I
14 cannot testify to a specific time in reference to a
15 clock.

16 Q. And would you agree that no one can
17 definitely tell the onset of an injury?

18 A. The abuser knows.

19 Q. I beg your pardon?

20 A. The abuser knows.

21 Q. Nobody else?

22 A. That's right.

23 Q. I'm talking about even the window of time?

24 A. The window of time can be generally
25 discussed based on studies of known timed accidental

1 injuries.

2 Q. But --

3 A. So, there is --

4 **THE COURT:** Let her finish her answer,
5 please.

6 A. So, there is a window of time that can be
7 referenced. A specific time, I think would be
8 neither responsible nor accurate.

9 Q. **(BY MS. WILLIAMS)** And a window of time,
10 what scientific studies support the window of time
11 for the onset of injuries?

12 A. There are studies that have been done in
13 car accident victims specifically and look into
14 change on their head CTs and how early some findings
15 show up on head CT and how soon fresh findings
16 appear, quote, older on head CT. They are few, but
17 they are allowed for a window to be assigned. Many
18 people will reference adult data, which is not useful
19 in children.

20 Q. Do you know of any pediatric data on timing
21 of injuries that is scientifically based --

22 A. Yes.

23 Q. -- on studies?

24 You do?

25 A. Yes, ma'am.

1 Q. And whose work would that be?

2 A. I believe it came from Mark Dias, when he
3 was in -- I think before he went to Hershey. I think
4 when he was in New York. I think it's from Dias.

5 And then there might be some addition
6 data from Matthew Vinchon in France. And -- but
7 we -- but I can't recall all the authors of the
8 papers. There a few that I can think of, at least
9 one specifically I used the most to rely on.

10 Q. Are these public scientific papers?

11 A. Yes.

12 Q. And do you have access to them?

13 A. Now? Right immediately?

14 Q. Yes.

15 A. I do not.

16 Q. But -- but you can give us the titles
17 later?

18 A. I can probably find them. I -- I mean,
19 they are incorporated into textbooks and things like
20 that. So, I -- I don't carry them with me.

21 Q. Do you know how these scientific studies
22 were performed?

23 A. The one I'm considering is the car accident
24 study where an institution took a look at children
25 and adolescents who came in in accidents where the

1 timing was documented, objectively; and they observed
2 the findings on head CT in relation to the times
3 since the accident. And that was how they assigned
4 some windows.

5 Q. And are these studies -- are the injuries
6 comparable to the injuries on Josiah?

7 A. Yes, in some cases.

8 Q. Approximately how many cases?

9 A. I don't remember.

10 Q. Are you taught how to tie injuries in a
11 window or time frame in your studies as a child abuse
12 pediatrician?

13 A. Yes, I have. In my experience, as well as
14 in my training, we have -- we discuss that with
15 radiologists regularly; and, yes, it's part of your
16 training.

17 Q. Okay. Do you also study the actual
18 scientific studies that have any relevance to that?

19 A. I don't understand the question.

20 Q. Okay. In -- besides talking to the
21 radiologists and practice, do you have any scientific
22 studies that support that training or what you're
23 taught?

24 A. Yes, ma'am. I discussed specifically the
25 one paper on accidents, and there are others who --

1 authors I do not immediately recall.

2 Q. Okay. But Josiah Fisher wasn't involved in
3 an accident; is that correct?

4 A. That is correct.

5 **THE COURT:** Ms. Williams, let's skip
6 the rhetorical questions.

7 **MS. WILLIAMS:** Okay.

8 Q. **(BY MS. WILLIAMS)** Car accidents is what I
9 mean.

10 **THE COURT:** It's 20 till. I'm hoping
11 we can finish this by a quarter till. Okay.

12 Q. **(BY MS. WILLIAMS)** And are you a
13 psychologist or a psychiatrist in addition to being a
14 pediatrician?

15 A. No.

16 Q. Okay. Can you tell a person' intent --

17 **THE COURT:** Clyde, Ms. Williams, I
18 don't want to hear those kinds of questions.

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

20 **THE COURT:** Those are for the jury.
21 Do you have anything else about her underlying data
22 or qualifications or whether or not this is generally
23 accepted science?

24 Q. **(BY MS. WILLIAMS)** Well, a closing sort of
25 question. Doctor, the things that we have talked

1 about are definitely challenged by scientific
2 studies. There is a group of people that see it one
3 way, and then there are new studies that challenge
4 the theories that we talked about?

5 A. I submit to you, ma'am, that there is no
6 controversy outside of a courtroom. There is not a
7 scientific controversy. It is all fabricated for the
8 purposes of creating reasonable doubt. That science
9 is based on people's very hysterically communicated
10 opinions, and it is not science. It's things that
11 have been published.

12 Q. Are you aware that Canada has had a lot of
13 wrongful convictions overturned on the basis of some
14 of this testimony?

15 A. Those are based on pathologists. That is
16 from pathologists and their practice. That is not
17 related to child abuse pediatricians using bad
18 science. That is a pathologist issue that happened
19 in Canada.

20 Q. Well, the pathologist obviously looks at
21 the tissue in the brain.

22 A. I'm not a pathologist, ma'am.

23 Q. And when someone's alive, you don't have
24 that opportunity, do you?

25 A. I hope not.

1 **MS. WILLIAMS:** Judge, the
2 qualification --

3 **THE COURT:** Excuse me. You pass the
4 witness?

5 **MS. WILLIAMS:** Yes.

6 **THE COURT:** Okay. Any questions?

7 **MS. BYRNE:** No questions, Judge.

8 **THE COURT:** Okay. Does that conclude
9 the testimony then? Are you ready for argument on
10 the motion, or is there anything else?

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

12 **THE COURT:** Okay. Thank you.

13 **ARGUMENTS**

14 **MS. WILLIAMS:** My argument would be
15 that this witness is not qualified to testify
16 regarding the force used against Josiah Fisher. She
17 was unable to determine the G forces operating on
18 Josiah Fisher at the time he sustained the skull
19 fracture and the cervical spinal injury. There is no
20 scientific basis for the window timing of the onset
21 of the injuries or symptoms.

22 Determining that something is abusive
23 when it could be accidental, you know -- and there is
24 no witness, no recording, no knife, no gun, holes in
25 the body. There is -- there is no basis for that

1 kind of a theory. And causation as to intent or as
2 to, you know, unintentional, that's for the jury.
3 All of these are questions for the jury that we have
4 talked about.

5 As well as the retinal hemorrhaging,
6 because retinal hemorrhaging is caused by many
7 different things, depending on the amount of oxygen
8 loss because the eyes are part of the brain. That
9 concludes my argument.

10 **THE COURT:** Thank you.

11 Does the State have argument?

12 **ARGUMENTS**

13 **MS. BYRNE:** I would just state that
14 this witness has more than explained her educational
15 background, her training, her experience, her
16 knowledge and awareness of numerous studies in this
17 field that are accepted in the medical community,
18 that qualifies her to testify as an expert.

19 And any concerns or cross-examination
20 points that Ms. Williams wants to make can be done,
21 just that, in cross-examination or through her own
22 expert witness. But this witness has demonstrated
23 the ability to be qualified to testify in this case.

24 **THE COURT:** Thank you. I find that
25 the witness is qualified, and she may render her

1 expert opinions. Is she giving one on time, also; or
2 she is not?

3 **MS. BYRNE:** She is rendering an
4 opinion based on the baby's injuries and where he was
5 at -- the level that he was at in the hospital, and
6 the amount of blood that was present in his brain, as
7 to a time frame of when those injuries would have
8 occurred in order for him to still be alive upon
9 entrance to the hospital.

10 **THE COURT:** Can you get that opinion
11 from her?

12 **MS. BYRNE:** Sure.

13 **Q. (BY MS. BYRNE)** From what you saw on Josiah
14 Fisher, looking at the CT scans that were done
15 sometime shortly after admittance to the hospital on
16 February 8, 2013, the hemorrhaging that you observed
17 to the brain and diffuse brain trauma that was
18 causing lack of oxygen and things like that in the
19 brain, do you have an expert opinion as to a range of
20 time in which those injuries would have had to have
21 occurred in order for him to become -- to be alive
22 when he entered the hospital?

23 **A.** Yes, I do.

24 **Q.** Okay. And what is that opinion?

25 **A.** I believe it was roughly a 12-hour window.

1 **THE COURT:** Thank you. Is that all of
2 her opinions?

3 **MS. BYRNE:** Yes, Judge.

4 **THE COURT:** Okay. All right. Thank
5 you.

6 **MS. WILLIAMS:** Judge, may I ask one
7 more question about that range?

8 **THE COURT:** Okay. Thank you.

9 **REXCROSS-EXAMINATION**

10 **Q.** **(BY MS. WILLIAMS)** How did you arrive at
11 that range?

12 **A.** Based on the appearance of his blood on --
13 sorry.

14 Based on the appearance of the blood
15 inside of his head, based on the lack of -- based on
16 the blackness of his brain, based on his rapid
17 decompensation in the emergency room leading to
18 emergency intubation, those things I believe
19 contribute to the time frame.

20 **Q.** Actually, that time frame could be larger?

21 **A.** Yes. It's roughly --

22 **Q.** Twelve hours --

23 **THE COURT:** Sorry. You're both
24 talking at the same time. Would you ask your
25 question again, please?

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

2 **Q.** **(BY MS. WILLIAMS)** That time frame could be
3 larger?

4 **A.** Yes. It is a rough window. It's not
5 exact. I can't look at a watch and tell you. That
6 would not be responsible.

7 **Q.** And --

8 **MS. WILLIAMS:** I pass the witness.

9 **THE COURT:** Okay. Have you now
10 covered all of her opinions?

11 **MS. BYRNE:** I believe so, Judge.

12 **THE COURT:** Okay. Do you have any
13 argument on the final point? The new point? I will
14 let you reopen if you do.

15 **MS. WILLIAMS:** I think the witness has
16 said that that really can't be established
17 specifically; and because of that, I think that
18 should be inadmissible.

19 **THE COURT:** Thank you. Your objection
20 is overruled. She may testify as to that opinion.

21 Ms. Williams, you may have liberal
22 cross-examination on that point.

23 **MS. WILLIAMS:** Okay.

24 **THE COURT:** Okay. So, I specifically
25 find the witness is qualified. I specifically find

1 that her opinion has a basis in science. And I
2 specifically find that the underlying data may come
3 in, that this is not more prejudicial than probative.
4 And, therefore, it will be allowed. Thank you.

5 While the jury is out, why don't we
6 take a five-minute break. Thank you.

7 **(Recess taken)**

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

9 **MS. WILLIAMS:** Judge, instead of
10 hopping up like a bunny rabbit, can I have just a
11 running objection in those areas of causation, the
12 time frame, and the ones that I argued on the motion?

13 **THE COURT:** You may.

14 **MS. WILLIAMS:** Thank you.

15 **THE COURT:** Doctor, the defendant has
16 the right to have the witnesses cross-examined by his
17 attorney. That's guaranteed under the Sixth
18 Amendment to the U.S. Constitution. You are a very
19 important witness in this case, and it's a very
20 important right for his lawyer to ask you questions.
21 So -- and, also, I think if you're going to be a
22 child abuse specialist, you have to expect to spend
23 some time in court; and we went through a lot of
24 trouble starting the trial early every morning to try
25 and get you on the stand before you leave town.

1 **THE WITNESS:** I apologize for my
2 unprofessional comment.

3 **THE COURT:** I just hope you won't
4 reflect a lack of respect for the lawyer's right to
5 ask you questions when it's her turn for
6 cross-examination.

7 **THE WITNESS:** No, Your Honor, I will
8 not.

9 **THE COURT:** Thank you.

10 All rise, please, for the jury.

11 **(Jury enters the courtroom)**

12 **THE COURT:** Thank you. Please be
13 seated. Thank you.

14 Ms. Byrne, you may continue.

15 **MS. BYRNE:** Thank you Judge.

16 **DIRECT EXAMINATION (CONTINUED)**

17 **Q.** **(BY MS. BYRNE)** I believe we left off,
18 Dr. Donaruma, where based on your personal
19 interaction and treatment of Josiah, as well as your
20 review of all of his medical records and consultation
21 with other medical professionals that have seen
22 Josiah, and your training and experience as a child
23 abuse pediatrician, are you -- are you able to
24 provide an expert opinion as to the cause of Josiah's
25 injury?

Marcella Donaruma - April 4, 2014
Direct Examination (Continued) by Ms. Byrne

1 A. Yes, ma'am, I am.

2 Q. And in preparation for your testimony
3 today, did you assist in making some slides that have
4 images belonging to Josiah and certain diagrams that
5 would be helpful to the jury in understanding your
6 testimony here today?

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

8 **MS. BYRNE:** At this time I would offer
9 State's Exhibit No. 75, tender to Defense for
10 inspection, which has previously been shown to
11 Defense. And I would -- I showed you. And I would
12 ask to publish to the jury during this witness'
13 testimony.

14 **MS. WILLIAMS:** No objection, Your
15 Honor.

16 **THE COURT:** Admitted.

17 Q. (BY MS. BYRNE) Before we talk about
18 Josiah's injuries from February -- from his
19 admittance February 8, 2013, have you had the
20 opportunity to review Josiah's birth records as well
21 as those of his mother from Conroe Regional Medical
22 Hospital in the Montgomery County Jail?

23 A. Yes, I have.

24 Q. Okay. And can you tell us what your
25 opinion is as to the circumstances surrounding

1 Josiah's birth?

2 A. Yes.

3 Q. Okay. Can you tell us how long was his
4 mother in labor?

5 A. I think she was in labor for 43 hours.

6 Q. And when somebody is in labor for a period
7 of time, such as 43 hours, what is the concern or
8 what -- is there a risk?

9 A. The concern is that the baby is exposed to
10 the outside world and the bacteria in the vagina, and
11 there is a risk of ascending infection coming up the
12 birth canal and affecting the baby in the amniotic
13 fluid and make the child sick or what we call sepsis,
14 meaning blood stream infection with bacteria which is
15 a dangerous bacteria.

16 Q. So, there would have been a concern for
17 sepsis?

18 A. Yes.

19 Q. Did Josiah have a sepsis workup? Was he
20 tested for any infection?

21 A. Yes, ma'am, he was.

22 Q. Okay. And what, if anything, was found?

23 A. Nothing was found. It turns out he was not
24 sepsis. He had no infection.

25 Q. Okay. What is meconium aspiration?

1 A. Meconium is the stool that comes out of the
2 fetus for a brand new baby. "Aspiration" means you
3 inhale that meconium into the lungs. And the
4 syndrome describes that circumstance.

5 Q. Now, did Josiah have any meconium in his
6 mouth when he was born?

7 A. Yes, he did.

8 Q. Okay. What is the concern -- or what would
9 cause Josiah to have meconium in his mouth?

10 A. He had a very stressful and prolonged --
11 the labor was stressful because it was so long. You
12 can imagine. And so, with that stress, the child's
13 stool -- he pooped inside the amniotic fluid. So,
14 when he was born, the fluid in his mouth was stained
15 with meconium, with stool. And that leads to the
16 concern that he could open his mouth and breathe and
17 pull that stool down deep into his lungs.

18 Q. Okay. Now, although Josiah had some
19 meconium in his mouth, what was the real concern?

20 A. The concern is that the meconium, that
21 stool, could get below the vocal cords and so
22 actually be involved in the airway and the lungs and
23 affect the ability of the lungs to exchange oxygen
24 appropriately.

25 Q. Was there any meconium that went into or

1 past Josiah's vocal cords?

2 A. No, ma'am, there was not.

3 Q. Okay. So, when he was actually born, he
4 had some meconium in his mouth; but right after he
5 was born, what was his breathing or resuscitation or
6 ability to breathe?

7 A. His ability to breathe was not good when he
8 was born, again, likely due to the stresses of labor.

9 Q. Okay. And from the time he was born, how
10 long did it take him to perk up?

11 A. It took him about five minutes --

12 Q. Okay.

13 A. -- to perk up.

14 Q. And was that with extensive resuscitations
15 or anything like that?

16 A. It was with resuscitation. I would not
17 call it extensive.

18 Q. Okay. Now, what is the Apgar score?

19 A. The Apgar score was invented by a doctor
20 whose last name is Apgar, A-P-G-A-R. It stands for
21 points on the scale. It's a 10-point scale. Rarely
22 does everybody ever get a 10. And it measures five
23 things for A, P, G, A, and R.

24 Q. Okay. Initially, due to the meconium
25 issue, where was Josiah on the Apgar score?

1 A. I think he was a 2.

2 Q. Okay. And did it rise rather quickly?

3 A. Yes. So, at birth he was a 2. By five
4 minutes, he was a 7.

5 Q. Okay. Based on that, where was he placed?

6 A. He was placed into the NICU. I think he
7 went to the Neonatal Intensive Care unit for
8 observation.

9 Q. Okay. And was there anything noted about
10 his time in the Neonatal Care of concern?

11 A. No. He was -- he was fussy. And so, there
12 was some concern for what is called neonatal
13 abstinence syndrome, meaning there was a concern he
14 was exposed to some kind of drug and then he was
15 withdrawing from it because he was no longer attached
16 to the mother who was possibly supplying him with
17 some kind of drug through the bloodstream. So, there
18 was that fussiness that got an evaluation, but no
19 drugs were found. And other than that, he did very
20 well, indeed.

21 Q. So, for his five days there, what was his
22 condition?

23 A. So, his condition was stable; and he was on
24 room air the entire time. So, if you really have
25 meconium in your lungs and somehow the doctor missed

1 it or didn't see it or pushed it in while trying to
2 pull it out -- your lung can't tolerate stool inside.
3 It disrupts the membranes that exchange air across
4 them, and the child can't tolerate room air and
5 breathes badly without support. He had none of those
6 problems.

7 Q. And, in fact, did they provide him a full 7
8 days of medication out of concern for infection?

9 A. No.

10 Q. Okay. So, there was no infection due to
11 birth?

12 A. That's correct.

13 Q. Okay. Now, in fact, on his fourth day of
14 life, what did they take an ultrasound of?

15 A. He had an ultrasound of his head on the
16 fourth day of life presumably due to the continued
17 fuzziness.

18 Q. Okay. And what, if anything, was noted
19 about the ultrasound of the brain?

20 A. Nothing. It was fine.

21 Q. Okay. Did he have any signs of neonatal
22 stroke?

23 A. None.

24 Q. Okay. Upon release from the hospital, was
25 Josiah a healthy infant?

1 A. Yes, ma'am.

2 Q. Is there anything about his birth or
3 anything about the labor that would have caused any
4 of the injuries or the trauma noted from February 8,
5 2013?

6 A. Oh, no, ma'am. That's not possible.

7 Q. And why is it not?

8 A. Based on the appearance of the bleeding and
9 based on the child's clinical condition and based on
10 the lack of any of the multiple bruises seen on the
11 child in the emergency room at Texas Children's being
12 mentioned in his discharge summary.

13 Q. Okay. And what do you mean the appearance
14 of the bleeding?

15 A. So, the blood inside of his head had a very
16 characteristic appearance on the head CT. Fresh
17 blood is white. If a child is bleeding right now --
18 like I'm taking this, I'm looking at the CT while the
19 image is being taken and blood is coming out, it
20 comes out black. But once it stays still, it's
21 white; and over time, as the red blood cells die and
22 they burst, the color changes on the CT scan. So, we
23 know white blood is fresh blood.

24 Q. So, the CT scans that would have been
25 reviewed that would have been done on February 8,

1 2013, what did the blood appear like?

2 A. It was fresh blood.

3 Q. Okay. So, let's -- let's talk about
4 February 8, 2013. What three categories can we place
5 all of Josiah's injuries into?

6 A. So, I broke them down into abusive head
7 trauma, abusive skeletal trauma, and abusive
8 cutaneous trauma.

9 Q. Okay. And based on your training and
10 experience, when you have head trauma, skeletal
11 trauma -- and I guess cutaneous, is that a fancy word
12 for bruising?

13 A. Yes, it is.

14 Q. Okay. When you're looking at all three of
15 these categories, what does that indicate to you as
16 the child abuse pediatrician?

17 A. That this child has been a victim of
18 physical abuse.

19 Q. Okay. Well, let's break down all of
20 Josiah's injuries. Let's start with the abusive head
21 trauma, particularly the skull fracture. What are we
22 looking at here?

23 A. So, that is a 3D reconstruction of his CAT
24 scan. So, I can give you the basics because that's
25 what I know about how the CT machine works. But when

1 it takes the pictures, it takes the pictures in a
2 rotating motion, with a child laying on the bed, with
3 a nose pointing up and toes pointing out, and rotates
4 and collects data as it shoots the beams into the
5 child. Because it is a study with radiation.

6 After it collects all that data, the
7 machine filters out -- and, again, it's algorithm.
8 That's math that I don't get, but that algorithm
9 recreates just the bony densities so that we get the
10 reconstruction of the skull, the bony structures in
11 3D.

12 Q. Now, this -- which side of the skull are we
13 looking at here?

14 A. We are looking at the right side of his
15 skull in this picture.

16 Q. And this would be considered the healthy
17 side of Josiah's skull?

18 A. Yes. There is separations you can see that
19 look unusual to most people who think of the
20 Halloween skeleton when they see this picture. And
21 those separations are actually the sutures, the areas
22 that have opportunity for growth between the separate
23 bones of the skull.

24 Q. So, that would be normal in the skull of a
25 baby to have those sutures, room for growth?

1 A. Yes. His are too widely separated. So,
2 they look like canyons rather than connections; but
3 the presence of those separations is expected in all
4 infants.

5 Q. Okay. And what are we looking at here?

6 A. That's a face-on view of the baby's skull.
7 So, you can see the soft spot, that diamond shape
8 here that goes down to his forehead and up in the
9 center. You can see the eye sockets, kind of as a
10 marker.

11 Q. Now, let's take a look at the left side of
12 the 3D reconstruction of Josiah's skull. What are we
13 observing there?

14 A. So, here, you can see that we have a really
15 beautiful lineup of the sutures overlapping each
16 other. But then here in this largest bone called the
17 perinatal bone, where if you sort of place your hand
18 above your ear and just point up to the top of your
19 head, that bone has a V-shaped fracture that is kind
20 of occupying most of the length of the parietal bone
21 and also has the edges widely separated.

22 Q. There was the diagnosis here?

23 A. That was a left parietal bone fracture that
24 was called somewhat diastatic, meaning the edges are
25 more separated than the usual fracture.

1 Q. We see it kind of pushing up in this 3D
2 imaging. What would cause it to push up like that?

3 A. There are two things. One is that the
4 initial force that split the bone pushed one area
5 down lower and the other up higher versus the fact
6 that the pressure of the brain swelling and dying
7 inside of the skull is causing additional separation.

8 Q. Okay. Okay. So, when you see a skull
9 fracture like this in a baby or an infant, tell us a
10 little bit generally about their skull and the
11 pliability of a baby's skull.

12 A. Well, the baby's skull -- this little man,
13 he was only 15 days old when he came in. So, he was
14 just born. So, his skull was still adapted to
15 survive the birth canal and the change in shape
16 that's necessary to get an oval out of a circle. So,
17 it has very soft characteristics. And the best
18 illustration I can give you is a bit graphic, but I
19 think it makes a clear point.

20 So, at autopsy on an infant, they make
21 a cut to take off the top of the skull so that the
22 brain can be viewed without being disturbed. And so,
23 when it came out the top of the skull, if you hold
24 the skull cap, it would actually be possible to turn
25 that skull cap that came off the top inside out like

1 a baseball hat and have the outside round and the
2 inside concave and then back out again because it's
3 really that soft.

4 And when I see that, it's sort of like
5 I picture it like a kind of rupture of the skull. If
6 you dropped a melon on the ground, it just splits.

7 Q. Okay. So, in order to have a skull
8 fracture like that on Josiah, what would have to be
9 the cause?

10 A. This is a result of blunt force trauma to
11 his head. Either his head hitting something very
12 fast and hard, or something hitting his head very
13 fast and hard.

14 Q. Okay. So, would this be consistent with
15 potentially a hand striking the baby's head?

16 A. It would be possible. I would -- it would
17 possible. I would think of something perhaps longer
18 and larger and firmer, but I can't say no.

19 Q. So, you think this would be more consistent
20 with maybe Josiah --

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

23 Q. **(BY MS. BYRNE)** -- would be --

24 **THE COURT:** Sustained.

25 Q. **(BY MS. BYRNE)** Would this be consistent

1 with striking Josiah's skull with an unknown object?

2 A. Yes, ma'am.

3 Q. Okay. Or would it be consistent with
4 striking Josiah's head against an unknown object?

5 A. Yes, ma'am.

6 Q. Okay. Now, what about if Josiah was on a
7 bed or rolled off the bed onto the ground? Is that
8 something that could cause a skull fracture like
9 this?

10 A. No, ma'am.

11 Q. Okay. Why not?

12 A. Typically, most beds are between, at the
13 very highest, 3 and a half to 4 feet high. I'm
14 sorry. And so, what we see in a typical household
15 fall -- we call that a straight fall, where you just
16 sort of rolled and you flop and something gives. We
17 see something that is a linear fracture because what
18 happens is that that curve at the parietal bone just
19 bends in and splits and it splits in a nice straight
20 line and it doesn't have that kind of separation
21 involved or that difference in elevation of the bone
22 pieces, if it was to result in a fracture at all,
23 which most often it doesn't.

24 Q. Based on your training and experience, can
25 you give us an example of the amount of force that

1 would have to be used in order to cause a skull
2 fracture like this in Josiah?

3 A. It's difficult to give you a number of
4 force because we aren't allowed to study hurting a
5 baby on purpose to see how much it takes. What we
6 know is the type of force that it requires to result
7 in this type of damage is more than necessary to move
8 a child through the course of daily activities.

9 Q. Is it your opinion that this is not
10 consistent with rolling off a bed?

11 A. Yes, that is my opinion. It is not
12 consistent.

13 Q. What about if the baby was being bathed in
14 a sink, and his head, I guess, fell, hit the side of
15 the sink?

16 A. No, ma'am. That is not consistent.

17 Q. What about accidentally being dropped from
18 about 3 or 4 feet?

19 A. No, ma'am.

20 Q. Okay. If you have an opinion, how far of a
21 fall would Josiah have to sustain in order to have
22 this injury?

23 A. In general, the literature defines long
24 falls and short falls. A long fall is greater than 5
25 feet. So, I say this appears to be more consistent

1 with a long fall --

2 Q. Okay.

3 A. -- if anything.

4 Q. Okay. And you say "if anything." What do
5 you mean by that?

6 A. Meaning if it was a fall, it would have to
7 be one of significant height. I believe that is less
8 consistent with a fall and more consistent with an
9 impact of an object to the head or head to an object.
10 That is not the floor.

11 Q. Okay. And in part because of the --

12 A. Separation and elevation.

13 Q. Okay. And not a clean line, more of a
14 jagged or V shaped?

15 A. Correct. Yes, ma'am.

16 Q. Okay. Now, in addition to the skull
17 fracture, Josiah had a scalp hematoma. What is that?

18 A. A scalp hematoma is a collection of blood
19 that usually people call like a goose egg. And it
20 collects fresh blood over the area where the fracture
21 disturbs the blood vessels running under the scalp.

22 Q. What -- what is the cause of a scalp
23 hematoma in Josiah?

24 A. Trauma.

25 Q. And what type of trauma?

1 A. Blunt force trauma to his head.

2 Q. Okay. And would that be from either
3 striking an unknown object into the baby or striking
4 the baby against an unknown object?

5 A. Yes, ma'am.

6 Q. Okay. Are these injuries, the scalp
7 hematoma and the skull fracture, are they -- are they
8 related to each other?

9 A. Yes. I suspect they came from the same
10 injury event.

11 Q. Okay. So, possibly from the same blunt
12 force event would have caused the fracture and the
13 hematoma?

14 A. Yes, I believe that is likely.

15 Q. Okay. Let's talk about the bleeding of
16 Josiah's brain. Can you tell us a little bit about
17 that?

18 A. Yes, ma'am. He had two different types of
19 bleeding inside of his head that were fresh. He had
20 fresh blood on the subdural space. The dura is a
21 membrane. And if you consider like -- if the brain
22 is like an egg, the skull is like the shell, yolk is
23 like the brain, and white is like the fluid. There
24 is a membrane that lines the shell to separate the
25 white and the yolk. So, if you think of that

1 membrane like the dura membrane, what happens is that
2 the brain's more complicated than an egg. So, it has
3 blood vessels going through the yolk, through the
4 shell to drain, and towards the shell to drain.

5 Sorry.

6 So, when there is trauma to that area,
7 the blood vessel breaks at the point. It goes
8 through the membrane and bleeds and separates the
9 membrane into halves and collects there. So, the
10 subdural blood is collecting underneath his skull
11 over his brain.

12 He also has a subarachnoid hemorrhage.
13 Okay. So, that subarachnoid membrane was disturbed
14 by something that hit fast and hard, and it ruptured.
15 The blood collected there and sort of gathered in the
16 crannies and nooks of the brain fields.

17 Q. Okay. Now, the subdural hemorrhaging, what
18 is your opinion as to the cause of the subdural
19 hemorrhaging?

20 A. Two possible causes for the subdural
21 hemorrhaging.

22 Q. Okay.

23 A. One is direct trauma that broke the skull
24 and made the scalp bleed versus a possible whiplash
25 sort of acceleration/deceleration activity that the

1 head went through that caused those veins that drain
2 the blue blood out of the brain towards the venous
3 draining system to pop and rupture and bleed.

4 Q. Now, was -- the bleeding on Josiah's brain,
5 I mean, was it just a few places? I mean, where all
6 was it observed?

7 A. It was located in several places. The most
8 obvious of which was on the left side of his head
9 underneath the fracture. There was also some
10 collection in between the two halves of his brain and
11 some more collecting underneath the thinking part of
12 the brain under the cortex and over the cerebellum,
13 the two bulbs that coordinate movement.

14 Q. Okay. In viewing an MRI of his brain, did
15 anyplace really appear to be normal at that point in
16 time?

17 A. He had the CT first and then the MRI, and
18 it never looked normal --

19 Q. Okay.

20 A. -- anywhere.

21 Q. So, would there have been some sort -- was
22 there evidence of some sort of changes in all areas
23 of his brain?

24 A. Yes.

25 Q. Okay. And that would include the area of

1 brain where you think?

2 A. Yes, ma'am.

3 Q. Coordination?

4 A. Yes, ma'am.

5 Q. Your brainstem?

6 A. Yes, ma'am.

7 Q. Okay. What was going on with the cells in
8 Josiah's brain?

9 A. The cells in his brain were swelling and
10 dying. Inside the cells there is what's called a
11 cytotoxic cascade, which means the cell, in an effort
12 to stop the damage, actually causes more damage. So,
13 in -- a brain can't repair itself like skin or liver.
14 It just -- it just gets hurt and then dies. And so,
15 the tissue tries to stop what is happening; and no
16 effort to stop what happened actually caused more
17 harm because of all of the bad regulation going on
18 inside the cells. So, each cell is swelling and then
19 dying; and that hurts its neighbors.

20 Q. Why are the cells not working properly?

21 A. Well, it's likely a combination of factors.
22 There has clearly been medical trauma to his head;
23 and if you have a whiplash type of motion, that can
24 affect the brain cells themselves. They -- they have
25 different levels of insulation. So, if you imagine

1 like a flower on a stem with roots. That's what
2 every nerve cell looks like. And the stem is coated
3 with a little jacket. Not as much on an infant as an
4 adult, but there is a little on there. And they're
5 different types of density, like one is a little
6 heavier than the other.

7 And so, if they're whiplashing, then
8 they're moving at slightly different speeds. And so,
9 they stretch; and they pop. So, it could be from the
10 whiplash and the stress; and it could be from the
11 direct trauma that had to happen to break his skull.

12 And then there is what we call
13 secondary injury; and that means that because of the
14 stress of the whiplash, the spinal cord in the neck
15 gets stressed and strained. And that's where your
16 breathing centers are. If your breathing centers get
17 affected and you have less effective breathing or
18 less frequent breathing, your oxygen level will go
19 down in your bloodstream; and that affects your
20 brain.

21 And so, the second injury that happens
22 is the affect of the stretching on the spinal cord
23 that then cuts down on your respiratory ability to
24 deprive your brain of oxygen. So, it's a very
25 complicated picture that he presents.

1 Q. Okay. Now, you indicated that the subdural
2 hemorrhaging could be caused from direct trauma
3 and/or whiplash?

4 A. Yes, ma'am.

5 Q. And subarachnoid hemorrhaging, that would
6 be from blunt force?

7 A. Or also whiplash. That would be profound.

8 Q. Okay. Now, I want to take a look at
9 Josiah's head. What are we looking at here?

10 A. So, what we're looking at is the top of his
11 head. When I described him laying on the little
12 surfboard that you put him into the machine on, the
13 images take pictures. And this one is sort of --
14 like if you can imagine slicing like a loaf of bread
15 are the pictures of his head. This is like the top
16 of his head, and this is a slice right around here
17 that's taking and turned 90 degrees. So, you're kind
18 of looking through the top of his head down a little
19 bit at his brain.

20 Q. And what, if anything, did you note or did
21 you observe about this CT scan?

22 A. The CT -- this image is profoundly
23 abnormal.

24 Q. How so?

25 A. Well, we can start with the bones. I'm

1 going to point --

2 Q. You can actually touch it, and it will make
3 a mark on there.

4 A. Okay.

5 Q. So, if you look here on the normal side,
6 you see how that whole left side appears -- my hands
7 are so cold. That whole left side is like a nice
8 white C. Okay. If you look on the opposite side,
9 then the bone is not a nice white C. So, here is the
10 line of suture that we talked about. Here, this C is
11 broken up into pieces. Okay. All of that area is
12 fractured.

13 Okay. That did not make it better.
14 I'm sorry. Okay. So, not going to touch it. So, we
15 have got those two areas of bone. One that's normal.
16 One that is fractured. And then we look at the
17 inside. So, here is the line that divides the left
18 and right half of the brain. This is the right half,
19 and this is the left half and here's his nose
20 pointing up here (indicating.)

21 MS. BYRNE: May I approach for just a
22 moment, Judge?

23 THE COURT: Yes, ma'am.

24 THE WITNESS:

25 A. I do that to my iPhone, too. My hands are

1 just really cold.

2 Q. (BY MS. BYRNE) All right. Well, I guess we
3 just won't touch it anymore. Go ahead. What were
4 you describing about the right side?

5 A. So, if we look at the inside here on the
6 right side, there is a little -- between the right
7 and left there is a division. There is a membrane
8 here. This membrane is very thick because it is
9 being surrounded by blood. So, this -- see up here
10 how you can't really appreciate much of a division,
11 even though we know it's divided all the way through.

12 Here -- here, we have a collection of
13 blood. Okay. Here, if we look at the brain, babies
14 do not have a great deal of the jacket of the
15 myelons. So, their gray matter and white matter are
16 not very well outlined, even when they're healthy.
17 But usually you can tell the leaves of the white
18 matter and gray matter separating each other.

19 When you look at his, there is
20 terrible separation. We call that lack of
21 differentiation of the gray/white matter junction.
22 And what that means is that they are damaged, that
23 the swelling has taken over. And the most obvious
24 thing we can see is the swelling. So, they are all
25 black, not gray, not white, not variation, just all

1 black.

2 And you can see that it's called
3 homogeneity, meaning all the same. So, this looks
4 sort of like -- if you looked in a bowl of oatmeal,
5 it's all the same color without any areas duplicated
6 where the gray should be and white should be.

7 Q. Okay.

8 A. And, finally, here under the fracture --
9 oh, shoot.

10 Q. If you want, can you step down and point to
11 the television right here?

12 A. Oh, yes. Okay.

13 So, the other thing that's important
14 to note is this white blood here, okay, underneath
15 the fracture area. That is the subdural blood. The
16 subarachnoid is not very well shown on this picture,
17 but I wanted to make sure that you could see the
18 skull fracture and subdural hemorrhage next to each
19 other. But there are some few little areas of nook
20 and crannies in the brain that have not yet swollen
21 tight to the skull.

22 So, this area would be where you would
23 find a little bit of white blood diving deeply into
24 the fissures in the brain that usually exist. His
25 are full and puffy because the swelling. And it's

1 not visible in this particular slide I offered to
2 Ms. Byrne.

3 Q. What are we looking at here?

4 A. That is a normal head CT scan of a child
5 who I believe is roughly 5 weeks old.

6 Q. Okay. Now, let's compare a normal head CT
7 scan to Josiah's CT scan from 5 months later. What
8 do we notice?

9 A. So, what we're seeing here on the left, you
10 can tell that -- that leaflike pattern, that
11 white/gray matter differentiation, you can trace it
12 like a child's maze, very nicely and clearly. On the
13 right-hand side, Josiah's 5-month head CT out from
14 his injury, there is really just -- there is no brain
15 in there anymore. What we are seeing is that ribbon
16 of gray tissue and then big black lakes of spinal
17 fluid.

18 And what has happened is all the brain
19 that was swelling and dying at the time has basically
20 broken up into little component parts and either been
21 digested by the body in the immune system or
22 reabsorbed and excreted by the body.

23 And so, what's left is what we would
24 call like a cortical ribbon. Here, just sort of a
25 ribbon and tissue down the center and around the

1 side. And then here is a little island hand of
2 spinal fluid. There is just very little brain left,
3 and a great deal of his brain has similar appearance
4 in the slices.

5 Q. The bleeding that you were talking about,
6 could it have been caused by a stroke?

7 A. No, ma'am.

8 Q. Okay. What was the bleeding in Josiah's
9 brain caused by?

10 A. His bleeding was caused by trauma.

11 Q. Okay. And, specifically, what kind of
12 trauma?

13 A. By, I believe, a combination of blunt force
14 trauma and then whiplash-type injury.

15 Q. Okay. In order to cause a whiplash injury
16 to a child, could that be caused by grabbing and
17 shaking a child with a hand?

18 A. Yes.

19 Q. Okay. Now, you mentioned the spine. Did
20 Josiah have any type of a cervical spine injury?

21 A. Yes, he did.

22 Q. Can you please explain to the jury what was
23 observed?

24 A. So, he had -- I have to give a little
25 anatomy background. He had a dislocation of the

1 upper most portion of his spine from his head. So,
2 the first two vertebrae -- one is called the atlas.
3 That's C1, cervical 1, and one is called the axis
4 and it is C2. And it has like a tooth that the atlas
5 sits around like a ring on a hook. It's mostly
6 cartilage in a kid that age.

7 And then on top of that kind of washer
8 and hook sits the skull. And there is a hole in the
9 skull to fit on top. So, his was dislocated at the
10 axis, at the atlas, and at the head. And so, the way
11 I conceive of these in the spectrum of injury to the
12 neck is like just when you pull your neck like an
13 actual whiplash from a car accident, kind of pulling
14 ligaments and then an internal decapitation syndrome,
15 along that spectrum, where the top of his head was
16 separated from his first vertebra and second
17 vertebra. And there was inflammation and swelling in
18 those areas, and the neurosurgeons treated that very
19 seriously.

20 Q. And what -- what is your opinion as to what
21 caused that cervical spine injury to Josiah?

22 A. From whiplash.

23 Q. And would that be consistent with grabbing
24 and shaking a baby with a hand or hands?

25 A. Yes, ma'am.

1 Q. Okay. And because of the separation from
2 his skull and his spinal column, what did
3 Josiah have to -- did he have to wear a brace?

4 A. Well, he was too little for surgery and for
5 the usual halo that older kids get, because his bones
6 were too thin to support the hardware; the screws
7 and -- I don't know if they're called bolts -- and
8 washers that have to hold it on. So, he had what's
9 called a Minerva jacket. Minerva, I'm not sure if
10 that is the company or person who invented it. We
11 just call them the Minerva. But it's a custom made
12 device that is used to hold the child in a neutral
13 position so the ligament and cervical spine can heal
14 without stretching and restabilize his cervical
15 spine.

16 So, the little guy was in the jacket
17 that went like a life jacket around his waist up his
18 chest over his arms and then had a collar that went
19 up here to keep him in a neutral position.

20 Q. How long -- approximately how long was
21 Josiah in that Minerva jacket?

22 A. He was in that until May of 2013. So, two
23 and a half months, three. A little bit less than
24 three months.

25 Q. Okay. Now, when you say "whiplash," what

1 type of force are you describing?

2 A. I'm describing the kind of force that we
3 see in a high speed motor vehicle collision where the
4 chin slams forward into the head and then the brain
5 keeps moving or the skull has stopped because it's
6 stopped by the chest, but the brain goes forward and
7 hits the inside of the skull. Or something backwards
8 where the back of the head hits between the shoulder
9 blades and skull stops moving and brain catches up
10 and hits the back of the skull, a mild disruption of
11 the tissue.

12 Q. Okay. In addition to his cervical spine
13 injury, what was noted?

14 A. Josiah's eyes or his retinas. So, he had
15 external injury to the eye; but he also had internal
16 injury to the eye. The eye is sort of an extension
17 of the central nervous system. And then the
18 ophthalmologist would say it is the window to the
19 brain. And we always look for problems in the eye
20 when you have problems in the brain, specifically
21 bleeding issues. Josiah's retinas were full of
22 hemorrhage.

23 Typically, ophthalmologists will
24 divide the retina into four quadrants; and because the
25 retina is like that thick coat of paint that goes

1 from the nerve -- the optic nerve in the back of the
2 eye to the globe, and it goes all the way around and
3 starts back at the color part of the eye on the
4 inside.

5 So, you can't see it looking at a
6 person in the face. You have to look through the
7 black pupil of the eye, and then there is a special
8 lens they have to move the eye around so they can get
9 a view all the way around the curvature of the inside
10 of the globe of the eye.

11 Q. Now, what was the cause of all of the
12 retinal hemorrhaging in Josiah's eyes?

13 A. A whiplash type of activity.

14 Q. And would that be consistent with grabbing
15 and shaking a baby with a hand or hands?

16 A. Yes, ma'am.

17 Q. Okay. And let's talk about the abusive
18 skull trauma that you observed on Josiah. I believe
19 we have already -- that would include the skull
20 fracture, correct?

21 A. Yes, ma'am.

22 Q. Okay. And you said that would have been
23 caused by blunt force trauma?

24 A. Yes, ma'am.

25 Q. Now, what about -- were there any rib

1 fractures noted?

2 A. Yes, ma'am.

3 Q. Okay. And what was observed?

4 A. He had a fracture of his left seventh rib
5 around the back, not exactly next to the spine but
6 near the spine.

7 Q. What is that indicative of? What does that
8 tell you?

9 A. So, that's indicative of forceful
10 compression of the chest. We usually see that there
11 is pressure delivered to the back of the ribs and the
12 spine of the vertebrae where the ribs arch over them
13 act as sort of the full thrust on the teeter-totter
14 to take the pressure, and that's where the rib snaps.

15 Q. Alone, would the rib fracture constitute
16 serious bodily injury; or like would a rib fracture
17 cause death or permanent loss of something?

18 A. It would be unlikely for a single rib
19 fracture to cause that.

20 Q. What does the rib fracture in conjunction
21 with all of the abusive head trauma observed on
22 Josiah tell you?

23 A. It adds to the complete clinical picture;
24 physical abuse, specifically physical abuse of a
25 child with a grip around the chest.

1 Q. Okay. Now, let's talk about the abusive
2 cutaneous trauma. And, again, when we say
3 "cutaneous," what are we really meaning here?

4 A. It's the word I use for skin. "Cutaneous"
5 means skin.

6 Q. Okay. What all was noted -- what abusive
7 trauma was noted on Josiah's body?

8 A. So, I broke down his bruising into facial
9 bruising, trunk bruising, and extremity bruising.

10 Q. Okay. Let's start with the facial
11 bruising. Where was the bruising noted on his face?

12 A. He had facial bruising on both eyelids.
13 So, I write down upper and lower eyelids, OU, which
14 means both eyes, concentrated along tarsal,
15 T-A-R-S-A-L, plate. And the tarsal plate is where
16 the eyelashes come out.

17 Q. Okay. State's Exhibit No. 53, can you see
18 the bruising and trauma that you're discussing on
19 Josiah's eye?

20 A. Yes, ma'am. That's his left eye, and that
21 red violet discoloration on the top lid and center
22 and then the bottom lid towards the inner aspect of
23 the eye, the nasal -- near the nose area of the eye.

24 Q. Okay. And does it appear to be swollen?

25 A. It does look a bit swollen.

1 Q. Okay. And looking at his other eye, in
2 State's Exhibit No. 47, what do you observe there?

3 A. You see similar bruising. It's a bit
4 tougher. The lighting is not good. But there is
5 similar bruising in the middle, the right upper
6 eyelid, and then also at the crease -- at the top of
7 the globe under the eye, there is some red violet
8 discoloration. And there was a good concentration in
9 the center of the lower eyelid, also.

10 Q. State's Exhibit No. 39, what all bruising
11 do you observe on State's Exhibit No. 39?

12 A. So, here we have three areas that are of
13 concern. You can see on the left jaw, same in a bit.
14 On the left jaw, up under the jaw by the angle of the
15 jaw, sort of where the cartoon characters have that
16 big squared-off jaw, he has some bruising on the
17 underside and also in front of the left ear. And if
18 you can see above the little C, color portion there,
19 inside of his ear, there is also bruising.

20 Q. Okay. Well, let's start with the bruising
21 on the neck area. How would a baby of 15 days old
22 have bruising on the neck area?

23 A. It would be -- sorry?

24 Q. What is it consistent with?

25 A. It's consistent with excessive force

1 applied to his little face.

2 Q. Okay. Would -- could somebody be grabbing
3 the baby?

4 A. Yes. We see that often with frustration
5 with feeding.

6 Q. So, for example, if somebody was frustrated
7 trying to feed their child and they might grab the
8 face and neck area?

9 A. Yes, ma'am.

10 Q. And would that be a common occurrence in
11 cases like that that you have seen?

12 A. Yes, ma'am.

13 Q. And then what about above -- near the ear?

14 A. So, this is -- this is a patch of red
15 violet bruising present in front of his ear, and it's
16 in line with the bruising inside of the pinna of the
17 floppy part of the ear.

18 Q. Okay. Well, let's talk about that, that
19 bruising inside of the ear. What's the ear made of?

20 A. The ear is completely cartilage.

21 Q. Okay. How do you get bruising on
22 cartilage?

23 A. It's really quite a challenge. You can
24 grab your own ear and just twist it as fast and hard
25 as you can; and you can hardly make it hurt, let

1 alone make an injury. And that's because it diffuses
2 the force very, very nicely and quickly through the
3 flexible tissue.

4 Here, this is just implicative of just
5 something so fast and so hard that the tissue didn't
6 have time to bend and diffuse, disperse, the force
7 through the related tissue. It just ruptured the
8 blood vessels. So, ear injuries in and of themselves,
9 much like a posterior rib fracture, are highly
10 specific for an inflicted type of injury.

11 Q. Okay. Now, I want to look at some of the
12 pictures. State's Exhibit 55, what are we looking at
13 here?

14 A. That's his shoulder. That looks like his
15 right shoulder. So, that -- the silver dot with the
16 clamp on it is a lead for the electrical monitor for
17 his heart. Then the center of the picture is his
18 armpit.

19 Q. Okay.

20 MS. BYRNE: Permission to approach the
21 witness?

22 THE COURT: Yes, ma'am.

23 Q. (BY MS. BYRNE) Dr. Donaruma, I'm going to
24 show you what has been marked as State's Exhibit
25 No. 77. Now, clearly, this is not the baby in

1 question in this case. But is this baby similar in
2 size to Josiah? And do you think that using this
3 would help demonstrate to the jury the injuries and
4 the possible causes of the injuries?

5 A. Yes, I believe it probably could.

6 Q. Okay. Now, looking at State's Exhibit
7 No. 55, you see bruising on the armpits and
8 shoulders. Was there similar bruising on the other
9 side of Josiah's arms?

10 A. Yes, ma'am.

11 Q. Okay. So, would that be consistent with
12 somebody grabbing a baby either under the armpits and
13 squeezing, applying pressure?

14 A. Yes, ma'am.

15 Q. Okay. Would it also be consistent with
16 possibly grabbing and squeezing the baby in a manner
17 over its shoulder?

18 A. Yes, ma'am.

19 Q. Okay. And where also was bruising observed
20 on Josiah?

21 A. There was also bruising on his right chest,
22 down in this area (indicating.) And then he had
23 bruising on his arm. So, he had a line of bruising
24 along the right forearm.

25 Q. Okay. Now, I want to use the baby and let

1 me say in the offset, demonstrating with the baby can
2 sometimes be a little upsetting because you're
3 talking about a child. Would that be fair to say?

4 A. Yes.

5 **THE COURT:** Just for the record, what
6 she is referring to as a baby is a doll, of course.

7 **MS. BYRNE:** Yes, it's clearly a doll,
8 used to demonstrate.

9 **Q. (BY MS. BYRNE)** Looking at all of these
10 injuries, particularly the abusive head trauma that
11 you observed in Josiah, I want to do some
12 demonstration.

13 Would the injuries, the skull fracture
14 and the bleeding in Josiah's brain, would it be
15 consistent with somebody holding a baby and then
16 dropping it onto the floor?

17 A. No, ma'am. It would not.

18 **Q.** Okay. Why not?

19 A. Because the constellation of injuries he
20 has reflect far more force than we see in that type
21 of short fall.

22 **Q.** Okay. Now, if I were holding the baby over
23 a sink or corner of the counter and I accidentally
24 stumbled and hit the baby into it, would that be
25 consistent with the injuries observed in Josiah?

1 A. No, ma'am, it would not.

2 Q. Okay. What if I was changing the baby and
3 I was holding him and he fell back like that
4 (indicating)? Would that be consistent with the
5 injuries?

6 A. No, ma'am. That's not sufficient.

7 Q. Okay. What about that (indicating)?

8 A. Well, yes. That would be more forceful and
9 could be responsible for the head trauma.

10 Q. Okay. The whiplash that you noted that
11 would have caused the spinal injury and perhaps the
12 bleeding in the areas of the brain, would that be
13 consistent with somebody holding a baby like this
14 (indicating), maybe stop crying, or shaking, holding
15 baby a little too rough, bouncing the baby like this
16 (indicating)?

17 A. No. People handle children like that all
18 the time and don't get those type injuries. That's
19 not reasonable.

20 Q. What about, you know, burping the baby a
21 little too hard (indicating), would that be
22 consistent?

23 A. No, ma'am, it would not be.

24 Q. What has to happen to the neck? What has
25 to occur in order to cause that whiplash injury?

1 A. So, it needs to be a forceful and violent
2 acceleration and deceleration, a sudden start and
3 stop of the head where the tissue moves, usually more
4 than one direction, over the shoulders and not in a
5 perfectly straight line.

6 Q. Would it be consistent with shaking the
7 baby in a forceful manner?

8 A. Yes, ma'am.

9 Q. Okay. Could a 6-year-old have caused these
10 injuries?

11 A. No.

12 Q. And why not?

13 A. A 6-year-old is not able to -- a 6-year-old
14 would not have the strength and coordination to
15 sustain that kind of force to cause that kind of
16 injury to a child.

17 Q. And looking at the blood and how Josiah
18 presented at the hospital, when he was admitted at
19 approximately -- I think it was 6:00, would the
20 bleeding observed or the injuries sustained be
21 consistent with some sort of birth complication from
22 January 24, 2013?

23 A. No, ma'am. That is not possible.

24 Q. And why is that not possible?

25 A. Because he has a full constellation of

1 findings that is reflecting of trauma more resent
2 than 15 days prior. And, in addition, he had a
3 five-day observed stay in a medical care unit where
4 he was seen by doctors and nurses around the clock.
5 It's not possible for the injuries to have gone both
6 without symptoms and without notice.

7 Q. If Josiah's brain had been bleeding the way
8 that he was bleeding on February 8, 2013, would it --
9 he ever have even survived to that date?

10 A. No, ma'am.

11 Q. Okay. Now, what sort of condition was
12 Josiah in when he checked into the hospital on the
13 8th?

14 **THE COURT:** Excuse me a moment. I'm
15 going to ask the jury to retire briefly so we can
16 take up a scheduling issue.

17 All rise, please, for the jury.

18 **(Jury released)**

19 **THE COURT:** Thank you. Have a seat.

20 Okay. Tell me what your plan is with
21 the scheduling if the doctor is not available until
22 next Wednesday -- is that correct? Is that
23 Wednesday?

24 **THE WITNESS:** Thursday.

25 **THE COURT:** Thursday. And where are

1 you going?

2 **THE WITNESS:** I'm going to Annapolis,
3 Maryland, for a conference.

4 **THE COURT:** I might mention I skipped
5 my conference yesterday to try and get through this.
6 Okay. So, this is taking a lot of time; and it might
7 have been better to put her on before the therapist.
8 So, we could have started earlier. So, when are you
9 expecting the Defense to do their cross-examination?
10 Because it's 5 until 4:00.

11 And, Cynthia, I know I promised we'd
12 quit at 4:30 for your daughter's prom, but it's
13 looking bleak.

14 **THE REPORTER:** It's okay, Judge.

15 **THE COURT:** So, you're taking a lot of
16 time and taking your time. Are you expecting Ms.
17 Williams to rush through her cross?

18 **MS. BYRNE:** I am not expecting
19 Ms. Williams to rush through her cross.

20 **THE COURT:** So, give me your plan on
21 what we're going to do --

22 **MS. BYRNE:** Well --

23 **THE COURT:** -- with the doctor?

24 **MS. BYRNE:** I believe that I'm almost
25 at the end of the doctor's testimony, and I can pass

1 her to Ms. Williams.

2 **THE COURT:** All right. Ms. Williams,
3 can you do your cross-examination in 45 minutes?

4 **MS. WILLIAMS:** In 45 minutes? I would
5 think so, Your Honor.

6 **THE COURT:** Okay. I'm sorry.

7 **THE WITNESS:** That's okay.

8 **THE COURT:** Okay. You're going to
9 pass her in 10 minutes?

10 **MS. BYRNE:** If not less, Judge.

11 **THE COURT:** Okay. Thank you.

12 *(Jury enters the courtroom)*

13 **THE COURT:** Please be seated.

14 **MS. BYRNE:** May I proceed?

15 **THE BAILIFF:** We're missing one juror.

16 **MS. BYRNE:** Oh, I'm sorry. Okay.

17 *(Brief pause)*

18 *(Juror enters)*

19 **THE COURT:** Thank you. You may
20 continue.

21 **Q. (BY MS. BYRNE)** How grave was Josiah's
22 condition when he checked in on February 8, 2013?

23 **A.** He was rapidly critical and unstable.

24 **THE COURT:** And what? Sorry.

25 **THE WITNESS:** He was rapidly critical

1 and unstable.

2 **THE COURT:** Thank you.

3 **Q.** (BY MS. BYRNE) Without treatment, in that
4 moment, how quickly would -- how likelihood -- how
5 likely would it have been that Josiah would have
6 passed away?

7 **A.** 100 percent, he would have died.

8 **Q.** Given the nature of his injuries or the
9 amount of fresh blood that was seen on his brain and
10 the critical condition that he was in upon being
11 checked into the hospital at 5:06 p.m., what sort of
12 time frame can you say that these injuries were
13 likely to have occurred in?

14 **A.** That this most likely would have happened
15 within a 12-hour window.

16 **Q.** Okay. And what are you making -- what are
17 you basing this opinion on?

18 **A.** I'm basing that on the child's presentation
19 clinically, just how sick and how rapidly he stopped
20 breathing, as well as the appearance of the bleeding
21 on the brain on the head CT.

22 **Q.** Okay. So, roughly, if we're just going to
23 say a time, 5:00 p.m -- let's be generous and say
24 5:00 p.m., even though CT scans were done a little
25 bit after that. If we were to go back approximately

1 12 hours, we would be looking at roughly 5:00 a.m.?

2 A. Roughly.

3 Q. Okay. Sometime on February -- your expert
4 opinion is sometime on February 8, 2013, these
5 injuries would have occurred?

6 A. Yes, ma'am.

7 Q. Okay. Now, since Josiah's injuries, he has
8 routinely had follow-up treatment and other
9 procedures at Texas Children's; is that correct?

10 A. Yes, ma'am.

11 Q. Okay. On August 2, 2013, was Josiah
12 diagnosed with hydrocephalus?

13 A. Yes.

14 Q. And, briefly, what that is?

15 A. It means that because of the debris in his
16 head from the dead cells and the blood, the drainage
17 system, sort of -- the fluid as blocked out and the
18 fluid accumulated and caused an increase in his head
19 size.

20 Q. And what had to be done in order to remedy
21 the swelling and the fluid that was in Josiah's
22 brain?

23 A. He had a neurosurgical surgical procedure
24 called a V for ventricle, V-E-N-T-R-I-C-L-E,
25 peritoneal, P-E-R-I-T-O-N-E-A-L, which is the cavity

1 of the abdomen, VP shunt.

2 Q. And in looking at the scans from August 2,
3 2013, can we see the tubing in Josiah's brain where
4 the shunt has been placed?

5 A. Yes, ma'am.

6 Q. Okay. And, basically, the shunt assists in
7 draining that fluid that Josiah's body -- his own
8 brain is just not capable of draining on its own?

9 A. Yes, that's right.

10 Q. Okay. And where does it drain to?

11 A. It drains out of the right side of his head
12 down the side of his head, down his neck, down the
13 skin of his chest, and into his abdominal cavity.

14 Q. And will this be a lifelong instrument that
15 Josiah will have in his head?

16 A. Yes.

17 Q. Okay. And what are some potential
18 complications?

19 A. Within the first year, about 40 percent of
20 shunts will fail. So, blockage, vomiting, increase
21 in head pressure, within that two -- within two years
22 about 50 percent will fail. And then every year
23 after that, there is another 5 failure rate of
24 blockage interruption.

25 Q. Do you have an opinion as to what caused

1 the hydrocephalus?

2 A. Yes. It was a consequence of the abusive
3 head trauma.

4 Q. Okay. Now, in December of 2013, Josiah had
5 something called a G tube placed in his stomach.

6 What is a G tube?

7 A. G tube. "G" stands for gastric, and it is
8 a tube placed from the outside through the abdominal
9 wall, through the wall of the stomach, and then
10 held -- stapled together with a balloon inflated on
11 one side and then a button on the other so that a
12 tube can deliver nutrition directly into the child's
13 stomach and bypass his mouth.

14 Q. Briefly, if Josiah was able to eat from a
15 bottle after being discharged from the hospital, why
16 over time would he start rejecting a bottle and
17 refusing to eat?

18 A. Well, part of that is because a child -- an
19 infant has a suck reflex. Anything you put in their
20 mouth, they suck on it. Young mothers overfeed the
21 baby just by not stopping because they keep sucking.
22 Over time that reflex goes away. It's not necessary
23 anymore because a child can eat other food. With the
24 loss of that suck reflex, Josiah may not know what to
25 do with a bottle anymore because that reflex he

1 doesn't have to think about is gone.

2 In addition, he has so little brain
3 left, it's impossible to say if he even feels hunger
4 cues like a regular person does, like if he knows he
5 is hungry or if he knows he is thirsty.

6 Q. Is that something that Josiah will have for
7 the remainder of his life?

8 A. Yes. I think that is likely.

9 Q. And are there risks of infection or
10 complications with the G tube?

11 A. Yes. After it's placed, the bigger risk of
12 poking something -- you're not supposed to go far.
13 They leak. They come out. They can get infected.

14 Q. Given your observations about the head
15 trauma and skeletal trauma caused to Josiah, what are
16 some of the life-limiting affects?

17 A. He will never function like another child
18 of the same age ever. He will be limited not only in
19 his ability to think, things like math, science, art,
20 music; but he won't understand human interaction.
21 Would he be able to recognize that -- when you smile
22 at somebody and they smile back, that feels good. He
23 won't have that.

24 Q. Okay. And when you personally treated
25 Josiah, did you do any sort of testing to see if he

1 could have -- had vision?

2 A. Yes. He seems to respond to light. So, we
3 turn the lights down and shine a light and he looked
4 at the light, but he didn't look at faces very well.
5 And so, I did what's called a threat test. So, with
6 the baby there, I just move my hands toward his face;
7 and a child will blink if something is coming at
8 them. He didn't notice.

9 Q. Based on everything that you reviewed, your
10 treatment of Josiah and your expertise in child abuse
11 pediatrics, do you have an opinion as to the cause of
12 his injuries?

13 A. Yes.

14 Q. And what is that?

15 A. He is a victim of child abuse.

16 Q. And based on the extent of Josiah's
17 injuries, particularly the brain hemorrhaging, the
18 lack of oxygen to his brain due to whiplash, and the
19 skull fracture and subsequent bleeding, do you have
20 an opinion as to whether those injuries constituted
21 serious bodily injury?

22 A. Yes.

23 Q. Okay.

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

25 **THE COURT:** Thank you.

1 Ms. Williams, on cross?

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

3 May I have just a moment to get --

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

5 **CROSS-EXAMINATION**

6 **Q.** (BY MS. WILLIAMS) I noticed that when you
7 were testifying, you were looking at a document. Is
8 my assumption correct?

9 A. Yes, ma'am.

10 **Q.** May I have an opportunity to examine it?

11 A. It's a couple of my notes from the day I
12 saw Josiah.

13 **Q.** Okay. Thank you.

14 A. And these are just written notes.

15 **Q.** Okay. Dr. Donaruma, your job is strictly
16 in the area of child abuse; is that correct?

17 A. Yes, ma'am.

18 **Q.** Okay. And then capacity, you -- part of
19 your job, would it be testifying like in court like
20 you are today?

21 A. Yes, ma'am.

22 **Q.** And have you ever been an expert witness
23 for the Defense?

24 A. Yes, I reviewed cases; but they never
25 wanted me to testify in court.

1 Q. Have you ever been a testifying expert
2 witness for the Defense in court?

3 A. No, never in court. They don't like what I
4 say.

5 **THE COURT:** Ma'am, please just answer
6 the question that's asked. Don't add anything extra.

7 **THE WITNESS:** Yes, Your Honor.

8 **THE COURT:** Thank you.

9 Q. **(BY MS. WILLIAMS)** And I think you have
10 testified over 50 times for the Court; is that
11 correct -- or about correct?

12 A. I am sure that's -- I'm sure that's
13 correct.

14 Q. And that is definitely part of your job?

15 A. Yes. The hospital has thought our
16 testimony is a community benefit for education
17 purposes, so they support the time.

18 Q. I'm sorry. I couldn't hear you.

19 A. Yes, ma'am. The hospital feels that our
20 testimony serves -- provides a community benefit for
21 education, so they support our time here.

22 Q. And Texas Children's Hospital gets a
23 special grant to work cooperatively with law
24 enforcement officers, prosecutors, Children's
25 Assessment Center, and other CPS professionals?

1 A. They do? I'm not familiar with it.

2 Q. In reference to this case, have you had an
3 occasion to talk with law enforcement officers?

4 A. I believe there was a police officer
5 present at my first meeting with Ms. Byrne. I
6 don't -- I don't recall specifically having a
7 separate meeting with law enforcement.

8 Q. And have you met with Ms. Byrne
9 approximately three times or more?

10 A. I can remember twice, but we have exchanged
11 a lot of emails. I have been in contact with her.

12 Q. Okay. Now, typically, when you're
13 working -- well, during the hospital stay itself, is
14 it correct that you did not treat Josiah Fisher?

15 A. Yes, that's correct.

16 Q. But, subsequently, you have consulted and
17 treated, overseen his treatment; is that correct?

18 A. Yes, that's correct.

19 Q. Okay. And that's because you're the child
20 abuse pediatrician?

21 A. Yes.

22 Q. Okay. And before today, you and I haven't
23 talked; is that correct?

24 A. No. No, ma'am, we haven't.

25 Q. Typically, don't you -- in this instance,

1 when the physicians were saving Josiah's life, they
2 did so without the benefit of a maternal history or a
3 family history; is that correct?

4 A. Yes.

5 Q. And, ideally, you would want a family
6 history of both parents?

7 A. Yes.

8 Q. Because that helps you make a decision as
9 to whether, you know, this is an injury or a
10 condition?

11 A. Yes. Yes.

12 Q. Were you -- you have -- you looked at the
13 medical records from Montgomery County Regional
14 Medical Center?

15 A. Yes.

16 Q. And you --

17 A. I'm sorry. The Conroe Regional Medical
18 Center.

19 Q. Oh, thank you. You're absolutely correct.
20 Thanks.

21 And the records of the mother showed
22 that she had gestational diabetes?

23 A. Yes. She may have had diabetes but not
24 insulin or hypoglycemic.

25 Q. Controlled by diet, probably?

1 A. Yes, ma'am.

2 Q. And that she was anemic?

3 A. Oh, probably.

4 Q. And because most of the women of
5 childbearing are.

6 And that she had asthma?

7 A. I don't remember that, but I believe you.

8 Q. Okay. Now, can -- can a long labor cause
9 delayed birth injuries because of periods of lack of
10 oxygen, like you described with meconium?

11 A. You mean like a cerebral palsy type of
12 picture? Yes.

13 Q. Yes.

14 A. Yes. It's possible.

15 Q. And -- and other problems as well as
16 cerebral palsy?

17 A. Like the sepsis that we spoke of, yes.
18 There are complications that can come from prolonged
19 labor.

20 Q. Well, there is probably a range. Would you
21 agree with that?

22 A. Yes, ma'am.

23 Q. Many things. And the onset of the
24 appearance of the injuries can be that?

25 A. Yes.

1 Q. Can it be delayed six months?

2 A. Depending on the condition in question,
3 yes.

4 Q. Okay. Is there any way that you know of to
5 test for all possibilities in this area?

6 A. No. I think that timing and regular well
7 child checks are usually where many of the normal
8 things come to life.

9 Q. But not at birth, there is no checking?

10 A. Correct. Some -- some conditions are not
11 evidenced at birth. That's correct.

12 Q. Right. And developed after the child
13 grows?

14 A. Yes.

15 Q. Typically, would a child's -- you know,
16 from what you described of the child's head, the
17 actual skull portion being so flexible, I'm assuming
18 also that it's very thin?

19 A. Yes, it's thinner in infants than it is in,
20 say, a 6-month-old or an adolescent or adult.

21 Q. Would it be the thickness of this stack of
22 papers?

23 A. I'd make it a little bit thicker.

24 Q. A little bit thicker?

25 A. Probably about three times that.

1 Q. Three times that?

2 A. Maybe. Maybe four.

3 Q. Okay. So, how many millimeters are you --
4 do you -- would you estimate that to be?

5 A. I estimate probably between 4 and 6, which
6 is like 4 to 6 times high. Less than 6.

7 Q. Okay. And you never did meet the mother of
8 Josiah Fisher?

9 A. No.

10 Q. Or his father?

11 A. No. No, neither of them.

12 Q. Or his grandfather?

13 A. No, ma'am.

14 Q. Or his step grandmother?

15 A. No. I only met the foster family.

16 Q. Okay. And that was because they brought
17 Josiah in for treatment.

18 Now, when Josiah was born, it was sort
19 of a precipitous birth?

20 A. I believe it was.

21 Q. Well, in that he was born to -- almost
22 immediately as he was received at the hospital?

23 A. Oh. Oh, yes. Yes, he came out fairly
24 quickly once he got to the right place. Yes.

25 Q. About four minutes or so?

1 A. It was pretty -- yes.

2 Q. And they -- pathology found acute infection
3 in the umbilical cord -- I'm sorry -- cord; is that
4 correct?

5 A. I thought it was the placenta.

6 Q. Well, the cord attached to the --

7 A. Right.

8 Q. -- to the placenta. And meconium staining
9 on the placenta, the baby's side?

10 A. Yes.

11 Q. And infarction?

12 A. Yes.

13 Q. And can you tell us what infarction is?

14 A. It's -- what happens is the placenta gets
15 older. The older placenta gets past term. It starts
16 to fail. And so, you can see stroking in the
17 placenta. And an infarction is a stroke, or
18 myocardial infarction is a heart attack.

19 Q. And is it possible to get infection through
20 the umbilical cord, for a child to get an acute
21 infection?

22 A. Yes. That would be quite rare, but I have
23 seen that. It's reported.

24 Q. And -- and Josiah was given a lot of
25 antibiotics in the event he became septic while he

1 was at Conroe Regional Medical Center?

2 A. Yes. He and his mother got --

3 Q. Sorry?

4 A. Yes, ma'am. He and his mother got
5 antibiotics.

6 Q. Okay. Now, there is no doubt in your mind
7 that there is a skull fracture, that Josiah has a
8 skull fracture?

9 A. Oh, yes, it's not refutable. He has a
10 skull fracture.

11 Q. And that's in an area of the head that's
12 common to have skull fractures?

13 A. That's right.

14 Q. Can you tell us the difference between a
15 broken skull and a fractured skull?

16 A. Yes. There is no difference.

17 Q. No difference?

18 A. No, there is no difference.

19 Q. Why do they call one a fracture and one a
20 broken skull?

21 A. I can't explain it. The same reason I say
22 cutaneous when I mean skin. We get trained in a
23 vocabulary, and so we use it.

24 Q. And on the bruises, some of those bruises
25 looked kind of almost like -- I wouldn't call it

1 chafing -- chafing. You know, from looking at the
2 pictures, you know, like friction on the skin.

3 A. I --

4 Q. Like particularly around here (indicating)

5 A. I would have to say I don't agree with that
6 interpretation.

7 Q. Okay. They don't look that way to a
8 professional like yourself?

9 A. That is correct.

10 Q. And bruises are kind of -- like trying to
11 time them is kind of an art form, isn't it?

12 A. We don't time them anymore because we
13 realized we don't know it very well.

14 Q. Because you can't -- you cannot definitely
15 determine the age of the injury by the color of the
16 injury?

17 A. That's right.

18 Q. And are some children more acceptable to
19 bruising than others?

20 A. Oh, sure.

21 Q. And Josiah was light skinned and light
22 headed?

23 A. Yes.

24 Q. Okay. And I believe in the Texas
25 Children's medical records, he had a tendency to

1 bleed easily?

2 A. Well, we can't prove that. I believe what
3 you're referring to is in "review of systems," the
4 father reported the child bleeds easily. That was
5 not something reproduced in the hospital.

6 Q. Can you -- can -- would you be able later
7 to show me in the medical records, not right now but
8 later after your testimony, where that is in the
9 medical records that the father said he bruises
10 easily?

11 A. Yes, I can.

12 Q. Okay.

13 **THE COURT:** So, you-all do that this
14 evening after we recess.

15 **MS. WILLIAMS:** I beg your pardon?

16 **MS. BYRNE:** I can find it right now
17 while she continues on cross, Judge. I know exactly
18 which page it's on.

19 **THE COURT:** Thank you.

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

21 Q. **(BY MS. WILLIAMS)** And as a matter of fact,
22 after Josiah got to Texas Children's Hospital, there
23 were a multitude of physicians working on him to save
24 his life?

25 A. Yes.

1 Q. Dr. Cara Doughty, I think she was lead
2 physician in the emergency area. And all of those
3 physicians thought and wrote in their records that
4 Josiah would be dead in 24 to 48 hours; is that
5 correct?

6 A. I don't recall that specifically. It may
7 be part of something they write routinely. If you
8 tell me it's there, I don't think I would argue.

9 Q. Well, from the records, you do know that he
10 was a -- Josiah was a life gift candidate. Almost
11 immediately life gift came the same night?

12 A. Yes, ma'am.

13 Q. Okay. And that meant that he was
14 designated for organ transplant, that kind of thing?

15 A. Yes.

16 Q. Immediately?

17 A. They felt death was imminent. They felt
18 that some of his organs could be salvageable for
19 other children.

20 Q. And they only do that when they're pretty
21 sure or it's their opinion that that patient is going
22 to pass away?

23 A. Yes.

24 Q. And I think -- typically, don't they pass
25 away when the life support is taken from them?

1 A. Yes. They declare death based on other
2 criteria, and then they are sustained on the
3 ventilator after being declared to maintain the
4 organs for transplant.

5 Q. Okay. This is a Texas Children's medical
6 record. Some of it's not present because it's been
7 excised, so to speak.

8 A. Yes.

9 Q. Is this the area where you think that --
10 where it says that the -- hematological bruises and
11 bleeds easily?

12 A. Yes. It says that right there.

13 Q. Okay. And now -- and it says here,
14 according to the father, he spits up with feeds and
15 has had eight loose diapers to date?

16 A. Yes, it does.

17 Q. But this is not the father saying that he
18 bruises and bleeds easily.

19 A. Well, in fact, it is -- "review of systems"
20 means that you review each organ system with the
21 caretaker in order to affect your diagnoses you're
22 going to consider --

23 Q. Okay.

24 A. -- as contributing to his problem.

25 Q. Okay.

1 **THE COURT:** Try not to talk at the
2 same time, please. Ms. Williams, control the pacing
3 please.

4 **MS. WILLIAMS:** Thank you for clearing
5 that up.

6 **Q.** **(BY MS. WILLIAMS)** Now, you talked about him
7 having a sonogram, Josiah having a sonogram at Conroe
8 Regional Medical Center?

9 **A.** Yes.

10 **Q.** And there were just a few comments about
11 him having symmetrical ventricles in the brain?

12 **A.** What I saw was the interpretation from the
13 doctor that said "head ultrasound normal." That's
14 what I know.

15 **Q.** Right. And, of course, ultrasound is not
16 the best imaging system. It wouldn't necessarily
17 show a skull fracture?

18 **A.** No. A physical exam would show a skull
19 fracture.

20 **Q.** And you wouldn't expect it to show a skull
21 fracture; is that correct?

22 **A.** No, because you don't get an ultrasound for
23 a skull fracture. You could find it, but that
24 wouldn't make sense medically to do that.

25 **Q.** Do they, as a routine practice, always

1 ultrasound children?

2 A. No.

3 Q. Do you know what they did in Josiah's case?

4 A. Presumably because he was so fussy, that
5 was something they mentioned; and they were worried
6 about his fussiness.

7 Q. And how long -- do you know how long the
8 fussiness continued?

9 A. It continued, I believe, through about day
10 four because on day five they felt it had resolved;
11 and he went home.

12 Q. Okay. On the -- you talked, also, I think
13 about the Apgar; and on a scale of 10, okay, 2 is
14 low. And that was because there was no respiratory
15 effort and no reflex when he was -- when Josiah was
16 initially born?

17 A. Yes, ma'am.

18 Q. And when a person sustains blunt trauma, is
19 the swelling immediate?

20 A. No, it varies from child to child; but it's
21 not instantaneous.

22 Q. And any time there is a lack -- significant
23 lack of oxygen, is there swelling?

24 A. Yes.

25 Q. There -- you are familiar with studies, are

1 you not, that talk about lethal minor falls from
2 shorter different -- distances?

3 A. Yes. There are case reports.

4 Q. Yes. And so, there is some controversy
5 about whether or not a child can sustain serious
6 bodily injury?

7 A. There is some.

8 Q. But we go back to the same thing, Josiah
9 had a skull fracture and a broken rib and subdural
10 hemorrhage and a broken rib -- a fractured rib.

11 A. Yes.

12 Q. And, presumably, his little ribs would
13 be -- be fragile as well as his whole skeletal.

14 A. In fact -- no. They are actually far more
15 flexible because they are mostly cartilage. So, they
16 can take more distention and deform more than an
17 adult bone which snaps faster.

18 Q. Uh-huh (affirmative.) And that wasn't
19 discovered until February the 25th because it wasn't
20 picked up in x-rays due to certain limitations; is
21 that correct?

22 A. That's not entirely correct. The callus
23 had to form on a fracture because we do miss hairline
24 fractures; but once the bone responds and the healing
25 was apparent, it was diagnosed.

1 Q. Can -- Doctor, can nutrition also affect
2 how easily bones fracture?

3 A. In a 15-day-old, I would say no because
4 mostly they're reflecting maternal state and they can
5 suck a mom dry to keep themselves stable. So, in a
6 15-day-old I would say that is not as accurate as it
7 would be, say, in a 15-month-old.

8 Q. And when it's in the back part, is that
9 from some pressure pushing down?

10 A. Yes.

11 Q. On the front to the back, like if he was
12 laying down on his back?

13 A. It's less typical in that fashion because
14 that gives you full support to the rib arches. When
15 you have it in insulation like that, it's usually
16 because there is a levering of the rib arc over the
17 spine -- I'm sorry -- the vertebrae processes that
18 arc, gets treated like a point and then it just
19 breaks at the point where the pressure is being
20 delivered.

21 Q. The blunt trauma is really nonspecific
22 finding in -- in itself; is that correct? Or would
23 you call it a specific finding?

24 A. I think I would need to understand --

25 Q. The question --

1 A. -- what you mean by "blunt trauma."

2 Because there is so many, the bruising and then the
3 head and the skull.

4 Q. In the skull?

5 A. The blunt trauma itself is not specific.
6 It's in the context of the other stuff that was also
7 present, plus the absence of any reasonable history
8 that would cause it.

9 Q. Okay. But the skull fracture itself,
10 that's --

11 A. Just the skull fracture by itself tells you
12 little.

13 Q. Little. And you basically -- do you
14 disagree with the studies that indicate short falls
15 can cause serious bodily injury or death?

16 A. May I first clarify they're not studies,
17 they're case reports. So, there wasn't a question
18 that was experimented on. It is just a description
19 of cases. And so, if we talk about case series, I
20 disagree with the methods.

21 Q. I see.

22 A. I think they were not well done. So, I
23 can't find their conclusions believable.

24 Q. Okay. But --

25 **THE COURT:** Can everybody hear okay?

1 Thank you.

2 **THE WITNESS:** Sorry. I will --

3 **THE COURT:** You still have water?

4 **THE WITNESS:** I am a second cup down.

5 **THE COURT:** You need more?

6 **THE WITNESS:** No. I think I will be
7 all right. I will try harder, Your Honor.

8 **THE COURT:** Thank you.

9 **Q. (BY MS. WILLIAMS)** So, it's your best --
10 best professional judgment that this was not an
11 accident, that the injuries that Josiah sustained
12 were not accidental?

13 **A.** Yes, ma'am. That is my opinion.

14 **Q.** And there are no studies that you're aware
15 of using actual infant with shaking or with striking
16 the children?

17 **A.** No, ma'am. I'm aware of no studies to
18 experiment on human infants.

19 **Q.** But there are case studies of recorded
20 short falls, not -- case -- recorded short falls?

21 **A.** Yes.

22 **Q.** That result in children's death?

23 **A.** They are not short falls. There is a
24 recording of a child who sits on a bar and spins fast
25 and hard. She twirls and spins, rotated about her

1 pelvis because she is on the bar and she spins and
2 slams her head into a concrete ground. So, it's not
3 a fall. It has a significant acceleration component
4 to it.

5 Q. You were talking about back acceleration
6 and deceleration injury. Is that -- is a torquing
7 the same kind of movement?

8 A. No, it's not.

9 Q. Okay. Just torquing, though, would add
10 more force to a fall or an injury?

11 A. Yes. By torquing, you mean something
12 that's twisting?

13 Q. Yes.

14 A. Yes, that does.

15 Q. Now, you really aren't here saying who
16 injured this child?

17 A. I can't say.

18 Q. Because you don't have any evidence or
19 knowledge of who injured the child?

20 A. I -- I never spoke to anybody who had care
21 of the child at the time he became -- I only have the
22 medical records.

23 Q. You -- in your medical opinion, you're
24 saying you don't think it's disease or any kind of
25 disorder, that it's what you said it is?

1 A. Yes, ma'am. It is child abuse.

2 Q. And radiologically -- I think you showed us
3 a skull fracture, but there are a multitude of
4 diseases and disorders that cannot be tested due to
5 financial costs in the hospitals?

6 A. Do you mean disorders that would affect
7 this particular baby?

8 Q. Well, like the hemorrhaging.

9 A. Could you -- could you --

10 Q. Okay.

11 A. I don't understand.

12 Q. Well, oxygen, whether it's restricted or
13 cut off or whatever, that's -- is that what causes
14 the hemorrhaging?

15 A. No. No, ma'am.

16 Q. Okay. What causes the hemorrhaging?

17 A. The type of hemorrhaging present in
18 Josiah's body within his eyes and his central nervous
19 system is due to trauma. Like in Josiah's case, a
20 combination of acceleration/deceleration whiplash and
21 blunt force trauma.

22 Q. Okay. But, generally, hemorrhaging can be
23 caused by a variety of things; is that correct?

24 A. Yes. A hemorrhage itself, like not in this
25 child but like the concept of hemorrhage --

1 Q. I'm talking --

2 A. -- sure, many things make hemorrhage
3 happen.

4 Q. Okay. And you said that there was a
5 12-hour window of timing, in your opinion. Are you
6 measuring from the onset of injuries?

7 A. Yes. Yes. I mean, it's roughly 12 hours
8 to his decompensation looking back is when it could
9 have happened.

10 Q. And you're -- you're thinking from the time
11 that he was in the hospital. Well, can the onset of
12 something like this be increased fussiness, diarrhea,
13 crying?

14 A. I believe that can be a trigger for what
15 happened. I don't believe a child with this type of
16 injury would be active and crying like you think of a
17 colicky baby. They might whimper a little and fuss,
18 but they wouldn't be actively screaming. They don't
19 have the consciousness to do that. Diarrhea, I can't
20 speak to.

21 Q. Well, the child was crying when he came
22 into the emergency room.

23 A. Like fussy, whimpering type of crying, but
24 not when you think of like a colicky baby with
25 everything drawn up and the skinny face. I don't

1 think that he could have mustered that.

2 Q. Okay. And, of course, that's your -- your
3 opinion?

4 A. Yes.

5 Q. Right. And you can -- no one can -- no
6 professional can really tell you exactly when an
7 injury occurs?

8 A. That's right. I think to give a precise
9 time would not be responsible.

10 Q. And even giving a time frame, that's an
11 estimate?

12 A. Yes.

13 Q. Because, indeed, you don't know when that
14 happened?

15 A. No. I was not there.

16 Q. Okay. Can you tell us in terms of G forces
17 how much force would it require to have an injury
18 like the skull fracture that Josiah had?

19 A. I can't tell you in terms of G forces
20 because babies aren't studied in experimental
21 circumstances.

22 Q. So, medicine and science cannot provide an
23 answer for all of our questions; is that correct?

24 A. Oh, no. I have the answer for Josiah's
25 questions.

1 Q. Not talking about Josiah. Like on the
2 timing, obviously, that can't be -- that can't be
3 determined. You can guess at a time frame?

4 A. Yes.

5 Q. But you don't know whether you're right or
6 whether you're wrong?

7 A. That's true.

8 Q. Just strictly opinion?

9 A. It's an estimate.

10 Q. And that's what the doctors were doing when
11 they estimated on February the 8th that Josiah would
12 be dead within 24 to 48 hours?

13 A. Yes.

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

15 **THE COURT:** Thank you.

16 Any redirect?

17 **MS. BYRNE:** Briefly, Judge.

18 **REDIRECT EXAMINATION**

19 Q. **(BY MS. BYRNE)** Just so that it's clear, how
20 would grabbing and shaking a baby, causing that
21 whiplash trauma, how would that lead to oxygen
22 deprivation?

23 A. So, you have -- you have that primary
24 injury and then secondary injury. So, we talked
25 about the stretching of the spinal cord. And there

1 is also sort of a concussion of the brain. When you
2 have a decrease in your mental status and injury in
3 your cervical spine, you worry about that stress on
4 the breathing centers.

5 And so, the drive to breathe in and of
6 itself is affected. And you have swelling of the
7 dying tissue that also impedes the ability of --
8 well, it occupies space. When it swells, it grows,
9 like push on all those growth plates and separate.
10 And so, that puts pressure from the outside, like
11 from the spinal column itself, on the breathing
12 centers; and you get diminished ability to breathe
13 even if you wanted to.

14 Q. And can the lack of oxygen -- what would
15 cause the seizure-like symptoms?

16 A. Well, for him, the blood touching the brain
17 could cause the symptoms. The damage to the brain
18 could cause the symptoms and the mechanical damage.
19 And then the deprivation of oxygen can cause the
20 symptoms. It's a complex picture.

21 Q. Okay. Now, would it be fair to say that
22 the blunt force trauma, the striking skull fracture
23 and the whiplash, could have occurred at the same
24 time or over a period of -- I mean, it doesn't have
25 to happen at the exact same time, does it?

1 A. No, no. It could have been a slamming and
2 a whiplash, and I can't -- I don't know. I wasn't
3 there.

4 Q. Okay. And this time line that you gave,
5 your expert opinion would be that sometime within 12
6 hours; and that's not exact science, correct?

7 A. Correct.

8 Q. That's just your expert opinion based on
9 the symptoms and everything that was observed, right?

10 A. Yes, ma'am.

11 Q. Okay. In addition to just the injuries,
12 when Josiah was checked into the hospital in the
13 grave condition, would it be important to you as a
14 child abuse pediatrician to know whether the baby was
15 eating?

16 A. Yes, ma'am.

17 Q. Okay. And why is that?

18 A. Well, babies do very few things that help
19 us assess their nervous system; but one thing is wake
20 up spontaneously to eat and eat well. So, that's a
21 great assessment of knowing that their central
22 nervous system, as primitive as it is, is in good
23 shape. So, the last time a child wakes and eats
24 prior to his injury is the last time we can say the
25 injury didn't exist.

1 Q. So, if -- it would be important to know
2 when the baby last ate?

3 A. Yes, ma'am.

4 Q. Okay. So, if at the hospital the father
5 reported that after picking up the baby Thursday
6 night he was still eating and drinking well, would
7 that be an indicator to you that the trauma likely
8 occurred after the baby stopped eating?

9 A. Absolutely.

10 Q. And it's your expert opinion that this is
11 child abuse?

12 A. Absolutely.

13 **MS. BYRNE:** At this time I offer
14 State's Exhibit No. 78. And I will pass the witness.
15 And tender to Defense counsel.

16 **MS. WILLIAMS:** No objection.

17 **THE COURT:** Admitted.

18 **MS. WILLIAMS:** You pass?

19 **MS. BYRNE:** Yes. Pass the witness.

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

21 **RECROSS-EXAMINATION**

22 Q. **(BY MS. WILLIAMS)** Doctor, did you author
23 this report?

24 A. If that is the one you took from my folder,
25 yes, I did.

1 **THE COURT:** Try not to talk over each
2 other. Control the pacing, Ms. Williams.

3 **Q.** **(BY MS. WILLIAMS)** Okay. In here it says he
4 will cry for feeds, dirty diapers, and a pain cry.

5 **A.** Yes, it does.

6 **Q.** I beg your pardon?

7 **A.** Yes, it does say that.

8 **Q.** If a pattern of feeding for a child changes
9 based on the child, not on the adult, and the child
10 begins to not take all of its formula, only about
11 half of it, would that be an indication that the
12 child is having some symptoms?

13 **A.** Yes, that is -- you're describing symptoms.

14 **Q.** So, when that starts, that could be an
15 onset of the symptoms?

16 **A.** Yes, that would be the onset of symptoms.

17 **Q.** Because it takes times for these, the
18 swelling --

19 **A.** Oh, you mean onset of symptoms of his.
20 I -- no, no, no, no. No, a child who suffers this
21 kind of injury is immediately altered in his mental
22 state.

23 **Q.** Can -- in an altered mental state, can a
24 child be looking at you but you get the feeling that
25 it's not seeing you or the impression that it's not

1 seeing you?

2 A. Yes.

3 Q. And can it kind of function some of that
4 time and then go into the altered state?

5 A. With this type of trauma, no, ma'am. Once
6 the trauma happens, they are altered and do not go
7 back to their baseline.

8 Q. Well, not to their baseline, but like if
9 you consider a seizure an altered state?

10 A. Yes. As a result of this trauma?

11 Q. Well, I'm just asking you in general if a
12 seizure is a type of altered state?

13 A. Yes. It's not entirely comparable to this
14 situation of Josiah's trauma; but, yes, we call
15 seizures altered mental status.

16 Q. And the layperson can't obvious -- can't
17 necessarily tell a seizure when it's happening unless
18 it's pretty dramatic?

19 A. Yes, that's true. Sometimes a doctor can't
20 tell either. You need EEGs to tell you.

21 Q. Okay.

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

23 **THE COURT:** Thank you.

24 **MS. BYRNE:** Nothing further.

25 **THE COURT:** Thank you.

1 Since this witness is leaving town, is
2 she excused for all purposes?

3 **MS. BYRNE:** No objection from the
4 State.

5 **MS. WILLIAMS:** Judge, I'd like for her
6 to be on call just as a precaution more than --

7 **THE COURT:** Okay.

8 **MS. WILLIAMS:** -- anything.

9 **THE COURT:** All right. And when will
10 you be back?

11 **THE WITNESS:** I will be back about
12 8:00 p.m. on Wednesday night.

13 **THE COURT:** All right. Thank you.
14 So, do you have a phone number in case we need to
15 reach you between now and then?

16 **MS. BYRNE:** I do, Judge.

17 **THE COURT:** Okay. So, at this time
18 you're excused. Hopefully we will not need you back.

19 **THE WITNESS:** Thank you, Your Honor.

20 **THE COURT:** Thank you. Have a good
21 trip. Thank you.

22 **THE BAILIFF:** Excuse me, Judge. You
23 have several people in the hall who are witnesses,
24 and they would like to know can they leave or --

25 **THE COURT:** Okay. I think they need

1 to wait until the lawyer comes out and talks to them.

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

3 **THE COURT:** Thank you. You're free to
4 go, Doctor.

5 **THE WITNESS:** Thank you, Your Honor.

6 **(Witness released)**

7 **THE COURT:** Yeah. Sir, they need to
8 wait so the lawyer can discuss the scheduling with
9 them on Monday.

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

11 **THE COURT:** Thank you. Is there
12 something else?

13 **MS. BYRNE:** The State rests.

14 **THE COURT:** Thank you very much.
15 Okay. May I see counsel at the bench?

16 **(At the Bench)**

17 **THE COURT:** Are those your witnesses?
18 Are those your witnesses in the hallway?

19 **MS. WILLIAMS:** Some of them are.

20 **THE COURT:** So, they can stay and talk
21 to you.

22 **MS. WILLIAMS:** Thank you.

23 **THE COURT:** So, we will begin your
24 case Monday at 10:00.

25 **MS. WILLIAMS:** At 10:00. Thank you,