

1                   **MS. BYRNE:** We do, Judge.

2                   **THE COURT:** Okay. We will take a  
3 20-minute break.

4                   All rise, please, for the jury.

5                   **(Jury released)**

6                   **THE COURT:** You're welcome to walk  
7 around the courthouse if you wish.

8                   **(Recess taken)**

9                   **(Jury enters the courtroom)**

10                  **THE COURT:** Thank you. Please have a  
11 seat.

12                  Would you call your witness for the  
13 record?

14                  **MS. BYRNE:** State calls Dr. Cara  
15 Doughty.

16                  **THE COURT:** Thank you. If you would  
17 raise your right hand, I will give you the oath.  
18 Better if you look at the jury.

19                  **(Witness Duly Sworn)**

20                  **THE COURT:** Thank you, ma'am.

21                               **CARA DOUGHTY, M.D.,**

22 having been first duly sworn, testified as follows:

23                               **DIRECT EXAMINATION**

24                  **Q. (BY MS. BYRNE)** Would you please introduce  
25 yourself to the jury?

1           A.     My name is Cara Doughty, I'm a pediatric  
2 emergency room doctor at Texas Children's.

3           Q.     How long have you been with Texas  
4 Children's?

5           A.     Since 2000. So, 14 years.

6           Q.     Are you a licensed doctor in the state of  
7 Texas?

8           A.     Yes, ma'am.

9           Q.     What sort of educational background do you  
10 have in order to practice medicine?

11          A.     After college I attended medical school at  
12 Washington University in St. Louis. I then came back  
13 to Houston and did residency and fellowship training  
14 at Texas Children's, and I have worked there since  
15 then.

16          Q.     And how many years did that take to  
17 complete?

18          A.     Medical school is four years, residency and  
19 fellowship was a total of seven years.

20          Q.     Okay. And what is your current -- do you  
21 have a title or position at Texas Children's?

22          A.     Assistant professor of pediatrics. And I  
23 work in the emergency room. I also direct our  
24 pediatric emergency medicine fellowship program where  
25 we train other doctors in that field.

1           Q.     Okay. Now, in addition to your work in the  
2 hospital and actual practice of medicine, have you  
3 done any publications or any sort of articles or  
4 things in the furtherance of medical research?

5           A.     My interest is in medical education. And  
6 so, the work that I do is related to teaching  
7 everyone from residents, paramedics, other people,  
8 about pediatric illness and injury to children.

9           Q.     And would you say that would be few or many  
10 publications you have done?

11          A.     Relatively few, but --

12          Q.     Okay. But they are pretty involved, I  
13 imagine?

14          A.     Yeah.

15          Q.     Okay. Now, in the emergency room, what  
16 would an average day be like in the emergency room?  
17 Like what are your typical duties?

18          A.     We see a wide range of children. So,  
19 obviously, nothing is expected in the emergency room.  
20 You don't know what type of patient is going to come  
21 in on any given shift. We do have different areas;  
22 and so, different types of patients tend to be sent  
23 to one area versus the other. And so, you have a  
24 little bit of an idea what's coming in based on where  
25 you're working.

1                   But most of the time, emergencies are  
2 emergencies. And so, what we see is unpredictable;  
3 and you don't know on any given day what kind of a  
4 day it's going to be.

5           Q.       What is the average length of a shift when  
6 you're in the emergency room?

7           A.       Anywhere from 8 to 12 hours.

8           Q.       I want to draw your attention to  
9 February 8, 2013. Were you working that day?

10          A.       Yes.

11          Q.       And you were in the emergency room?

12          A.       Yes.

13          Q.       Did you come into contact with a 15-day-old  
14 infant identified as Josiah Fisher?

15          A.       I did.

16          Q.       Okay. And what was Josiah's condition --  
17 or what were your observations at the time he was  
18 admitted into the hospital?

19          A.       When Josiah arrived, he was brought by EMS  
20 and arrived in our ambulance bay. He was immediately  
21 recognized as critically ill and brought to our major  
22 resuscitations room or trauma room, and I called  
23 overhead for doctors and nurses and the  
24 resuscitations team to come to evaluate him.

25          Q.       When you describe that you see a variety of

1 emergencies, I'm sure -- on varying scales, how would  
2 you describe the condition that Josiah was in?

3 A. Josiah was critically ill, in danger of  
4 dying.

5 Q. Now, what was your role right at that  
6 moment in treating Josiah?

7 A. Our immediate role is to stabilize the  
8 patient. So, to provide the life-saving care that  
9 they need. In his case, he wasn't breathing  
10 effectively. So we needed to put a breathing tube in  
11 to breathe for him. And then we need to assess the  
12 extent of his injuries and try to find anything that  
13 could be potentially life threatening immediately.

14 So, that includes things like bleeding  
15 in the brain or trauma to the head, trauma to the  
16 belly where you can also lose a large amount of  
17 blood. And in patients like that, where they are  
18 critically ill, some of the other tests or other  
19 injuries that we also look for in suspected abuse, we  
20 wait; and those happen later because they are not  
21 life-threatening injuries.

22 Q. Now, when you say other injuries that  
23 aren't necessarily life threatening, that doesn't  
24 mean they aren't necessarily serious?

25 A. Correct.

1           Q.     It's just that in that very moment, you  
2 wouldn't expect them to cause death?

3           A.     Correct.

4           Q.     Okay.  So, you mentioned breathing.  What  
5 exactly did you have to do to help Josiah breathe?

6           A.     Josiah was making some effort to breathe on  
7 his own, but it was not adequate.  He was not  
8 breathing normally.  His mental status was such that  
9 he was really not able to breathe normally.  And so,  
10 we gave him sedative medicines and put a breathing  
11 tube in to breath for him.

12          Q.     When you say his mental status was such,  
13 what do you mean by that?

14          A.     So, in a baby, normally, you would expect  
15 them to be able to, you know, cry, calm, be consoled,  
16 you know, look, fix their eyes on you, things like  
17 that.  And he wasn't able to do any of those things.  
18 His mental status was significantly lower than what  
19 we would expect, and that was --

20          Q.     What -- and what, if anything, did that  
21 indicate to you about potential injuries or trauma?

22          A.     That in combination with some sort of  
23 unexplained change in mental status in a baby, in  
24 combination with bruising, the very pale state that  
25 he was in and then the findings that we found on CT,

1 the CT scan really, for us all together, gives us a  
2 constellation of symptoms that is most consistent  
3 with trauma or abuse.

4 Q. Okay. Well, let's start with the outside  
5 of Josiah's body. Were there noticeable injuries or  
6 things that caused concern for a medical professional  
7 on Josiah's body?

8 A. Yes. And sort of immediately noticeable  
9 was that he was extremely pale and had multiple  
10 bruises on his face and his shoulders and upper arms.

11 Q. Now, in the emergency room, if a child  
12 comes in with injuries that are visible like that, is  
13 that something that would be photographed by the  
14 hospital?

15 A. That's part of our routine, to document  
16 injuries, yes.

17 Q. Okay.

18 MS. BYRNE: May I approach the  
19 witness?

20 THE COURT: Granted.

21 Q. (BY MS. BYRNE) I'm showing you what's been  
22 marked as State's Exhibits No. 22 through 56.

23 A. Yes.

24 Q. Have you had an opportunity to review these  
25 exhibits prior to taking the stand?

1 A. Yes.

2 Q. Okay. And do State's Exhibits No. 22  
3 through 56 fairly and accurately depict Josiah as he  
4 was upon admittance to the hospital on February 8,  
5 2013?

6 A. Yes.

7 **MS. BYRNE:** At this time I would  
8 tender State's 22 through 56 into evidence -- offer  
9 them into the evidence and tender to Defense for  
10 inspection.

11 **MS. WILLIAMS:** Thank you. No  
12 objection, Your Honor.

13 **THE COURT:** They are admitted.

14 Q. (BY MS. BYRNE) I'd like to take a look at  
15 some of these exhibits. If you can tell us what  
16 we're looking at in State's Exhibit No. 23?

17 A. I believe that's Josiah's neck with  
18 bruising.

19 Q. And what I'm pointing to on the exhibit,  
20 would that be the bruising that you noticed on his  
21 neck?

22 A. Yes.

23 Q. Okay. State's Exhibit No. 24, what are we  
24 looking at here?

25 A. Thank you.



1 Q. Sorry.

2 A. That's his shoulder and arm. So, it's a  
3 bruise right above his -- where his -- his armpit.

4 Q. Okay. And then is there some redness and  
5 bruising kind of over --

6 A. Yes.

7 Q. -- on his shoulder area?

8 A. On the shoulder, as well.

9 Q. Okay. What are we looking at in State's  
10 Exhibit No. 25? If you can tell, would that be the  
11 backside of his arm?

12 A. Yeah. It is turned sideways? I believe  
13 that's his arm. Yeah, there you go.

14 Q. Okay. This is redness?

15 A. On his upper arm.

16 Q. Bruising -- okay. What are we are looking  
17 at in State's 26?

18 A. That's again his shoulder, upper arm.

19 Q. Okay. And the bruising that you indicated  
20 you observed?

21 A. Yes.

22 Q. Okay. Now, what is it that you are trying  
23 to document on State's Exhibit 28?

24 A. So, this is his upper chest where there was  
25 bruising, as well. I don't think it comes across --

1 Q. Okay.

2 A. -- very well.

3 Q. In these pictures are you trying to  
4 document redness and bruising that are observed on  
5 the chest?

6 A. Correct.

7 Q. Okay. What's noticeable in State's Exhibit  
8 No. 30?

9 A. I'm having trouble seeing this one. It's  
10 also his chest.

11 Q. Okay. Do you see any bruising over here in  
12 the armpit area --

13 A. Yes.

14 Q. -- and shoulder area?

15 State's Exhibit No. 33, is this just  
16 another picture showing the bruising, doesn't show it  
17 very well.

18 A. To his arm, yeah.

19 Q. Bruising on his arm.

20 And do these pictures look better if  
21 you have the opportunity to actually see some of them  
22 and hold them --

23 A. Yes.

24 Q. -- versus the system?

25 A. Yes.

1           Q.       And then here, the opposite arm in State's  
2 Exhibit No. 24?

3           A.       Again, that is the arm where -- right at  
4 the shoulder with bruising all along there.

5           Q.       Okay. So, on both his left and right arm  
6 and left and right armpits -- were there bruising  
7 above the armpits into the shoulders?

8           A.       Correct.

9           Q.       Okay. All of this bruising that was seen  
10 on the armpit and the shoulder area, could that be  
11 consistent with a hand grabbing the child and  
12 applying pressure?

13          A.       It certainly could be.

14          Q.       And State's Exhibit No. 38, what are we  
15 looking at?

16          A.       This is Josiah's face. There is tape on it  
17 where we secured the breathing tube in his mouth, but  
18 what you see is bruising right in front of his ear as  
19 well as a linear bruise that's right along his neck  
20 right below the tape there.

21          Q.       So, it was actually bruising along the  
22 baby's neck.

23                       And then I guess State's Exhibit 41 --  
24 in several of these pictures, do you use a measuring  
25 tool to try and determine how large the bruise is?

1           A.       We do just for documentation sake.

2           Q.       And this particular bruise, was it at least  
3 over a centimeter wide?

4           A.       Yes.

5           Q.       What are we looking at in State's  
6 Exhibit 45?

7           A.       So, this is Josiah's face. He had bruising  
8 over his eyelids, and his eyelids were both very  
9 swollen.

10          Q.       State's Exhibit No. 46, is this a close-up  
11 of one of his eyes?

12          A.       Yes.

13          Q.       Okay. And can you note the redness?

14          A.       You can appreciate the redness and the  
15 swelling.

16          Q.       Now, a lot of these pictures -- would that  
17 be duplicate -- I guess some of them you zoom in and  
18 try and measure?

19          A.       Yes. We zoom in. We try to measure. We  
20 also recognize that it is kind of hard to take good  
21 pictures and really get good pictures of bruising;  
22 and so, we try to take a lot of pictures.

23          Q.       This would be his opposite eye. What do  
24 you observe on his opposite eye?

25          A.       Again, the redness, the bruising, almost an

1 abrasion or scrape on the bottom eyelid.

2 Q. Do his eyes appear to be swollen?

3 A. Yes.

4 Q. What, if anything, could that be indicative  
5 of?

6 A. Again, just blunt trauma.

7 Q. Okay.

8 A. Force.

9 Q. Now, externally you observed bruising and  
10 things like that. Based on your training and  
11 experience, what could be the cause of bruising in an  
12 infant like that?

13 A. Infants don't -- at this age don't crawl,  
14 don't walk, don't cause themselves trauma. So, in  
15 terms of trauma, trauma is caused to them. Someone  
16 else has to do this to them. We do think about  
17 bruising, making sure that there is not a problem  
18 with bleeding or something like that that child was  
19 born with. But we check those labs, and those are  
20 normal.

21 Q. Okay. So, certainly doctors would look for  
22 other causes that might explain bruising before just  
23 deciding that it's trauma?

24 A. And, again, bruising alone would be one  
25 thing; but bruising along with the other findings

1 that we had with Josiah, it wouldn't make any sense  
2 with any of the other things.

3 Q. Well, let's talk about those other  
4 findings. What was noted as far as right there in  
5 the emergency room that was in need of immediate  
6 treatment?

7 A. So, after taking care of his breathing with  
8 the breathing tube, the biggest concern was his head.  
9 His soft spot in his head was swollen, indicating  
10 that there was likely increased pressure inside his  
11 brain. So, once we had stabilized him enough that we  
12 felt comfortable to take him to our CT scanner, we  
13 took him to the CT scanner to evaluate his head as  
14 well as his belly.

15 Q. And what was observed when the CT scans  
16 were done on Josiah?

17 A. There are multiple findings on Josiah's  
18 head CT. He had a fracture of his skull on the  
19 left-hand side. Underlying that, he had some  
20 bleeding that was in a location we call subdural.  
21 But, basically, under the lining of the brain. He  
22 also had swelling of his entire brain, indicating  
23 again, sort of shaking and loss of oxygen.

24 Q. Were there any signs of seizure or that  
25 this baby had had any seizures?

1           A.       Yes.  So, before we decided to put the  
2 breathing tube in, Josiah was intermittently having  
3 periods where he would -- his eyes would deviate off  
4 to the side, and he appeared to be having a seizure.  
5 So, we did treat him with seizure medicines while he  
6 was in the emergency room, as well.

7           Q.       Now, everything that you have mentioned the  
8 brain swelling, the brain bleeding, the seizures,  
9 would the seizures be caused from the brain injuries  
10 that you observed?

11          A.       Yes.

12          Q.       Okay.  I guess the lack of oxygen, would  
13 you consider these to be very grave conditions?

14          A.       These are very grave conditions.

15          Q.       All right.  At the time when you're trying  
16 to save this baby's life, what was the prognosis at  
17 that time?  What did you think the likelihood was?

18          A.       I thought it was likely that he would pass  
19 away.

20          Q.       Okay.  Now, how could Josiah -- I mean, in  
21 order to sustain these injuries on his head, what  
22 would have had to have occurred?  I mean --

23          A.       These are injuries that didn't occur from  
24 everyday handling.  These are injuries that didn't  
25 occur even from an accidental single fall.  The head

1 injuries that he has are multiple, indicate shaking  
2 and impact over time. So, it's something that  
3 required multiple events.

4 Q. Would it be fair to say that there had to  
5 be some sort of significant direct force to his head  
6 in order to have caused these injuries?

7 A. Yes.

8 Q. Okay. And, in addition, you have also  
9 mentioned shaking. Sometimes it can be that they go  
10 hand in hand, as well?

11 A. Yes. So, we talk about shaking impact.  
12 The idea that there could be kind of a combination of  
13 a shaking force as well as an impact where the head  
14 is hitting something, hitting a surface.

15 Q. Okay. Now, the injuries that you observed  
16 on this baby, would that be consistent with being  
17 dropped one time to the floor?

18 A. No.

19 Q. Okay. Would that -- hypothetically, let's  
20 say that a 15-day-old could roll and would roll off a  
21 bed. Would these injuries be consistent with rolling  
22 off a bed?

23 A. A 15-day-old can't roll off the bed. And  
24 even when we see older babies who have rolled off a  
25 bed and fallen and hit their heads, they have perhaps



1 a single skull fracture. They do not have all of  
2 these other findings that we saw with Josiah.

3 Q. What if Josiah was being bathed in a sink  
4 and maybe his head hit the side of the sink one time,  
5 would that be consistent with these injuries?

6 A. No.

7 Q. Okay. And I don't want you to -- would it  
8 be fair to say that the force that would have caused  
9 these injuries would be greater than necessary to  
10 handle this child in day-to-day activities?

11 A. Absolutely.

12 Q. So, change his diaper, you wouldn't have to  
13 apply this force?

14 A. No.

15 Q. Feeding the baby, would it require this  
16 force?

17 A. No.

18 Q. Burping the baby or rocking the baby, would  
19 it require this much force?

20 A. No. It would require substantially more  
21 force.

22 Q. In your opinion, were any of these caused  
23 by accidental mishandling of this child?

24 A. No.

25 Q. Now, as -- okay.

1                   **MS. BYRNE:** Permission to approach?

2                   **THE COURT:** Granted.

3           **Q.**       **(BY MS. BYRNE)** I'd like to show you what's  
4           been marked as State's Exhibit No. 21. Do you  
5           recognize this type of report?

6           A.       Yes. This is a physician's statement  
7           regarding injury to a child. It's a standard  
8           document that we at the hospital fill out when we're  
9           concerned that there may have been child abuse or  
10          trauma to a child.

11          **Q.**       And as a doctor, who from time to time  
12          fills out reports like this? Are you considered a  
13          custodian of those records?

14          A.       Yes.

15          **Q.**       And all the entries that are made inside  
16          State's Exhibit No. 21, are they made at or near the  
17          time of the event or the treatment of the child?

18          A.       Correct. They are typically made either in  
19          the emergency room or immediately after admission to  
20          the hospital.

21          **Q.**       And they are made by somebody that has  
22          personal knowledge of what they're putting in the  
23          report?

24          A.       Yes.

25          **Q.**       Okay. And are these kept in the day-to-day

1 regular course of business of Texas Children's  
2 Hospital?

3 A. They are kept in the medical records.

4 Q. Okay. So, it's a routine record to have in  
5 your hospital?

6 A. Correct.

7 Q. Okay. And an exact copy of the original  
8 that would be maintained at the hospital?

9 A. Correct.

10 Q. Okay.

11 **MS. BYRNE:** At this time I would offer  
12 State's Exhibit No. 21 into evidence and tender to  
13 the Defense for inspection.

14 **MS. WILLIAMS:** No objection.

15 **THE COURT:** Admitted.

16 Q. **(BY MS. BYRNE)** Now, why are these reports  
17 filled out at the hospital?

18 A. They are documentation of the injuries that  
19 we see, the concerns that we have for child abuse.

20 Q. Okay.

21 A. Standardized as part of the medical  
22 records.

23 Q. Okay. So, what was treated for the most  
24 immediate of injuries in the emergency room, is that  
25 what would be listed here under "medical condition"?

1           A.       Correct.

2           Q.       Okay.  So, we have got brain swelling and  
3           bleeding, fracture, and seizures?

4           A.       Correct.

5           Q.       Okay.  Now, you also note physician's  
6           impressions relating to the condition of the child.  
7           Is that just -- what does that mean?

8           A.       Physician's impressions relating to the  
9           condition of the child is our interpretation of those  
10          injuries and what we think the potential causes are.  
11          In some cases when we fill out this form, we don't  
12          know whether there was abuse or not; and we're asking  
13          for further investigation.  In some cases we're  
14          pretty convinced, as in this case, with all of these  
15          findings.

16          Q.       So, is it fair to say that some cases it  
17          would be more obvious than other cases that abuse may  
18          or may not be occurring?

19          A.       Correct.

20          Q.       Okay.  And the injuries that you saw on  
21          Josiah that you were treating, would it have been  
22          likely for them to result in death or permanent  
23          injury?

24                   **MS. WILLIAMS:**  Objection.  She should  
25          be asked her opinion.

1                   **MS. BYRNE:** I can rephrase.

2                   **THE COURT:** Overruled. Okay.

3           **Q.**       **(BY MS. BYRNE)** In your treatment of Josiah  
4 and your medical training, is it your opinion that  
5 the injuries that you are treating him for could have  
6 resulted in death or permanent brain injury?

7           **A.**       Absolutely.

8           **Q.**       Now, given all you know, you see children  
9 all the time -- and sometimes you said it's obvious,  
10 sometimes it's not -- was there an obvious conclusion  
11 based on your medical training and experience as to  
12 what would have -- whether this would have been  
13 accidental or abuse?

14                   **MS. WILLIAMS:** Objection as to the use  
15 of the word "conclusion." Again, I would say that  
16 the proper way to ask that question is using the word  
17 "opinion."

18                   **THE COURT:** Overruled. You may  
19 answer.

20           **A.**       At the time of presentation in the  
21 emergency room, obviously, we're concerned most about  
22 the life-threatening injuries. We might -- number  
23 one concern in him, after treating him and  
24 stabilizing him, was that this was not an accidental  
25 trauma. With that said, we still do the other

1 evaluation to look for other causes.

2 Q. Okay. So, for example, retinal scans,  
3 x-raying, like things like that. There are certainly  
4 more follow-up treatment that needs to be done?

5 A. Exactly. So, at the time the emergency  
6 room, I did not have results from some of those tests  
7 that, again, are much more confirmatory of abuse, as  
8 well.

9 Q. But those are all things that would be done  
10 and would have been handled by other medical  
11 professionals?

12 A. Once he is hospitalized and stabilized.

13 Q. Okay.

14 MS. BYRNE: I pass the witness.

15 THE COURT: Thank you.

16 MS. WILLIAMS: Thank you.

17 CROSS-EXAMINATION

18 Q. (BY MS. WILLIAMS) Dr. Doughty, my name is  
19 Clyde Williams. Good afternoon --

20 A. Good afternoon.

21 Q. -- to you. I represent Mr. Fisher. And I  
22 think you had the opportunity to see Mr. Fisher at  
23 Josiah's bedside during the course of your good  
24 treatment of Josiah.

25 EMS, you were probably about one of

1 the first, if not the first, doctors to see Josiah  
2 Fisher. Would that be a correct statement?

3 A. I was certainly one of the first. Several  
4 of us probably arrived simultaneously in that room.

5 Q. All at one time because you had to work on  
6 him as a team?

7 A. Correct.

8 Q. And you had to do procedures immediately  
9 because he is breathing -- his breathing was labored,  
10 and he wasn't getting enough oxygen at the time to  
11 the brain.

12 A. Correct.

13 Q. Did you give him any blood transfusions?

14 A. Not in the emergency room.

15 Q. Did you give him any kind of fluids?

16 A. Not in the emergency room.

17 Q. Okay. Well, during any of your treatment?

18 A. I'm sorry?

19 Q. During any of the time that you were with  
20 him -- I think you were with him for about an hour  
21 and 20 minutes?

22 A. Yes.

23 Q. And was he given any fluids that you're  
24 aware of?

25 A. In general, we try to avoid giving fluids

1 in children with concern for brain injury. So, I  
2 don't believe that we gave any fluids --

3 Q. Okay.

4 A. -- during that time.

5 Q. And brain -- brain injury can be caused by  
6 a lot of things; isn't that true?

7 A. There are many things that can injure the  
8 brain. There are not many things that can accuse  
9 brain swelling, skull fracture, and bleeding in the  
10 brain.

11 Q. Well, in this instance, you didn't have the  
12 benefit of Josiah's birth records, maternal  
13 conditions before and during birth, the length of the  
14 labor, and what kind of delivery it was?

15 A. He is 2 weeks old when we are seeing him  
16 there in the emergency room. There is no way that he  
17 would have survived for two weeks with these injuries  
18 from birth.

19 Q. I'm not asking that. I'm just saying when  
20 you treated him, you did what you had to do; but you  
21 didn't have his birth records or any knowledge of  
22 what kind of birth he had?

23 A. That is correct. We were --

24 Q. Or what kind of maternal problems there  
25 were?



1           A.       That's correct.

2           Q.       There was no --

3                   **THE COURT:**   Excuse me.   Excuse me.  
4       One at a time.   Ms. Williams, let her finish the  
5       answer before you ask the next question.

6                   And, of course, let the attorney  
7       finish the question all the way through before you  
8       answer, Doctor.   Thank you.

9                   **MS. WILLIAMS:**   Thank you, Judge.

10          Q.       **(BY MS. WILLIAMS)** There -- and the father  
11       really didn't know much about the medical history.  
12       So, he wasn't particularly helpful in that instance?

13          A.       No.   The father did not know much about the  
14       medical history.

15          Q.       CPS brought -- I mean, EMS came in; and  
16       pretty soon thereafter, would it be true that a CPS  
17       worker came in?

18          A.       I do not recall the exact time that the CPS  
19       worker came in.

20          Q.       During the time that you worked on Josiah,  
21       did you have any contact or know that there was a CPS  
22       worker come in reference to Josiah?

23          A.       Frankly, I was concerned with Josiah living  
24       to make it to the intensive care unit.   It is our  
25       standard practice that our social workers will

1 contact the police and CPS as part of our evaluation.

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

3 I would ask for a response to my question.

4 A. I do not recall.

5 **THE COURT:** Thank you.

6 A. I do not recall whether the CPS workers  
7 were in the emergency room at the time we were  
8 treating him.

9 **THE COURT:** Excuse me just a moment.  
10 The rules require that you just answer the question  
11 asked.

12 **THE WITNESS:** Okay.

13 **THE COURT:** Thank you.

14 **Q. (BY MS. WILLIAMS)** There are other doctors  
15 at Texas Children's Hospital whose job it is to be  
16 a -- especially interested in suspected abuse of  
17 children; isn't that correct?

18 A. Yes, that's correct.

19 **Q.** And they work with law enforcement; is that  
20 correct?

21 A. Yes, that's correct.

22 **Q.** They work with CPS workers?

23 A. Yes. That's correct.

24 **Q.** And they work with Children's Assessment  
25 Center?

1           A.       Yes.  That's correct.

2           Q.       And there is a special grant to Texas  
3 Children's Hospital for this purpose of these  
4 professionals all working in conjunction --

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

6                    **MS. WILLIAMS:**  Oh, I'm sorry.

7                    **MS. BYRNE:**  I thought she finished the  
8 question.  I apologize.

9                    **THE COURT:**  Approach, please.

10                   **(At the Bench)**

11                   **THE COURT:**  Do one of the doctors who  
12 works in conjunction with the Children's Assessment  
13 Center treat the baby?

14                   **MS. BYRNE:**  Yes, at a later time.

15                   **THE COURT:**  Okay.

16                   **MS. WILLIAMS:**  I didn't hear you.

17                   **THE COURT:**  Sorry.  I can't hear you.

18                   **MS. WILLIAMS:**  I couldn't hear you.

19                   **THE COURT:**  I was just asking if a  
20 doctor -- if any of the doctors work with the  
21 Children's Assessment Center or law enforcement  
22 treated the baby, and the D.A. responded at a later  
23 time.  And so --

24                   **MS. WILLIAMS:**  Okay.  I can't hear  
25 you.

1                   **THE COURT:** Okay. So, I don't know  
2 that this is getting us anywhere.

3                   **MS. WILLIAMS:** Okay. Thank you.

4                   **(End of Bench Discussion)**

5           **Q.**       **(BY MS. WILLIAMS)** You're familiar with  
6 neonatal stroke?

7           **A.**       Yes.

8           **Q.**       And that generally occurs in the first 28  
9 days of a child's birth?

10          **A.**       That's correct.

11          **Q.**       And it causes a lack of oxygen to the brain  
12 or an interruption in the blood vessels that causes  
13 oxygen not to be delivered to the brain as it should  
14 be?

15          **A.**       That is true.

16          **Q.**       And in the process of being born,  
17 particularly if it's a long labor, that -- when the  
18 baby goes through the birth canal, there are forces  
19 pressing on the baby's head; is that correct?

20          **A.**       That is correct.

21          **Q.**       And the -- if the baby is in that birth  
22 canal a long time, his or her ability to receive --  
23 to get enough oxygen is compromised.

24          **A.**       It is true that babies can lose oxygen  
25 during birth or during a difficult delivery.

1 Q. And depending on how much they lose, if  
2 it's just a little bit, it's probably not going to  
3 cause any problem?

4 A. That's --

5 Q. Would you agree with that statement?

6 A. The longer you are without oxygen, the more  
7 significant your problems will be.

8 Q. And the same thing with a baby. Once it's  
9 born, it has to -- it may have to be revived because  
10 it isn't breathing when it first comes into the  
11 world?

12 A. Yes.

13 Q. Because you're familiar with the Apgar  
14 system to evaluate --

15 A. Yes.

16 Q. -- neonatals; is that correct?

17 A. That's correct.

18 Q. So, a baby who is not making any  
19 respiratory effort at two -- at two minutes after  
20 birth and has to be resuscitated may not have had  
21 sufficient oxygen when it was born?

22 A. There are multiple reasons why a baby might  
23 not be breathing when they are born and need  
24 resuscitation.

25 Q. And that's just one of them?

1           A.     Yes.

2           Q.     Stroke -- and I'm not talking about the  
3 skull fracture, but just the stroke. That causes  
4 bleeding in the brain, doesn't it?

5           A.     No. So, Josiah had evidence of --

6           Q.     Will you answer my question?

7           A.     Can you rephrase the question?

8           Q.     Yes. I'm sorry. Stroke is bleeding in the  
9 brain or a lack of oxygen getting to the brain --

10          A.     There are --

11          Q.     -- because of the blood vessels being  
12 compromised or something interrupting the flow of  
13 oxygen?

14          A.     There are two different types of strokes.  
15 There are strokes that are called hemorrhagic strokes  
16 where there is bleeding from the specific blood  
17 vessel in the brain, and there are other strokes that  
18 are -- where there is a blood clot forming and then  
19 lack of blood flow to the brain.

20                     In both of those cases, you see  
21 bleeding or lack of blood flow in a very specific  
22 area where that one vessel is. That is not what we  
23 saw in this case.

24          Q.     In this case, you -- well, let's -- it can  
25 take some time for the brain to swell in a situation

1 like this, where there is stroke involved?

2 A. This child didn't have a stroke.

3 Q. In your opinion?

4 A. Correct.

5 Q. But your opinion is without medical history  
6 and birth records; is that correct?

7 A. He -- the injuries he presented with on the  
8 day that I saw him were not consistent with a stroke.  
9 He had bleeding in his brain that was caused by  
10 trauma. And he had loss of oxygen to all of his  
11 brain that was probably caused by the fact that he  
12 was not breathing well because of the brain injuries.

13 Q. Is it your opinion that the skull fracture  
14 was the cause of Josiah's bleeding?

15 A. A brain bleeding -- he had bleeding in  
16 several parts of his brain; and so, the skull  
17 fracture was not likely the only cause of bleeding in  
18 his brain.

19 Q. In your opinion, would the skull fracture  
20 have been fatal to Josiah or cause serious bodily  
21 injury to Josiah?

22 A. A skull fracture alone in general is not  
23 fatal. It can be a significant injury. It can be  
24 life threatening; but in general, skull fractures  
25 alone are not fatal. It's what happens in the brain

1 under them that's the part that is more likely to be  
2 fatal.

3 Q. And are you familiar with the thickness of  
4 an infant's skull?

5 A. The infant's skull is quite thin. I don't  
6 know a measurement.

7 Q. Less than 5 milliliters?

8 A. Yes, ma'am.

9 Q. Something like this maybe (indicating)?  
10 Like this (indicating)?

11 A. I don't know an exact measurement.

12 Q. It's very fragile, isn't it?

13 A. Infant skulls are fragile.

14 Q. The bruising on the -- that you saw on  
15 Josiah's body did not cause any serious bodily  
16 injury; is that correct?

17 A. The bruising in and of itself healed  
18 without causing any significant injury.

19 Q. And any scratches on him didn't cause  
20 significant injury either?

21 A. That's correct.

22 Q. Okay. And did you -- did anyone treating  
23 him initially order any kind of metabolic testing on  
24 Josiah Fisher?

25 A. Explain to me what you mean by "metabolic



1 testing."

2 Q. How his body processes his nutrients.

3 A. We ordered in the emergency room initial  
4 studies that were mostly addressed to life-saving  
5 things, things like blood counts, initial  
6 chemistries, which is sort of metabolic, how your  
7 kidneys are functioning, and things like that.

8 Q. But specialized tests for metabolic weren't  
9 ordered because you were doing the emergency  
10 procedures that you have to do to save Josiah's life?

11 A. That's correct.

12 Q. Because that was your concern and your only  
13 concern?

14 A. Absolutely.

15 Q. Now, when you resuscitate a child, intubate  
16 a child, do they just lay still for you to -- for the  
17 tube to go down their throat?

18 A. That depends on their medical condition.  
19 In Josiah's case, he was still making some -- some  
20 movements; and so, we gave him medications so that he  
21 was sedated and wouldn't feel anything while we were  
22 putting the tube down.

23 Q. Did he -- he resist the intubation?

24 A. No, ma'am.

25 Q. Approximately how many people were working

1 on Josiah Fisher in that initial time frame?

2 A. In the range of 15.

3 Q. Fifteen different people?

4 A. Somewhere in there.

5 Q. And would it be correct that a lot of  
6 people were working on Josiah at the same time?

7 A. Correct.

8 Q. And his pulse was good, or was it, when he  
9 initially came in?

10 A. That's an excellent question. His pulse  
11 was initially good, but he had periods where his  
12 heart rate and pulse would drop.

13 Q. Drop.

14 A. And that is another concerning sign for us  
15 that there is swelling in your brain.

16 Q. And were -- was Josiah crying any of the  
17 time before he was intubated?

18 A. Yes and no. He was sort of irritable,  
19 inconsolable, making some crying type noises but not  
20 crying like a normal baby would be crying.

21 Q. Did the fact that CPS was there and EMS,  
22 the emergency medical service, did that influence you  
23 any in your decision as a -- of thinking that  
24 Josiah's injuries could be consistent with abuse?

25 A. No, ma'am. There is really nothing else

1 that could have caused this constellation of symptoms  
2 even though we were seeing them in the emergency.

3 Q. In your opinion?

4 A. In my opinion.

5 MS. WILLIAMS: Pass the witness.

6 THE COURT: Thank you.

7 Redirect?

8 MS. BYRNE: Nothing further.

9 THE COURT: Thank you. Is this  
10 witness released, or is she on call?

11 MS. BYRNE: Released.

12 MS. WILLIAMS: On call.

13 THE COURT: That means you're released  
14 for today but subject to recall.

15 THE WITNESS: Okay.

16 THE COURT: Thank you.

17 THE WITNESS: Thank you.

18 THE COURT: Thank you so much for  
19 coming down.

20 (Witness released)

21 MS. BYRNE: We will go ahead and  
22 recess at this time.

23 Members of the jury, it's important  
24 you remember all of the instructions I have given you  
25 before. Don't discuss the case with anyone or read

1 anything about the case or listen to anything about  
2 the case. And we will start again tomorrow at 10:00.

3 All rise, please for jury.

4 ***(Jury released)***

5 **(END OF TODAY'S PROCEEDINGS)**

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